

# **A Multi-level Analysis of the EU Linking Directive Process**

**The Controversial Connection between EU  
and Global Climate Policy**

Karoline Hægstad Flåm





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**Abstract**

Despite initial scepticism in the EU towards the Kyoto Protocol's project mechanisms (the CDM and JI), the "Linking Directive" was adopted in October 2004, connecting the EU emissions trading scheme with the project mechanisms. Not only was the Linking Directive settled remarkably quickly, the decision-making process also left a more liberal text, with fewer restrictions on the use of the project mechanisms, as compared to the initial directive proposal. This report examines possible explanations to this puzzle, evaluating whether Member State preferences, EU institutions or external influence from the climate regime best can contribute to understanding the process. On the basis of the analysis of written sources stemming from the decision-making process, as well as seven in-depth interviews, the report finds that Member State preferences were the main driver in the Linking Directive process. This gives support to the intergovernmentalist mantra, that Member States are the main decision-makers in the EU. It also challenges much recent research claiming that EU policy-making is increasingly being taken out of the hands of the nation-state and into supranational actors such as the Commission and the European Parliament.

**Key Words**

Linking Directive, EU, climate policy, CDM, JI

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## Abbreviations and Acronyms

CDM	Clean Development Mechanism
DG	Directorate General
ENGO	Environmental non-governmental organization
EP	European Parliament
ET	Emissions Trading
ETS	Emissions Trading Scheme
EU	European Union
JI	Joint Implementation
MEP	Member of the European Parliament
MS	Member State
MW	Mega Watt
NGO	Non-governmental organization
WCD	World Commission on Dams



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Oslo, October 2007

Karoline Hægstad Flåm



# 1 Introduction

## 1.1 Background

In 1997, a milestone in global climate policy was reached: The Kyoto Protocol was signed, paving the way for mandatory reductions in greenhouse gas emissions around the globe (United Nations 2007). As part of the strategy to curb emissions, the Protocol included three so-called ‘flexible mechanisms’: 1) global emissions trading (ET), 2) the Clean Development Mechanism (CDM), and 3) the Joint Implementation Mechanism (JI). Under the two latter mechanisms, parties with a greenhouse gas reduction commitment can invest in projects ‘abroad’ as an alternative to what is generally considered more costly emission reductions in their own countries. In return for this, the investor is entitled to so-called emission credits, which can then either be used to comply with ones own emission targets, or they can be sold with a profit on the emissions trading market. CDM and JI are often termed the ‘project mechanisms’, as they are bound to projects in specific geographical areas, as opposed to global emissions trading.<sup>1</sup>

As a follow-up to the Kyoto Protocol, the EU established its own regional emissions trading scheme (ETS) in October 2003. However, this scheme did not include a link to the CDM and JI – much due to the controversy surrounding these mechanisms. The green movement argued that establishing a link to the project mechanisms would create ‘loopholes’ in the EU scheme (Greenpeace 2003; Climate Action Network Europe 2003). It would damage the Member States’ domestic climate policy, which in turn would undermine the EU’s credibility in international climate negotiations (Ibid.). Moreover, it was argued that the environmental integrity of the project mechanisms was questionable.<sup>2</sup> Also a vast majority of the EU Member States, the Parliament and likewise the Commission positioned itself as strongly sceptical against the project mechanisms, both during the 1997 Kyoto negotiations and during the later ETS negotiations (Grubb et al. 1999: 94; Michaelowa 2004: 12).

However, the EU would not remain a ‘safe haven’ where climate policy was kept unhampered by the CDM and JI for long. In spite of all the initial opposition, a link from the EU ETS to the Kyoto Protocol’s project mechanisms would be established – and remarkably quickly, too: in October 2004, only a year after the EU emissions trading scheme had been adopted, a separate ‘Linking Directive’ was signed (Directive 2004/101/EC). With it, a direct bridge between EU and global climate policy had been established.<sup>3</sup>

## 1.2 The Research Question

This brief recap of the stages leading up to the Linking Directive sketches out an interesting puzzle. How could the EU, once a major sceptic of mixing market-based mechanisms with environmental policy, adopt a directive advancing just such a mix? More specifically, how could the Linking Directive be adopted considering its design and content? There is much to suggest that the final directive actually ended up more liberal –

in the sense that it contained ‘softer’ restrictions on the use of the project mechanisms as compared to what the initial proposal had suggested. As representatives of the green movement stated; ‘[t]o the disappointment of environmental groups, the text of the linking directive finally adopted does not contain significant environmental [...] checks’ (Climate Action Network Europe 2007). This is puzzling in light of the aforementioned strong ‘anti-flex’ forces in the EU. It calls for closer scrutiny on what actually happened during the Linking Directive process, *how* the directive design changed and *why* these changes came about. Hence the main research question of this study:

*In what way did the design of the Linking Directive change, and how can this change be explained?*

In seeking answers to these questions, the study fulfils a dual function. For one, it exemplifies a more general trend – the growing emergence of the so-called ‘new’ environmental policy instruments (Jordan et al. 2003). Environmental policy is increasingly moving away from the regulatory ‘command and control’ regimes, and turning towards more cost-efficient and market-based alternatives (Ibid.: 1-13). Of this, the Linking Directive is a prime example. It brings climate change into the business boardroom, and expands EU climate policy to a ‘global market’, leaving it up to the industry to achieve environmental targets at a minimum cost. Second, and equally important, the Linking Directive provides the opportunity to study EU decision-making up close. Who actually decides EU environmental policy? Is EU policy-making increasingly being taken out of the hands of the nation-states and into supranational actors such as the Commission and the European Parliament – as has been suggested by a number of recent studies?<sup>4</sup> A detailed case study of the Linking Directive process can contribute to better answering these questions. It tells the tale of how *part* of the EU’s climate policy came about, and as such, it contributes to the empirical basis on which theoretical debates within Political Science are founded.

### **1.3 Theoretical perspectives and methodological considerations**

In line with increasing attention towards multi-level governance research, this study will take on a multi-level analysis approach, meaning that it will scrutinize possible determinants on the Linking directive both on national, EU, and global levels. The study is based on three broad theoretical perspectives: (i) intergovernmentalism, which highlights the interests and preferences of the Member States; (ii) institutionalism and multi-level governance, which, among other things, highlight the role and the strategies of EU institutions; and finally (iii) regime theory, emphasizing the impact of, and interaction between, international regimes. These perspectives in turn produce four different explanatory hypotheses (two of them are derived from the same perspective). The first hypothesis anticipates that the change in the Linking Directive can be traced back to a *change in Member State preferences*. It assumes that the Linking Directive proposal was drafted by a Commission which acted without a political agenda of its own, and that the European Parliament reflected the preferences of the Member States. A change in the directive must

consequently have stemmed from a change of heart among the Member States. The second and third hypotheses, both of them derived from the institutionalist- and multi-level governance perspective, respectfully anticipate that the change in the Linking Directive came as a result of *influence from the Parliament*, and as a result of *influence from the Commission*. These hypotheses assume that the EU institutions played a much more significant role in the decision-making process than what the intergovernmentalist perspective foresees. They provided independent and outcome-altering input in the process, ultimately contributing to the change in the directive. The last hypothesis assumes that the directive change has to do with factors external to the EU – more precisely, that the change has been spurred by the *international climate regime and one of its key players, Russia*. According to this hypothesis, Russia, both by virtue of its determining vote on the Kyoto Protocol, and its potentially important position as an emission credit supplier, is expected to have had an influence on the design of the Linking Directive. More will be said on all of the hypotheses in the next chapter.

The study relies on a number of different sources. Official EU documents (both the accessible and the ones initially withheld from public access) have been collected, the press coverage of the process has been scrutinized, and previous academic studies of relevance to the subject of study have been surveyed. To supplement this background cloth of information with first-hand data on the subject, seven in-depth interviews have been conducted with actors involved in the Linking Directive decision-making process. All in all, the interviewees represent the Commission, the Parliament, state delegates, industry lobbyists, green lobbyists, and external analysts (for a complete list of the interviewees and their formal positions, see appendix 1).

The analysis of documents and interview data, then, rests on systematic comparisons between the different testimonies, cross-checking competing observations and statements, weighting of different sources – essentially, good historical criticism. On this basis, a credible reconstruction of the Linking Directive's decision-making process and its main determining forces has been established – not with absolute certainty, but hopefully with a considerable degree of credibility and confidence.

#### **1.4 Structure of the report**

This introductory chapter is followed by four chapters. Chapter 2 presents the analytical framework of the study, and it is divided into three parts. The first part specifies and operationalizes the dependent variable of the study: the design of the Linking Directive. It also gives an account of the legislative procedure by which the directive was handled, the co-decision procedure. The reason for presenting this in the context of the analytical framework (as opposed to, for instance, the empirical chapter) is that some *general* knowledge on the legislative procedure is necessary before we can embark upon assessing how the different theoretical perspectives may be relevant in the case of the Linking Directive. The second part of the chapter, then, gives an account of the theoretical perspectives guiding the study, and derives explanatory hypotheses from each of them. Finally, the chapter outlines the report's methodology. It clarifies the study's

position in terms of philosophy of science; it presents the methods used for gathering and analysing the empirical data; and it assesses the methodological strengths and potential pitfalls of the study.

Chapter three, then, presents the empirical record of the study. It maps out the whole decision-making process, from the close background of the initial proposal and up to the final approval of the directive. On this basis, then, chapter four presents the analysis, first evaluating the empirical support for each one of the explanatory hypotheses separately, and then analysing them all together, with an eye on unveiling possible inter-relations between the different explanatory factors.

Finally, chapter five gives a summary and concludes on the main findings of the study<sup>5</sup>, before it discusses the theoretical implications of these findings. Finally, the chapter points to potential improvements on the study's research design.

## 2 Conceptual, Theoretical and Methodological Framework

In this chapter, the analytical framework of the study is presented. The chapter is divided into three separate parts: The first part specifies and operationalizes the study's dependent variable – the design of the Linking Directive. It also gives a brief account of the legislative procedure by which the directive was handled, sketching out the formalities of the process. The reason for presenting these formalities in this section of the study is simply that some *general* knowledge on the legislative procedure is necessary before we can start to assess how different theoretical perspectives may be relevant in the case of the Linking Directive. That said, the *details* of the Linking Directive process will, of course, be dealt with in the separate empirical chapter, chapter 3.

In the second part of the chapter, then, the study's three explanatory approaches are outlined. These are (i) the Member State approach, based on the interests and preferences of the EU Member States; (ii) the EU institutional approach, reviewing the role of EU institutions; and (iii) the external context approach, which analyses the potential impact of the international climate regime. The approaches are all derived from broader theoretical perspectives, respectively: (i) intergovernmentalism; (ii) institutionalism and multi-level governance; and (iii) regime interaction theory. Explanatory hypotheses are derived from each of them.

The third and last part of the chapter examines the report's methodological choices. It clarifies the study's position in terms of philosophy of science; it presents the methods which have been used for gathering and analysing the empirical data; and, finally, it assesses both methodological strengths and potential pitfalls of the study.

### 2.1 The Dependent Variable: The Design of the Linking Directive

As mentioned introductorily, this section is twofold: first, the dependent variable of the study – the design of the Linking Directive – is defined and operationalized. Second, we go through a brief account of the legislative procedure by which the Linking Directive was handled.

#### 2.1.1 *Specifying and Operationalizing the Dependent Variable*

In many respects, an EU directive can be seen as a miniature variant of an international regime. True, there are significant differences between an international regime and a directive, but there are also distinct similarities. By standard definition, an international regime can be understood as 'principles, norms, rules, and decision-making procedures around which actor expectations converge in a given issue-area' (Krasner 1983: 2).<sup>6</sup> Similarly, an EU directive consists of principles and rules, often based on underlying norms, aiming to regulate actors in a given issue area. For the purpose of operationalizing this study's dependent variable, then, seeing the Linking Directive as a variant of a regime is a reasonable approach.<sup>7</sup>

Underdal (1999) classifies regimes by means of a strong-weak dichotomy. A ‘strong’ regime is one whose ‘norms, rules and regulations significantly constrain the range of behaviour that qualifies as legal or appropriate’ (Ibid.: 4). Put more simply, ‘the closer a regime comes to say ‘anything goes’, the weaker it is’ (Ibid.). Applying the same kind of dichotomy on my dependent variable is, however, not entirely straightforward. This is because of the directive’s dual, and somewhat conflicting, objective. On the one hand, the directive encapsulates the goal of *cost-efficiency* (objective 1): It aims to contribute to reducing the total amount of greenhouse gas emissions by making the abatement costs as small as possible. Linking the ETS to the JI and the CDM provides European business with the possibility to buy project credits in order to meet their emission targets, which is potentially more cost-effective than taking steps to cut emissions within the EU. On the other hand, the Linking Directive also carries with it the principle of *polluter-pays* (objective 2) in the sense that it aims to ensure that the CDM and JI merely are supplements to domestic action. The rationale here is that since the EU historically has been responsible for a preponderant share of the emissions, the main emission reductions should take place within the EU. Depending on whose opinion is asked, then, a ‘strong directive’ could be one making it easy to reduce emissions ‘abroad’ – prioritizing objective 1; just as it could be one ensuring that emission reductions happen ‘at home’ – prioritizing objective 2. Hence, the strong-weak dichotomy turns out not to be the best point of departure when operationalizing the Linking Directive.

Instead, the dependent variable will be measured by means of a *strict-flexible dichotomy*. A change towards a ‘flexible’ directive will be taken to mean that the final directive arranged for a more *easy and unregulated use of the project mechanisms* as compared to the initial proposal<sup>8</sup> (objective 1), whereas a change towards a ‘stricter’ directive will mean that the directive ended up with *significant limitations and regulations on the use of the project mechanisms* (objective 2). The dichotomy is, in other words, based upon the degree of pressure for domestic mitigation – a strict directive implies there was significant pressure to take action internally in the EU, whereas a flexible directive implies there was less pressure to do so.

Having given account for the terms strict and flexible, the dependent variable can now be demarcated and specified as *the degree of flexibility in the Linking Directive*. The variable will be evaluated in terms of three different values: (i) no change, (ii) stricter, and (iii) more flexible. However, the Linking proposal consisted of a number of different issues, some of which may have turned out stricter in the course of the process, others of which may have turned more flexible. This gives way to the possibility of conflicting interpretations of whether the directive actually became ‘stricter’ or ‘more flexible’. It is necessary to further operationalize the directive along different sub-dimensions.

The directive’s sub-dimensions emerge naturally when reviewing the initial Commission proposal as well as the many experts’ comments on it (see European Commission 2003; Lefevere 2006; Point Carbon 2003b, 2004b). Its main features (sub-dimensions) stand forward as:

- the issue of a quantitative provision. The project mechanisms were, as mentioned in the introduction, controversial to many, and a quantitative provision – a cap – on their use could ensure that most of the mitigation effort was made ‘at home’. This was among the key questions in the Linking Directive debate.
- the issue of qualitative provisions. In addition to limiting the *amount* of project credits, the linking debate also revolved around what *type* of projects which should be eligible for credits. Sinks<sup>9</sup>, large hydro power and nuclear projects were by many suggested to be kept off-limits, due to the social and environmental risks related to such projects. These qualitative aspects will thus be treated as another sub-dimension of the directive.
- the issue of timing. There were also some differences as to *when* the linking should take place (or more precisely, at what point CDM credits should be allowed into the EU ETS<sup>10</sup>), and whether or not one should await the Kyoto Protocol coming into force.

These were the main features of the Linking Directive debate. Of course, the debate contained other important issues as well, such as the issue of conversion of credits, avoidance of double counting of credits, the potential linking to other trading schemes, and the inclusion of so-called national projects (Lefevere 2006). Due to limitations on the scope of this report, however, we cannot take all issues into account. It is still my claim that the above selection of dimensions is justifiable, as it represents the lion’s share of the directive’s content and as it covers the dimensions which invited the most debate. More will be said on these issues in the empirical chapter.

In sum, then, the dependent variable – now specified as *the degree of flexibility in the Linking Directive* – is operationalized along its above mentioned sub-dimensions, with the values ‘no change’, ‘stricter’, and ‘more flexible’. If, for instance, the final directive contained a stricter cap as compared to the initial directive proposal, the dependent variable will score ‘stricter’ on this dimension. If, conversely, the directive turned out more flexible on, for example, hydro power, it will score ‘more flexible’ on this dimension. The original proposal will be treated as a point of reference – a basis of comparison.<sup>11</sup> The account of whether the directive *as a whole* turned out ‘stricter’ or ‘more flexible’ than the initial proposal (and the subsequent analysis of *why* this change took place) will be based on an overall assessment of *all* the dimensions taken together.

Having specified and operationalized the dependent variable, we now move on to map out the *formal procedure* in which the directive was handled – the co-decision procedure. As mentioned, this is presented here for the simple reason that some general knowledge on the legislative procedure is necessary to assess how different theoretical perspectives may be relevant in the case of the Linking Directive.

### 2.1.2 *The Co-decision Procedure: Framework for the Linking Proposal*

The Linking proposal was handled by means of the so-called co-decision procedure. Put shortly, the procedure means that the European Parliament

and the Council<sup>12</sup> have to agree on an identical legislative text before it can be passed as law. More in detail, the procedure goes as follows: A new legislative proposal is drafted by the Commission, which has monopoly of legislative initiative within the procedure (European Commission 2007a). The proposal then comes before the European Parliament and the Council. The two institutions discuss the proposal independently, and each may amend it freely.

In Council, the proposal is first considered by a working group, whose conclusion usually forms the basis of the Council's 'general approach'. In parallel in the Parliament, one of the MEPs is appointed as rapporteur and gets the responsibility to write a report on the Commission's proposal. The rapporteur is also responsible for incorporating any amendments from the parliamentary committees. Having been discussed and voted on in the relevant parliamentary committees, the report is then debated and voted on in full plenary in Parliament, where it is adopted by *simple majority*<sup>13</sup> – the Parliament has had its 'first reading' on the proposal (Ibid.).

The Parliament's report is then sent to the Council for further discussion. However, what is required for the Council to change the Parliament's text is much dependent upon the act of the *Commission*. The Commission may 1) choose to support the Parliament's amendments and incorporate them into its proposal, or it may 2) choose not to support the Parliament's amendments. Its choice has a direct effect on the subsequent decision-making: If the Commission approves all of the Parliament's amendments, the Council only needs a *qualified majority*<sup>14</sup> to approve the text. If, conversely, any of the amendments have not been approved by the Commission, the Council needs *unanimity* to approve it, making the threshold for passing the directive noticeably higher (Ibid.). If the Council accepts the Parliament's text in this first round, a so-called 'first-reading agreement' is reached, and the proposal becomes law. Otherwise, the Council adopts a so-called 'common position' which is sent back to the Parliament for a second reading.

To change or reject the Council's common position, the Parliament needs an *absolute majority*<sup>15</sup> – giving a certain incentive to the Parliament to try to reach agreement in the first reading. If the institutions are still unable to reach agreement, a conciliation committee is set up, attempting to negotiate a compromise text between the two institutions. Both Parliament and Council can reject the proposal either at second reading or following conciliation, causing the proposal to fall. The Commission can also withdraw its proposal at any time.

To sum up, the formal structure of the co-decision procedure can thus be likened to a tennis game, as Torbjørn Larsson (2003) has suggested, – 'the ball is passed back and forth [between the Parliament and the Council] over a net in which a proposal risks getting stuck if one of the players does not deliver a good shot (a constructive opinion)' (Ibid.: 39). However, as Larson also writes; 'the tennis metaphor does not fully apply, since a third party – the Commission – is doing the serving' (Ibid.). The Commission functions as the server – the formal policy *initiator* – whereas the Parliament and the Council are the players – the

formal *decision-makers*. And the dynamics of the co-decision procedure are such that the final legislative act may differ substantially from what the Commission put forward in its initial proposal. Hence, as often is the case in sports, the game may take on a different dynamic than what the initial serve indicated.

Keeping this procedural framework in mind, we can now start exploring the theoretical perspectives guiding this study.

## 2.2 Explaining the Linking Directive: Three Approaches

The choice of theoretical foundations in this study encompasses different actors and different levels of influence. Intergovernmentalist theory highlights the importance of Member State preferences when determining and understanding EU policy. Institutional theory and the multi-level governance perspective highlight the role of institutions in EU policy-making.<sup>16</sup> Finally, regime theory points to the potential impact of the external, global climate regime context. These three theoretical perspectives have all proven to be relevant to the study of EU policy-making (see for instance Skjærseth and Wettstad 2002; and forthcoming 2008), and they are therefore likely to contribute to a better understanding also of the Linking Directive.

In the following, all of the three theoretical perspectives are presented in greater detail, sketching out their core theoretical assumptions and their implications for the Linking Directive case. Explanatory hypotheses are derived from each of them. We start with the Member State approach.

### 2.2.1 The Member State Approach

The most important factor when explaining EU policy is the configuration of *Member States' preferences*. This is the mantra of intergovernmentalist thought. According to Andrew Moravcsik (1991; 1997; 1998; 1999), perhaps the most well-known and untiring demonstrator of intergovernmentalism's explanatory power in European integration, the state's preferences reflect the pressures and objectives of the domestic groups with the strongest influence on the state apparatus – the key actors 'at home'. The national governments in turn bring their preferences to the negotiation table, where they 'strategize as unitary actors vis-à-vis other states' in order to achieve their goals (Moravcsik 1998: 22).<sup>17</sup> Supranational institutions, on their side, play a marginal role within this perspective. They are believed to merely serve the goals of the national governments (Ibid.: 67; Moravcsik and Nicolaïdis 1999: 69). Andreas Maurer et al. (2005) elaborate on this assumption:

'Supranational institutions have been established and endowed with powers in order to help maximise the governments' national advantages (e.g. to resolve collective action problems and to reduce transaction costs) – but *they remain at all times under the control of the Member States*. They implement the Member States' decisions *without having an autonomous agenda*' (Ibid.: 12, my italics).

Thus, the core assumptions within the intergovernmentalist framework can be summarized as follows:

- The most important explanatory factor in international negotiations and in EU politics is state preferences.
- Supranational institutions exert little influence by themselves; they merely serve the goals of national governments.

How does this perspective play within the case of the Linking Directive? Above all, the directive must be expected to reflect the preferences of the EU Member States. Moreover, supranational actors such as the Commission and the Parliament – even though they played formal roles, as we have seen from the co-decision procedure chart – must be assumed to have acted either neutrally or in line with the Member States' preferences. In other words, the Commission, which formally initiated the legislation, is assumed to have launched a proposal to which it anticipated broad Member State support, and the Parliament, which formally is a co-decider, is assumed to have 'gone along with' the Member States position. Subsequently, a change towards a more flexible directive is assumed to have originated in Member States *changing* their preferences in the course of the process, i.e. that they wanted a more flexible directive. This suggests the following hypothesis:

**H1:** *The Member State hypothesis:* The Linking Directive became more flexible because Member States changed their preferences in the course of the process.

#### *Operationalization of the Hypothesis*

How is the Member State hypothesis to be evaluated and judged? The Council debate minutes and Council votings are obvious points of departure, as these documents indicate what the Member States' preferences were at the outset and throughout the decision-making process. An evaluation of official government statements will also add to the data on which the intergovernmental hypothesis will be judged.

However, the hypothesis will not be strengthened alone by a random number of Member States changing their preferences in the course of the process. The 'swinging states' must have constituted a qualified majority, in line with the co-decision procedure (confer section 2.1.2) – they must have been weighty and numerous enough to be able to change the outcome of the process. Thus, if the debates, votings and government statements show that a *sufficient* number of Member States actually changed their positions during the process – and expressed this with voting – this will, naturally, strengthen the Member State hypothesis. If, as a converse scenario, the data show that Member States lost ground in the negotiations and had to give in to, for instance, the Parliament's preferences in the course of the process, this seriously questions the explanatory power of the intergovernmentalist perspective in this study: Member State preferences were *not* the main determinant in the making and shaping of the Linking Directive.

### 2.2.2 *The EU Institutional Approach*

While the intergovernmentalist banner upholds the primacy of state preferences, institutionalist and multi-level governance theory share a somewhat different slogan: *institutions matter*. They should be treated as ‘political actors in their own right’ (March and Olsen 1996: 738), actors which ‘can themselves develop endogenous institutional impetus for policy change that exceeds mere institutional mediation’ (Bulmer 1998: 370). Thus, that institutions matter is the first premise giving way to the EU institutional approach.<sup>18</sup>

The other is that the role of institutions is most prominent when there is significant domestic uncertainty and disagreement (Underdal 1994: 192). In such cases the national governments tend to be less fixed or strong and the field more open for supranational entrepreneurs (Ibid.). The Linking Directive seems to be just such a case – with high level of complexity and little knowledge and experience among the Member States. All the more reason to explore the EU institutions’ role in the Linking Directive process. But first, the core assumptions of the institutional approach are summarized:

- EU institutions are not only instruments for national governments. Rather, they have increasingly developed their own interests and their own agenda.
- Furthermore, institutions can exert influence that exceeds their formal mandate, particularly when the degree of issue complexity is high.

Which EU institutions should be investigated in the case of the Linking Directive? The Parliament and the Commission stand out as obvious choices, not least because of the legislative procedure by which the directive was handled – the co-decision procedure. As was shown in section 2.1.2, the Council is not the only actor which might have had an effect on the Linking Directive outcome. Also the Parliament and the Commission are important actors within this procedure.<sup>19</sup>

As for the Parliament, the co-decision procedure gives this institution the mandate to be a real and legitimate *co-decider*. Not only does the procedure require the overall approval of the Parliament for the proposal to be passed as legislation, it also gives the Parliament the right to propose amendments and to veto the entire proposal if it perceives that its amendments have not been taken sufficiently into consideration. This has fundamentally increased the power of the Parliament as compared to the other procedures (Crombez et al. 2000; Tsebelis and Garrett 2000).

So, what might have been the Parliament’s legislative agenda in the Linking Directive process? Judging by its composition at the time, the Parliament could very well have been inclined to work for a more flexible directive. The elections in 1999 ‘dethroned’ the socialist group (PSE) and put the centre-right group (European People’s Party and Christian Democrats) in the lead position. This is a group which tended to be ‘resistant to any calls for higher standards that impose significant costs on industry’ (Grant et al. 2000: 36). A restrictive Linking Directive would

certainly mean more costs to the European industry. This indicates that the Parliament could have worked for a more flexible directive. One could of course argue, conversely, that the Parliament traditionally has been known as the ‘greenest’ of the EU institutions (see Sbragia 2000: 302; Weale et al. 2000: 92-93), indicating that the Parliament perhaps worked for a more *restrictive* directive. However, in this study, we will assume that the dominant centre-right group of the Parliament ‘outweighed’ any green forces, and thus that the Parliament as such contributed to the development towards a more flexible directive. The assumption is encapsulated in the following hypothesis:

**H2:** *The Parliament hypothesis:* The Linking Directive became more flexible due to influence from the Parliament.

There is also good reason to give scrutiny to the Commission’s role. First and foremost, its exclusive right to initiate legislation within the co-decision procedure is an important asset, since the way that policy proposals are initially formulated and packaged can have a strong bearing on the eventual policy outcome (Princen and Rhinard 2006: 1119). Moreover, we have seen that the Commission’s stance on any Parliament amendments has a direct effect on the subsequent voting procedures in the Council: if the Commission approves all Parliament amendments, only a *qualified majority* is needed for the Council to approve the text. If, conversely, any of the amendments are not approved by the Commission, the Council needs *unanimity* to approve it (confer section 2.1.2). In other words, the Commission plays a potentially significant role within the co-decision procedure.

But the Commission should also be investigated due to its potential *informal* influence on the process – its knowledge and role ‘in the less formalized arenas of politics’. After the initial proposal and throughout the process, the Commission takes an advisory role, provides information and expertise, and by this, it can actively select ‘the policies that promote its interests; restricting the available choices for governments; continually pressing and negotiating until it gets what it wants’ (Hix 1999: 237). A number of scholars have found the Commission to do just this.<sup>20</sup> Hence, the Commission’s role – both formal and informal – should be closely investigated.

The Commission is organized into 23 General Directorates (DGs). Compared to the other Directorates, the DG Environment has been among the smaller, with a relatively small staff. By some it has even been described as being dominated by ‘ecological freaks’ (Grant et al. 2000: 17). By comparison, the DGs concerned with industry and economy typically have far greater resources, often blocking proposals introduced by the DG Environment (Weale et al. 2000: 119). In fact, this is precisely what happened in the EU ETS process, when several commissioners, including the DG Enterprise Commissioner and DG Competition Commissioner, blocked a draft proposal from the DG Environment (Reuters/Planetark 2001). Could it be that a similar power struggle took place internally in the Commission during the Linking Directive process? Could it be that the Commission’s industry and economy DGs succeeded in getting

through its will, causing the directive's design to change? Alternatively, maybe the DG Environment realized that it would have better chances for a smooth legislative process if the proposal was changed into something a bit more acceptable to industrial and economic interests. Both possibilities are embedded in the following hypothesis:

**H3: *The Commission hypothesis:*** The Linking Directive became more flexible due to influence from the Commission.

### *Operationalization of the Hypotheses*

In order to assess the Parliament- and the Commission hypotheses, it is necessary to clearly define the concept of *influence*. Observing that the Parliament or the Commission contributed – by means of being involved in the process – tells us little. To qualify as noteworthy actors in their own right, they had to (i) provide *independent input* in the policy-making process. This could be anything from a formal amendment, an acceptance or a dismissal of amendments, an advisory suggestion during negotiations, or a more informal proposition behind the scenes. The input being ‘independent’ means that it was new and unique, and not just a repetition of already stated proposals. Moreover, the institutions had to (ii) *change the outcome* of the process – their activity had to be outcome-altering. If the Commission or the Parliament provided input that was both independent and which altered the outcome of the process, they had real and effective influence on the Linking Directive, and the Commission- and Parliament hypotheses will be strengthened. Conversely, if the data suggest that the Commission or the Parliament did not really contribute any input, or did not come through with their initiatives, the hypotheses will be weakened, along with the EU institutional explanatory as such.

### *2.2.3 The External Context Approach*

EU environmental policy does not exist in isolation from international institutions and international regimes – even less so the Linking Directive, whose goal it was precisely to link the EU ETS with the international climate regime. Thus the need for a third explanatory approach: the external context. Whereas the intergovernmentalist and the EU institutional perspectives both seek to explain the directive change by looking at national and EU internal variables, this third perspective zooms out and captures some of the international circumstances which might be relevant for the study.

The point of departure is the concept of ‘institutional interaction’, a term taken from the theoretical work done by, among others, Sebastian Oberthür and Thomas Gehring (2006). For reasons of simplicity, we shall use the term *regime interaction* instead of *institutional interaction* in this report.<sup>21</sup> The term ‘regime’ has been defined in section 2.1.1 as ‘principles, norms, rules, and decision-making procedures around which actor expectations converge in a given issue-area’. The term ‘interaction’, on the other hand, will be explained more in detail in the following passages.

Today, environmental policies are part of a heavily fragmented institutional structure of international environmental governance. More than two hundred environmental agreements have been concluded to date, and the number is growing (Ibid.: 2). This suggests an equally growing relevance of *international regime interaction*. Though the development of a broad theory on regime interaction is still at an early stage, Oberthür and Gehring certainly provide its initial foundations. They denote interaction as what happens when

[...] one institution affects the institutional development or the effectiveness (performance) of another institution. In essence, *institutional interaction* refers to a causal relationship between two institutions, with one of these institutions ('the source institution') exerting influence on the other ('the target institution') (Ibid.: 6, their italics).

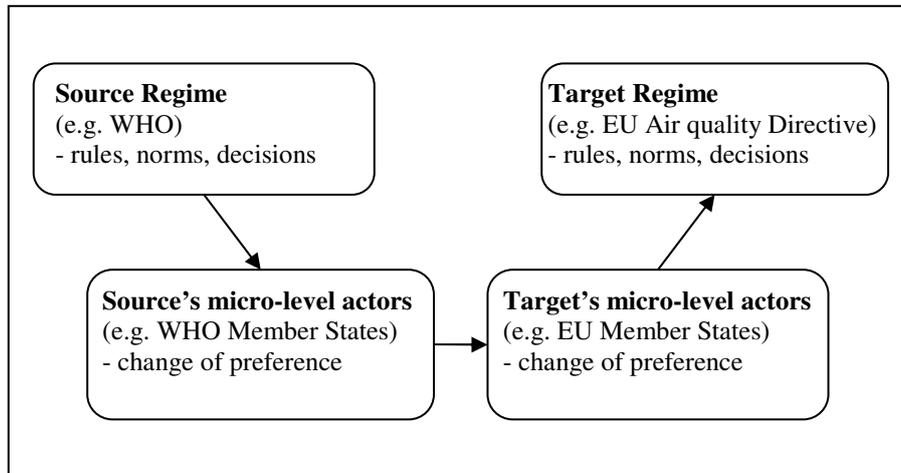
Oberthür and Gehring describe interaction as consisting of three separate stages. In the first stage, the source regime (with its rules, norms and decisions) affects the preferences or the behaviour of relevant actors within its own domain (the source's micro-level actors). In the second stage, this leads to a change of preferences and a change of behaviour of actors relevant to the target regime (the target's micro-level actors). In the third stage, this finally produces a change within the target regime (and its rules, norms and decisions).

Consider, for example, the World Health Organization (WHO) as the source regime, and the EU Air Quality Framework Directive of 1996 as the target regime (the example is taken from Wettestad 2006). The WHO produces air-quality guidelines affecting all its member states (its micro-level actors). These guidelines also influenced EU institutions and the EU member states (the target regime's micro-level actors), as it was politically difficult to reject the WHO guidelines in EU environmental policies. Consequently, the Air Quality Directive adopted stringent WHO pollution limit values in its daughter directives (Ibid.: 290-295). In other words, the EU chose 'more ambitious policies than would have come about without the WHO' (Ibid.: 293) – a regime interaction had taken place. The process is illustrated in figure 1.

Like the Member State approach, this regime interaction perspective entails changes in Member State preferences. But different from the Member State approach, the sources of these changes are external to the Member States and even to the EU. These external influences may also work through the European Parliament or the Commission. In other words, the Member State approach entails the reviewing of state preferences *internally* in the EU, whereas the external context approach deals with possible *external* influence.

The core premise in interaction theory can thus be summarized as follows:

- Interaction between regimes can affect policy outcomes. Influence from a source regime and its key micro-level actors can affect the contents, the operation or the consequences of a target regime.

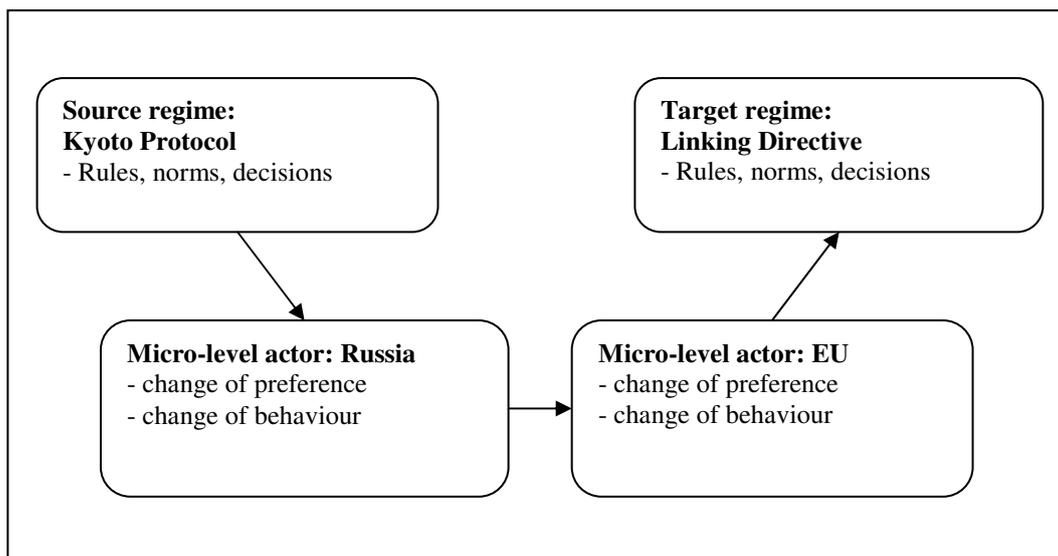
**Figure 1 Causal mechanisms in regime interaction**

Could the theory on regime interaction be relevant also when reviewing the Linking Directive process? Let us treat the Kyoto Protocol, which is the most relevant international framework for the Linking Directive, as a potential source regime (as done by Oberthür 2006: 56-63), and the Linking Directive as a potential target regime. Who, then, were the key micro-level actors within these regimes? Intuitively, it seems that Russia, which had signed but not yet ratified the Kyoto Protocol when the Linking debate arose, was to play a pivotal role (Bang et al. 2005). When the US withdrew from the Protocol in 2001, the Russians were left with a key role in determining whether and how the Protocol would be implemented. During the Linking Directive process, there was a real risk that Russia would not ratify the protocol, and there was a real risk that the Kyoto Protocol would collapse (Ibid., Skjærseth and Wettestad forthcoming 2008). At the same time, it was clear that Russia was a potentially big supplier of JI credits, making the country directly economically affected by the design of the Linking Directive.

Could it be that Russia, with this ‘make it or break it’ position in relation to the Kyoto Protocol, exerted an influence on the EU, and subsequently on the Linking Directive? Did the Russians perhaps demand a flexible Linking Directive (as this would improve their JI revenues) in return for ratifying the Kyoto Protocol? The possibility is pursued in the following, last hypothesis. It is also illustrated in figure 2.

**H4: The external context hypothesis:** The Linking Directive became more flexible due to external influence from the climate regime and its key micro-level actor Russia.

**Figure 2 Possible regime interaction in the case of the Linking Directive**



#### *Operationalization of the Hypothesis*

In order to evaluate the external context hypothesis, it is necessary to investigate the EU-Russian relations on the issue of the Kyoto Protocol during the period of negotiating the Linking Directive. Little is out in the open on this subject, so interviews with key actors will have to be the main source of information in this regard.<sup>22</sup> Was there pressure for influence from the source micro-level actor Russia to the target micro-level actor EU, and if so, did this pressure result in changes in the Linking Directive? Evidence of Russian pressure on the design of the Linking Directive would, of course, strengthen this hypothesis, whereas a lack of pressure from the Russians would significantly undermine it.

#### *2.2.4 Summary of the Explanatory Approaches*

Thus far, I have presented the three theoretical perspectives which will guide the analysis of this report. Four hypotheses have been derived from these perspectives:

**H1:** *The Member State hypothesis:* The Linking Directive became more flexible because Member States changed their preferences in the course of the process.

**H2:** *The Parliament hypothesis:* The Linking Directive became more flexible due to influence from the Parliament.

**H3:** *The Commission hypothesis:* The Linking Directive became more flexible due to influence from the Commission.

**H4:** *The external context hypothesis:* The Linking Directive became more flexible due to external influence from the climate regime and its key micro-level actor Russia.

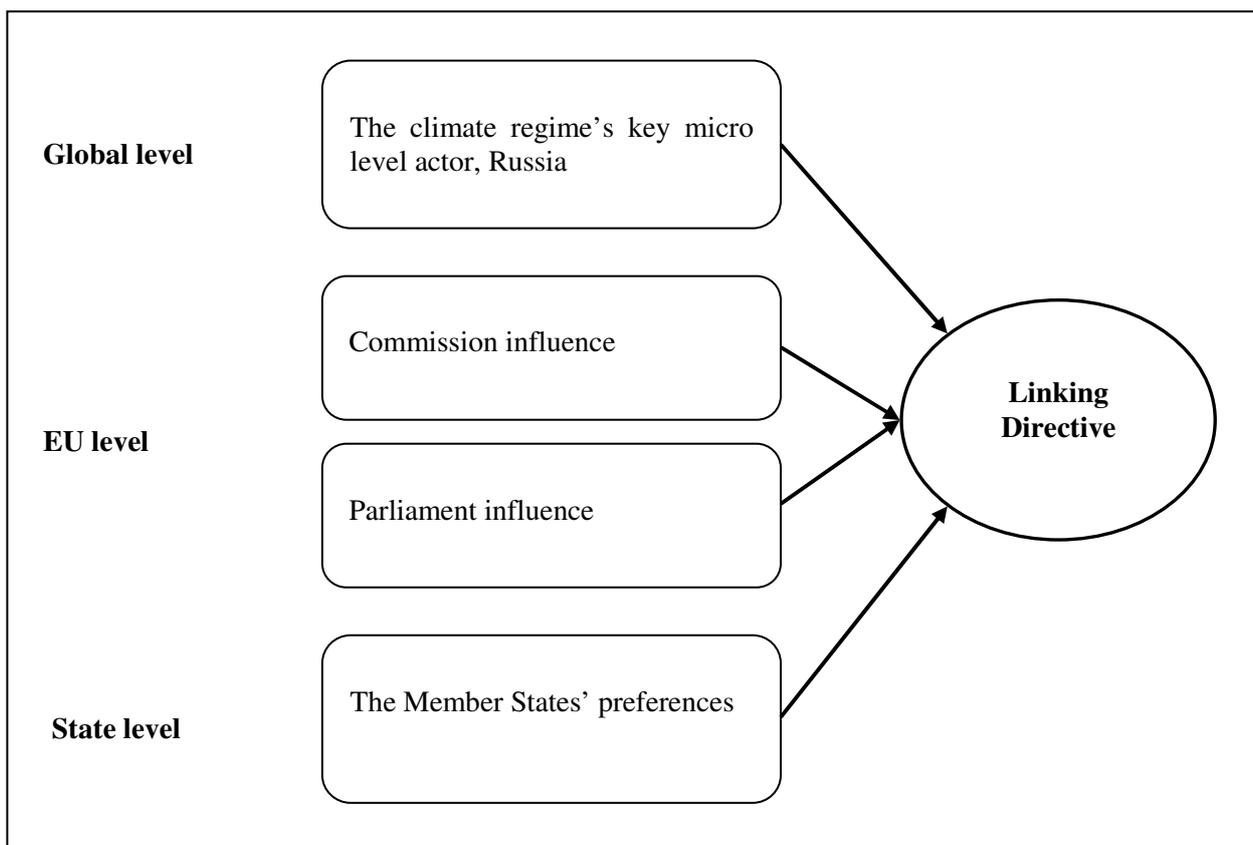
The hypotheses' theoretical foundations and underlying assumptions are summarized in table 1. As the table's left column suggests, the hypotheses belong to different 'levels of analysis': the state level, the EU level, and the global level.

**Table 1** Recap of the theory and the hypotheses

LEVEL OF ANALYSIS	THEORIES	CORE ASSUMPTIONS	HYPOTHESES
STATE LEVEL	INTERGOVERNMENTALISM	STATE PREFERENCES MOST IMPORTANT, THESE HAVE DOMESTIC ORIGINS. SUPRANATIONAL INSTITUTIONS EXERT LITTLE POWER.	- MEMBER STATE HYPOTHESIS.
EU LEVEL	INSTITUTIONALISM, MULTI-LEVEL GOVERNANCE	INSTITUTIONS MATTER, AND THEIR INFLUENCE CAN EXCEED FORMAL MANDATE.	- COMMISSION HYPOTHESIS - PARLIAMENT HYPOTHESIS
GLOBAL LEVEL	REGIME INTERACTION	EXTERNAL INFLUENCE FROM INTERNATIONAL REGIME AND KEY MICRO-LEVEL ACTORS.	- EXTERNAL CONTEXT HYPOTHESIS

It should be noted that these three theoretical perspectives by no means need be mutually exclusive. True, they highlight different decision-making levels and different actors and institutions, but still, they can yield *complementary* explanations which seen together provide credible answers to the research question. We will return to these issues in the concluding chapter of the report.

Figure 3 gives a simple recap of the explanatory framework established in this theory section. Moreover, it provides a 'visual' of the actors which will be pursued in the empirical chapter.

**Figure 3 Preliminary explanatory model of the Linking Directive**

Having presented our three explanatory approaches, we can now proceed to the methodology of the study.

## 2.3 Methodology

This section presents the study's methodology.<sup>23</sup> It is divided into four parts. The first part gives an account of the ontological and epistemological point of departure – the study's assumptions in terms of philosophy of science. The second and third part presents the methods used to *gather* and subsequently *analyse* the data. Finally, an overview of the methodological strengths – and potential pitfalls – of the study is presented.

### 2.3.1 The Report's Basis in Philosophy of Science

Social sciences can roughly be divided into two branches: one basing itself on an empiricist, or positivist methodology; and one basing itself on an interpretive methodology.<sup>24</sup> Although there are vast variations within each branch, and the distinction between the two is far from absolute, each can be characterized by its own specific ontology – a vision of what the world really is – and its own epistemology – a notion of what knowledge is and how it can be obtained.

Empiricists have an ontological position similar to the one dominating in the natural sciences: they presume that there is a ‘Real World out there’, a world that exists independently of our senses (Moses and Knutsen 2007: 8).<sup>25</sup> In this world there are regularities and patterns which can be unravelled by means of the right scientific methods. Epistemologically, then, you can obtain objective and true knowledge, knowledge upon which predictions and inferences can be made.

Interpretists have an entirely different point of departure. They question the empiricists’ ontological assumption. Even if there exists some law-like patterns in nature, they argue, the patterns of interest for interpretists are not rooted in nature but are ‘a product of our own making’ (Ibid.: 10). There is no ‘one’ social world – there are several. These worlds are created in the interrelation between people, and people, unlike physical particles, think. They are self-aware, reflexive, and they enjoy a certain freedom of action. This has two important scientific implications: 1) the ‘objects’ of social science cannot be subject to universal laws, nor can one predict on their behaviour; and 2) the researcher, herself a self-aware individual, can never be entirely objective and value-free in her work. Epistemologically, then, rather than aiming for (the impossible) prediction and unveiling of general patterns, the interpretists aim to *understand* and *interpret meaning* in human endeavours (Ibid.: 11).

This report is neither purely empiricist, nor purely interpretist. Rather, it is positioned somewhere in the middle. The report has interpretist features both in regards to the nature of its data, and in the way these data will be analysed (we will return to these issues shortly). On the other hand, it is empiricist in its main assumptions. The study assumes that there are empirical facts to be unveiled in the Linking Directive process (ontologically, that there *is* in fact a real world), and that these facts can be approached by using the right research tools (epistemologically, that true knowledge is within reach). The report is thus more than an account of different respondents’ personal testimonies of the Linking Directive process, it is more than accounts of ‘social worlds’. It is an attempt to reveal what *actually happened*, to reconstruct *wie es eigentlich gewesen war*, as the father of modern historiography, Leopold von Ranke, would have put it (quoted in Ibid.: 118). Though this is a difficult task – interpretists would even say that there is no *one true* story of what happened – still, this report will build on the notion that one account can be more empirically informed, and hence *truer*, than another.

To sum up the report’s basis in philosophy of science, then, this study has interpretive features in the nature of its data and the way these data will be analysed, but the fundamental scientific assumptions belong in the empiricist camp. We will assume that there is an ontological truth to be unveiled in the Linking Directive process, and that we can approach this truth by the support of the right research tools. In the next passages, we take a closer look at these tools.

### 2.3.2 *The Report’s Methods for Gathering Data*

The choice of research methods is very much decided by the nature of the research question – it all depends on what you are trying to do. You do

not choose the carpenter's tools when doing an electrician's job, just as you do not apply the house painter's supplies when working in the chef's kitchen (unless you are going for that unconventional and 'arty' cooking, of course). As it appears from my research question, this report is a study of a decision-making process which took place in 2003-2004. What methods for gathering data does this research question call upon?

Methods for gathering data include, among others, historical methods, interviews, surveys, and observation. In our case, observation would be an ill-suited approach, as the object of study is a closed and finished decision-making process. Equally, surveys would be a bad choice of technique, since there are not a *great number* of people who would know the details of what happened during the process (moreover, the questions pertaining to my hypotheses are not easily coded into a multiple-choice or yes/no-questionnaire). Thus, interviewing the actors who were actually involved in the process and reviewing the textual sources pertaining to the period have constituted the main methods of gathering data.

The first round of gathering data has been the collecting of relevant documents, including both official and more 'unofficial' writings: all the reports and minutes from the institutional meetings; other relevant studies conducted on the matter; the press' coverage, commentaries and chronicles etc. This material has subsequently been sorted chronologically, in order for the first 'skeleton' of the narrative to come to light. Based on this first round of data, I have gotten an impression of the empirical patterns as well as the 'empirical holes', what was in need of further clarification, and not least, which key actors should be contacted for closer, in-depth interviews.

The second round of gathering data has been the carrying out of interviews. Altogether seven interviews have been conducted during the spring of 2007 – most of them in Brussels, some in Oslo. The informants have represented the Commission, the Parliament, state delegates, industry lobbyists, green lobbyists, and researchers and analysts (see appendix 1 for a list of the interviewees and their positions). I have made use of both open-ended and more 'closed' yes- or no questions (see attached interview sketch in appendix 2). The latter form of questions makes cross-checking and comparisons between different sources more easy to conduct; while the former allows for a more natural and un-interrupted dialogue to establish. The intention has been to give the interviewees time and opportunity to reflect, and to formulate arguments with their own words (Morse and Richards 2002: 93). The reader should bear in mind, however, that the attached interview sketch has served only as a *general* point of departure. The questions and the style of the interview have of course been adjusted according to the informant (meaning, for example, that more in-depth questions on the Commission's role have been raised to the Commission informant).

All interviews, save one, have been conducted face-to-face, using a tape-recorder.<sup>26</sup> After having completed the interviews, the recordings have been transcribed and put together with the written material.<sup>27</sup> Upon this collection of data, then, the *analysis* of the data could begin.

### 2.3.3 *The Report's Methods for Analysing the Data*

Methods for *analysing* data include, among others, statistical methods, comparative methods, experiments, and interpretive methods. In this case, inferential statistics and comparison of different cases were both far-fetched, as I am dealing with only one case. The experiment would also be an ill-suited approach, as it requires the possibility to manipulate and control different variables. Thus, the interpretive method has been the road to travel when analysing data in this study.

In the interpretive method, as in all research methods, the goal is to try to establish *credible causality*. This means inferring causality from a thorough account (or, to use empiricist language, a thorough correlation-assessment) of the different aspects (variables) of the process. The difference from the statistical method, for example, is that the assessment of variables and their relation to one another is done not by means of quantitative techniques, but the researcher's own interpretation. Thus, much hinges on the researcher's ability to make good judgements. In this respect, it is important that no single point of view seizes monopoly or is given disproportionate weight. This concern is partly safeguarded by the data having been gathered from a wide range of sources. But it also hinges on conducting systematic comparisons between the data, and on cross-checking competing observations. In practice, this means organizing the data systematically, juxtapositioning potentially conflicting data, and comparing and consulting with third party sources. It also means assessing central versus more peripheral documents and sources, more neutral ones versus potentially more biased ones – essentially, good historical criticism. By means of this weighting of different sources, by cross-checking the testimonies and by examining where the different data intersect, one can approach the real story – not with absolute certainty, but with *credibility* and *confidence* (Silverman 1993: 155). The concepts of credibility and confidence should not be taken to mean that only 'conservative' or status-quo findings are valid – such criteria would be fatal for any scientific progress. Rather, the concepts are in close analogy to Karl Popper's account of falsifiability: no knowledge can be verified as absolutely certain; there are only more solid and credible versions of it.

### 2.3.4 *Strengths and Weaknesses of the Design*

The design of this study carries with it both inherent strengths and weaknesses. These are related to the issues of reliability, validity, and generalization.

#### *Reliability*

Reliability is usually interpreted as the ability to replicate the original study using the same research instrument and getting the same results (Feagin et al. 1991: 17). Similarly, it can be defined as 'the degree of consistency with which instances are assigned to the same category by different observers or by the same observer on different occasions' (Hammersley 1992, as quoted in Silverman 1993: 145). Lack of reliability is one of qualitative research's main challenges. This is mainly due to

the lack of standardization involved in the research method, and to the difficulty pertaining to re-examining and verifying the data.

In order to deal with this predicament, it is important to *document ones procedure*. As for this study's written data, this is available for any reader to verify and double-check.<sup>28</sup> The interview data, however, are not as easily accessible for the reader. The interview transcripts could of course have been included in the appendix, but due to issues of anonymity, I have chosen not to do this. Although a list of the informants' name and positions is attached in the appendix (so that the reader can verify what institutions and what actors actually have been heard), *all* informants have been promised anonymity in the sense that their name would not be linked specifically with any information. This way, it is ensured that the informants can reveal information without having to worry about potential consequences. Attaching the transcripts, even without the informants' names, would potentially compromise this anonymity. The lack of transcripts does, of course, make it impossible for the reader to double-check or verify any quotations, but in the choice between *verifiable data* and *good data*, I have given the latter the most weight.

Besides the issue of anonymity, there is a second potential challenge to the interview data's reliability: the interviewer-interviewee understanding. The interviewees may very well have misunderstood the questions; they may have forgotten important parts of the process; and they may unknowingly, or even knowingly, have distorted their responses. These issues should, however, be investigated and taken into account rather than just being seen as mere 'problems'. I have been aware of them all throughout the process of the study, and I have to the best of my ability tried to minimize their potential influence as sources of error. The informants have been re-consulted after the interviews, and they have been given the opportunity to review and double-check both their own answers and the manuscript as such. This significantly reduces, if not removes, this threat to the study's reliability.

### *Validity*

Validity can be defined quite simply as 'truth: interpreted as the extent to which an account accurately represents the social phenomena to which it refers' (Silverman 1993: 149). If reliability is the qualitative study's drawback, then validity is its clear advantage. Qualitative studies allow for rich descriptions and the usage of a variety of different sources. With this, the depth of the study increases, and one can draw more confident inferences on the object of study.

There are however two potential pitfalls with regard to the study's validity. One relates to the *selection* of data, which risks being biased. Solid empirical groundwork is of course critical in any type of research, whether one is conducting a quantitative or qualitative study, but, as Stanley Lieberman (1992) points out, 'the impact of error or imprecision is even greater when the number of cases is small' (Ibid.: 115). In this report, we deal with a single case only, and Lieberman's warning should be given even more weight. Still, it is my claim that the selection of data in this study constitutes little threat to its validity. The written material is

taken from a wide range of sources – from different stakeholders’ statements, different analysts’ viewpoints, press coverage, a number of respected scholars, and of course official EU archives. The EU documents which were initially withdrawn from public access were all released upon request. All in all, then, a solid amount of textual data contribute to the study’s validity. As for the interview data – two potential informants, from the industry and an ENGO respectfully, were unfortunately not available for interviews. They were, however, replaced by representatives from a different industry association and a different ENGO. This way, it has been ensured that different viewpoints have been heard also in the lobbyist branch – even if the sources initially addressed were not available. Having heard from both high-level players and grassroots voices, from both the different EU institutions and from neutral bystanders, I would argue that the *selection* of data in this report is sufficiently diversified to be labelled unbiased.

The second potential threat to validity relates to the possibility that the *data itself* is biased. There is little reason to suspect that the written data material in this report is grossly or systematically biased: much of it consists of debate minutes which should give a good reflection of the debates as they were. Government or analyst statements should of course be subject to greater scepticism (data cross-checking and general source criticism goes a long way in this respect). As for the interview data, however, the threat of bias is considerably larger.<sup>29</sup> As mentioned, there is the risk that the informants’ testimonies are not entirely accurate, or that important parts of the puzzle are being left out (this issue can, however, be dealt with by means of re-consulting with the informants). Moreover, the tape-recorder may have had a negative influence on the interview data. It may have intimidated the informants or made them uncomfortable, leaving them less free to speak their mind. To paraphrase Heisenberg’s uncertainty principle, the act of observing the object, changes the state of the object itself (Moses and Knutsen 2007: 145, 298). In spite of this, I have chosen to tape-record the interviews, as the alternative would have increased the risk of losing valuable data. Moreover, the informants interviewed for this report share a common characteristic: they are all more or less public persons who are used to speaking before the public. This gives good reason to believe that the recorder’s impact on the interviewees has not been tremendous. All the same, I have tried, to the best of my ability, to be observant of any reserve and nervousness when transcribing and analysing the informants’ testimonies.

### *Generalization*

A final ‘weakness’ of the single-case study like this one, is that it hardly gives the possibility to generalize. On the basis of a single case, it is impossible to infer anything with much confidence (Yin 1994: 35-36). However, there are different kinds of generalization. And though *statistic generalization*, understood as making inferences from a sample to a population, would be impossible in a case study like this, so-called *analytic generalization* may be closer within reach. With this type of generalization, one induces from cases to theoretical propositions, rather than from samples to populations or universes (Mitchell 1983, as quoted in Silverman 1993: 160). Cases in qualitative research are often chosen

on the same basis as laboratory experiments, namely on a theoretical or analytic assumption. The result of the case study thereby contributes to the strengthening or the weakening of this theoretical assumption. As such, the case study contributes to the broader cumulative process of theory-building. And as the number of case studies grows, the analytic generalizations will turn more confident. In this lies a reminder that qualitative case studies can function as important theory-editors or theory-builders. The same might apply to a study on the Linking Directive process.

To sum up, this chapter has served three purposes: it has specified and operationalized the study's dependent variable, and sketched out the legislative procedure by which the Linking Directive was handled. Second, it has presented the theoretical perspectives and the explanatory hypotheses which will be evaluated in this report. Finally, it has given account of the methodological framework of the study. With that, we are ready to embark upon the empirical data: the actual decision-making process leading up to the final Linking Directive.

### 3 The Empirical Record

This chapter maps out the whole decision-making process leading up to the final Linking Directive. It is divided into different phases, corresponding more or less with the chronology of the process: the background, the Commission disagreement, the official Commission proposal, the Russian reactions, the EU reactions, and finally, the informal compromise and the final directive. Not only do the different phases map out the variations in the *dependent variable* (the degree of flexibility in the Linking Directive) over time, they also outline the variations in the *independent variables* included in the explanatory hypotheses: the Member State preferences; the Parliament- and Commission influence; and the external pressure from Russia. Towards the end of the chapter, the empirical record is summarized in two tables – one mapping the change in the dependent variable, thus providing an answer to the first part of our research question: *in what way did the design of the Linking Directive change*; and one mapping the empirical record on the independent variables, thus constituting a foundation on which we in the next chapter try to find answers to the second part of the research question: *how can the change in the design of the Linking Directive be explained*?

#### 3.1 First Phase: The Background

The concept of emissions trading has certainly been controversial – and equally so, the issue of linking the EU trading scheme to the Kyoto project mechanisms. During the 1997 Kyoto negotiations, a vast majority of the EU Member States, the Parliament and likewise the Commission, was sceptical or even hostile to emissions trading and the project mechanisms (Grubb et al. 1999: 94).

However, both the Commission and the Member States would slowly become more susceptible to the project mechanisms. Some of the change was simply due to the fact that emissions trading ended up being included in the Kyoto Protocol. Though it was not what the EU officially had wanted, emissions trading was now part of the Protocol and thus something one had to accept and adjust to. The change in stance was also spurred by the replacement of Commission personnel (Lefevere 2005: 96). Jørgen Henningsen, the head of the DG Environment's climate change unit in central parts of the 1990s, left his post in 1998, and along with him went most of the staff who had been taking a 'command and control' approach to climate policy. In came Jos Delbeke, holding a Ph.D. in economics; and with him, new staff favouring economic policy instruments (Ibid.). All in all, then, the perception on emissions trading, and to some extent also the project mechanisms, was slowly changing in the central EU. The ground was gradually being set for allowing a greater degree of flexibility in climate policy instruments.

As a follow-up on the Kyoto Protocol, the Commission launched its proposal for an EU emissions trading scheme in October 2001 (European Commission 2001a). This was, however, only about EU *internal* trading – the issue of linking to the project mechanisms was kept out of the proposal. Instead, the Commission said it would table a separate Linking

proposal later on (European Commission 2001b). The reason for leaving out the linking issue was said to be that the Marrakech Accords, spelling out rules for the functioning of the flexible mechanisms, had not yet been finalized. It was argued that these rules ‘should not be pre-judged’ (Lefevere 2006: 122). However, as one analyst put it, ‘the official version of why one needed a separate directive, everybody knew was a lie. [...] The reality was that the linking issue was very controversial stuff. It had the potential to blow up the whole ET directive’ (Interviews in Brussels, 11-16 April 2007). In other words, including the linking issue in the ET text had the potential to jeopardize the whole ET directive.

That is not to say that the ET directive did not contain certain references to the possibilities of linking. With both industry and a number of Member States now actually advocating a link to the project mechanisms, the ET directive ended up with two amended paragraphs on the advantages of linking and the importance of the CDM and JI mechanisms (Lefevere 2005: 127). On the other hand, the Parliament succeeded in adding a sentence in the ET directive stating that ‘the use of the mechanisms shall be *supplemental* to domestic action’ (Ibid.: 128, my italics), indicating a continuing parliamentary restrictiveness towards the project mechanisms. The differences of opinion on flexibility and linking were thus clear already during the making of the ET directive.

When the ET directive was agreed upon in March 2003, the Commission reaffirmed its intention to propose a Linking directive (SEC(2003)785 2003). Some suggested ‘early in 2003’ (ECCP Working Group 2002: 2), others pinpointed April as the specific kick-off date for the Linking directive proposal (Point Carbon 2003c).

### 3.2 Second Phase: The Commission Disagreement

However, the linking proposal would be delayed, due to internal disagreement in between the DG Environment and other Commission DGs (Environmental Finance 2003; Lefevere 2005). Especially, there was heavy friction between the DG Environment and the DG Enterprise (Interviews in Brussels and Oslo, April and May 2007). Both the issue of qualitative and quantitative provisions were sources of conflict.

The conflict became perhaps most apparent in June 2003, when an unfinished draft of the Linking proposal was leaked, causing stark reactions. This draft

- suggested a cap at 6 percent of the total amount of allowances allocated by the Member State,
- excluded sinks,
- excluded ‘hydroelectric power production incompatible with the criteria and guidelines of the World Commission on Dams’<sup>30</sup>,
- excluded nuclear projects, and stated that ‘the commitment [...] to refrain from using [credits] generated from nuclear facilities can be considered as open-ended’,
- allowed for CDM credits no earlier than 2008<sup>31</sup> (see Environmental Finance 2003; Michaelowa 2004: 13; Lefevere 2006: 134-141).

In sum, the draft was ‘filled with all kinds of restrictions’ (Interviews in Brussels, 11-16 April 2007), and it stirred up a storm, both in industry, among most Member States, and within the Commission (Ibid.). Weeks went by without the different departments of the Commission being able to agree on a proposal text (Environmental Finance 2003). And the disagreement went all the way to the top level, with Environment Commissioner Margot Wallström and Commissioner for Enterprise, Erkki Liikanen, ‘basically shouting at each other’ (Interviews in Brussels, 11-16 April 2007). Liikanen wanted more flexibility, as did industry and a number of Member States and other stakeholders (Ibid.).

In the end, the Environment division backed down on quite a few of their restrictions, as we shall see in the official proposal.

### 3.3 Third Phase: The Official Proposal

On 23 July 2003, then, the Commission finally issued its Linking Directive proposal (European Commission 2003). This time,

- the proposal suggested that a review of the imports of JI/CDM credits should take place once it reached 6 percent of the total quantity of the Member States’ allowances. The Commission could set final cap at ‘for example 8 %’ (the 6 and 8 percent limits would correspond respectfully to a quarter and the third of the EU’s Kyoto mitigation effort<sup>32</sup>);
- it excluded sinks till after the first Kyoto period in 2012. However, this provision would be open for review when the Kyoto Protocol rules on this issue would be settled at the CoP-9 in December 2003;
- hydro power was recognized as a legitimate source for projects, but one should avoid projects entailing ‘negative environmental and social impacts, in particular from large hydro-electric power production as identified by the World Commission on Dams’;
- it excluded nuclear projects, and stated that ‘the commitment [...] to refrain from using [credits] generated from nuclear facilities has been fixed until 2012 and provides an indication for the continuation for subsequent periods’;
- CDM credits would still not be acceptable before 2008. The Directive was also dependent on the Kyoto Protocol coming into force (Ibid.: 7-11).

As we can see, changes had been made since the leaked draft. For one, the proposed cap had gone from 6 to, in practice, 8 percent. Moreover, the provisions on hydro- and nuclear projects had become somewhat less restrictive (or at least less clear) than in the leaked version. From initially excluding anything not in accordance with the World Commission on Dams, the proposal now only referred to the World Commission but did not demand strict compliance. Also the nuclear ban had been slightly changed, from being considered as ‘open-ended’ to providing ‘*indication* for the continuation’ (my italics) – a nuance in words which could possibly give more room for reversing the nuclear ban. All in all, the process towards a more flexible directive had already started.

### 3.4 Fourth Phase: The Russian Reactions

At the launch of the Linking proposal, Environment Commissioner Margot Wallström commented that she thought the proposal would be beneficial to ‘other countries, for example Russia’ (Environment News Service 2003). The specific address to Russia was far from random. After the US pullout from the Kyoto Protocol in 2001, Russia was left, not only with its potential economic gains from emissions trading painfully reduced (since the US was thought to be among the major buyers of emission quotas), but also with the casting vote in determining whether – and how – the Protocol would be implemented. EU continuously tried to convince Russia to ratify (Ibid., Reuters/Planetark 2003), an effort also reflected in the Linking Directive. Russia was the only country mentioned specifically in the proposal – several times – and always in relation to the benefits of JI (European Commission 2003: 2-4).

The EU effort to get the Russians to ratify the Kyoto Protocol continued throughout the fall of 2003. From 29 September to 3 October the World Climate Change Conference was held in Moscow. At this conference, an EU delegation consisting of the then-Presidency (the Italians), the future Presidency (the Irish) and the Commission attended and tried ‘to convince the Russian Government to ratify’ (Europe Environment 2003). However, the effort to influence could go both ways. Holding the determining vote on the Kyoto Protocol, the Russians clearly had the possibility to demand something in return – for instance a flexible Linking Directive. This would increase Russian economic gains from project credits. There are some data suggesting that the Russians did just this: At a roundtable discussion on air quality and climate change in Rome in March 2004, the Russians voiced their concern that the EU would cap the number of credits allowed into the EU ETS (International Environment Reporter 2003). They equally made it clear that without an expanded market for emission credits, Russia would not ratify the Protocol: ‘I cannot see this agreement being ratified until the context changes’, warned Sergei Roginko, a member of Russia’s Climate Change Commission and the chairman of Russia’s committee on JI (International Environment Reporter 2004). By the wording of things, it could seem like the EU was being pressured on the design and the flexibility of the EU Linking Directive.

However, there is also data denying such pressure. According to both key negotiators and neutral bystanders of the process, Russians did not have an influence on the Linking Directive. All informants are actually unanimous in this rejection (Interviews in Brussels and Oslo, April and May 2007). ‘For the Russians, it was all about the World Trade Organization’, elaborates one of them (Interviews in Brussels, 11-16 April 2007). Moscow was demanding EU support for Russian membership in the WTO (ENDS Europe Daily 2004b). In return, the Europeans would get their much wanted ratification of the Kyoto Protocol (Ibid.). Environment commissioner Wallström constantly dismissed that any such ‘package’ was on the table, but still, speculations on a WTO-Kyoto trade-off were numerous (Ibid.). EU delegates talked to the Russians ‘repeatedly’ on this issue, both during the ETS- and the linking directive process (Interviews in Oslo, 17 April 2007). Even neutral bystanders,

informants who would have little to lose from admitting that the Russians ‘got their way’, seem to argue that the WTO ordeal simply overshadowed any other potential trade-offs which could have been made.

### 3.5 Fifth Phase: The EU Reactions

More battle of influence would take place internally in the EU. The Linking proposal was met with engaged responses, both from the industry and from environmental organizations.<sup>33</sup> There was also a wide spectrum of views among the Member States and within the European Parliament. The stage was thus set for an intense ‘tug-of-war in the EU’, as one observer commented (Point Carbon 2003b).

However, in spite of all the disagreement and the ‘tug-of-war’ mood towards the linking issues, it is an important backcloth that the parties were in quite a hurry to get the directive approved. The EU ETS was scheduled to start in January 2005, and if the Linking Directive was to be adopted and translated into law before this, it would have to be settled early in 2004. True, there was no absolute *need* for the Linking Directive to be ready at the same time as the ETS, as it would have been fully possible to amend the Linking Directive after the ETS had been up and running for a while. However, to most people involved there was a ‘politically felt deadline’, meaning that both the Linking and the ETS ‘*should be ready set at the same time*’ (Interviews in Oslo, 17 April 2007). This sense of hurry would put a significant pressure on the upcoming decision-making process.

#### *The Member States’ Reactions*

Thus, the Member States took up the glove right after the summer vacations in 2003, and started consultations on the proposal in the so-called Working Party on the Environment<sup>34</sup>, where most of the Member State work on the directive was conducted. In this Working Party, Member State delegates gathered for discussions on the Linking issue close to every second week, from the first meeting on 29 July 2003 onwards till early April 2004 (as is seen from the Council documents). No wonder, as the delegates seemed to have plenty to talk about.

There were ‘major concerns’ about several aspects of the Commission’s proposal. The main dispute centred on the issues of timing, the cap and the qualitative restrictions. A majority wanted a link established from 2005 instead of 2008 (Council of the European Union 2003f, 2003e; Point Carbon 2003a). Similarly, a majority were against any quantitative limit whatsoever (Ibid.). Only Germany and the Netherlands argued in favour of the Commission’s proposal on this issue, while the UK and later Austria wanted the cap set at installation-level rather than at Member State-level (see, for instance Council of the European Union 2004b, 2003c).

As for the qualitative provisions, the delegates were more closely divided. On the nuclear issue, France pushed ‘extremely hard’ for a less restrictive provision, proposing that such projects should be admitted ‘at least after 2012’ (Interviews in Oslo, 28 March 2007). And though the

Council documents give the impression that France was a sole rider on this, in reality the Member States were quite divided on the issue. Under the table, the French got Britain and Finland on their side, and they probably also joined forces with some of the soon-to-be Member States, such as Lithuania and Poland<sup>35</sup> (Interviews in Brussels and Oslo, March and April 2007). Moreover, the Germans had only just decided to phase out their nuclear facilities, leaving this still a sensitive issue in Germany. All in all, then, the nuclear issue was more delicate to the Member States than what might have come out in public.

There were opposing coalitions also on the other qualitative provisions. Several states, particularly the southern ones, questioned the proposal's ban on sink credits (Council of the European Union 2003e, 2003f). On the hydro provision, two separate coalitions formed; again Germany and the Netherlands stood together, and were eventually backed by Sweden, demanding stricter wording and an explicit demand of compliance with the World Commission on Dams (Council of the European Union 2004a); on the other side, the French, the Spanish and the Portuguese opposed the German group (Council of the European Union 2003d). The latter group was eventually backed by Italy, Greece, Austria and Finland (Council of the European Union 2003a, 2003c).

The Environment Council had its first minister meeting on the Linking Directive right before Christmas, on 22 December. The positions were to some extent the same that had been reflected in the Working Party meetings. A majority still supported an early link and was against the proposed cap, and the qualitative provisions still caused significant division (Council of the European Union 2003b). However, there were a couple of important additions. The Council now concluded that the quantitative and qualitative restrictions should be put 'in the competence of the Member States' (Michaelowa 2004: 13). In addition, the majority of Member States also suggested that the reference to the entry into force of the Kyoto Protocol should be deleted, thus proposing that the linking directive should be independent of Russia and of the fate of the Protocol (Ibid.). This would give more stability to European industry, and it would also give an important international signal that the EU was 'moving ahead' (Ibid.).

#### *The Parliament's Reactions*

In Parliament, the Linking proposal was handled by the Environment Committee. Alexander De Roo, a Dutch MEP from the Greens, was selected as the main rapporteur on the Commission's proposal.<sup>36</sup> Although the dominant group of MEPs was from the centre-right, choosing a 'green rapporteur' certainly added to the likeliness of a Parliament positioning itself *against* a flexible directive. The Parliament had already maintained throughout the ET negotiations that any link to the CDM and the JI would be acceptable only after 2008 (ENDS Europe Daily 2003). It was also known that the rapporteur thought the Linking Directive ought to be a tool to entice further ratification of the Kyoto Protocol, and thus that the directive should be dependent upon the Protocol coming into place (Interviews in Brussels, 11-16 April 2007). Also on the qualitative provisions, the Parliament was expected to demand strictness: During the ETS process, it had wanted to ban both

sinks and nuclear credits even if they were to be allowed under the Kyoto regime post-2012 (Lefevere 2003).

During the first months of the fall 2003, however, the Parliament did not really take any stiff-necked position, nor did it loudly voice any concern. Instead, De Roo seemed to retreat to consultations and deliberation. He had a lot of meetings with lobbyists, both from the industry, the environmentalists and the research community (Interviews in Brussels, 11-16 April 2007). He attended the CoP-9 in Milan in December 2003, at which he had more meetings with lobbyists, among others with the International Emissions Trading Association (IETA), who wanted to change the rapporteur's mind on the directive's dependency on the Kyoto Protocol (Ibid.). In other words, while the Member States were voicing their positions in the Working Party Group and at the minister meetings of the Council, the rapporteur was 'doing research', seeking to find what would be the best Parliamentary position towards the Commission's proposal.

The Environment Committee's first formal response to the Linking proposal came when the rapporteur issued his draft report on 27 January 2004<sup>37</sup> (Committee on the Environment 2004). In this draft report, the rapporteur had changed his mind on the Kyoto dependency, and was now agreeing with the Council that the directive should be independent of the Protocol. This would give industry a 'good start' with emissions trading, and it would prevent the EU from being 'dependent on Russian President Putin' (Ibid.: 6). Likewise on the issue of timing, he changed his position and was now agreeing with the Council that an early link was desirable. These were, however, tough concessions to make for a Green politician: 'I've given them a lot – I'm already going quite far', the rapporteur said after the report had been published (ENDS Europe Daily 2004a).

To balance these concessions, however, the rapporteur was more demanding on the qualitative provisions. The Council position to let the governments decide for themselves was unacceptable to De Roo, who wanted strict rules: Hydro projects should be smaller than 20 MW and in compliance with the World Commission on Dams in order to be approved as credits in the ETS, he demanded (Committee on the Environment 2004: 9). On the quantitative provision, he had been forced to loosen up a bit as compared to the Commission's proposal, since there had been fractions in the Parliament wanting 'no cap at all' (Interviews in Brussels, 11-16 April 2007). A middle way had to be found. Thus, De Roo proposed that 'a maximum of 50 percent' of the total reduction effort could be made externally (as opposed to the Commission's quarter and a third of the Kyoto effort – confer section 3.3). This was a pragmatic approach – more flexible than the Commission's, but still stricter than the 'worst case scenario', which was no cap at all.

Thus far, then, there seemed to be agreement between the Council and the Parliament on two issues: the deletion of the Kyoto reference, and the timing of the link. On the qualitative and quantitative provisions, there was still much ground to be covered. However, as we shall see, progress was being made in a parallel track, where informal meetings were smoothing up the negotiations.

### 3.6 Sixth Phase: The Informal Compromise

Already before Christmas, rapporteur De Roo took an informal initiative which would significantly speed up the process. Having nosed around on what the Member States' and other stakeholder's positions were, he proposed a compromise deal with the Council: in order to get an agreement, he said, the Parliament could be flexible on the cap, provided that the qualitative provisions remained sufficiently robust (Lefevere 2006: 127). In other words, if a Council majority could back restrictive rules on the issues of nuclear credits, sinks and hydro power credits, a deal could be brokered on moderating the cap. Clearly, De Roo had gathered that the Parliament was 'not likely to get its way with the cap, so he chose to focus on the qualitative provisions instead' (Interviews in Oslo, 28 March 2007). Such a strategy would, as we shall see, yield results.

After the turn of the year, De Roo's compromise deal was discussed at the Council's Working Party meetings (see, for instance Council of the European Union 2004b). Moreover, there were several so-called triologue meetings during the spring, regularly from January till April (as is shown by the Council of the European Union 2004c, 2004d). In these informal meetings, all three parties – the Parliament's rapporteur, the Council Presidency and the Commission – were attending. Draft compromises went back and forth between the Presidency, the rapporteur, and the Commission, along with questions as to whether such a formulation 'would be ok' and so forth (Interviews in Oslo, 3 May 2007). There was a 'good atmosphere' and there was a strong feeling that things could be settled before the summer deadline, because 'people were willing to compromise', (Interviews in Brussels, 11-16 April 2007).

There was also another aspect adding to the progress and the good atmosphere. Allegedly, the Commission's relations with the Italian Presidency had 'not been very good' (Interviews in Oslo, 3 May 2007). However, with the Irish, who took over the Presidency at the turn of the year, the relations turned all the better: A 'much better chemistry' made it easier for the Commission to communicate well with the negotiating parties in the final stages of the process and this helped 'speed things up' (Ibid.). At the same time, however, much was already settled at this stage, and there was not much need for extra input from the Commissioners, besides their smoothing up the final process (Interviews in Brussels, 11-16 April 2007). De Roo's compromise deal had left few issues on the table, and on the remaining issues, the alternatives were already circulating in between the Presidency and the Parliament.

On 16 March 2004, the Parliament's Environment Committee gave their final vote on the proposal (Committee on the Environment 2004). The position was essentially a reflection of the earlier draft report: it proposed to remove the reference to the entry into force of the Kyoto Protocol, and it proposed to link in 2005 instead of in 2008. This was all in line with Member States' wishes. As previously, it argued for a total ban on credits from sinks and nuclear projects, also post-2012. And in spite of De Roo's informal concessions, the report still argued for an overall cap at 50 percent. On one issue there was a slight change from the earlier draft report, however. Hydro credits would not only have to comply with the

World Commission on Dams, they also had to come from projects smaller than 10 MW. Earlier proposals on this issue had put 20 MW as the maximum limit. Having ‘given a lot’ on the other issues, the Parliament was now testing the leeway for getting a stricter wording on the hydro provision. Put differently; it was pushing the limits.

As it turned out, however, the Parliament would fail to get all of the ‘robustness’ it had claimed for the qualitative restrictions. On 5 April 2004, the parties had their last trialogue meeting – and a final (though still informal) agreement was reached (Interviews in Brussels, 11-16 April 2007, and Lefevere 2006: 127). The last-minute move from the Parliament, proposing to lower the maximum limit of the hydro projects from 20 to 10 MW, was not accepted by the Council’s Presidency, which held on to the 20 MW limit (Council of the European Union 2004e). And once again, in order to get the directive through, rapporteur De Roo had to give in.

The same thing happened with the nuclear issue. All the way, the Parliament had wanted the nuclear ban to last post-2012. As it turned out, however, there was a considerable risk that the French had allies enough to block the whole proposal if the nuclear provision was too strict. The composition of the Council was such that a minority would need 26 votes and more than two states to block a proposal.<sup>38</sup> As previously mentioned, the French were possibly getting support from both UK and Finland, which was holding ten and three votes respectively. With France’s own ten votes, the group was dangerously close to the blocking limit. Moreover, the Germans, which had only just decided to phase out their nuclear facilities, was holding another ten votes, and was thus capable of making the opposition group more than big enough to block the whole proposal. There was a strong feeling among the negotiators that ‘we *might* be able to get a tough nuclear stance through the Council, but we might also fail’ (Interviews in Brussels, 11-16 April 2007). De Roo – facing also a large minority in the Parliament willing to accept nuclear credits (Ibid.) – did not want to risk it, and accepted the Presidency’s proposal that the nuclear ban should last only till 2012. This was better than nothing, the negotiators argued: ‘let’s give them this, and then, after 2012, we’ll see’ (Ibid.).

All in all, then, the Parliament lost a few battles in the finalizing stages. On the upside, their will to compromise helped get a final agreement on the table before the election deadline. As one analyst commented; ‘maybe [De Roo] could have achieved more if he went on and argued for longer. But on balance, he settled for this in order to go ahead’ (Ibid.). Giving in on the details was simply the price to pay to get the directive passed in time.

### 3.7 Seventh Phase: The Final Directive

On 20 April the compromise package went before a plenary vote in the Parliament. And instead of asking for a second reading, the Parliament voted in favour of the text. The final text contained the following features:

- It removed the stipulated, common cap. Limits would be ‘specified by each Member State’, which also should ensure that the project mechanisms were ‘supplemental to domestic action’.<sup>39</sup>
- It excluded sinks, but their possible inclusion for the Kyoto commitment period 2008-2012 would be reconsidered in 2006.
- Hydro-power projects with a capacity over 20 MW would have to comply with ‘relevant international criteria and guidelines, including [...] the World Commission on Dams’.
- Nuclear activities were excluded till 2012.
- The Directive was no longer dependent on the Kyoto Protocol coming into force, and CDM credits could be used already from January 2005 (Directive 2004/101/EC).

As we can see, the compromise package left the directive at quite a distance from what the Parliament had originally demanded. Instead of an overall cap at 50 percent, the quantitative limit would be settled by each Member State. The clear percentage limit had also been replaced by the much more thorny and unclear concept of ‘supplementarity’. On the issue of sinks, the door was still left half open for revisions from 2008. Similarly, the nuclear provision had been modified to please the French: whereas the initial proposal had excluded nuclear projects indefinitely, the ban was now only secure until 2012. Only on the issue of hydro projects was there a clearer and somewhat stricter provision now than in the initial proposal: the text now demanded that hydro projects comply with the World Commission of Dams (as was also demanded in the leaked draft). However, the Parliament had lost their 10 MW limit, and had to settle for 20 MW. For most Member States, on the other hand, there was good reason to be happy about the final agreement. As one analyst commented: ‘the restrictions which ended up in the final directive, were of a kind of shape and size that for most Member States would not be perceived as very restrictive’ (Interviews in Brussels, 11-16 April 2007).

The Commission approved all of the Parliament’s amendments, and thus a qualified majority in the Council was enough to approve the directive (confer with the co-decision procedure, sketched out in section 2.1.2). On 13 September the Council took its vote on the final directive, and with only France and Austria opposing it, the directive was adopted (Council of the European Union 2004f). Both France and Austria voted against due to the nuclear provision – France because it thought the provision was still too restrictive, and Austria because it thought the French were given too many concessions (ENDS Europe Daily 2004d). ‘We made significant concessions to the French in order to get them on board’, one negotiator commented (Interviews in Oslo, 3 May 2007). ‘And ironically, in the end, they still voted against’ (Ibid.).

Not long after the April agreement on the Linking Directive, the Russians seemed to be budging on their position towards Kyoto ratification (ENDS Europe Daily 2004c). However, once again the Russian movement was related to the WTO, not the Linking Directive. It followed the successful conclusion of bilateral WTO talks during an EU-Russia summit in Moscow in May. Officially, EU negotiators continued to deny that there had been a diplomatic trade-off between the Kyoto Protocol and the

WTO issue, but Putin himself acknowledged that the issues had ‘overlapped’ (Ibid.). ‘The fact that the EU has met us halfway in the negotiations on the WTO could not but have helped Moscow’s positive attitude to the question of ratifying the Kyoto Protocol,’ he said (Ibid.). On 30 September 2004, then, the Russian cabinet approved the act to ratify the Kyoto Protocol.

A month later, on 27 October 2004, the Linking Directive was formally signed by both Parliament and Council. A first-reading agreement had been reached – at remarkable speed and on, safe to say, controversial issues. There was little use hiding the pride amongst EU officials. ‘We are implementing Kyoto before it comes into force,’ said rapporteur De Roo (EU Energy 2004). Also outside observers were stunned by what had been achieved: ‘The Linking proposal was potentially so divisive that we thought it could go past a second reading and into conciliation,’ one analyst commented (Interviews in Brussels, 11-16 April 2007). ‘A first reading agreement was almost incredible and certainly exceptional considering all of the initial disagreement’ said another (Ibid.). On the 13 November 2004 the Directive was published in the official journal and became EU law.

### 3.8 Empirical Summary and Mapping

If we review the initial proposal and compare it with the final directive, we find that there are significant differences in between the two. Table 2 summarizes the changes in the dependent variable, along its five sub-dimensions.

**Table 2 Assessment of the dependent variable – the change in the Linking Directive.**

	<b>Commission proposal in July 2003 (third phase)</b>	<b>Final directive adopted in October 2004 (seventh phase)</b>	<b>Assessment of change in the dependent variable</b>
<b>The cap</b>	Review of credit import at 6 percent, final cap at ‘for example 8 %’.	No common cap. Limits to be set by each Member State.	<b>MORE FLEXIBLE</b>
<b>Sinks</b>	Sinks excluded until 2012, review at the CoP-9 in December 2003.	Sinks excluded until 2008, review for the 2008-2012 period.	<b>MORE FLEXIBLE</b>
<b>Hydro projects</b>	Hydro projects would have to take account of ‘environmental and social impacts’.	Hydro projects over 20MW would have to comply with ‘relevant international criteria and guidelines, including [...] the World Commission on Dams’.	<b>STRICTER</b>
<b>Nuclear projects</b>	Nuclear power excluded till 2012 – with an ‘indication for continuation’ after this.	Nuclear power excluded till 2012, review and possible change after the first Kyoto period.	<b>MORE FLEXIBLE</b>
<b>Timing</b>	The Directive would be dependent on the Kyoto Protocol coming into force. No CDM credits could be used before 2008.	No longer dependent on the Kyoto Protocol coming into force. CDM credits could be used from 2005.	<b>MORE FLEXIBLE</b>

As we can see, the directive became more flexible along four out of five sub-dimensions. Only with regard to the hydro provision was there a clearer and stricter wording in the final directive as compared to the initial proposal. All in all, then, we can safely say that the final Linking Directive became more flexible as compared to the initial directive proposal – it allowed for an easier and less regulated use of the mechanisms.

In many respects, however, one could say that the process towards a more flexible directive had begun already before the initial Linking proposal (in phase 1 and 2). The draft which was leaked in June 2003 and which contained even ‘greener’ provisions than the official proposal, was met with heavy resistance, and was, in the end, revised to a somewhat more industry-friendly proposal. The process of change thus went all the way from June 2003 and throughout the months till the final directive was approved in April 2004. When the above table nevertheless compares the final directive with the official proposal in July (phase 3) instead of with the earlier draft (phase 1), this is done so that the comparison is made on the basis of the *official* directive texts, rather than on unofficial drafts. This is also in accordance with the way the dependent variable was operationalized in section 2.1.1.

The apparent question upon these empirical findings is: what caused this change? Was it the Member States, the Parliament, or perhaps the Commission? Or was it due to pressure from EU-external actors? These are the questions which will be scrutinized in the next chapter; the analysis. Prior to this, however, table 3 summarizes the changes in the independent variables throughout the Linking Directive process – the Member State preferences, the Parliament- and Commission pressure, and the external pressure from Russia. This table may serve as a useful point of reference for the reader when we proceed to the analysis in the next chapter.

**Table 3 Recap of the empirical record on the independent variables.**

	<b>Variable 1: Member State preferences</b>	<b>Variable 2: Parliament influence</b>	<b>Variable 3: Commission influence</b>	<b>Variable 4: Pressure from Russia</b>
<b>First phase: the background</b>	Majority is sceptical towards linking during Kyoto negotiations. They slowly become more susceptible to linking during ET directive process.	Parliament is sceptical towards linking during Kyoto negotiations, and remains somewhat sceptical during ET directive process. It wants strict cap, and complete, long-lasting ban on both sinks and nuclear credits. Any link will only be acceptable after 2008.	Commission is sceptical towards linking during Kyoto negotiations. Changes personnel in the prelude to the ET directive process, and new staff favouring economic instruments is recruited.	
<b>Second phase: the Commission disagreement</b>	Heavy resistance against leaked draft from the Commission (June 2003). Draft is perceived to be too restrictive.		The leakage reveals significant internal division in the Commission. DG Enterprise pushes through more flexible proposal.	
<b>Third phase: the official proposal</b> <b>Fourth phase: the Russian reactions, and</b> <b>Fifth phase: the EU reactions</b>	Majority now wants link from 2005 and is against any cap. Closer division on the qualitative provisions: French alliance for nuclear credits; southern states want sinks accepted; two opposing coalitions on hydro. Minister meeting concludes that restrictions should be left for the Member States to decide, and that directive should be independent of Protocol and of Russia.	Throughout fall, rapporteur does 'research' on the best Parliamentary position. Lobbyists try to change rapporteur's mind on the directive's dependency on Russia and the Protocol. Draft report (Jan. 2004) maintains that directive should be independent of the Protocol, and link should take place in 2005. 50 % cap, and strict hydro provision (20 MW and compliance with WCD)	Commission launches official proposal (July 2003).	On World Climate Change Conference in Moscow (Sept./Oct. 2003), EU tries to convince Russia to ratify the Protocol. The parties also talk 'repeatedly' about Russian WTO membership. Russians voice concern over cap on project credits (March 2004), but WTO matters are said to have been 'more important'.
<b>Sixth phase: the informal compromise</b>	The Italians leave the Presidency seat to the Irish (Jan. 2004). De Roo's compromise proposal is discussed in trialogue meetings throughout spring.	De Roo proposes a compromise deal with the Council (Dec.2003): flexible cap for restrictive qualitative rules. Env. Committee gives final vote (March 2004): Tries for the same as in draft, but now, hydro must be smaller than 10 MW.	Commission has 'much better relations' with the new Presidency. Commission attends in trialogue meetings, though much is already settled.	
<b>Seventh phase: the final directive</b>	Final agreement is reached in trialogue meeting. The Council votes in favour of the final directive (Sept. 2004), only France and Austria opposes it.	Parliament accepts final compromise. Loses the 10MW-limit on hydro, and also gives concessions on nuclear provision.	Commission accepts the final agreement.	Putin promises to ratify Kyoto Protocol after successful talks on the WTO (May 2004). In Sept. 2004 Russia ratifies.

## 4 The Multi-level Analysis

Having mapped out the empirical record, we can now start to analyze our findings, with an eye to reaching an answer to the second part of the research question: *How can the change in the design of the Linking Directive be explained?*

The analysis will be conducted in two stages. First, each of the four hypotheses is examined separately, against the empirical material presented in the previous chapter. This gives a preliminary picture of whether the hypotheses seem to have been strengthened or not. Second, the hypotheses and their inherent independent variables will be *analysed together*, and possible interrelations between them will be considered. The purpose of this is to assess whether the different variables worked together – that is, whether the actors and institutions involved in the process took part in *influential coalitions* to produce the directive change (the term ‘influential coalitions’ will be further explained). Only on the basis of such a ‘holistic’ analysis, can we reach more robust conclusions as to how the Linking Directive case is best explained. But first, let us deal with each of the hypotheses separately.

### 4.1 Separate Evaluation of the Hypotheses

#### 4.1.1 The Member State Hypothesis

‘The restrictions which ended up in the final directive, were of a kind of shape and size that for most Member States would not be perceived as very restrictive’  
(Interviews in Brussels, 11-16 April 2007)

Before getting down to the preliminary analysis of the Member States’ influence on the Linking Directive, a brief recap of the hypothesis and its inherent assumptions is in order. The Member State hypothesis was born out of intergovernmentalist theory. Its embedded assumptions were that state preferences are the most important when accounting for EU policy-making; and that supranational institutions exert little influence by themselves – they merely serve the goals of national governments. In the case of the Linking Directive, then, it was assumed that the Commission, which formally initiated the directive proposal, and the Parliament, which was the co-decider on the directive, both acted in line with the Member States’ preferences throughout the process: they were at all times ‘under the control of the Member States’ (Maurer et al. 2005: 12). The proposal was assumed to have been in line with the Member States’ preferences, and subsequently, a change in the directive was assumed to stem from a change in the Member States’ preferences. The hypothesis thus read as follows:

**H1:** *The Member State hypothesis:* The Linking Directive became more flexible because Member States changed their preferences in the course of the process.

When operationalizing this hypothesis, two scenarios were sketched out: either Member States *changed* their positions during the process – and were heard on this. This would, of course, strengthen the Member State hypothesis. The second scenario was that Member States lost ground and had to give in to, for instance, the Parliament's preferences in the course of the negotiations, which of course would weaken the intergovernmentalist hypothesis as such: Member State preferences were not the main determinants in the making and shaping of the Linking Directive.

So, what has the empirical record told us about the Member States' influence on the directive? First of all, the empirical data showed that during the first phase – the background leading up to the initial proposal – a number of Member States were changing their stance, from initial scepticism during the Kyoto negotiations to slowly becoming more susceptible to flexibility and the project mechanisms. At the launch of the ET directive in 2001, a number of Member States were actually advocating a link to the project mechanisms (Lefevre 2005: 127). The same preferences came to the surface in the second phase, when a draft proposal from the Commission was leaked. The draft, restrictive and 'green' in its content, was met with heavy resistance from most of the Member States, which demanded a softer, more flexible directive proposal (Interviews in Brussels, 11-16 April 2007). In other words, already before the launch of the official linking proposal, it was clear that most Member States were demanding a flexible link to the project mechanisms.

When the official Commission proposal was tabled in July 2003, some changes had, as we have seen, been made. However, the proposal was still far from being an 'easy match' with the Member States preferences. As we remember, the Council had 'major concerns' about several aspects of the Commission's proposal, both on the timing, the cap and the qualitative provisions. The Commission proposal did, in other words, not reflect the wishes of the majority of the Member States.

Throughout the process, however, the Member States would largely succeed in changing and shaping the directive text to their liking. First of all, they got a long way with their demand on the cap. While the Parliament's rapporteur had suggested that the domestic action should constitute 'at least half of the reduction [...] effort made', the Council had demanded that the cap should be left the competence of each Member State. The latter alternative survived in the final wording of the directive text, which simply added that the effort should be 'supplemental to domestic action'. Perhaps not the strongest Council achievement, considering that the Parliament's rapporteur had admitted in the compromise deal that he could be flexible on the cap, but still, it shows that Member State preferences prevailed in the final directive.

Moreover, the Council was the first to demand an early link and a removal of the dependence on the Kyoto Protocol – both changes which made it to the final directive. True, these were not issues to which the Parliament had very stiff-necked positions – the Parliament's Environment Committee actually supported these amendments in its report on the directive. However, for the Parliament, these were *concessions* made to the Council. As we remember, the rapporteur admitted after the report

had been published that he had ‘given them a lot’, and that he was ‘already going quite far’ (ENDS Europe Daily 2004a). Once again, the Member States had gotten their way.

Also on the qualitative issues the Member States were successful. The majority of the Member States (along with the Parliament as well), was against sinks altogether, and they were heard on this. The same can be deduced from the empirical record on the nuclear issue. France managed (under the table) to team up a significant coalition demanding more flexible wording on the nuclear provision. They pushed ‘extremely hard’, and this, together with the uncertainty regarding the coalition’s exact size (and voting weight), certainly yielded results. As we have seen, the French got Britain and Finland on its side, counting 23 votes altogether. With 26 votes (and more than two states) as the minimum to block a proposal, and with the somewhat uncertain Germans holding another ten votes, there was a very real possibility that the group could be big enough to block the whole proposal if it was too strict on the nuclear issue. There was a feeling in the Parliament that it *might* be able to get a tough nuclear stance through the Council, but it might also fail (Interviews in Brussels, 11-16 April 2007). The Parliament did not want to risk it, and therefore accepted that the nuclear ban should last only till 2012. This change did not stem from anywhere but the persistence of the French coalition, a fact adding to the impression that Member State preferences were important.

As for the hydro provision, however, the empirical record has shown that the Member State community was more divided. Two coalitions formed: on one side a group led by Germany, counting 19 votes altogether, were demanding stricter wording and an explicit demand of compliance with the World Commission on Dams (Council of the European Union 2004a); on the other side, a group led by the French (altogether 23 votes) opposed the German proposal. Despite the fact that the latter group eventually was backed by four more countries, and thus clearly outnumbered its opponents, the final directive ended up with exactly what the German group had wanted: a stricter hydro provision. This change *cannot* be ascribed simply to Member State preferences, as the majority in the end was against it. Instead, it must be ascribed to the combination of two things: (i) the persistence of the Parliament on this issue (to which we will return when dealing with the next hypothesis), and (ii) the fact that the German coalition had already given in to the French on the nuclear issue, and that they now ‘deserved’ a little something in return. Put simply, the French was met on their nuclear demands, the Germans was met on their hydro demands. However, whereas the nuclear change can be ascribed to a Member State coalition and to this coalition only, the hydro change also stems from Parliament pressure. Consequently, the hydro change does not give the same support for the Member State approach.

#### *Preliminary conclusion on the Member State hypothesis*

All in all, however, it must be said that the empirical record has provided considerable support for the Member State perspective. On all issues, except the hydro provision (and *possibly* the nuclear provision, the coalitions’ size being unclear on this issue), the Council majority’s

preferences prevailed in the final directive text. The Member State approach is thus fruitful to explaining the changes in the directive text, as it accounts for *much* of what happened in the process.

However, we have seen that the Member State hypothesis as it was formulated in this study, as well as its underlying assumptions, are not entirely accurate when describing the Linking Directive process. Intergovernmentalist theory, as we remember, assumes that supranational institutions – in this case the Commission and the Parliament – operate either neutrally or in line with the Member States' preferences. The Commission was expected to launch a proposal which Member States could support, and the Parliament to act in line with the Member States' preferences. This is, however, not what happened in the Linking Directive process. The Commission and the Parliament were by no means under the control of the Member States. True, the Commission tried to *accommodate* the Member States' preferences when rewriting the leaked draft proposal into a less restrictive text in June 2003 – but the official proposal was still far from being a good match with Member State preferences. On the issue of the cap and the timing, for instance, the Commission's proposal was not in line with what the Member States wanted, and their objections were heard immediately after the proposal was launched. A similar objection can be made with regard to the role of the Parliament. The Parliament took a much more sceptical position towards linking than did the Council, and it issued a long list of independent amendments (which we will come back to when dealing with the next hypothesis). This puts a noticeable question mark next to the intergovernmentalist assumptions on the role of supranational institutions.

#### 4.1.2 *The Parliament hypothesis*

‘Once there was a race to meet the deadline, the  
Parliament's compromises were not far away’  
(Interviews in Oslo, 28 March 2007)

Let us take a brief recap of the Parliament hypothesis: the hypothesis originated in institutionalist and multi-level governance theory, both of which uphold the slogan that *institutions matter*. It was stated as the approach's core assumptions that institutions, in contrary to what the intergovernmentalists believe, have their own interests and their own agenda. They can exert influence that exceeds their formal mandate, particularly when the degree of issue complexity is high. Applied to the case of the Linking Directive, it was expected that the Parliament, both by virtue of being a co-legislator under the procedure, and by being an important EU institution, took part in the process and influenced on the design of the directive. Given that the centre-right group was in the lead position at the time, it was further assumed that the Parliament contributed to changing the directive in a flexible direction:

**H2:** *The Parliament hypothesis:* The Linking Directive became more flexible due to influence from the Parliament.

The Parliament providing *independent* and *outcome-altering* input was required for the Parliament hypothesis to be strengthened.

The empirical record has shown that the Parliament no doubt provided independent contributions in the course of the process. And it certainly had its own interests and agenda. The Parliament's Environment Committee proposed 18 separate amendments in its final report on the directive (Committee on the Environment 2004). However, the Parliament did *not* contribute to changing the directive in a more flexible direction. Rather, it was pushing in the opposite direction. During the first and second phase of the process, before the official proposal was launched, the Parliament made it clear that it wanted strict rules on linking. This position was further pursued after the proposal was launched, when the Parliament's rapporteur post was given to the Green MEP, Alexander De Roo. Along with the Parliament's Environment Committee, he pursued a number of possible restrictions in the Linking Directive text. This fact alone is enough to reject the Parliament hypothesis as it was formulated in this study.

With a nod to the scholars who have depicted the Parliament as the 'greenest' among the EU institutions, perhaps we should have assumed an opposite direction on the Parliament's influence? Did the Parliament provide independent and outcome-altering input which left the directive more *restrictive*? To some extent: yes. The Parliament certainly provided input which aimed to keep the directive a restrictive one, and it did get acceptance for some of its demands. Its opposition against sinks was reflected in the final directive, as was its work for a stricter wording on the hydro provision. It should be added, though, that both of these achievements to a certain extent also were due to support in the Council. A majority of the Member States was against sinks, and a minority group supported a stricter hydro provision. This implies that the Parliament cannot alone take the credit for these achievements (we shall return to this issue in the second part of the analysis; the evaluation of the hypotheses put together).

The empirical record gives, however, more indications of a losing Parliament than of a winning one. De Roo, which initially had wanted the directive to be dependent upon the Kyoto Protocol coming into force, changed his mind and issued a draft report suggesting an early link and independence from the Protocol. These were both concessions made to the Member States – and the rapporteur thought of them as 'giving them a lot'. Likewise, the Parliament did not get its way on the issue of the cap. The suggestion of a common, quantitative limit of 50 percent did not make it to the final directive text – perhaps not surprising, as the rapporteur had admitted he could be 'flexible on the cap' in his informal compromise suggestion. Also on the nuclear provision, the Parliament would have to accept certain changes. All the way, the Parliament had wanted the nuclear ban to last post-2012. As we have seen, however, there was a considerable risk that the French coalition was big enough to block the whole directive if the nuclear provision was too strict. De Roo did not want to risk it, and therefore accepted the Presidency's proposal that the nuclear ban should last only till 2012. All in all, then, the Parliament gave in on a number of issues.

Why was the Parliament so eager to compromise? There were several reasons: in May 2004 the Parliament would dissolve for elections and summer hiatus. If an agreement was not reached before this, one would have to wait until late 2004 or perhaps even till 2005 before any further progress could be made. Moreover, there was the risk that the rapporteur might not be re-elected to the next Parliament. And even if he would be re-elected, he might no longer be the rapporteur on the Linking Directive. Thus, there were also personal issues at stake, issues such as wanting to finish the job, and wanting to 'leave your legacy' (Interviews in Brussels, 11-16 April 2007). However, the need to move forward was also due to 'bigger things' (Ibid.). There was the time pressure set by the ETS starting date, and in addition, there was the issue of the soon-to-come EU enlargement. Waiting till after the ten accession countries had joined the Community would mean at least a year's delay, both due to administrative friction, and due to possible political friction: 'We didn't really know how the new Member States would play this issue. [...] We expected that maybe they would see it as a burden [...]. At least, we didn't think the enlargement would be helpful to the process', one negotiator explained (Ibid.). All in all, then, there were a number of factors putting pressure on the Parliament and increasing its will to compromise. It seems the number one priority was to get the Linking Directive passed in time – and any questions pertaining to the restrictiveness and design of the directive was secondary. As one bystander commented, 'once there was a race to meet the deadline, the Parliament's compromises were not far away' (Interviews in Oslo, 28 March 2007).

But why, then, was the Parliament so much more permissive than the Council? Why was it not the other way around – the Parliament holding on to a hard-line position and the Council instead giving concessions? Part of the answer probably lies in the fact that the Parliament would need an *absolute majority* to change the Council's position should the process go on to a second reading, as opposed to a *simple majority* in the first round (again, confer the co-decision procedure sketched out in section 2.1.2). This certainly gives the Parliament an incentive to try to reach agreement in the first reading. In addition, the seemingly uneven strength of the Council and the Parliament resonates well with the historical division of power between the two institutions – the Council has always been a 'very strong (...) upper house' (Rodden 2002: 154). The co-decision procedure, which has been said to increase the legislative powers of the Parliament (Crombez et al. 2000; Tsebelis and Garrett 2000), is a relatively new procedure, and it only became standard for environmental issues as of 2001 (see the European Commission 2007b). As one bystander pointed out, 'the Parliament did not yet have much experience with the co-decision procedure' (Interviews in Oslo, 28 March 2007). Thus, there was still a bit of 'trial and error' going on, and the Parliament was, to a certain extent, 'willing to make compromises just as long as they were 'part of the game'' (Ibid.). This paints an interesting picture with regards to the role and the self-perception of the Parliament, a picture which merits further studies.

### *Preliminary conclusion on the Parliament hypothesis*

To sum up, then, the empirical record has weakened the Parliament hypothesis, as it has been formulated in this study. This relates to the assumed *direction* of the Parliament's influence, as it turned out it worked for a more restrictive directive, rather than a more flexible one. As for the *degree* of the Parliament's influence, on the other hand, the Parliament only partially managed to curb the directive change: On the issues of sinks and hydro credits it managed to push through its initial demands. On a possibly modifying note, however, it should be kept in mind that the Parliament already enjoyed a certain support from the Council on these issues.

All in all, then, we can preliminary conclude that the Parliament was *not* a force for a more flexible directive, and that it only had *some* success in producing a more restrictive directive.

#### *4.1.3 The Commission Hypothesis*

‘The Commission is just as much a political animal  
as the Parliament and the Council’  
(Interviews in Brussels, 11-16 April 2007)

The Commission hypothesis was derived from the same theoretical assumptions as the Parliament hypothesis. It was assumed that the Commission, though a politically neutral institution on paper, had its own agenda and its own interests in the Linking Directive process. It was assumed that either, the Commission contributed to a more flexible directive due to certain DGs winning the internal power struggles of the Commission, or that the DG Environment realized that it would have better chances for a smooth legislative process with a more flexible and industry-friendly directive. Both possibilities were embedded in the hypothesis:

**H3:** *The Commission hypothesis:* The Linking Directive became more flexible due to influence from the Commission.

As with the Parliament, the Commission would need to have provided *independent* and *outcome-altering* input for the hypothesis to be strengthened. So, what has the empirical record told us about the role of the Commission?

The record has shown that the Commission slowly had been growing more susceptible to the flexible mechanisms since they were included as part of the Kyoto Protocol. A change in personnel around 1998, with the entry of Jos Delbeke and other new staff favouring economic policy instruments, helped facilitate this development. Still, the perception on emissions trading and the project mechanisms was far from uniform in the Commission – just as it was far from uniform in the rest of the EU. As we remember, the official reason for leaving the linking issue out of the ET Directive was that the Marrakech Accords had not yet been finalized. However, as one analyst put it, the Linking Directive ‘had the potential to

blow up the whole ET directive' (Interviews in Brussels, 11-16 April 2007). In order to at least get the EU emissions trading up and running, then, the Commission strategically decided to discuss the linking issue in the context of a separate directive proposal.

However, when it was time to draft the separate linking proposal, the difficulties and disagreement eventually came to the surface. Especially, there was heavy friction between the DG Environment and the DG Enterprise, a conflict which escalated further when the previously mentioned draft was leaked. Informants have testified that the draft was the work of a 'rather green' branch of the Commission, a branch which was continuously 'fighting the project mechanisms' (Ibid.). Apparently, the change of Commission personnel had not entirely removed the differences of opinion towards climate policy, as one informant elaborates: 'There were still people in the DG Environment who hated the project mechanisms, just like they had hated them during the Kyoto negotiations. They had just started to accept the concept of emissions trading, but this was still considered to be a *domestic* tool. Linking to the project mechanisms was something else entirely' (Ibid.). As we remember, the leak stirred up a storm, all the way to the top level. One bystander characterized the process as a 'cat-and-dog fight' within the Commission (Interviews in Oslo, 28 March 2007). In the end, the Environment division had to back down on quite a few of their restrictions. Thus, the leak – probably done by 'a commissioner wanting a less strict regime, somebody who wanted there to be reactions on the draft' – certainly had its intended effect (Ibid.). All in all, then, the DG Enterprise's agenda had an outcome-altering influence, and the process towards a more flexible directive started already *before* the launch of the official proposal. This gives considerable support to the Commission hypothesis in the first stages of the process. As one lobbyist put it, 'The Commission is just as much a political animal as the Parliament and the Council' (Interviews in Brussels, 11-16 April 2007).

Did the Commission (and its subdivisions) have an influence on the process also later on in the process? It certainly had the opportunity, as it was present at all the triologue meetings which took place during the spring. In these meetings, the Commission no doubt helped facilitate the negotiations. It provided expertise and input to the other parties, a role which was further facilitated, as noted earlier, by the Commission's much better relations with the Irish Presidency as compared to the Italian, which had 'not been very good' (Interviews in Oslo, 3 May 2007). In this new and better relationship, however, did the Commission actually come up with *outcome-altering* contributions? Did it mark and shape the process as it had done in the initial stages? The empirical record gives little indication of this. Rather, it shows that De Roo's compromise deal had left few issues on the table, and that on the remaining issues, the alternatives were already circulating in between the Council Presidency and the Parliament. In other words, much was already settled at the final triologue meetings, and there was not much need for extra input from the Commissioners (Interviews in Brussels, 11-16 April 2007).

Another fact adding to the impression that the Commission did not have much of an influence during the last stages of the process is that once the

first reading agreement was reached, the Commission accepted all of the entailed amendments without voicing any independent concerns. As we remember from section 2.1.2, the Commission could have chosen *not* to accept all of the Parliament's amendments, in which case the Council would have needed *unanimity* to approve the amendments in question (European Commission 2007a). True, the Commission took part in the final negotiations, but due to the trade-off deal suggested by De Roo, and due to the time pressure and the strong will to compromise among the parties, there was really not all that much the Commission needed to do. This provides less support for the Commission hypothesis, which suggested that the Commission not only was an important independent player in the initial stages, but also later on in the process.

*Preliminary conclusion on the Commission hypothesis*

All in all, then, we can preliminary conclude that *some* support has been yielded for the Commission hypothesis. The Commission did not play a cardinal role in the final stages of the process, but the empirical record has shown that it was an important actor earlier on. In the shaping of the linking proposal, the DG Enterprise succeeded in changing a restrictive and 'green' draft into a somewhat more industry-friendly proposal, and was thus part of the forces changing the directive in a flexible direction.

*4.1.4 The External Context Hypothesis*

‘For the Russians, it was all about  
the World Trade Organization’  
(Interviews in Brussels, 11-16 April 2007)

The external context hypothesis was born out of Oberthür and Gehring's (2006) model of regime interaction. As a brief reminder, this model consists of three separate stages: In the first stage, the source regime (with its rules, norms and decisions) affects the preferences and the behaviour of a relevant actor within its own domain. In the second stage, this leads to a change in the preferences and behaviour of an actor relevant to the target regime. In the third and final stage, this, in turn, produces a change within the target regime (and its rules, norms and decisions) – a regime interaction has taken place.

This report has suggested that the regime interaction model might be relevant to what happened in the Linking Directive process. More precisely, it has assumed that the Kyoto Protocol – the most relevant international framework for the Linking Directive – might have functioned as a source regime, and the Linking Directive as the target regime. The supposition was as follows: in the first stage, the rules and decisions of the Kyoto Protocol were likely to affect the behaviour of Russia, as the Protocol was providing the possibility of significant economic gains from emissions- and credit trading. In the second stage, Russia was expected to pressure the EU into designing the Linking Directive as flexible as possible, as this would further increase Russian revenues from their project credits. The means to this pressure would be the stalling of the Kyoto Protocol ratification. In the third stage, the EU, wanting the Kyoto Protocol to come into force, was expected to have

given in to the Russian pressure, and to have agreed to change the design of the Linking Directive in a flexible direction. The hypothesis was formulated as follows:

**H4:** *The external context hypothesis:* The Linking Directive became more flexible due to external influence from the climate regime and its key micro-level actor Russia.

Now, did this hypothesis and its underlying assumptions find support in the empirical data presented in this study?

As for the first part of the regime interaction model, it has already been demonstrated that the Kyoto Protocol affected Russian preferences in regards to climate policy (see for instance Bang et al. 2005). Because of the Kyoto Protocol, Russia could anticipate considerable economic gains from emissions trading, and their signature on the Protocol was in the first place largely caused exactly by expectations of large revenues from quota sales (Ibid.: 16).

As for the second stage, in which the Russians were expected to pressure the EU on the design of the Linking Directive, the picture is less clear. Russia was no doubt in a *position* to pressure the EU. Holding the key vote on whether or not the Protocol would come into force or not, the Russians could stall their ratification and at the same time demand side-payments – for instance in the form of a flexible Linking Directive. The Russian position was specifically highlighted in the Linking Directive proposal, in which Russia was the only country mentioned specifically – and several times. According to one observer, the proposal was basically saying, ‘look, Russia, you’ll miss out on all this trading if you don’t ratify the Protocol. All of these project opportunities will go by you’ (Interviews in Brussels, 11-16 April 2007). The EU was basically inviting the Russians to the negotiating table. The empirical record has also shown that EU delegates talked to the Russians ‘repeatedly’ on the question of Kyoto ratification, both during the ETS- and the linking directive process (Ibid.). There was the World Climate Change Conference in September-October in Moscow, where the EU troika stated its case for Kyoto ratification; and later on there was the roundtable discussion on air quality and climate change in Rome in March 2004. The possibilities for Russian pressure on the EU and the Linking Directive were, in other words, numerous.

However, did the Russians actually *seize* these opportunities to exert influence on the Linking Directive? As we have seen, at the mentioned discussion in Rome the Russians did raise their voice against capping the number of credits allowed into the EU ETS. And they added some pressure to their words: the chairman of Russia’s committee on JI warned that ‘I cannot see this [Kyoto] agreement being ratified until the context changes’ (International Environment Reporter 2004). At first glance, then, it seems the external hypothesis is strengthened. One could argue that Russia ‘got its way’ on the cap – as we know, the final Linking Directive contained no common cap on JI and CDM credits.

However, one could equally argue that the Russian role towards the Linking Directive was more rhetorical than it was real, and that the lack of cap actually had nothing to do with Russia. Both negotiators who were involved in the process and outside analysts are unanimous in rejecting Russian influence on the Linking Directive. The Russians ‘played this card’ in public, they say, but in the real negotiations, ‘the linking issue was not all that important for Russia. There were other matters which were more important’ (Interviews in Brussels and Oslo, April and May 2007). ‘For the Russians, it was all about the World Trade Organization’, elaborates one of them (Interviews in Brussels, 11-16 April 2007), referring to the Russian demand for EU support on the question of WTO membership.

Confronted with this somewhat conflicting data – some of which indicates that Russia was putting pressure on the directive’s design; some of which denies that the Russians had any real influence on the directive – one has to compare and weigh the different accounts up against each other. We are dealing with official government statements and public ‘rhetoric’ on the one side, and first hand interview data on the other. In this case, the latter is judged as the more trustworthy. For one, *all* of the informants reject Russian influence on the directive. Even neutral bystanders, informants who would have little to lose from admitting that the Russians ‘got their way’, seem to claim that the WTO ordeal simply overshadowed other potential trade-offs which could have been made. Moreover, if the Linking Directive negotiators knew that for the Russians, it was really ‘all about the WTO’, and that the Russians would come along on the ratification of the Kyoto Protocol as long as they got their support on the WTO membership, there was really no need to throw in the Linking Directive as part of the deal as well. These factors both suggest that the Russians did *not* have an influence on the Linking Directive and that the external context hypothesis should be rejected. There is also a third factor substantiating this interpretation. As we have seen, the reference to the entry into force of the Kyoto Protocol was deleted in the course of the process, making the directive – at least formally – independent of Russia and the fate of the Protocol. As the rapporteur, Alexander De Roo, commented when the directive was adopted, ‘this gives the message: We are not waiting for you, President Putin. We are going ahead with or without you’ (Point Carbon 2004a). This certainly adds to the impression that the Russians did *not* have any influence on the design of the Linking Directive.

Why, then, were the Russians mentioned in the Linking Directive proposal as the sole country, and several times? Clearly, this was a reflection of the EU’s desire to push through a Russian ratification of the Kyoto Protocol. The Europeans took numerous initiatives on this subject, and there are even indications of a Kyoto Protocol-WTO trade-off between Russia and the EU. There are, however, meagre indications of a Kyoto-Linking Directive trade-off between the parties.

#### *Preliminary conclusion on the external context hypothesis*

In spite of some conflicting data, then, we interpret the empirical record to provide little support for our external context hypothesis. In sum it has

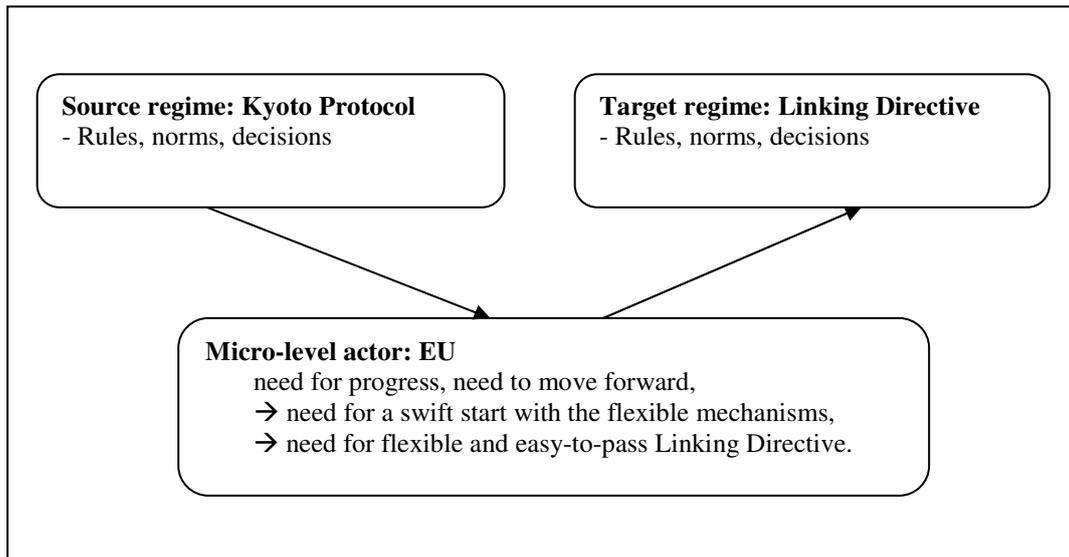
been made plausible that Russia did not have an influence on the design of the Linking Directive. Different informants, also the ones who would have little to ‘lose’ from admitting that Russia ‘got its way’, have all denied such a connection. In addition, the reference to the entry into force of the Kyoto Protocol was eventually deleted in the directive text, making it essentially independent of Russia. This does not strengthen the external context hypothesis.

That said, it is still premature to deny that Oberthür and Gehring’s regime interaction theory *as such* is without relevance in the case of the Linking Directive. There is much to suggest that a certain external pressure *did* play a part in the decision-making process – though a different kind of pressure than the one suggested by our hypothesis. The empirical record has repeatedly shown how significant the aspects of time pressure and the regard for ‘bigger things’ were in the course of the process. In addition to the time pressure factors stemming from *within* the EU (the EU ETS kick-off date in January 2005, the Parliament elections coming up in May 2004, the soon-to-come EU enlargement), there was external pressure from the Kyoto Protocol. After all, the Kyoto Protocol was the reason why the idea of the project mechanisms and the Linking Directive came about in the first place. And with the US absent and the Russians stalling their ratification, there was a certain demand for the EU to ‘move forward’ and set an example for the international community. As one Linking Directive negotiator commented; ‘we wanted to show to the outside world that ‘look, we are Kyoto ready, we are moving ahead’ (Interviews in Brussels, 11-16 April 2007). To show this, the ET Directive was steered through on a fast track – and the Linking Directive on an even faster one. And with the pace of the process, there was simply not room for stiff-necked positions and ‘obsessive demands for restrictions’ (Ibid.). Instead, the directive would have to be Member State friendly and easy to pass. ‘Since the US was out of the game, the EU had become ‘the flagship’ on climate policy – and a flagship without the Linking Directive was simply not a flagship’, as one analyst put it (Ibid.).

All this suggests a different kind of regime interaction than the one that was sketched out in figure 2, section 2.2.3. It suggests that rather than the Kyoto Protocol influencing Russia and in turn the EU, there was pressure going directly from the Protocol to the EU – pressure to move forward and to show leadership on the international climate stage. This in turn meant that there was a need for a swift start with the flexible mechanisms and a swift adoption of a Linking Directive. The line of reasoning is illustrated in figure 4, showing a possible revision of the regime interaction model for the Linking Directive case.

Of course, this report does not provide enough data to robustly support (or reject) the above-shown model, as it did not sketch out a hypothesis demanding such data to be gathered. Consequently, the model and its causal suggestions will be left unexamined in this report, available for others to pursue in later studies. It can be noted, though, that a Kyoto-induced directive with *no* influence from the international climate regime seems highly improbable. Perhaps our external context hypothesis would have stood stronger when facing the test of the empirical record, if it had been formulated in accordance with the above model.

**Figure 4 Possible revision of the regime interaction model for the Linking Directive case.**



Having dealt with each hypothesis separately, we will now proceed to conduct a joint evaluation of all the hypotheses. The aim is to determine whether there have been instances of interrelations in between the different explanatory factors. After this, we will summarize our findings.

## 4.2 Joint Evaluation of the Hypotheses

This section provides a synthesized and somewhat more ‘holistic’ analysis of the empirical record. Instead of dealing with each hypothesis separately, we evaluate possible interrelations in between the different independent variables. In doing this, we shall temporarily put our three explanatory perspectives aside, and with them, any theoretical blinders which might have been steering our analysis thus far. Rather, we shall look at whether there might have been instances of *interrelations*, or *co-influence*, in between the different actors and different institutions involved in the Linking Directive process. Could it be that the Member States and the supranational institutions in any way worked together to produce the Linking Directive outcome? Or could it be that groupings of Member States worked together with, for instance, groupings within the Commission?

The point of departure for this joint analysis is the concept of *winning coalitions*. In mathematical or game theoretical studies, a ‘winning coalition’ signifies a group of players who come together to achieve a common goal, and who by this increases its numerical voting weight so that it can ‘get its way’ in the decision-making process (confer American Mathematical Society 2007). In this study, however, we shall speak of *influential coalitions* – a term which will bear a somewhat less quantitative meaning than the term used in game theory, namely a group of players who, having identified a common ground are capable of acting together towards a common goal, and who by this succeeds in increasing its influence in the decision-making process.<sup>40</sup> Hence, an influential

coalition consists of different actors or institutions which by the support of common interests and common goals, manage to increase their influence in the process of negotiation. The reader should note that we are not using the term ‘coalition’ in the sense that the parties necessarily joined together and actively coordinated their policies and positions. Rather, the term denotes instances of increased negotiation strength due to knowledge of common interests. Simply by knowing that they have fellow partisans in other institutions, each actor is strengthened in its individual ability to put a mark on the process.

So, did any influential coalitions arise in the course of the Linking Directive process? The empirical record gives several examples. I will present them briefly in the following passages.

#### *4.2.1 The Council and the DG Enterprise – An Influential Coalition*

First of all, it seems that the Council<sup>41</sup> and the DG Enterprise enjoyed somewhat mutual interests throughout the process. In the second phase, in the wake of the leakage, the reactions from many of the Member States and the DG Enterprise were to a large extent congruent. Both camps wanted more flexibility to the industry, both in terms of the quantitative and the qualitative provisions (Interviews in Brussels, 11-16 April 2007). In the intra-Commission battle which followed the leakage, the support from the Member States certainly strengthened the DG Enterprise’s position against that of the DG Environment (Ibid.). As such, the Member State preferences contributed to the DG Enterprise’s influence in pushing the directive in a more flexible direction. At the same time, the knowledge that the DG Enterprise had gained ground in these initial stages of the process, must have given the Member States confidence that their demands would be heard in the up-coming negotiations. Together, then, the Member States and the DG Enterprise stood stronger than they would have done separately. Although they did not ‘come together’ and join forces formally, they did work to achieve a common goal, and by this, they certainly increased each other’s influence on the Linking Directive process. Thus, the Member States and the DG Enterprise constituted an influential coalition.

#### *4.2.2 The Parliament and the DG Environment – A Somewhat Influential Coalition*

On the other side of the preference spectrum, there seems to have been another coalition; one in between the Parliament and the DG Environment. As with the Member States-DG Enterprise coalition, these parties’ mutual stance was reflected in leakage ordeal: the leaked draft was the work of DG Environment people who ‘hated the project mechanisms, just like they had hated them during the Kyoto negotiations’ (Interviews in Brussels, 11-16 April 2007); and likewise, the Parliament had been working for strict restrictions ever since the Kyoto negotiations. Now, we know that neither the Parliament nor the DG Environment were among the more successful players in pushing through their interests – the DG Environment lost the battle over the leakage, and the Parliament gave in on quite a few issues later on in the process. On their own, then, these were actors without tremendous effect on the process. However, together

it seems that they *co-influenced* and increased their say on the directive. As we know, the Parliament's rapporteur De Roo and the DG Environment representatives had frequent contact in the trialogue meetings throughout the winter and spring in 2004. Their common interests cannot but have helped the Parliament in getting a stronger say in the process (Ibid.). The little curbing effect which we in the preliminary analysis ascribed to the Parliament can thus partly be ascribed to the somewhat influential coalition between the Parliament and the DG Environment.

#### 4.2.3 *The Parliament and the German Group – An Influential Coalition*

A stronger coalition, and perhaps a better explanation of the Parliament's achievements in curbing the Linking Directive change, is found in between the Parliament and what we shall term 'the German group' within the Council. The group, which primarily consisted of Germany and the Netherlands, had congruent preferences with the Parliament on two issues: it argued in favour of a cap, whereas most other countries were against any cap at all (Council of the European Union 2004b, 2003c) – a position which certainly was close to the Parliament's heart. Second, on the issue of the hydro provision, the group was joined by Sweden, and demanded stricter wording and compliance with the World Commission on Dams (Council of the European Union 2004a). This was also a position with which the Parliament could easily sympathize. The issue of the cap soon turned out to be a lost battle (as reflected by De Roo's compromise suggestion), but on the hydro issue, there was a lot to be gained from standing together. The German group did not have a majority to back its hydro demand, but with fellow partisans in the Parliament, their argument certainly stood stronger (Interviews in Brussels, 11-16 April 2007). Likewise, the Parliament was more likely to have success in pushing through its strict hydro demands knowing that there was a certain support in the Council (Ibid.). And in the end, as we know, the hydro provision ended up being the one single provision which actually became more restrictive in the final directive. The Parliament and the German group can thus be categorized as an influential coalition.

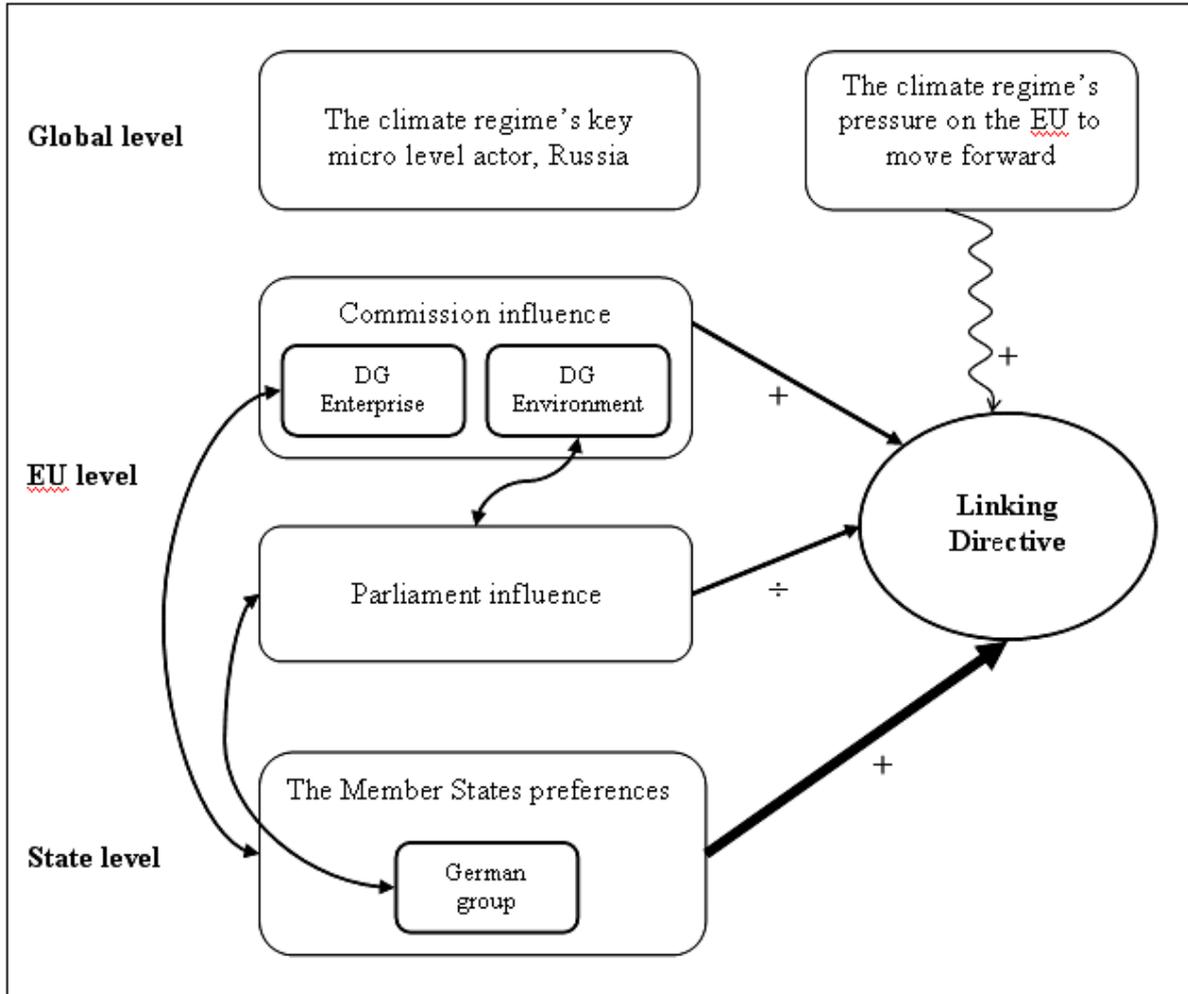
All in all, then, this joint evaluation has shown that the Linking Directive process not only was marked by single actors or separate institutions. It was also marked by coalitions: separate actors and institutions which, by knowing that they had common interests, increased their chances of influencing on the design of the directive. We have found three instances of influential coalitions: the Member States and the DG Enterprise, the Parliament and the DG Environment, and finally, the Parliament and the 'German group' in the Council. These actors did not necessarily actively join together in coalitions in the sense that they coordinated their policies or strategies, but still, these are institutions whose effect on the Linking Directive design cannot be viewed entirely separate from one another.

### 4.3 Summary of the Analysis

Having conducted both separate and joint analyses of the hypotheses set out to be evaluated in this study, we can now present a revised and empirically informed version of the explanatory model for the Linking Directive. The revised model, presented in figure 5, is more comprehen-

sive and more rich in detailed than the model which was sketched out in figure 3 as part of the analytical framework in section 2.2.4. Reality is, as we know, usually more complex than what initial theoretical models indicate.

**Figure 5 Empirically informed explanatory model for the Linking Directive.**



**Brief explanation of the model:** The thickness of the arrows in the above shown model reflects the relative influence of the independent variables: the thicker the arrow, the more important the independent variable was found to be. A plus or minus sign reflects the direction of influence – a plus means that the particular variable contributed to changing the Linking Directive in a more *flexible* direction, while a minus means that the variable had an opposite influence on the directive. *No arrow* signifies, of course, that no support has been given for that particular hypothesis. Two-way arrows illustrate the different instances of co-influence which have been detected in the analysis: instances where different actors and different institutions increased their influence by the support of congruent interests. In addition to this, a *crumpled arrow* points from the climate regime pressure, indicating that though this factor has not been sufficiently examined in this report, it *might* have had a positive effect on rendering the final directive more flexible.

Before summarizing the substance of this model, a brief explanation of the model's different elements is on order. First of all, some of the study's independent variables (illustrated as the big boxes in the model) have been divided into sub-divisions (the smaller boxes), simply because these sub-divisions have proved to be relevant for explaining the directive change: the Commission has been specified into the DG Enterprise and the DG Environment, and from the Member States the 'German group' has been taken out as a separate sub-group. Moreover, there are two-way arrows in between some of the independent variables, illustrating the different instances of co-influence which have been detected in the analysis: the coalition between the Member States and the DG Enterprise, the coalition between the Parliament and the DG Environment, and the coalition between the Parliament and the German group. Causal arrows are pointing from the different independent variables towards the study's dependent variable, the Linking Directive. These arrows reflect the relative importance of the variables: the thicker the arrow, the more important this independent variable has proved to be. A plus sign signifies that the variable contributed to changing the Linking Directive in a flexible direction, while a minus sign means that the variable – in this model the Parliament influence – contributed in the opposite direction. The lack of arrow pointing from the Russia variable signifies, of course, that no support has been given for this particular hypothesis. In addition to this, the reader will notice that an additional element has been included in the model as compared to the one sketched out in section 2.2.4: the climate regime's pressure on the EU to move forward. This is the scenario suggested as a possible alternative to the Russia scenario expected at the outset of this study. A *crumpled arrow* is moving from this factor towards the dependent variable, signifying that a causal relationship with the Linking Directive has not been firmly established in this report, and that it should be further investigated in later studies.

So, what is figure 5 actually telling us about the Linking Directive process? The report has found that the intergovernmentalist perspective is a fruitful approach to explaining the Linking Directive change. The Member States were the big victors in the Linking Directive process: they were no doubt the ones with the most impact on the final directive text, as is also indicated in figure 5. However, the perspective is in need of significant revisions when it comes to the role of supranational institutions. The Member States were far from 'controlling' the supranational institutions, as the theory would have it – the Commission launched a proposal to which the Member States had several reservations, and the Parliament had its own, more restrictive position throughout the process. Still, the Member States managed to get most of their wishes through in the end, a fact supporting the overall core of the intergovernmentalist perspective: the deciding power rests with the state.

The institutionalist- and multi-level governance perspective, which recognizes that supranational institutions can play an important part in EU policy-making, has, on its side, been given some support by this report. The Commission put its mark on the directive via the DG Enterprise during the initial stages of the process, while the Parliament, on the other hand, managed to some extent to *curb* the change in the directive. Probably, the directive design would have become more flexible had it

not been for the position taken by rapporteur De Roo and the Parliament. Thus both institutions had some independent impact on the process. The significance of these institutions should, however, not be seen as completely isolated. They both enjoyed significant backup from other institutions: the DG Enterprise took part in an influential coalition with the majority in the Council; and the Parliament was part of a coalition with both the DG Environment and the 'German group' in the Council. These instances of co-influence in between the different actors is an important part of explaining the Linking Directive process: The Member State influence throughout all of the process, and the Commission's influence in the beginning of the process, would probably have been significantly weaker had they not both enjoyed a certain backup from one another. And similarly, the Parliament's influence on the process had probably been more meagre, had it not been for the support in the DG Environment and the Council's German group.

As for the report's last hypothesis, the external context hypothesis, this has been given little support. Based on 1) the harmonious testimonies of all of the interviewees on this issue, 2) the fact that the dependence on the Kyoto Protocol was removed from the proposal text in the course of the process, and 3) the fact that there was little reason to put the Linking Directive on the line in a negotiation so highly revolving around the WTO question, we have found it to be most plausible that Russia did *not* have any real influence on the directive's design. This does, however, not mean that the study has rejected Oberthür and Gehring's regime interaction model as such. There is much to suggest that the international climate regime had an impact, not via Russia, but directly on the EU system, pushing it to move forward and show leadership on climate policy. As mentioned, this scenario seems plausible, but it has not been sufficiently examined in this report (as indicated by the crumpled arrow in figure 5). It is left to pursue in later studies.

## 5 Conclusion and implications

This report has asked the question: *In what way did the design of the Linking Directive change, and how can this change be explained?* We have explored three different theoretical perspectives, and on the basis of these, we have launched four explanatory hypotheses. *The Member State hypothesis*, born out of the intergovernmentalist perspective, stated that the Linking Directive became more flexible because Member States changed their preferences in the course of the process. *The Parliament hypothesis*, derived from institutionalist and multi-level governance theory, stated that the Linking Directive became more flexible due to influence from the Parliament, while *the Commission hypothesis*, also derived from institutionalist and multi-level governance theory, assumed that the Linking Directive ended up more flexible due to influence from the Commission. Finally, *the external context hypothesis*, based on regime theory and Oberthür and Gehring's (2006) model of regime interaction, assumed that the Linking Directive ended up more flexible due to external influence from the climate regime and its key micro-level actor Russia.

The report has scrutinized the empirical record from the close background of the initial proposal and up to the final directive. We have sought to 'reconstruct' the Linking Directive's decision-making process, based on the triangular support of empirical data, theoretical insight, as well as interpretation and historical criticism. The overriding aim has been to establish which of the three explanatory approaches seem to be the most rewarding when trying to explain why the Linking Directive changed the way it did.

In this concluding chapter, we first briefly sum up the main empirical findings of the report, before discussing possible theoretical implications of these. Finally, we discuss the methodological and theoretical choices taken, and point to ways in which the analytical framework could be expanded or improved in later studies.

### 5.1 Summary and Main Findings

To sum up the Linking Directive process with few words, one could describe it as a remarkably swift process, dealing with remarkably difficult issues. This is the paradox which has been scrutinized in this report. The fact that the directive was passed in spite of the controversy it arose, must partly be ascribed to the combination of strong Member State preferences on the one hand, and the positions taken by the Commission, and above all the Parliament, on the other. Due to a seemingly strong sense of time pressure, the Parliament was willing to go easy on its demands in order to get the directive passed. As we remember, there was the ETS starting date approaching, the Parliamentary elections, and the EU expansion. The Kyoto Protocol and the international climate regime probably also put a certain amount of pressure on the process. Under such conditions, the Parliament only to a small degree managed to hold on to its political claims, and the Commission, after having put its mark on the process with the launch of the directive, chose to take a more facilitating than actually outcome-altering role. Both institutions seemed to prioritize the

aim of reaching a political agreement – even if this meant giving in to Member States' preferences.

So where does this leave us with regard to the three explanatory approaches set out at the outset of this study? It has, without a doubt, been the approach rooted in intergovernmentalist theory which has proved to be the most rewarding, in that it accounts for most of what happened. On almost all of the Linking Directive's sub-dimensions, the Member State majority's preferences prevailed. However, the fact was not, as our hypothesis would have it, that Member States *changed* their positions in the course of the process, nor was it the situation that the Commission and the Parliament only reflected Member State preferences. Rather, the Commission proposal was not matching with Member State preferences in the first place. Moreover, both the Commission and the Parliament played independent roles in the process. In the end, then, we are confronted with an interesting situation: the empirical data certainly supports the overall core of the intergovernmentalist perspective – Member State preferences were important drivers in the Linking Directive process – but at the same time, the perspective's underlying assumptions about neutral supranational institutions are not supported by the Linking Directive study.

As for the explanatory approach derived from the institutionalist- and multi-level governance theory, this has only been given some support by this study. The Commission – or, more precisely, the DG Enterprise – was important in the initial stages of the process, and managed, after having battled with the DG Environment, to render the official proposal more flexible in its design. In the later stages of the process, however, the Commission and its sub-divisions seem to have played a more accommodating and facilitating role, without actually putting an outcome-altering mark on the process. All in all, then, only *some* support is given to the Commission hypothesis. The Parliament hypothesis, on the other hand, has been granted no support in this study – the reason being simply that the Parliament pushed for a more *restrictive* directive rather than a more flexible one. This is a question of how the hypothesis was formulated. As we remember, we expected the Parliament's influence to reflect the dominance of centre-right MEPs. However, there was also reason to believe that the Parliament's influence could take an opposite direction, reflecting the Parliament's traditional 'green' stance in EU politics. It seems we assumed wrongly in this study. That said, even in the quest for a more restrictive directive, the Parliament's success was not considerable: it adjusted to the Council position on quite a few issues. Part of the reason for this permissiveness was certainly the aforementioned time pressure. Also, the fact that the Parliament would need an absolute majority to change the directive if it should go on to a second reading certainly gives an extra incentive for the Parliament to try to reach an agreement in the first round. In addition to these factors, the study has also suggested that the Parliament's influence on the Linking Directive reflects its traditional position as an underdog as compared to the upper house, i.e. the Council. True, the Parliament has increasingly been given legislative powers, as with the introduction of the co-decision procedure, but there might still be a lack of experience and a sense of submissiveness in the institution, even if it – on paper – functions as an equal co-decider with the Council.

Finally, we have found little to support the hypothesis derived from Oberthür and Gehring's regime interaction theory. This does, however, not mean that the interaction model as such has been rejected. It has been suggested that a certain external pressure *did* play a part in the decision-making process – however a different kind of pressure than the one suggested by our hypothesis. There seems to have been pressure from the Kyoto Protocol, not via Russia, but directly on the EU, calling on the EU to 'move forward' and to show political leadership on the international climate stage. Such a scenario has not been examined sufficiently in this report, but it certainly seems plausible, considering that the Kyoto Protocol was the reason why the idea of the project mechanisms and the Linking Directive came about in the first place.

To sum up, then, this study has shown that when treating the three explanatory approaches as competing alternatives, the Member State approach no doubt seems to carry the most weight. However, all three approaches have proved to have something to contribute to the overall understanding of the process. The institutional and multi-level governance perspective has been given some support, and the regime interaction model has shown itself as a probably useful framework for understanding how external, international factors influence on EU internal policy-making, even if the regime hypothesis as we formulated it did not gain support. This points to the *complementary* nature of the theoretical perspectives applied in this report, as well as to the multifaceted nature of EU politics: single actors or single explanatory perspectives do not alone explain EU policy-making – the combination of different actors and different perspectives do.

However, this study has not only reflected the complementarity of the theoretical perspectives, it has also suggested explanations *across* the three presented approaches. We have found three instances of what we termed 'influential coalitions' – different actors from different levels of influence which, having identified a common ground, managed to gain influence in the Linking Directive process. The Member States and the DG Enterprise had congruent interests in working for a more flexible directive, and with this, they strengthened each other's positions in the course of the process. The Parliament and the DG Environment, on the other hand, had congruent interests in working for a more restrictive one, as did also the Parliament and the 'German group' in the Council. Also these actors increased their influence on the process by knowing that they had common goals. Thus, the independent variables in this study – and the theoretical perspectives from which they are derived – need not be seen only as alternatives or as complements to one another. They can also be seen as potentially intertwined or integrated explanatory approaches.

## 5.2 Theoretical Implications

One should, of course, be careful before trying to infer any general lessons from a single case study like this one. Studies of different decision-making processes might very well come up with entirely different conclusions as to what the important explanatory factors are in a particular process. That said, the findings of this report reflect *part* of the total picture – part of how EU policy-making is chiselled out – and as

such, they contribute to the empirical basis on which political theories are founded. So, how do the findings of this report relate to and contribute to existing theoretical debates within Political Science?

First of all, the study has indicated that the EU Member States may still be more important as explanatory factors in decision-making processes than much recent research would have it. A long list of scholars (see for instance Egeberg 2005; Hooghe and Marks 2001; Garrett and Tsebelis 1996; Matlary 1995; Carlsnæs et al. 2004) have upheld the notion that EU policy-making has been taken out of the hands of the nation-states and into supranational actors such as the Commission and the European Parliament. This report no doubt challenges this view. By account of the Linking Directive process, the Member State preferences continue to stand tall in the EU system – a reminder which should not be ignored when considering theoretical framework in future EU policy studies.

Second, the study has demonstrated that *pressure* on a political system – even on one as big as the EU – can yield results. As we have seen, the political pregnancy of the Linking Directive was surprisingly swift – nine months was all it took from the Commission proposed the directive in July 2003 till it was approved by the Parliament. This is a remarkably short time in the context of EU decision-making. It seems likely that this ‘effectiveness’ in the decision-making had to do with the time pressure involved, both internally within the EU, but seemingly also from the outside, with the Kyoto Protocol and the international climate regime demanding progress and leadership from the EU. As one bystander described the process:

it [the Linking Directive] could easily have gone to a second reading – perhaps even to conciliation – had it not been for the great consensus on the bigger issue at stake. The climate change was seen as an important political subject by all, and the EU was in a hurry to move forward. It wanted to get the emissions trading scheme and the link to the project mechanisms up and running – and it wanted it done as quickly as possible (Interviews in Brussels, 11-16 April 2007).

Similarly, we also remember the negotiator commenting about the process that ‘we wanted to show to the outside world that ‘look, we are Kyoto ready, we are moving ahead’ (Ibid.). The understanding that this was about ‘bigger things’, that it was about global problems and that one needed to move quickly forward, could not but have helped speeding up the process. Again, this calls for a more thorough study of the international climate regime’s influence on the EU policy-making. How extensive is this regime’s influence on decision-making in the EU? Is it, generally speaking, easier to get difficult political issues steered through the EU system on a fast track if only there is enough regime pressure on the political system? The Linking Directive process seems to indicate this – but other case studies are needed to complement or correct the impression.

Finally, one should take notice that the findings of this study reflect the complexity and multifaceted character of EU decision-making. For one, the study has demonstrated the complementarity of the applied theoretical

perspectives: all three approaches have had something to contribute in explaining the Linking Directive process. Second, the study has also pointed to the intertwinement and the co-influence of the different independent variables evaluated. Actors which initially were thought to ‘pertain’ to different theoretical perspectives worked together and co-influenced to produce the final outcome of the process. This could not have been foreseen if one had treated the applied theories as rigidly competing with one another. Explanatory models for EU policy-making should strive to encapsulate the intricate and cross-level nature of the field of study.

### 5.3 Methodological and Theoretical Improvements of the Study

In these final passages of the report, we take a step back and consider the research design of the study. We discuss both the methodological and theoretical choices taken, and point to ways in which the analytical framework could be expanded or improved. We start with looking at some of the methodological challenges this study has faced.

In any kind of scientific research, the questions of whether one has collected *sufficient* and *good* empirical data will surely pop up and trouble the researcher at some point or another. As for the first of these predicaments – the question of sufficient data – I would argue that the findings of this report rest on a broad empirical basis. Both the written data and the interview data have been gathered from a wide range of sources, and it has been ensured that different viewpoints have been heard. That said, there will always be room for more information. Ideally, one should keep searching for answers until there are no new answers to be found. Practically and pragmatically, however, such an ideal is impossible to live up to in any scientific quest – much less within the practical limits of this report. Thus, there is no absolute guarantee that the findings of this study will stand unchallenged. New information might nuance or even revise the overall picture presented here. Therein lays the potential crudity – as well as the beauty – of scientific research. With time, new discoveries, new information and new interpretations can correct established conceptions and, by this, contribute to an ever-more solid basis of knowledge.

As for the second question – on whether one has collected *good* data – also here, I would argue that the study stands relatively strongly. Seven in-depth interviews with key actors in the decision-making process have provided the basis for a profound and rich description of what happened during the Linking Directive process. Moreover, giving each informant the opportunity to double-check their answers and to give extra input on the manuscript has significantly strengthened the validity of the data. Of course, one could argue that ideally, every source of information should be available for the reader to verify, i.e. that anonymous interview data should be avoided. But again, this is a mantra with little practical resonance, at least in the social sciences. When dealing with people, with their thoughts and their relations to one another, it is difficult to collect data without having to promise some kind of discretion. Moreover, using open and verifiable data does not necessarily mean one is using *good* and

*valid* data. To the contrary, demanding full openness from the respondents in this study probably would have reduced the quality of the interview data. Many respondents would not have been as candid or free-spoken if they had known that their statements would be traceable to their names. True, the subject at matter has not been among the most sensitive (it does not require very personal or intimate information), but still, what was being discussed during the interviews were issues relating to power relations and to some extent personal careers. Hence, it has been my judgement that this study would have to base its analysis partly on anonymous interview data. For this, the study surely pays some, as it also gains some.

What about the theoretical choices taken in this study? What could be done differently in order to improve the theoretical framework? A question worthy of consideration in this regard, is whether one should take account of possible linkages between the Linking Directive process and the preceding ET Directive process, which ended with the ET Directive being adopted in 2003. The Linking Directive can certainly be treated as a separate decision-making process standing on its own feet, as has been done in this report, but it can also be seen as a process relating to the preceding ET Directive. After all, the Linking Directive was an *amendment* to the ET Directive, and with this formal connection, it seems reasonable to assume that there might also have been some *causal* connections at work between the two, i.e. that there was in fact a correlation between the first and the second course of action. Considering (i) the closeness in time and (ii) the issue-linkages between the two processes (the similar issues at stake), the former process might very well have had an impact on the latter. For instance, it might be the case that the 'losing actors' of the ET process were expecting some kind of 'pay-back' during the Linking Directive process. More specifically, perhaps the Member States, feeling pressured and hassled by the ETS, now demanded a 'tit for tat', arguing that at least, emission targets should be reached as cheaply as possible with a flexible Linking Directive. A similar line of reasoning assumes that the reason why the Commission operated in a somewhat facilitating, 'laissez-faire' manner in the last stages of the Linking Directive process, was simply that it had taken a very active and 'entrepreneurial' role during the foregoing making of the ETS (as is shown by Wettestad 2005), and that it realized that now was the time to 'loosen the grip'. Of course, these lines of reasoning remain only speculations and hypotheses in this context, as they have not been scrutinized in this report. However, they *might* shed additional explanatory light on why the different actors in the Linking Directive exerted such different degrees of influence. Hence, in future studies, seeing the ETS and the Linking Directive not as separate, but as related courses of action, might both be a nuancing and interesting analytical approach.

The report also invites alternative theoretical approaches than the ones which have been applied here. Perhaps Graham Allison's (1971) three approaches to analyzing decision-making could be useful? Perhaps a diffusion perspective, or even the insights from traditional structural realism could prove to be relevant explanatory tools? Even within the applied theoretical framework, there are possibilities for digging both wider and deeper. All three theoretical perspectives could have been

expanded: for one, we have not included a thorough review of the domestic political games in the Member States, an approach which would have constituted a more in-depth application of Moravcsik's theory of liberal intergovernmentalism. A closer study of the key 'swinging states' could have been interesting, not least to investigate whether intergovernmentalist theory holds also on the level of domestic political games. The application of multi-level governance theory could also have been broadened, including a close-up study of NGOs, businesses' or lobbyists' possible impact on the process. The same can be said for the regime interaction model of Oberthür and Gehring. Within this model, it would have been possible to include other key actors than the one included in this study. Russia seemed, at the outset, to be an intuitively important actor, but what about other countries which might have had interests in the Linking Directive, such as other Eastern European countries, Japan, or developing countries? The role and potential impact of these actors has not been scrutinized in this study, and with that, there are considerable possibilities for further studies on the Linking Directive.

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## Notes

<sup>1</sup> JI credits stem for emission reducing projects in transition countries, i.e. Eastern Europe, while CDM credits stem from projects in developing countries. More precisely, the JI covers emissions-reduction projects developed between different Annex I countries (the 36 industrialized countries listed in Annex I of the UN Climate Convention), and the CDM covers emissions-reduction projects developed in non-Annex I parties (in this context basically meaning low-cost, developing countries).

<sup>2</sup> For supplementary information on the critical stance against linking the EU ETS with the project mechanisms, see for instance Climate Action Network Europe et al. (2003a; 2003b).

<sup>3</sup> An 'indirect link' between the EU ETS and the project mechanisms existed also without the Linking Directive coming into place: Member States could still engage in JI and CDM projects, or authorise a legal entity to do so – but the credits would have to be bought and used by the *governments* to comply with their Kyoto targets. In turn, this could result in more generous allocations to the entities covered by the ETS. With a direct link, however, EU installations could invest and use the project credits themselves, in order to comply with their EU targets, thereby creating a whole new market for CDM and JI (confer Lefevre 2005: 128).

<sup>4</sup> See for instance Egeberg (2005), Hooghe and Marks (2001), Garrett and Tsebelis (1996), Matlary (1995) and Carlsnæs et al. (2004).

<sup>5</sup> For a brief summary of the report's main findings, see the abstract presented in the beginning of the report.

<sup>6</sup> Though Krasner's is generally cited as a consensus definition, it is still disputed, and a number of alternative definitions have been postulated. For a brief discussion of the dispute and alternative regime definitions, see Levy et al. (1995).

<sup>7</sup> For a broader discussion on the similarities and differences between EU polities and international regimes, see for instance Skjærseth and Wettstad (2002).

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<sup>8</sup> The formal procedure from the initial proposal up to the final directive will, as mentioned, be elaborated more in the next section of this chapter, section 2.1.2.

<sup>9</sup> A carbon sink is a reservoir that can absorb or sequester carbon dioxide from the atmosphere. Forests are the most common form of sink, besides soils, peat, permafrost, oceans, and carbon deposits in the deep ocean.

<sup>10</sup> JI credits can, according to the Kyoto Protocol and its implementing provisions, only be issued from 2008 onwards. As for the CDM credits, on the other hand, the Kyoto Protocol allows for their 'prompt start'. As a result of this, CDM credits could, in principle, be issued already from 2000 onwards (Lefever 2006: 134).

<sup>11</sup> The reader should bear this in mind when looking at the analysis and its findings. The study will not judge the initial nor the final directive as strict or flexible *per se* – it will only reveal whether they were strict or flexible *in relation* to one another. A more appraising discussion of whether the final directive was strict or flexible in terms of environmental policy in general, or whether it was 'good' or 'bad' environmental policy, will remain untouched in this study.

<sup>12</sup> The term 'Council' will, throughout this report, refer to the Council of the European Union (often also termed the Council of ministers). It should not be mistaken for the European Council (the meeting of the heads of governments). I will sometimes use shortenings also when referring to the European Commission (simply 'the Commission') and the European Parliament ('the Parliament').

<sup>13</sup> Simple majority in the European Parliament means a majority of the members taking part in the vote (European Commission 2007a).

<sup>14</sup> Since November 2004, the threshold for a qualified majority in the Council is set at 232 votes out of 321 (72,27 %). Qualified majority also requires a favourable vote from the majority of Member States (i.e. at least 13 Member States). In addition, a Member State may request verification that the qualified majority includes at least 62% of the Union's total population. Should this not be the case, the decision will not be adopted (European Commission 2007a).

<sup>15</sup> Absolute majority in the European Parliament means a majority of the members who comprise Parliament. In its present configuration (with 732 MEPs), the threshold for an absolute majority is 367 votes (European Commission 2007a).

<sup>16</sup> Multi-level governance is not the name of a single theory or a single phenomenon, but rather a large body of explanatory approaches emphasizing common aspects of EU policy-making, namely that decision-making competencies and influence is shared at different levels and across different actors. It focuses not only on formal institutions but also on non-state actors (such as NGOs and Industry) and their influence at different levels of government. However, these latter forms of actors will remain untouched in this study.

<sup>17</sup> With that, Moravcsik's intergovernmentalism is in close analogy to Robert Putnam's (1988) two-level games. Putnam's states are 'Janus-faced': on the one side, they must build coalitions among domestic groups; on the other side, they work to satisfy these domestic groups internationally. There is a simultaneous play on both levels, and moves on the one are sure to have an impact on the other.

<sup>18</sup> The term 'institution' is multifaceted, and a conceptual clarification is in order. The usage of the term within this explanatory approach will be in compliance with the usage in the literature on European integration; it refers to the supranational *bodies* or *organizations* of the EU, such as the Commission, the Parliament and the European Court of Justice. It does not refer to more 'loosely'

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connected conventions or international agreements (which is the common usage in regime theory and in this report's definition of regimes). While the former understanding refers to a concrete body, a unit with a post-box address, if you will, the latter understanding does most often not imply such a 'physical' address.

<sup>19</sup> The European Court of Justice is obviously also an important supranational institution within the EU, not least with its ability to enforce legislation (see for instance Weale et al. 2000). However, I will disregard the European Court in this study, simply because prior knowledge on the process reveals that it did not play a role in regards to the making of the Directive. The Court is of more interest when looking at the implementation of the EU emissions trading regime (particularly with regards to the National Allocation Plans, the Court has had an important role). During the process studied in this report, however, the institution was not relevant, and it is therefore not included in the study.

<sup>20</sup> Wayne Sandholtz and John Zysman (1989), for instance, argue that 'leadership for [the Single European Act] came from outside the national settings. [...] It came from the Commission' (Ibid.: 98). Janne Haaland Matlary (1995), finds similar results in her study of European energy policy. Susanne K. Schmidt (2000) displays cases where the Commission has managed to manipulate the Council's default position and change the Member States' preferences. Furthermore, Jørgen Wettstad (2005) demonstrates how the making of the EU emissions trading scheme – to which the Linking Directive was amended – to a great extent was a result of the 'entrepreneurial' role played by the Commission (Ibid.: 17).

<sup>21</sup> In this explanatory perspective, we substitute the word 'institutional' with 'regime' in order to avoid confusion and mixture with the previous explanatory perspective, the 'EU institutional approach'. This change of term should, however, be seen merely as a cosmetic change to Oberthür and Gehring's work, not a substantial one.

<sup>22</sup> More on the methods of gathering data in section 2.3.2 of this chapter.

<sup>23</sup> The term *methodology* refers to a 'general approach to research', whereas a *method* is a specific research technique utilized within a methodology (Silverman 1993: 1).

<sup>24</sup> For long it has also been common distinguish so-called 'quantitative' from 'qualitative' research. As I read these terms, however, they refer more to the nature of the data used, than to the general philosophical assumptions of the research.

<sup>25</sup> Moses and Knutsen (2007) use the terms *naturalism* and *constructivism* where I respectfully speak about *empiricism* and *interpretivism* (Ibid.: 8 ff). In this report, the terms are treated as coterminous.

<sup>26</sup> Due to practical difficulties, one of the interviews has been conducted over phone.

<sup>27</sup> These transcripts have not been included in the report's appendix. This is due to issues of anonymity, to which we will return later in this chapter.

<sup>28</sup> Some of the Council minutes were originally withdrawn from public access, but they have been released upon request. Thus, the reader should be able to locate and consult also these sources.

<sup>29</sup> In accordance with the empiricist-interpretist differences, disagreement exists as to whether interview data in itself can be 'biased' (Silverman 1993: 106-107). While interpretists see interview data as accounts of the informants' own

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perception of reality, and consequently as authentic and un-biased by definition (as long as the informant is talking about what he/she believes is 'true', this is treated as a version of the truth); empiricists treat interviews as potential facts which can be of 'good' or 'bad' quality, that is, valid or not (Ibid.: 107). On this point, my understanding is leaning more to the empiricist camp; viewing the interview data as *potentially true reports* about what actually happened.

<sup>30</sup> The World Commission on Dams (WCD) was established by the World Bank and the World Conservation Union in 1998. Its mandate was and is to review the development effectiveness of large dams and to develop internationally acceptable criteria and standards for large dams.

<sup>31</sup> As mentioned in a previous footnote, the question of when to allow JI credits was not an issue, since this mechanism was dependent on the Protocol entering into force. CDM credits could in principle be allowed earlier (confer Freestone and Streck 2007: 52).

<sup>32</sup> The intricate details of the correspondence of these numbers can be found in the Commission's proposal, which claims that the 6 percent limit represents about a quarter of the total emission reductions the EU has to achieve under the Kyoto Protocol, whereas the final limit at 8 percent corresponds to one third of the EU's target under the Protocol (European Commission 2003: 8).

<sup>33</sup> Examples of the many statements and position papers on the Linking Directive can be found in Europa and OGP (2003), Cembureau et al. (2003), Union of Industrial and Employers' Confederation of Europe (2003), Climate Action Network Europe (2003), Climate Action Network Europe et al. (2003a; 2003b), and International Emissions Trading Association (2003).

<sup>34</sup> The Working Party on the Environment is one of many Council working parties (for more information on these, see for example Larsson 2003).

<sup>35</sup> These countries could of course not give any formal voting support at the time, since they did not join the EU till May 2004. However, the accession countries participated in the deliberation process through an 'interim committee', created to give the countries which were due to join the EU a say in the process (Fernandez Armenteros and Massai 2005).

<sup>36</sup> The so-called shadow rapporteurs were Christopher Davies from the Alliance of Liberals and Democrats for Europe (ALDE), Anders Wijkman from the European People's Party-European Democrats (EPP-ED), and David Bowe from the Party of European Socialists (PES). From the socialists, however, Rolf Linkohr was in reality more involved than David Bowe (Interviews in Brussels, 11-16 April 2007). For instance, Linkohr was the draftsman on the Linking proposal opinion from the energy committee.

<sup>37</sup> In the draft report, the rapporteur sketches out preliminary thoughts on what position the Parliament should take in its final report. The draft report was, however, not the first Parliamentary response to the Commission's proposal. De Roo's draft report was preceded by a report from the Industry Committee, issued on 10 December 2003 (Committee on Industry 2003). This one suggested only two revisions in the Commission's proposal: that the cap be set at 8% (as in the Commission's proposal), but without the prior review-ordeal at 6 %; and that sinks showing a demonstrable reduction in emissions, should be allowed (Ibid.).

<sup>38</sup> At the time of the Linking Directive process, the UK, France, Germany and Italy had ten votes each; Spain had eight votes; Portugal, the Netherlands, Greece and Belgium had five; Sweden and Austria had four votes; Denmark, Finland and Ireland had three votes; and Luxembourg had two votes. Altogether, they had 87 votes. A winning coalition would need 62 votes. Conversely, a

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minority consisting of 26 votes and more than two states would be enough to block a proposal (Midgaard 1999).

<sup>39</sup> The Commission would monitor the levels of use, however, and it might 'make proposals to harmonize the cap across Member States' (Lefevere 2006: 148).

<sup>40</sup> Of course, one can safely argue that 'influence' can be a matter of quantitative judgement, just like voting. In this study, however, the degree of influence will be judged also on the basis of qualitative, subjective interpretation.

<sup>41</sup> When speaking of the Council as a 'unit' in this context, I am, of course, referring to the majority of the Member States.

## **Appendix 1**

### **The Interviewees**

Alexander De Roo:

Dutch Parliamentarian, MEP and rapporteur on the Linking Directive at the time in question.

Christian Egenhofer:

Senior fellow at the Centre for European Policy Studies (CEPS).

Trygve Hallingstad:

Norwegian environment council to the EU during the Linking Directive process.

Sanjev Kumar:

Lobbyist and Emissions Trading Scheme Coordinator for the WWF European Policy Office.

Jürgen Lefevere:

Commissioner in the DG Environment during the Linking Directive process.

Stig Schjølseth:

Analyst at Point Carbon, Oslo.

Michael Wriglesworth:

Consultant/lobbyist for the International Emissions Trading Association (IETA) during the Linking Directive process. Now senior advisor at the Centre for European Policy Studies (CEPS).



## Appendix 2

### The Interview Sketch

- Is it alright for you if I use a tape recorder?
- I would like to list your name in an appendix in the thesis, but you will be given full anonymity in the sense that nothing you say will be linked to your name. In addition, you will have the possibility to verify and double-check any quotations, as well as the manuscript as such. This way, you can make sure that I have not misunderstood you. Is this ok?
- I will start off with some general introductory questions, and then I will proceed to some more specific ones. Please feel free to interrupt, and take your time to think back and remember. Ready? Let's begin.

#### Introductory questions:

- First of all, how were you yourself involved in the process?
- What job or position did you have during the process? Were you active during the whole decision-making period?
- How would you describe the Linking Directive decision-making process?
- What issues invited the most debate?

#### Questions on the role of the Commission:

- During the Kyoto negotiations, the Commission was rather sceptical towards the project mechanisms. What happened to make them launch the ETS and the Linking Directive?
- How would you describe the role of the Commission during the Linking Directive process?
- Before the official proposal, there was a leak of an unfinished draft, a draft which seems to have yielded a lot of reactions. Do you remember this? What happened internally in the Commission after the leak?
- Would you say that the Commission had an influence on the course of the process, besides being the one drafting the proposal?
- What kind of influence?
- Did they come up with any independent proposals, things that others had not already proposed?
- What happened during the trialogue meetings? Approximately how many such meetings were held? Who were present?
- How active was the Commission during these meetings? And in what way?

#### Questions on the Parliament:

- What was the Parliament position towards the Commission proposal?
- What were the main objections?
- What can you tell me about the rapporteur's compromise deal which was proposed in December 2003?

- How would you describe the role of the rapporteur?
- What happened during the trialogue meetings?
- It seems the Parliament had to compromise on a lot of issues. Why did they not have more success in holding on to their claims?
- Why did the Parliament not wait for the next parliamentary period and take the time to get a better deal? Why the hurry to reach an agreement?

#### Questions on the Member States:

- Did the Member States have clear positions on the issue of linking once the proposal was launched?
- Did these positions change in the course of the process?
- What Member States were the most active?
- On what issues?
- On what issues did the majority of the Member States get what they wanted – and on what issues did they lose?
- Were there any alliances in the Council?
- France and Austria were the only Member states voting against the final directive – what were their reasons?

#### Questions on external factors:

- Were there talks on the Linking Directive in between the EU and Russia before, during or after the Linking Directive process?
- If so, what was discussed?
- Did you yourself have any contact with representatives from Russia?
- There was a lot of talk about how this directive would make a Russian ratification of the Kyoto Protocol more likely. Did Russia, with its ‘make it or break it’ position in relation to the Kyoto Protocol, did they have an influence on the decision-making process?
- It has been said the Russians held EU ‘ransom’ on the issue of Kyoto ratification, demanding support for Russian membership in the WTO. Was the relation between the two of a similar character on the Linking issue?

#### Concluding questions:

- In your opinion, what actors were the main drivers in the process, and who got the most say on the final outcome?
- The process was quite quick, wasn't it? It only took nine months from the initial proposal till the deal was made. Why the pace?
- The EU has made something of a u-turn on the flexible mechanisms. Why is this?
- Is there anything you would like to add, something important that I should have asked about?
- Are there other people you think I should talk to, or other sources I should confer?

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