Arenas and Bargaining Dynamics in EU Efficiency Policy-Making

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This paper examines two far-ranging measures under the EU action plan for energy efficiency: The recent phase-out of incandescent light-bulbs and the 2009 fuel efficiency standards for passenger-cars. Against the backdrop of the EU's institutional propensity to deadlock, the paper asks how it became possible to adopt these rather ambitious measures in spite of fierce contestation. It argues that the level of *de-facto* (as opposed to *de jure*) decision-making matters: While the breakthrough in negotiating the fuel-saving regulation was achieved only during bilateral Franco-German talks on the summit level, the incandescents phase-out was facilitated by expert decision-making in technical "comitology" committees. Although fundamentally different in terms of the level of politicisation and situated on opposite ends of the decision hierarchy, both instances of decision-making outside the formal arenas of legislation were crucial in breaking stalemate. Potential opponents were kept at bay and the respective institutional environments facilitated agreement by means of diffuse reciprocity (fuel saving regulation) and depoliticization (incandescents ban).

Keywords: energy policy, environmental policy, joint-decision trap, comitology, multilevel governance, decision venues

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1 The Puzzle: Policy-innovation in the Face of Deadlock

In March and April 2009, respectively, the Council of Ministers (in the following: "Council") adopted two far-ranging energy efficiency regulations. Regulation 244/2009 on ecodesign requirements for non-directional domestic household lamps became known, somewhat oversimplified, as the "lightbulb ban". By setting, among other things, energy efficiency standards for domestic lighting, in effect it provided for the phase-out of incandescents and their replacement by more efficient lighting such as compact fluorescent "energy saver" lamps (CFLs). Regulation 443/2009 on emission performance standards for new passenger cars for the first time legally required manufacturers to ensure that the sum of their newly produced cars on the European market meets certain fuel efficiency targets. By requiring noticeable adaptations, both regulations strongly affected vested interests of manufacturers and consumers and generated obvious controversy.

The dominant multilevel governance paradigm of EU policy-making suggests that the standard arena of European legislation, the community method, and in particular the codecision or ordinary legislative procedure is unfit to deal with political dossiers involving high levels of conflict. Since the Council can act only on a qualified majority, and since it moreover usually strives for consensus even when not formally required, it is easy for a small minority of dissenting member states to block legislation. The veto-position of the European Parliament (in the following: EP) exacerbates this situation. The expected outcome in contested dossiers, so the argument goes, is either policy deadlock, or if anticipated in advance, non-decision, or at least a policy watered down to a level that is acceptable to the pivotal actor in a veto coalition (Falkner 2011a, Golub 1996, Héritier 1999, Marks et al. 1996, Scharpf 1999).[1]

From this vantage point, the efficiency regulations on domestic lighting and passenger cars appear puzzling. This contribution asks how deadlock was avoided and how, given the circumstances just detailed, a suprisingly high level of ambition was ensured in these contested policy dossiers. The main thesis that I wish to advance is that a shift in the *de facto* level of decision-making away from the ordinary legislative arena was crucial in bringing the dossiers forward. In addition, I shall explore the causal mechanism underlying the catalytic effect of this bypass and its possible boundaries.

The next section (section 2) details the argument in the abstract. It explains on a theoretical level how and when arena-shifts may serve as bypasses around deadlock and hence facilitate legislation on contested dossiers against the institutional constraints of the community method. I also briefly outline alternative explanations. Some possible methodological objections are addressed in section 3, before proceeding to the case studies. The following sections then present empirical evidence for my argument by tracing the decision-making processes leading up to the regulations on domestic lighting (section 4) and passenger cars (section 5), respectively. Section 6 concludes.

2 Arena Shifts and Bargaining Dynamics

Metaphors are telling. The literature on positive integration in the EU is ripe with concepts from water engineering or traffic planning. Political decisions and reform projects are thought of as a constant flow that has to pass the "bottle necks" and "needle's eyes" provided by various veto-points. Deadlock, stalemate and logjam are typical expressions for the frustating lack of progress in many policy areas. It makes sense to push this imagery a little further. Water always finds a way out. Taking the route of the least resistance, it will bypass congestion. Stuck in a traffic jam, we naturally look for a diversion route. I suggest that such informal bypasses around Council deadlock exist and that they, in fact, matter. The subsequent case study examples provide evidence for this claim, but I shall first lay out my analytical framework and explain which kinds of bypasses there are and how they work.

In his major study on the EU's problem-solving capacity, Scharpf (1999: 74–75) in passing already acknowledges that the pathologies he associates with the "joint-decision trap"[2] may be partly overcome by delegation to bureaucratic committees. More specifically, also Héritier (1999) points out the relevance of arena-shifts for breaking Council stalemate as one among several "subterfuge" strategies. In their comparative analysis of the impact of federal arrangements on welfare-state consolidation, Obinger et al. (2005) coin the term "bypass mechanism" to indicate how federal veto points were circumvented to ensure welfare state progress. The same authors also identify possible equivalents on the EU level. In a recent project on EU decision-traps, Falkner (2011b: 241–243) identifies "arena shifting" as one among several mechanisms which in various policy-areas have provided exits from the joint-decision trap in EU

policy-making. She discerns arena shifts in the horizontal dimension – decisions made not by governments but by interest organizations or in collective bargaining settings – and arena shifts along the vertical axis – delegation to expert committees. In the same volume Kudrna (2011) shows that a vertical shift was indeed crucial in enabling the Lamfalussy financial market reforms.

Also along the vertical axis, I propose to distinguish two types of bypasses around a deadlocked Council, which might be thought of as under- and overpasses. An underpass consists in the relegation of a (potentially) contested dossier to the lower levels of decision-making: the technical or administrative arenas of European policy-making. By contrast, an overpass promotes a deadlocked dossier upward in the decision-hierarchy to the summit level. Although located on opposite ends of the decision hierarchy and the policy cycle, both types of bypasses facilitate policy-innovation, for partly similar and partly different reasons. Before elaborating these, I should clarify at this point that my interest is in the mechanisms by which different institutional venues within the joint-decision mode prevent the JDT from snapping shut or facilitate escape. The strategic considerations of political actors about which venue to choose in order to promote their goals are not my primary concern here. In fact, I would not even argue that they make deliberate choices with a view to circumvent political stalemate. This may be true from time to time, but it may also be the case that certain policies for completely unrelated reasons just happen to be decided outside the formal community method. I take up the notions that different institutional venues empower certain actors to voice their concerns while silencing others, and that they promote or discourage certain logics of decision-making. But my choice of the noun "bypass" instead of the verbs "shifting" or "shopping" is deliberate.

2.1 Comitology and Expert Committees as Underpasses

Experts are involved in various stages of EU policy-making. A lot of research has been conducted on the consensus-facilitating role of the Committee of Permanent Representatives (COREPER) and the technical committees that are part of the Council infrastructure.[3] For this paper, however, I shall focus on the implementation rather than preparatory stages of decision-making, namely on the various types of "comitology" commitees that are responsible for implementing community legislation. Legislation and implementation are hard to separate in practice. In principle (and according to the EU's self-description),

the legislative act should contain all the basic decisions so that its implementation is akin to a mechanical subsumption process, during which the existing genereal rules are only "applied" to changing and contingent circumstances, yielding more specific and concrete regulatory decisions that remain completely within the predefined boundaries of the basic legislative act. But often, the basic legislation is left vague and sketchy, either deliberately or *nolens volens*, to gloss over unresolved differences (Héritier 1999: 17). Resolution of these issues is then *de facto* relegated to the implementation stage, in anticipation of or in reaction to a situation in which the Council is unable to act.

But why should comitology commitees be more successful at coping with contestation? If the decision is passed on to another arena, will not deadlock be passed on alongside it?[4] There are at least three reasons why this is often not the case: Depoliticization of debate, homogenization of preferences and a change in the style of interaction among decision-makers.

2.1.1 Depoliticization

The administrative arenas of EU decision-making are rather arcane. This is not to say that there does not exist any documentation at all, although, for example, protocols of regulatory committee meetings are often hard to make sense of for outsiders. More importantly, there is typically very little press coverage of comitology proceedings. The topics are indeed often couched in technical language and their implications difficult to understand, which makes reporters and the public at large loathe to deal with them. Once a decision is shifted into comitology, it all but disappears from the public radar and sometimes even from the radar of politicans.[5] Comitology is policy-making by stealth. It may deflect public criticism and help to get dossiers accepted which would otherwise be difficult to "sell" to a domestic audience (Flynn 2000, Huster 2008: 72, Weale 2005: 338). National delegates in comitology committees are responsible to specialized departments of their national ministries, sometimes only to specialized national agencies which themselves operate at arm's length from the domestic ministry. Thus, comittee members are decoupled from the dynamics of national electoral competition (Benz 2009: 142–143).

2.1.2 Homogenization of Preferences

Arguably, committees share a collective institutional interest in getting their work done and producing decisions. If a comitology commitee fails to attain consensus, and negative votes are registered, let alone a proposal is voted down, this is considered an accident that is not supposed to happen. The desire to live up to this institutionally entrenched expectation may override whatever substantive differences there are in a given dossier and transform, as it were, pure conflicts into battle of the sexes-constellations. By contrast, politicians working in the Council are much more likely to get away with or even to raise their profile in front of their domestic audience by blocking a decision they deem unacceptable. In addition to the general bureaucratic interest in "getting things done", the fact that specialized policy experts are deliberating among themselves implies that the collective interests of a sectoral policy-community may dominate over territorial differences (Benz 2003: 329, Peters 1997: 32).

2.1.3 Interaction-style

The style of interaction in expert committees is different form the style of interaction in a political body. Experts are more interested in finding viable, maybe even technically optimal solutions. By contrast, politicians want to carry their point or, if they cannot get it all, find a good compromise. But they are only willing to go so far. They will evaluate every possible agreement against their BATNA (best alternative to negotiated agreement; Fisher and Ury 1981) and are ready to make use of their veto if the test fails. Ideal-typical experts deliberate. They have a common goal in mind and common criteria as to what counts as an argument. Ideal-typical politicians bargain. Their ultimate goals may be self-regarding and in the last instance they are not accountable to principles of technical rationality but to the "national interest" (Elgström and Jönsson 2000, Gehring 1999, Joerges and Neyer 1997, Neyer 2004, Sannerstedt 2005).

To be sure, procedural controls exist to ensure that comitology committees do not overstep the legislative boundaries that EU policy-makers have set up. The main instrument in pre-Lisbon comitology was the so-called "scrutiny" period, in which Council and EP may check whether implementing regulations are *ultra vires*. This is a rather weak instrument, however, since it allows Council and EP only to overthrow the whole regulation but not to amend in-

dividual parts of the draft. Ironically, comitology committees were themselves introduced as control instruments to monitor and possibly sanction decisions delegated to the Commission (Pollack 2003). But as always with delegation, there remains the question of who watches the watchmen (Dehousse 2003).

2.2 The Summit Level and Minilateralism as Overpasses

Demoting a contested dossier downwards to the level of expert deliberation is a viable bypass around deadlock, possibly because it obfuscates political conflict, homogenizes preferences, and changes the logic of interaction. Another way around deadlock leads upward on the ladder of escalation to the summit level. This sometimes involves strategic "minilateralism": exclusive negotiations among a subset of concerned actors. A topical example is the response to the current Euro-crisis. On an issue that involves severe distributive conflict and at the same time must be addressed quickly, political leaders have naturally chosen the summit level and taken the risk to exclude reluctant players (the UK). But taking the overpass is far more frequent; it does not only occur in exceptional situations of emergency or grand institutional reform. The following is a sketch of the mechanisms that explain the catalytic effect of taking the overpass.

2.2.1 Encouragement of Issue-linkage

Taking the overpass facilitates logrolling, a well-known mechanism of conflict-resolution. Logrolling means tying together several issues about which negotiators care differently in order to forge compromise. Negotiators on the summit level have access to a larger set of issues which they can bundle into pareto-superior package-deals. By contrast, the compartmentalization of the Council into issue-specific sectoral Council formations (Environment Council; Transport, Telecommunications and Energy Council etc.) and the concomitant allocation of ministerial competences constrain the set of issues that can be combined, and it is rather unlikely that the complementary preferences required for a package-deal will be found in one and the same issue-area (Scharpf 1997: 129).

2.2.2 Homogenization of Preferences

When policymakers shift the arena of decision-making, this allows them to exclude potential veto-players. The catalytic effect is twofold: First, the higher the number of negotiators that are involved in a decision, the higher are the transaction costs of coming to an agreement. Second, agreement among a small group of like-minded actors is, naturally, easier. Dissenters are excluded and, accordingly, interest heterogeneity is reduced (Genschel and Plümper 1997). But why would the side-stepped actors not react by wielding their veto? The reason why they are less likely to do so is that when a subset of actors with a high enough stake in the issue engage in "minilateral" negotiations, they can exercise collective agenda-setting power. Their proposals will be difficult to change once submitted to the entire group (Lax and Sebenius 1985). Even though the governments that have been, against their will, excluded from back-door negotiations have good reason to be unhappy about this, they will be reluctant to unravel the minilateral deal and thereby risk negotiation breakdown.

2.2.3 Interaction-style

Summit-level interactions should still be characterized as bargaining rather than arguing, but it is plausible that under certain conditions the bargaining on the summit level is more "benign". Heads of state have to consider the overall relations between their governments in the *long run*, which may suffer under a hard-nosed bargaining style. A lengthened time-horizon means that current negotiations are conducted under a "shadow of the future" (Axelrod and Keohane 1985). The typical synchronous give-and-take orientation of fierce bargaining steps back in favour of a more asynchronous orientation of "diffuse reciprocity" (Keohane 1986) where concessions that are made by one party in the present do not have to be compensated immediately and in kind by the other party. Instead, a generalized expectation that mutual concessions will "even out" in the long run prevails and allows for decision-making even in conflictual preference constellations and absent explicit package-deals (Peters 1997: 31, Hayes-Renshaw and Wallace 2006).

2.3 Conclusion

Two of the theoretical mechanisms that arguably explain the catalytic effects of arena-changes are found in both types of bypasses. Preferences are homogenized and interaction-styles are transformed in similar ways. Issue-linkage, however, is particular to summit decision-making and for obvious reasons not possible in the highly specialized technical committee structure. The mechanism of depoliticization, on the other hand, is particular to committee governance, since taking the summit level implies a step upwards on the ladder of political escalation.

Note that bypasses may be established not only in reaction to but also in anticipation of deadlock. In the first case, the effectiveness of choosing a bypass can be gauged by comparing the situations before and after an arena-shift has occured. The sequence of events provides a hint as to whether a causal relation exists. In the latter case, the impact on the legislative output is more difficult to estimate, because it requires counterfactual reasoning. It does not, however, rule out causal effectiveness.

3 Data and Method

The following two case studies empirically inform the questions outlined above. I "process-trace" (Bennett and George 2005: Chapter 10) these cases to evaluate the plausibility of my claim that two types of bypasses facilitated a solution and to explore their different implications and underlying causal mechanisms. The cases have been selected because they are puzzling in their own right: How did these rather strict measures become possible in a decision-making system that on the face of it is unfit to deal with intense conflict? The selection criterion is thus intentionally "outcome-centric" (George and Bennett 1997), meaning that for the moment, I must defer the question of generalizability (Geddes 1990). The case study design could be best thought of as a "hoop" test (Collier 2011). Passing the test affirms but not fully confirms my case-specific explanation. Failing the test would however fully disconfirm it.

The case studies are based on empirical information drawn from official records, specialized news outlets and mainstream quality newspapers, and policy papers from NGOs and industry. This information is supplemented by semi-structured expert interviews with EU and member state officials and with

representatives of environmental and industry groups.

While the focus of this paper is on arena shifts, I do not whish to argue against alternative explanations. Policy is always determined by the confluence of various factors. My aim is rather to point out that arena-shifts took place during the formulation of politically sensitive EU energy efficiency policies and that these haved indeed been consequential bypasses. A secondary aim is to explore possible scope conditions for the choice of different kinds of bypasses.

4 Phasing Out Incandescent Lighting

The following case study looks into the evolution of regulation 244/2009 on non-directional household lamps (in the following: lamps regulation). It first provides an overview of the policy problem and the regulatory framework in which the lamp regulation was negotiated (section 4.1). The main subsections then go on to examine closely the substance and level of conflict underlying the dossier, and the potential stumbling blocks that the procedure had to bypass in order to succeed (sections 4.2 and 4.3).

4.1 The Policy Problem and the Regulatory Framework

An important component of the EU's approach to enhancing energy efficiency in order to reach its climate protection goals is "Ecodesign of energy using products". Ecodesign aims at reducing the environmental impact of products sold in the European market already at the design stage. Setting up a regulatory framework for ecodesign was the aim of directive 2005/32 "establishing a framework for the setting of ecodesign requirements for energy- *using* products" (short: ecodesign directive), later recast and extended as directive 2009/125 "establishing a framework for the setting of ecodesign requirements for energy-*related* products" (my emphasis). Although ecodesign as a concept in principle includes all kinds of environmental impacts, the ecodesign directive emphasizes the energy consumption of manufactured products in use. It includes a large array of goods; currently 37 product groups are or will soon be regulated under the framework. Interestingly, automobiles, most likely the product group with the largest carbon footprint, are explicitly exluded from the ecodesign directive and are treated in a separate regulation (see section 5).

This case study only covers one aspect of the ecodesign directive, namely

the implementing regulation on non-directional household lamps (vulgo: light bulbs). As the ecodesign directive merely sets a framework for regulating on a large number of products, measures for specific products are defined outside of the codecision procedure. Formally, this task is delegated to the Commission, but in fact, member state representatives as well as non-state actors are closely involved. In a two-stage procedure, the Commission, based on extensive expert consultation and third-party preparatory studies, submits a proposal for regulatory measures first to an adivsory stakeholder-assembly ("consultation forum") and then to a regulatory committee of member state delegates, in which the formal decision-making power is vested. The committee discusses the proposal, taking into account the views expressed in the consultation forum, and adopts – with a qualified majority – or rejects – with a blocking minority – the Commission proposal. Although a vote may be called, decisions are ususally taken by consensus. The extensive consultation between Commission and member state regulators is one of several factors ensuring that draft measures have not yet been rejected.

Under the ecodesign framework, member states are tightly constrained when they want to adopt unilateral measures for goods that are covered by the directive. Thus, the default outcome, should an implementing regulation be vetoed down, is the absence of policy, not the re-instatement of domestic leeway. In institutionalist terms, member states were hence negotiating in a compulsory negotiation system, which is particularly deadlock-prone (Scharpf 1997: 126–127).

The implementing regulation 244/2009 on non-directional household lamps was adopted in April 2009 under the ecodesign framework. Discussions began in early 2007. The lamps regulation was decidedly not framed as an outright "ban" of the incandescent lightbulb, but it had the effect of phasing out sucessively over several years the sale of such bulbs. Its final version set a number of criteria that domestic household lamps had to comply with in order to be allowed on the market. These were specifically energy efficiency targets but also criteria relating to light quality and toxic substances, such as mercury.

4.2 Issues and positions

What at first sight appears to be a straightforward task – setting energy efficiency targets for lamps – turns out, on closer inspection, to be a rather complex regulatory challenge with several trade-offs, affecting many different

stakeholders. The preparatory study alone comprises roughly six hundred pages. Some issues nevertheless stand out more than others and may be treated in a stylized manner. The level of contestation can be characterized as high, especially if taking into account public opinion.

4.2.1 Issues

First, the *level of ambition* of the lamps regulation was at issue. This includes the question how quickly the requirements should be tightened, i.e. the pace of the phasing-out of inefficient lamps. It also includes the question of how strict the requirements themselves should be set. There are various lamp types (e.g. incandescent lightbulbs, halogen lamps, CFLs) with various degrees of efficiency, meaning that not all types would "survive" any given setting. These issues were of particular concern for lamp manufacturers. Three options emerged from the preparatory studies with regard to the strictness of the measure and were submitted to consultation by March 2008.

Option 1 All incandescents, all halogen lamps and CFLs with less than perfect light output ($B+$ class and lower) would be phased out. This was the strictest option.

Option 2 All incandescents, average and poor halogen lamps and CFLs with less than perfect light output and less than excellent color rendering would be phased out. Efficient (B class) halogen lamps and CFLs with less than perfect light output but excellent color rendering would remain on the market. This was the second strictest option.

Option 3 All incandescents and poor halogen lamps would be phased out. All CFLs and average or better halogen lamps would remain on the market. This was the least strict option.

With regard to the time-table, the Commission put forward an ambitious and a cautious option. The latter was also submitted in an industry proposal. The ambitious option would implement a phase-out in three stages during five years. The cautious option would have been a phase-out during seven periods in different wattage categories, fully effective only after nine years.

Second, the issue of *consumer choice* was at stake. Consumers had already invested in their lighting equipment and not all lamp types would be compatible with all kinds of luminaires, for example. Questions of light aesthetics

and taste (light temperature, sparkling effects) and ease of use (e.g. warm up times) were also debated. At a more general level, there was a sentiment of being patronized by supranational politics. Whether this impression was based on rational criticism or rather fueled by populist media-campaigns and EU-bashing is not of immediate concern at this point; but the fact, that these sentiments existed, is relevant, because it could have seriously hampered the regulation.

4.2.2 Actors and Positions

Regarding *societal groups*, a very large set of actors provided input during the consultation forum meetings, including the lamp manufacturers and their European associations, environmental and consumer protection organizations, architects, light designers, advocacy-groups for persons suffering from light-related conditions and many more. An official list of all publicly registered governmental and non-governmental stakeholders in June 2007 includes 739 entries.[6] Environmental groups pushed for a higher level of ambition. They wanted a quick phase-out of inefficient lighting and strict regulatory settings. Consumer groups were in favour of an ambititous measure, as it would help users to save on their electricity bills; on the other hand, they wanted to ensure that there would be enough substitutes for existing appliances and no shortage of supply during the conversion.

Industry, finally, was not against a measure per se, but they were eager to secure a "realistic" time-table for the phase-out. Indeed, industry had proposed in June 2007, prior to the Ecodesign measure, a voluntary commitment to increase the efficiency of lighting equipment. Industry positions were not perfectly in alignment, however. The two largest European manufacturers are the German OSRAM and the Dutch Philips. OSRAM tried to slow down the phase-out, whereas Philips wanted to move on faster. Similarly, OSRAM preferred less strict settings (option 3 above) than Philips did (option 1). The reason for this difference is that Philips was already more advanced, in particular regarding the development of highly efficient LEDs (light-emitting diodes). OSRAM still had large investments in halogen lighting to redeem. Moreover, the adaptations required to produce halogen bulbs in a former incandescents facility are rather modest, whereas CFLs need a completely different facility. For OSRAM, the shift from incandescents to halogens was therefore manageable. Halogens are more efficient than conventional incandescents but significantly

less efficient than CFLs and LEDs. Since halogens have a similar light quality and some halogens are also shaped like incandescents, OSRAMs interest in keeping more halogens longer on the market coincided with consumer group concerns. Due to certain changes in the policy-environment, however, OSRAM seems to have changed its position in the course of the negotiations and finally supported a more stringent measure (see section 4.3.3). This certainly facilitated an ambitious regulation.

Regarding the audience at large, the domestic electorates, there was a considerable degree of unease, especially in Germany and Austria. Several newspapers reported negatively on the proposed measure, seeing it as yet another unnecessary interference from Brussels into the everyday life of European citizens. Austrian cinemas in September 2011 featured a documentary picture called "Bulb Fiction" which claimed to uncover the "power of the industry lobby and its entanglement with politics" as exemplified by the lamps regulation.[7] Among others, the large German news magazines *Zeit* and *Spiegel* also provided very critical commentary on the regulation.[8] The latter published the preprint of a euro-sceptical essay by writer Hans Magnus Enzensberger entitled "Gentle Monster Brussels" in which the incandescents ban figured prominently. The EP also received a number of fiercly written petitions pertaining to the lightbulb "ban". An apt example of the public fury (and of the dry wit of EU officials), the following excerpt from the petition committee's summary of a letter from Germany deserves to be quoted at length.

> The petitioner, a photographer, objects to plans to ban the production of incandescent light bulbs, fearing that he will be forced to throw away some extremely expensive flash photography equipment which requires such bulbs. He also considers that the EU itself is harmful and calls for its abolition. He expresses doubts concerning the intellectual capacity of EU officials, whose salaries are moreover paid by him. He advocates banning them so far into the wilderness so as to be certain that they will never return to wreak any further harm.[9]

Among the *member states*, the Netherlands held the most ambitious position. They wanted to ratchet up the Commission proposal to the point where only excellent CFLs or more efficient devices would be allowed as quickly as possible (option 1 above). The Dutch environmental minister at that time saw

the measure as a priority and Philips, the Dutch producer, was in a position to implement it rather easily. The United Kingdom and Ireland were also in favour of a strong measure (option 1) and demanded a stricter time-table. The UK even announced to adopt a domestic measure unilaterally. Although this was not possible from a juridical point of view, it created symbolic pressure for the Commission to take action. Denmark, Sweden and, with some reservations, also Austria supported the second-strictest option 2. Belgium, Hungary, Poland, the Czech Republic, Italy, Spain and Portugal were in favour of the most lenient option 3. Some members of this "laggard" group defended their position by pointing to the issue of consumer choice. Some of them might also have been concerned about the impact on the lighting industry.[10] The French and German positions were ambiguous. France was somwhere between options 1 and 2, whereas Germany was between options 2 and 3.

Taken together, there was among the member state representatives and the main stakeholder groups no fundamental opposition against the measure, but some actors wanted to go further than others regarding the level of ambition. Fundamental opposition was voiced, however, by parts of the general public, particularly in Germany, Austria, and also the United Kingdom, although this was not directly reflected in the positions taken by the national delegates. Leaving this latter aside for a moment, the interest constellation resembles a "battle of the sexes" game, a positive-sum distributional conflict. This suggests that decisional stalemate, in the sense of one party blocking the decision alltogether, was not an issue. At stake was the level of ambition. In a bargaining setting, one would expect this to be set at the level of the least ambitious negotiator (or the least ambitious coalition).

4.3 The Decision-making Process

The decision-making process has, to stay within the imagery of levels and layers, a descending shape. It experienced a steep rise towards the summit level, only to percolate downwards into the technical crawl space, soon afterwards. When it resurfaced, many observers reacted as if presented with a sudden fait accompli.

4.3.1 Agenda-setting

The idea of a regulation on household lamps was put on the agenda by Germany when it assumed the Council presidency. It was a pet project that originated in Sigmar Gabriel's (social democratic) environment ministry. Other countries outside the EU had already introduced similar measures. Garbiel argued, apparently out of concern for the environmental profile of his department and of the EU in general, that the Union may not "lag behind" and should live up to its self-image as environmental policy leader. In early 2007, Germany assumed the Council presidency and used this window of opportunity to advance the issue. At the same time, Gabriel also lobbied the Commission, suggesting in a letter to then Environment Commissioner Stavros Dimas that the Ecodesign directive be extended to cover lamps. The March 2007 European spring summit was also headed by Germany, under the chairwomenship of chancellor Angela Merkel. Here, the Commission was due to present its Energy Action Plan. German policy entrepreneurship was successful in that the action plan that was adopted by the European governments at the spring council took up the lamp regulation. In addition to the grand goals of increasing competitiveness, maintaining energy security and abating climate change, the summit declaration included a rather innocuous rider inviting the Commission "to rapidly submit proposals to enable increased energy efficiency requirements [...] on incandescent lamps and other forms of lighting in private households by 2009" (Council of the European Union 2007: 20).

4.3.2 Discussions on the Expert-level

Backed with support from the summit, the Commission began to take up the preparatory legwork. It collected information from stakeholders and private consultancy firms, prepared an impact assessment, and finally submitted a draft regulation to the consultation forum and the ecodesign regulatory committee. The draft contained the options outlined above and member states and stakeholders were asked to comment on then. Both assemblies convened twice; the consultation forum in March and May 2008, and the regulatory committee on 3 November for informal preparatory discussions and again on 8 December 2008, when the final decision was taken only among voting members. The informal regulatory committee meeting was scheduled on the proposal of the Netherlands and others in order to deliberate among national policy experts,

as in the consultation forum, but without the industry present, so that member states could be more outspoken about how far they would go on the Commission proposal.

4.3.3 Industry Reconsiders its Position

There are some plausible indications that the German lighting industry has reconsidered its position in the course of the negotiations. The initial industry proposal, endorsed by both OSRAM and Philips, was a cautious phase-out of incandescents during nine years with a relatively low level of ambition (option 3), which would have left, for example, many halogens on the market. The reasons for this initial preference have been described above section 4.2.2. On the one hand, a transition from low-margin incandescents to halogens seemed profitable. On the other hand, OSRAM was worried that a regulation requiring not only halogen bulbs but even CFLs would undermine its competitive position. CFL production involves more manpower and therefore the shift from incandescents and halogens to CFLs would involve a shift from local production to imports. [11]

Until shortly before the Commission proposal went from the consultation forum to the regulatory commitee, OSRAM profited from anti-dumping duties that the EU levied on very cheap Chinese import CFLs since 2001 at a rate up to 66 per cent.[12] These duties had, however, come under pressure, since their WTO-conformity and environmental reasonableness became increasingly questioned. In August 2008, the Commission General Directorate for Trade announced that it would not renew the antidumping duties and in October 2008 they were removed. Philips had criticized them from the very begining, since it had its own production sites in China and was partly to be considered an importer. Philips and OSRAM were also opponents in a legal proceeding about the legality of the antidumping duties in front of the Court of First Instance, where Philips demanded that the duties be removed, whereas OSRAM claimed that the Commission was legally required to extend them (Luo 2010: 142). Faced with this new situation of increased competition from China, OSRAM saw in the lamps regulation an opportunity to retain its competitive position, as long as it would include not only energy efficiency critieria, but also quality standards and toxicological standards that the cheap import products were unlikely to meet. To be sure, theses provisions were not included by some clandestine conspiracy in order to buy off OSRAMs opposition. Ra-

ther, they adressed important and valid consumer concerns that had also been voiced by several stakeholder groups. Still, it appears plausible to argue that this made the stringency of the final outcome acceptable to one of the two industry actors. In a way, industry and consumers were now pulling together in what has aptly been termed a "baptist-bootlegger coalition" (Vogel 1995).

4.3.4 Bypassing Public Opinion

Looking at the public opinion in Austria and Germany, the two countries with the most outspoken public criticism, one cannot help but notice a certain tidal dynamic. Measured by the degree of criticism after the adoption of the lamp regulation (outlined above), the issue was highly salient. However, there was close to no awareness during the decision-making. A survey conducted on behalf of OSRAM showed that 80 percent of the Germans were unaware of the measure.[13] A German diplomat is quoted in *die Zeit* as remembering not a single press inquiry about the lamp regulation during the German presidency.[14] But after the taking effect of the measure, public interest suddenly surged and resulted in the severe criticism reported above. Apparently, both EU officials and EU citizens were equally taken by surprise; the former by the public backlash and the latter by the removal of incandescent lamps from the store shelves. This delayed reaction is also in line with the observations reported by domestic and EU officials in my interviews. The opposition from domestic audiences was too late to influence the lighting regulation. But this does not mean that European regulators were not aware of it. The lightbulb was symbolically charged, not only indicating a waste of electricity but also the private realm of "ordinary citizens". The Commission indeed became cautious. For example, it weakened a labelling measure on television sets, another product with a high consumer profile, for fear of damaging the public profile of the energy label.

4.3.5 EP Scrutiny and output

Since the ecodesign directive specified that the regulation be adopted under the "regulatory committee procedure with scrutiny", the EP had the opportunity to deliver an opinion on the draft regulation as adopted by the ecodesign regulatory committee. The rules of procedure, however, only permit scrutiny of a potential *ultra vires* act, in which case the EP could have rejected the

proposal. The EP had no competence to challenge the substantive content of the regulation or to make amendments. Accordingly, there was little debate within the EP. In mid-February 2009, two German MEPs, members of ALDE and EEP-ED, respectively, followed up on the emerging public contestation and submitted a resolution to the environment committee opposing the regulation. The resolution argued that a far-reaching measure such as this should not be adopted in a regulatory procedure. The committee rejected the resolution with 14 votes in favour, but 44 against. Without being submitted to the plenary, the regulation was adopted and entered into force in March 2009.

The final version of the lamps regulation was set between options two and three (see section 4.2.1 above). The level of stringency thus came close to a compromise between the second and the least strict proposal. Incandescents will be phased out completely. All CFLs remain on the market. Only inefficient halogen lamps (class D and worse) are phased out. C class halogens remain on the market. The phase-out period was limited to three years, starting in September 2009 and ending in September 2012. Thus, the time-table was stricter than both the industry-proposed "cautious" option and the "ambitious" Commission proposal, reflecting the pressure generated by the determination to go ahead, which the UK and Ireland had signaled during the negotiations. The final measure also included several quality standards (regarding *inter alia* color rendering, startup time and product life) and a limit value on mercury content with the double effect of adressing consumer concerns and fencing off the cheap competition from east-Asian exporters, which had flared up after antidumping-duties had been lifted.

4.4 Conclusion

The substance of the final regulation appears to be consistent with the majority position among national delegates in the regulatory commitee. In that sense, it is not particularly puzzling. What is striking, however, is that so little contestation was going on in the first place. First, because the lighting industry was to a certain extent divided. In its earlier proposal for a voluntary self-regulation, it had suggested to phase out incandescent bulbs but it wanted to leave halogens on the market. This was of particular concern for OSRAM. Arguably, changing circumstances have led OSRAM to reconsider its position. A second potential stumbling block was the backlash in public opinion in several member states, mostly in Germany, Austria and also to a lesser extent

in the UK. The fact that public unease was voiced mainly after the fact suggests that the decision-making in far-away comitology committees took place below the radar of domestic public spheres. Politicization set in only after the phase-out had started and the practical implications had become visible to consumers.

5 Regulating Fuel Consumption

This section looks at the evolution of regulation 443/2009 setting emission performance standards for passenger cars (in the following: fuel efficiency regulation). It examines the substance and level of conflict underlying the dossier, the bargaining dynamics and the developments that lead into deadlock, and finally how deadlock was evaded via overpass.

5.1 The Policy Problem and the Regulatory Framework

The EU has imposed on itself the goal to cut back its greenhouse gas emissions by 20 per cent (in CO_2 equivalents) from the 1990 baseline until 2020. Road transport is the second biggest source of greenhouse gas emissions in the EU, after power generation. In 2007, when the EU began to draft binding fuel efficiency targets, road transport was created roughly one fifth of the overall CO_2 emissions within the EU and passenger cars alone were reponsible for twelve per cent. Emissions from road transport continued to rise and therefore threatened to undermine rather than to help the EU's efforts to tackle climate change (European Commission 2007). One major instrument to reach the 2020 target is therefore the promotion of fuel efficient cars.[15] This is exactly the aim of the 2009 fuel efficiency regulation. Its core prescriptions are the following:

- A *target value* of 130g CO_2/km for all newly registered in the EU. This target is to be reached by changes in the central parameters of vehicle design (e.g. engine and chassis) until 2015. The full target will be gradually phased-in.
- This general target value does not address single cars or brands but the vehicle industry as a whole. Individual manufacturer obligations are calculated by dividing the general target according to a *utility function*

(vehicle mass) at such a rate that manufacturer fleets consisting of heavier cars are allowed higher emissions.

- Manufacturers which fail to comply with their alloted reduction obligation must pay a *penalty*. The amount depends on the degree of noncompliance. Penalties are phased in gradually until 2019.

- A number of *exceptions* for specific vehicle types and bonuses (which may also be seen as derogations) for additional reductions on top of those achieved by changes in central design parameters (e.g. more efficient air conditioning).

5.2 Issues and Positions

Naturally, in a complex dossier such as this, several issues were contested at once. I can hence only present a sample of the most serious points of contention and describe them in a stylized fashion.

An early conflict revolved around the questions whether a *legally binding approach* was superior to industrial self-regulation at all. This issue was settled rather quickly in favour of the former, because the blatant failure of previous industrial self-regulation inter alia gave rise to the legislative proposal in the first place. In principle all governmental actors where then in favour of adopting some form of regulation, but the level of ambition remained highly contested. Thus, the conflict is most appropriately thought of as a battle of the sexes constellation. (Although there are also a traits of a collective action problem/prisoner's dilemma constellation, since it makes little sense for, say the UK to unilaterally reduce the fuel consumption of its car fleet when it alone only represents a fraction of all the cars in the EU that contribute to climate change.)

The remaining issues may be subsumed under the common heading of the *level of ambition* of the planned regulation. The level of ambition consists of several parameters, which were by and large contested in parallel between the "leaders" and "laggards" of the process:

- The level of the general target value (including bonuses and derogations) and the rate (time-table) of its phase-in

- The level of fines and the rate of their phase-in

- The level of individual manufacturer obligations as a function of the general target value and some "utility parameter"

The distinction between the general target value and the individual manufacturer obligations is an important one. The distribution of the reduction obligations that are required under a fixed general target does not change the overall level of ambition. But the haggling over the individual obligations shows how much adaptations the individual member states were ready to accept and hence the priority they accorded to the aim of reducing CO2 emissions from passenger cars vis-à-vis other (socio-economic) goals. For the negotiations to succeed, it was indeed crucial that these two dimensions could be treated separately. Originally, a target value of 120g CO2/km (equal to 5l of gasoline or 4.5l of diesel) was proposed. This figure was a historical remainder from the negotiations about the first European car exhaust norm and based on a Franco-German compromise found in the early nineties. It had no substantive rationale yet remained a focal point and DG Environment's "dead pledge" during the fuel efficiency negotiations.

Governmental preferences about the level of ambition coincided largely with industrial geography. Given the "widely recognised importance of the car industry to capitalist economies" (Paterson 2007: 205), this should not come as a big surprise. But the extent to which contestation even within the camp of "car-friendly" countries was shaped by the structure of the auto industry is indeed striking. The countries without a major car industry in general welcomed a stringent regulation, but, with the exception of the Netherlands and Denmark, both environmental front-runner states, they were not actively pushing. The dossier was not salient enough for them. The member-states with the largest and economically most important car industries were Germany, France, Sweden the United Kingdom, followed by Spain, Italy, Belgium and Hungary (see table 1), while the Hungarian industry is to a large extent foreign-owned, mostly by German companies. For these countries, the fuel saving regulation was highly salient and within this camp, there was the highest degree of contestation.

The reason why the car-friendly countries disagreed on the level of ambition is their specialization in different supply sectors and the resulting technical lock-ins and sunk costs. German manufacturers like Daimler-Chrysler, BMW and even Volkswagen are specialized in large, powerful and heavy premium cars. This is also true of the automobile plants in Hungary which produce for

Table 1: Largest European car producting countries, several measures. Compiled from Eurostat 2006.

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

Table 2: Mean vehicle mass and CO_2 emissions of new car fleets. Data compiled from European Commission Memo/07/597 (for Sweden: European Parliament IP/A/ENVI/FWC/ST/2006-44). No data is available for the mean vehicle mass of the Swedish car fleet.

Country	Brand/Manufacturer	Mass (kg) in 2006	CO_2 emissions (g/km) in 2006
Germany	Porsche	1569	282
Sweden	Volvo (Ford)	-	195 (in 2005)
Germany	DaimlerChrysler	1472	184
Germany	BMW	1453	182
Germany	Volkswagen	1366	165
Spain	Ford	1319	162
France	Renault	1234	147
Italy	Fiat	1112	144
France	PSA Peugeot Citroën	1201	142

German brands.[16] On the other hand, the French producers PSA-Citroën and Renault, the Italian Fiat, and also to some extent the UK car industry (not counting the niche manufacturers of precious sports cars) offered a larger range of small and hence less fuel-hungry vehicles (see table 2). Those car makers faced smaller adaptation costs than the premium manufacturers and had a more positive outlook on the regulation. Some may even have advocated a strict regulation to improve their competitive position, as German politicians angrily suspected.

Due to internal differences, the positions of the Commission and the European Parliament (EP) were at times ambivalent, but in general both fought for a fuel saving regulation that was more stringent than the minimal compromise

in the Council. The supranational impact was limited, however, for reasons that will be explained below.

5.3 The Decision-making Process

5.3.1 Agenda-setting

As noted above, CO_2 emissions of passenger cars have been debated already in the early 1990s but there was no legislative follow-up until 2005. Instead of a mandatory regulation, the Commission in 1998 negotiated a "voluntary agreement" with the European car manufacturers association ACEA to reduce average CO_2 emissions up to 140g/km until 2008. The agreement also included a vague committment to reduce emissions further up to 120g/km until 2012. When after an intermediate review in 2003, it became apparent that the industry would fail to deliver, the Commission, during the last days under Prodi, pulled the emergency brake and announced that it would start to prepare binding legislation.

While the agenda was thus set, this was also the beginning of intense debates within the Commission. The Directorates General (DGs) for the Environment and for Enterprise and Industry both claimed responsibility for the dossier and established their own working-groups and policy-networks. This turf war coincided with divergent substantive positions. Until early 2007, enterprise commissioner Verheugen, a German social-democrat, insisted on another prolongation of the existing industrial self-regulation instead of adopting a legislative approach. Only shortly before the presentation of the draft regulation in December 2007, which, in a very unusual procedure, had been prepared by the two DGs in parallel, DG Environment officialy secured the sole responsibility for the dossier. DG Enterprise, however, successfuly inserted the so-called "integrative approach" into the proposal against the opposition of DG Environment. This clause allowed, on a critical reading, for a dilution of the 120g-target up to 130g CO_2 /km, if manufacturers brought forward certain additional measures on top of the changes to basic design parameters (e.g. efficient air conditioning). Other inter-DG disputes concerned the level of penalties and the distribution of individual manufacturer obligations.

5.3.2 Intergovernmental Debate and Subsequent Stalemate

The bargaining dynamics in the Commission mirrored closely the topics discussed and the alignment of preferences in the Council. Since the nominal target goal of 130g CO_2 /km (120g including bonuses under the "integrated approach") was considered fixed, the first topic was the stringency of fines.

The second, most contested and at the same time most complex topic concerned the definition of individual manufacturer obligations under the general reduction target. Already the early pre-drafts had accepted that, given the diversity of European car-makers, uniform standards would not make it through the Council and that some kind of balanced burden-sharing had to be found. From the various options that were discussed, the idea of differentiated individual obligations weighted by some "utility parameter" (which in the end was defined as vehicle mass) quickly emerged as the most politically viable one. On the one hand this approach successfully decoupled the distributive dimension of the conflict from the question of the level of the general reduction target (the "productive" dimension, as it were) and thus possibly helped to avoid that pareto-superior solutions were left on the bargaining table (Lax and Sebenius 1986, Scharpf 1997: 124). On the other hand, as the distributive implications now became clearly visible, even quantifiable, bargaining focused precisely on how to share the reduction efforts. In technical terms, this was defined as the slope of the so called "emission value curve", which plotted reduction obligations against vehicle mass. A slope of "hundred per cent" was defined as the statistical association in 2006 between vehicle emissions and weight. The distribution of individual reduction obligations according to the hundred per cent slope would have required that efficient small car manufacturers *reduce the same amount* of CO_2 as inefficient premium car manufacturers (say 20g/km), even though the latter had a much larger potential for reductions than the former. A slope of "zero per cent", by contrast, was defined as an equal distribution of reduction obligations, despite different starting points. It would have required that producers of premium and small cars, due to their different starting points, *reduce different amounts* of CO_2 (small car manufacturers less than large car manufacturers) in order to reach the unitary target value.

To be sure, neither of the two extreme options was politically feasible or normatively attractive. Thus, after a period of maximum demands, the subsequent negotiations centered on finding a compromise slope in between. Naturally, the small car camp favoured a solution near the zero per cent slope. As

Christian Streiff, CEO of PSA-Citroën argued, "one gram of CO_2 must be the same for everybody. It would be unfair to allow richer citizens to pollute more than a middle-class person in a smaller car" (The Times, 8 Feb. 2007). The Governments of France and Italy lobbied the Commission to propose a zero per cent slope, while the German government countered with its own lobbying efforts. German Chancelor Merkel found a supporter in Commissioner Verheugen, who, in an unheard of move politicized the Commission-internal debate, by giving an interview to the German tabloid "Bild am Sonntag". There he declared that a future regulation should not put a lopsided strain on premium car makers. In a Council meeting in June 2007, German Environment minister Gabriel proposed a declaration to the effect that the Commission should incorporate a clear differentiation between small and premium car manufacturers, which found no support among his colleagues, however. Gabriel later acknowledged that the level of individual manufacturer obligations was a "tough nut to crack" due to the differences between the French, Italians and Germans (Reuters, 28 July 2007). The next Environment Council in October 2007 did not even discuss the regulation. It seemed that a compromise was out of reach and everyone was now waiting for the Commission to present its official proposal.

5.3.3 Born out of deadlock: "Merkozy" Takes the Overpass

From this point on, decision-making began to shift to the summit level. While many technicalities were still hammered out in the Commission DGs, it was already obvious that the regulation would stand or fail with a compromise on the distribution of individual manufacturer obligations (slope). The heads of states of the most affected countries now directly addressed their concerns to the Commission. In December 2007, shortly before the draft regulation was due, Sarkozy declared that he would now be ready to concede up to a twenty per cent slope; and Prodi, who from his office as Commission president had returned to the position of Italian prime minister, wrote in a letter to the Commission that he would be ready to accept up to thirty per cent, but no more. In another round of "split the dollar" bargaining, Merkel now declared an eighty per cent slope her last offer (Wirtschaftswoche, 19 December 2007). The Commission draft finally proposed a slope of sixty per cent.

The intergovernmental debate remained fierce; German officials were now speaking of a "trade war" that the Italians and French had waged against

them (AFP, 19 December 2007). A first direct summit-level meeting between Merkel and Sarkozy was scheduled in February 2008, now without the Italians. They agreed to not agree for the time beeing and delegated the issue to a bilateral "high level working group", which, however, was unable to deliver tangible results. The same is true for the Environment Council in March 2008. The UK was the only country expressly favouring a zero percent slope, but it had already secured derogations for premium sports cars. Many governments were undecided and supported the Commission proposal without enthusiasm. The premium car camp around Germany now also included Sweden, Austria, Hungary and the Czech republic. It kept insisting on a 80 per cent slope. No camp was on its own able to secure a qualified majority. Only the small car camp held a blocking minority and would in principle have been able to block a slope above its preferred twenty per cent. The alignment with regard to the question of penalties was similar.

In effect, the dossier was still deadlocked between the different positions in the Environment Council. A break-through was finally reached during another round of bilateral Franco-German talks that took place in early June 2008 in the small Bavarian town Straubing. The Italians were excluded from this meeting, very much to their disapproval since they were not only concerned about Sarkozy's resolution on the slope issue but also because they had somewhat different preferences regarding the level of penalties. Parts of the negotiation were held tête-à-tête, without the participation of experts or other government officials. The outcome reflected in almost every respect the (previously stated) preferences of the German delegation. The only issue were the Germans did not fully succeed was the slope of the emission value curve, which was set at a compromise level of sixty percent, still a bit closer to the German ideal point.

5.3.4 Final steps and Output

Hardly any changes were made after the Straubing compromise had been settled. France now took over the Council presidency and it hastened to conclude the dossier. France knew that the presidency would next go to the Czech, a state that belonged to German-led premium car camp. France put the Straubing compromise on the next Council agenda in October 2008, where, after some minor amendments mainly regarding the level of penalties, an informal head-count added up to a qualified majority. The Council more or less accepted the last draft as it stood, fearing that any change would unravel the

artfully crafted compromise if it would not have been rejected by France and Germany, anyway. What can be observed is thus indeed a sort of "collective agenda setting power" of the Franco-German duo.

The regulation still needed approval by the EP, however. Because of the high priority assigned to the dossier by the Council Presidency and since EP election were already looming on the horizon, EP assent was sought in a single reading fast-track procedure with intensive trilogue negotiations. Contestation within the EP ran along both national, partisan and finally also along sectoral lines, when in the final vote the leading environment committee (ENVI), against the express proposal of its rapporteur, threw out the diluting amendments that the industry committee (ITRE) had introduced before. Yet, its influence in the last stage of the codecision procedure was limited to an essentially minor *succès d'estime* in the form of a long-term target value for the year 2025. The other supranational actor, the Commission, was most influential during the early stages of agenda-setting in re-activating the "dormant" dossier of fuel efficiency, but it was all but shut out when Sarkozy and Merkel were brokering the final deal. A compromise between Council and EP was reached in early December 2008, on which the EP voted on 17 December. The regulation was officially adopted by the Council on 6 April 2009.

5.4 Conclusion

The dossier was deadlocked in the Environment Council until it was elevated to the summit level. The minimalteral negotiations among a subset of the actors for whom the regulation was most salient and among whom it was most contested moved the dossier forward and led to a resolution. Council deadlock was circumvented via an "overpass". But why did the dossier only move forward once it was shifted onto the summit level, and why did Sarkozy make such obvious concessions? Several interpretations of the evidence are possible, and some others can be ruled out. Firstly, there is no indication of any package-deal. While the talks were held in private, it is unlikely that there would not at least have been some rumours among informed observers. Yet, press reports and my interviewees suggested otherwise. One pet project of Sarkozy at the time, which was seen critical by the German Chancellor was the establishment of a "mediterranean union". This could have been a prototypical candidate for a package-deal, but the German stance on this project did not change after the Straubing meeting and the "club med" was later scaled

down considerably. From this exlusion of an alternative explanation, it seems more likely that the mechanism of diffuse reciprocity played a larger role and hence that Sarkozy's concessions were in part motivated by his expectation to being rewarded in the long haul. It is difficult, though, to back up this claim with independent evidence, since the concept of diffuse reciprocity is hard to operationalize. After the Straubing meeting, the French took over the Council presidency. While presidencies usually have favourite projects that they emphasize under their term, they are expected to act as neutral, "honest brokers". Presidencies are moreover evaluated according to the number of dossiers they are able to conclude (Niemann and Mak 2010, Warntjen 2008). These are additional influences on France's readiness to yield to German positions.

6 Conclusion

Two of the most far-ranging and potentially contentious dossiers in the recent EU attempt at addressing energy efficiency were facilitated by taking bypasses around the stumbling blocks of the ordinary legislative procedure. That is the thesis I have tried to advance in this paper.

In the case of the lighting regulation, a measure was adopted that was considered by important industry actors to be far too ambitious and that generated public anti-European outrage in several member-states. While industry acquiescence mainly resulted from a change in the policy-environment which made the lighting regulation acceptable as a restriction against competition from overseas, the fact that public criticism only really was noticeable after the regulation became effective attests to the relevance of depoliticization through "underpass" decision-making. In the case of the fuel saving regulation, such a depoliticization was not possible. The issue was very salient right from the beginning, arguably due to the economic relevance of the automobile industry, especially in Germany. Therefore, it was impossible to include the fuel saving policy within the general ecodesign framework. The negotiations came closests to deadlock on the question of how the burden of adaptation should be shared between the different national manufacturers with their very unequal vantage points. Exactly on these issues with strong distributive implications a compromise was only reached during bilateral and informal talks among the heads of state of France and Germany. Again, negotiators abandoned the formal procedure, this time to take an "overpass" around the deadlocked Council. Since

there are no indications for a clear-cut package deal, it seems more plausbile that diffuse reciprocity – more prosaic: the value of positive intergovernmental relations – facilitated the compromise.

Different types of bypasses were relevant in the individual cases. Although certain technical details of the fuel saving regulation were also hammered out in subsequent comitology procedures, the nitty-gritty had to be resolved on the summit level. The distributive implications of the decision were clearly elaborated in the preparatory legwork that had been done by Commission experts and vividly expressed in the limit value curve. In this way, the distributive dimension and the productive dimension of the fuel saving regulation were separated. While this is often seen as encouraging an integrative bargaining style (Lax and Sebenius 1986), it did not exactly make the distributive component easier to negotiate. The haggle over the slope of the limit value curve was pure zero-sum bargaining. It is hardly conceivable that this essentially political task could have been successfully delegated to an expert committee. This was not true in the case of the lighting regulation, which involved no zero-sum conflict. Although industry actors were affected differently, there was a general consensus to move forward, especially since some member states had announced to go ahead alone. A fundamental opposition against the measure was, however, revealed in the public opinion of some member states, but only after the fact. Had policy-making taken place in a more transparent setting, more contestation – and possibly deadlock – could have been the result.

Notes

[1]The outcome, to be sure, also crucially depends on the consequences of non-agreement (the location of the status quo, in veto-player parlance). As will be shown later, in the cases under study the member-states were not allowed to adopt unilateral measures in lieu of a common policy. They were entrapped in a compulsory negotiation setting that is actually untypical for decision-making on product standards.

[2]On the joint-decision trap see Scharpf 1988; 2011.

[3]On the topic of technical and expert decision-making, also COREPER and the countless technical commitees that prepare the legislative legwork immediately spring to mind. COREPER forges preliminary consensus and sorts out the uncontested "B" points from the "A" points that still need political discussion in the Council meeting. The role of this institution is not to act as catalysts for the resolution of contentious topics but rather on the contrary to act as clearing-house for the uncontested issues that do not need political discussion. This function does of course relieve the Council from a huge workload, but instead of bypassing deadlock, it rather uncovers those issues that may lead into deadlock.

[4]This happened, for example, in the case of the regulation of genetically modified organisms, but it appears to be the exception rather than the norm. See Pollack and Shaffer 2010

[5]Interest groups on the other hand are often well-informed about comitology proceedings and are consulted in advance.

[6]2009/ETE/R/068.

[7]See http://www.bulbfiction-derfilm.com/ accessed 10 April 2012

[8]"Ein Schlag auf die Birne", die Zeit, 27 August 2009, 8; "Sanftes Monster Brüssel", der Spiegel, 28 February 2011, 108–111.

[9]1883/2008

[10]Hungary is home to eleven incandescents production sites belonging to the US-american GE Lighting. Other incandescent lamp production sites are located in Poland (Philips), Italy (Philips), France (Philips and OSRAM), Slovakia (OSRAM), and Germany (OSRAM). See the Commission's impact assessment C(2009) 1907 final.

[11]See the Commission's impact assessment C(2009)1907 final, 44.

[12]See Council Regulation 1205/2007.

[13]OSRAM press release 24. August 2011, on file with the author.

[14]Ein Schlag auf die Birne", die Zeit, 27 August 2009, 8.

[15]Fuel consumption is directly correlated with CO_2 emissions and unlike NO_x, particulate matter or other noxious sustances, CO_2 cannot be filtered out of the car exhausts or otherwise rendered harmless.

[16]Swedish brands (e.g. Volvo) are also notorious for their fuel consumption but Sweden has on a large scale introduced so-called "flex-fuels" with a smaller CO_2 lifecycle-footprint. It has therefore successfully argued that cars running on those fuels be partly exempt from the fuel efficiency regulation.

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