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42

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**Taking the lead: informal division of labour in
the EU's external environmental policy-making**

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Abstract

This paper examines the informal division of labour in the EU's external environmental policy-making. In EU policy-making with regard to the UN Commission on Sustainable Development (CSD) and international climate negotiations, member states and the Commission informally ‘take the lead’ on a particular issue under the authority of the Presidency. In the case of the CSD, ‘lead countries’ play an important role in the preparation of the EU's position, whereas the EU's representation in day-to-day climate negotiations is carried out by ‘lead negotiators’, who are assisted by ‘issue leaders’, who in their turn link the EU's representation system with its decision-making structure. In spite of the increasing importance and relevance of that phenomenon for the EU's external environmental policy-making, it has not yet been thoroughly studied. Based on interviews with officials from the member states, the Commission and the Council Secretariat and on non-participatory observation, this paper aims to make a first contribution to filling that gap. Therefore, it addresses the following questions: why do actors in the EU opt for that system of informal division of labour?; how does that system function in practice in the CSD and climate change contexts?; what are the opportunities and caveats it possibly generates?; and finally, what can we learn from it about the EU's external environmental policy-making?

Keywords

climate negotiations; Commission on Sustainable Development; European Union; informal division of labour; lead countries, issue leaders & lead negotiators

Abbreviations

AWG	Ad Hoc Working Group
AWG-KP	Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol
AWG-LCA	Ad Hoc Working Group on Long-term Cooperative Action under the Convention
CFSP	Common Foreign and Security Policy
CMP	Conference of the Parties serving as Meeting of the Parties to the Kyoto Protocol

COP	Conference of the Parties
CSD	United Nations Commission on Sustainable Development
EGFA	Expert Group on Future Action
EU	European Union
IPM	Intergovernmental Preparatory Meeting
KP	Kyoto Protocol
LCA	Long-term Cooperative Action
LULUCF	Land Use Land-Use Change and Forestry
REDD	Reducing Emissions from Deforestation and Degradation
RIM	Regional Implementation Meeting
SBI	Subsidiary Body for Implementation
SBSTA	Subsidiary Body for Scientific and Technological Advice
UN	United Nations
UNFCCC	United Nations Framework Convention on Climate Change
WPIEI	Working Party on International Environmental Issues
WPIEI CC	Working Party on International Environmental Issues dealing with Climate Change
WPIEI Global	Working Party on International Environmental Issues dealing with Global Environmental Aspects of Sustainable Development

1. Introduction

This paper aims to gain deeper insights in the informal division of labour in the European Union's (EU) external environmental policy-making. In a couple of international environmental negotiations, such as in the CSD (United Nations Commission on Sustainable Development) or in climate negotiations in the UNFCCC (United Nations Framework Convention on Climate Change) context, we observe that the Presidency, who is formally in charge of leading the Council's decision-making and the EU's representation, informally assigns some of its tasks to interested member states or the Commission.¹ Indeed, non-Presidency actors are able to 'take the lead' in the EU's external environmental policy-making. In the context of the EU's decision-making with regard to CSD negotiations, 'lead countries' take an important role in the preparation of the EU's position, whereas the EU's representation in day-to-day climate negotiations is carried out by 'lead negotiators', who are assisted by 'issue leaders', who in their turn link the EU's representation system with its decision-making structure.

The cases analyzed in this paper – namely the informal division of labour in the EU in the context of international negotiations on CSD and climate change – are characterized by four common features. First, it is an informal system, which is not driven by Treaty provisions or other (legal) obligations. It takes place under the formal authority of the Presidency and the various actors who take the lead perform their task under the Presidency's umbrella. Although in theory, each Presidency has the right and the opportunity to abandon that system and to take up all the work on its own, we notice that successive Presidencies opt to continue working along those informal lines. Second, two different kinds of tasks are informally divided among member states or Commission officials who take the lead. On the one hand, in the pre-negotiation stage, the preparation of EU positions is largely steered by lead countries (in the CSD case) or by issue leaders (in the climate case). On the other hand, in the actual negotiation stage of climate change negotiations, the representation of the EU is taken up by lead negotiators. Indeed, whereas the preparation of EU positions is a task informally divided in both cases, the representation of the EU is informally assigned to lead negotiators only in the context of the climate change negotiations. Third, the actors taking the lead are informally assigned a particular task because of specific

¹ Although sustainable development is a horizontal policy area encompassing more than merely an environmental dimension, the EU's policy-making with regard to negotiations in the CSD is also considered as 'external environmental policy-making'. Indeed, EU policy-making on CSD negotiations takes place within the same institutional context as other external environmental policies (i.e. in the Working Party on International Environmental Issues of the Council).

skills or expertise they possess or because they want to be closely involved in the negotiations. Fourth, the practice of informally dividing the labour in the EU's policy-making process was initiated because of a pressing problem the EU was facing during international negotiations (such as a weakly performing Presidency or a situation in which the EU fears to be completely overwhelmed by the international negotiation partners). Thereafter, it has quickly become an uncontested informally institutionalized practice to prepare and conduct international environmental negotiations in that way.

The fact that policy-making in the EU is often driven by informal dynamics is not a new observation. Scholars have emphasized the day-to-day informal interinstitutional interactions in the EU, stressing, for example, the Commission's perspective (Stacey 2003), comitology (Joerges and Neyer 1997) or the role of the European Parliament (Maurer et al. 2005). Moreover, decision-making in the Council, which is the institution in which the informal division of labour discussed in this paper takes place, is often determined by informal norms, making the Council functioning in a less intergovernmental and formal way than one would expect at first sight (Heisenberg 2005; Lempp and Altenschmidt 2008). From that point of view, the informal nature of the division of labour in the context of the EU's external environmental policy-making can be seen as another illustration of the normative character of the Council (Lewis 2003), at least in rather low-politics affairs.

As for the EU's external relations, informal practices and the non-Treaty based division of labour have mainly been studied with regard to the EU's Common Foreign and Security Policy (CFSP). On the one hand, large member states taking the lead and *de facto* excluding the others from the EU's foreign policy have been extensively analyzed in the literature on the so-called 'directoires' or 'directorates' (Keukeleire 2001; Gegout 2002). On the other hand, the more recent phenomenon of 'core groups' in the CFSP approximates more to the type of informal division of labour we witness in the EU's external environmental policy, as the main rationale behind establishing such core groups is specialization and division of labour among member states (Schwegmann 2000; Keukeleire 2006).

The informal practices of division of labour in the EU's external environmental policy-making have been largely underexposed in the literature. Although it is part of the EU's day-to-day policy-making practice in such an increasingly important domain, until now, only its occurrence has been highlighted (on the existence of lead countries in CSD, see Cameron 2004: 162; or Van den Brande 2009a: 20-22; on the existence of lead negotiators and issue leaders in climate

negotiations, see Oberthür and Roche Kelly 2008: 38; or van Schaik 2010: 262).² However, until now, no studies have aimed to unravel the dynamics of those processes in detail.

This paper aims to fill that gap in the literature. Therefore, it seeks to answer the following research questions. First, what is the rationale behind the choice for an informal division of labour (section 2)? By answering that question the benefits of the system are likely to pop up. Second, how does the system function in practice, more in particular in EU's policy-making regarding CSD (section 3), and climate change negotiations (section 4)? Third, what are the opportunities and possible caveats it generates (section 5)? And finally, what are the similarities and dissimilarities between both cases, and what we can learn from it in order to better understand the EU's external environmental relations (the concluding section 6)?

As mentioned, two cases are studied in this paper. First, we investigate the EU policy-making process with regard to CSD-16 and CSD-17 (2008-2009). Second, the EU's participation in the two-year run-up to the 15th Conference of the Parties (COP 15) in Copenhagen is considered, hence also concentrating on the period 2008-2009. In both cases, we focus on the day-to-day policy-making processes at the level of experts and government officials. EU policy-making and representation at the high-level sessions of international negotiations are not taken into account, since those do not follow the informal pattern of division of labour we aim to analyze. Although the level of politicization of both cases significantly differs, with the climate negotiations being more politicized than the CSD ones, the informal dynamics in the Council correspond. As we will elaborate in the concluding section, we argue that the level of politicization does not affect the extent to which the EU's day-to-day external environmental policy-making process is characterized by an informal division of labour. The empirical data for this paper mainly originates from interviews we conducted with policy-makers who were closely involved in the EU processes.³ Moreover, we had the opportunity to attend international negotiations in the CSD and under UNFCCC,

² Moreover, a lead country system, similar to the one used in CSD negotiations, has also been applied during the final negotiation stages leading to the Stockholm Convention (Delreux 2009: 25-26) and such a system is nowadays also used in the EU's policy-making on international biodiversity negotiations.

³ More in particular, we interviewed ten member state representatives, three Commission officials and two officials working at the Council Secretariat. Six of these interviewees have performed a lead country, lead negotiator or issue leader task in the CSD or climate negotiations between 2008 and 2009. The interviews were conducted in Brussels between May 2009 and March 2010. The interviews were qualitative and semi-structured, focusing on the practical functioning of lead countries, lead negotiators and issue leaders, as well as on the interviewees' assessment of the advantages and disadvantages of the system and the internal dynamics in the EU when this system of informal division of labour is employed.

as well as WPIEI (Working Party on International Environmental Issues) meetings preparing for CSD negotiations, as a result of which a non-participatory observation in our field of study helped us to contextualize our findings.

2. Rationale behind the informal division of labour

Why do the actors in the EU – both the Presidency giving up power and the member states taking up additional work – opt for this informal system of division of labour? The rationale behind the establishment of this system seems to be fourfold: burden-sharing, expertise pooling, involving member states, and guaranteeing continuity.

First, the international agenda of many international environmental negotiations is so dense that it becomes very difficult for a Presidency to appropriately manage the whole range of agenda items. Presidencies usually do not have sufficient capabilities to deal with the multitude, diversity and complexity of the international agenda. The two-year CSD-16/17 cycle covered a wide variety of themes, including agriculture, desertification and water. Likewise, the international climate change agenda is very broad and complex, comprising financial questions, forestry issues, mitigation discussions, etc. The preparation, coordination and administration of all those – often technical – items is an almost impossible task for a single Presidency. Hence, from the perspective of the Presidency, the CSD system of lead countries and the climate change system of lead negotiators and issue leaders can be seen as an effective burden-sharing exercise. The workload is informally separated among the other actors in the EU, who operate under the authority, auspices and responsibility of the Presidency. That first rationale certainly holds true for small and medium-sized Presidencies, but practice teaches us that large member states holding the Presidency, which could reasonably be assumed to have the necessary capabilities to deal with such a complex and broad agenda, also opt to continue with that system. That suggests that the rationale behind it is broader than only burden-sharing.

Second, the system allows the EU to pool the expertise, know-how and negotiation skills of the 27 member states and the Commission. In other words, informally dividing the work is considered to strengthen the negotiation capacity of the EU at the international level, as it allows for assembling the best capacities in the EU instead of merely relying on the expertise the Presidency has. On the one hand, certain member states are known for their particular capabilities on a specific issue (such as the southern member states on desertification for CSD, or the Scandinavian countries on sinks in climate change negotiations). On the

other hand, not only member states have specific expertise, also individual representatives do. The informal division of labour makes it possible to also incorporate the skills and know-how of individual officials in the EU policy-making process, irrespective their national or institutional affiliation.

Third, involving the member states in preparing (and conducting) the negotiations results in a win-win-situation both for the Presidency and for the member states that take the lead. On the one hand, it increases the likelihood of efficient decision-making, since the most interested member states have the opportunity to be involved in the process from its preparation stage, as a result of which they cannot be confronted with surprises when the decision-making process reaches the level of the entire Council (Working Group). Moreover, involving the member states in the international negotiations increases the likelihood of making the outcome of the international negotiations acceptable for the member states. By being active at the international level, the member states are able to properly assess the political borders within which an international agreement is possible, as well as the feasibility of the EU's position, on which the formal EU negotiator (the Presidency) will likely have to make concessions (Delreux and Kerremans 2010). On the other hand, compared to a situation where only the Presidency is in charge, this system is beneficial for the member states as well, since they are able to significantly contribute to (a part of) the policy-making process, to experience ownership on a particular issue, and to feel useful in the EU. The drawback of a single Presidency doing all the work on its own is that the other member states cannot deploy their capabilities. Without a system of informal division of labour, a member state would have to wait 13 years (i.e. 26 Presidencies) before it could take the lead again in preparing EU positions or representing the EU internationally.

Fourth, the system of informal division of labour improves the continuity in preparing the EU position internally and articulating that position externally. When everything is merely dealt with by the rotating Presidency – and the concomitant switch in staff –, continuity is at risk every six months. Other EU actors informally taking the lead for a longer period resolves this difficulty. Continuity is advantageous, first, for the preparation of EU positions, since international environmental negotiations are seldom finite. Indeed, climate change negotiations are a nonstop process going from COP to COP, each of them being prepared in multiple preparatory meetings. CSD processes usually take two years (a review year followed by a policy year). Hence, also there, lead countries guarantee the continuity that four successive Presidencies could never achieve.

Second, continuity is also advantageous in the EU's external representation in climate change negotiations. Being represented by the same people not only facilitates the identification of the EU's contact point by the international partners, it also implies the possibility of growing confidence between the EU negotiator and its colleagues from third states or negotiation blocs.

3. Lead countries in the case of the Commission on Sustainable Development

In the EU's internal decision-making with regard to the CSD negotiations, a central role is put aside for the Presidency that has the responsibility of leading the Council towards a common EU position for each of the CSD issues on the agenda. Because of the reasons mentioned before, various Presidencies have opted for an informal division of labour when preparing the CSD negotiations. More in particular, the member states or even the Commission are assigned specific tasks during the preparatory process, as they take the lead in preparing the common EU position for a particular CSD issue. The role of the member states as lead countries does not include representing the EU at the international level. Indeed, the EU's representation at CSD (or one of its preparatory meetings) is still exercised by the Presidency and in some cases by the Commission (cf *infra*).

The origin of the lead country system seems to date back to the beginning of the nineties. At that time, in the context of post-Rio negotiations, many member states prepared their own draft EU position paper in an uncoordinated way, hampering the Presidency to integrate all those national texts into one common EU position. It was the Belgian Presidency of 1993 that suggested using a system of lead countries. The agenda of those post-Rio negotiations was extensive, highly technical and it demanded a lot of expertise. By using a system with lead countries, the available expertise among the member states could be pooled and the common performance of the EU would be increased. About at the same time, the system spilled over to the very recent CSD preparations. That spillover effect can be explained by the fact that the post-Rio negotiations and the negotiations on CSD issues were handled by mostly the same people. In other words, the EU preparations on CSD were influenced by the way the post-Rio preparations were managed, because the officials who were involved in both processes had good experiences with the lead country system in the post-Rio negotiations and chose to copy it to the CSD context. This logic of institutional isomorphism (Koelble 1995) was promoted by the 1994 German Presidency that was convinced of the merits of delegating responsibilities to lead countries (usually the most active member states).

Although it is not totally clear whether the lead country system has been used by each Presidency from 1994 on, all Presidencies have been using the system for the CSD preparations of the current programme of work of CSD (2004-2017), i.e. from CSD-12 on. The agenda of the CSD has been planned on the basis of cycles of two years, in which each cycle consists of a so-called 'review session' in the first year and a so-called 'policy session' in the second year. Every cycle focuses on a specific thematic cluster of issues, on the one hand, and on a cluster of twelve cross-cutting issues (e.g. education, poverty eradication...), on the other hand (UNDESA 2008). For this paper, we examined the implementation cycle of CSD-16 (2008) and CSD-17 (2009) that discussed six thematic issues, i.e. agriculture, rural development, land, drought, desertification and Africa, as well as the cluster of cross-cutting issues. While both sessions took place in New York during two weeks in May, the first session has been preceded by a Regional Implementation Meeting (RIM) for each UN region⁴ and the second session has been prepared by an Intergovernmental Preparatory Meeting (IPM) for all UN member states in February 2009 in New York (Van den Brande 2009a: 8-12).

The internal EU preparations of the CSD (and its preparatory meetings) and the external representation of the EU's position are formally the main responsibility of the Presidency. The EU Presidencies that guided the member states through the preparatory process for the CSD-16/17 cycle were respectively Portugal, Slovenia, France and the Czech Republic. The internal EU decision-making process takes place in the Council Working Party on International Environmental Issues (WPIEI), in particular the WPIEI dealing with global environmental aspects of sustainable development (WPIEI Global). The WPIEI Global gathers monthly and the yearly session of the CSD is a recurring point on its agenda. It is the highest decision-making body that is involved in the preparatory decision-making process for CSD. Indeed, in contrast to other global negotiations, such as those on UNFCCC (Schunz et al. 2009: 5), the WPIEI Global does not prepare Environment Council conclusions on CSD. Once the WPIEI Global has adopted an EU position, that position is no longer discussed at higher levels by Coreper, the Environment Council⁵ or the European Council (Van den Brande 2009b: 12). On the spot, the EU coordination meetings are organized in a setting similar to that of the WPIEI Global. Those meetings take place daily before the CSD meeting itself or during the meeting, if deemed necessary. At those coordination meetings, the EU speaking points are finalized and practical arrangements important for the

⁴ The EU participated at the RIM organized by the UN Economic Commission for Europe (UNECE) in January 2008 in Geneva.

⁵ The role of the Environment Council (and of other Council configurations) with regard to CSD is very limited. In practice, it is only used for debriefing about the CSD negotiations by the Presidency.

negotiations of that day are made. The Presidency also uses those meetings for debriefing about the CSD discussions of the previous day and about its outreach activities.

After having discussed where the preparations for the CSD exactly take place in the EU, we can now go deeper into the lead country system itself. In order to distribute the work among the member states, the Presidency clusters the thematic issues of the cycle in so-called 'sub-clusters'. The sub-clusters are decided at the beginning of the preparations of the CSD cycle (in this case by the Portuguese Presidency) and usually not changed by the following Presidencies. For CSD-16/17, five sub-clusters were set up.⁶ The preparations for CSD-17 did not change the sub-clusters. Subsequently, a lead country is appointed for each sub-cluster. Lead country tasks are carried out by representatives of member states or the Commission, who attend the WPIEI Global and who are responsible for the coordination of the EU position on the specific thematic issues of the sub-cluster. An important element in this regard is the division of competences between the member states and the EU. Thematic issues that are Union competences (e.g. agriculture in CSD-16/17) are almost automatically assigned to the Commission. The latter then takes up the role of lead country and operates under that heading. Although some Commission officials do not like to see the Commission called a lead 'country', it seems to be a general rule that the Commission takes the lead for issues covered by EU competences and that the other issues are divided among the member states. The occurrence of EU competences is thus a sufficient condition for the Commission to claim (and to be granted) its role as lead country.

A lead country can be appointed for only one CSD session or for the whole cycle. In theory, the lead country system is used to achieve long term continuity across four Presidencies, which implies that a lead country is responsible for a sub-cluster during the whole CSD cycle. The European Commission and Belgium, for example, were lead country during the whole CSD-16/17 cycle. In practice, however, it happens that member states stop being a lead country during the preparations, for example, because of organizational reasons. That was the case for the Czech Republic and Italy because of respectively its upcoming role as EU Presidency and as G8 Presidency. The process leading up to the appointment of the lead countries seems to be very informal and the result of a certain kind of lobbying between the member states and the Presidency. On the one hand, a

⁶ Those were (1) a sub-cluster on agriculture, land and rural development; (2) a sub-cluster on drought and desertification; (3) a sub-cluster on Africa; (4) a sub-cluster on cross-cutting issues and interlinkages; and (5) a sub-cluster on water (for the review of the CSD-13 water and sanitation decisions).

member state can be eager to be a lead country with regard to a specific sub-cluster. In that case, that member state starts an informal lobbying process towards the Presidency and the other member states. On the other hand, it can be the case that no member state is candidate to be a lead country for a specific sub-cluster. In such a case, the Presidency has to lobby in order to find a lead. Sometimes, when no member state is willing to take the lead for a specific sub-cluster, the Presidency itself takes on the task (e.g. France on Africa, during its Presidency and until the end of the preparations). In general, the Presidency calls upon the previous lead countries at the first meeting of the WPIEI Global to express their continued intention to be a lead country or not. When the lead countries for each sub-cluster are appointed, all member states are informed by the Presidency in the WPIEI Global. Table 1 illustrates the thematic issues, the sub-clusters, the competence division and the lead countries with regard to the CSD-16/17 cycle.

Thematic issue	Sub-cluster	Competence	Lead country CSD-16	Lead country CSD-17
Agriculture	1	EU	Commission	Commission
Rural Development	1	EU	Commission	Commission
Land	1	MS	The Netherlands	France, Czech Republic (both as Presidency)
Drought	2	MS	Czech Republic & Italy	Spain
Desertification	2	MS	Czech Republic & Italy	Spain
Africa	3	MS	The Netherlands	France (initially as Presidency)
Cross-cutting issues & interlinkages ⁷	4	MS	Belgium	Belgium
Water	5	MS	France	France

Table 1: Lead countries for CSD-16 and CSD-17

How does internal decision-making occur, taking into account the lead country system? The main function of a lead country is thus to help the Presidency in preparing the EU position on the issues of its sub-cluster. Following the informal character of the lead country system, each lead country is free to choose how it works and Presidencies do not interfere in a lead country's working method. Yet, some consistency exists between the working methods of the various lead countries. An important example is the establishment of a subgroup by a lead country. Such a subgroup is an informal working group, consisting of a small number of member states that are interested in assisting and working together with the lead country on the issues of the sub-cluster. Although not all lead countries decide to establish a subgroup, most of them did during the CSD-16/17 preparations. Figure

⁷ In the final months of the negotiations, 'means of implementation' was added to the thematic issue 'cross-cutting issues and interlinkages' and was led by Belgium, together with the UK and the Presidency.

1 illustrates the internal EU decision-making and the external EU representation with regard to CSD.

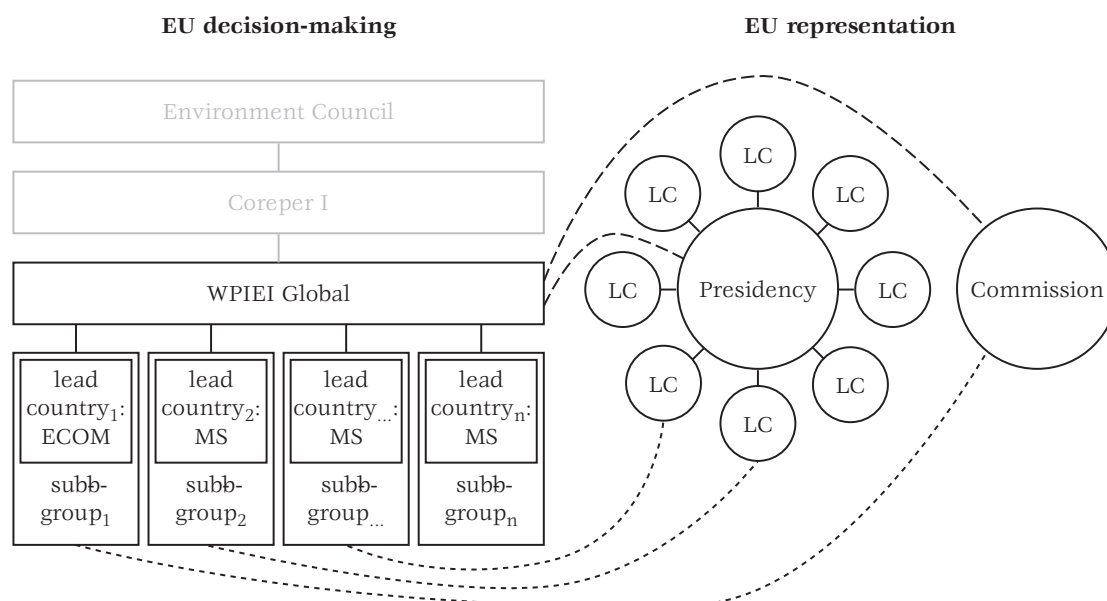


Figure 1: lead countries in EU policy-making with regard to CSD [LC = lead country; MS = member state; ECOM = Commission]

In practice, the functioning of a lead country in the internal preparations for CSD is an iterative two-stage-process. It starts with the lead country writing a first draft of the text (e.g. position papers, speaking points...) and sending that to the members of its subgroup for comments. Subsequently, the lead country incorporates those comments and it prepares a revised draft which it sends to the Presidency. The latter may incorporate its own comments. That is the first stage, taking place between the lead country and its subgroup. Afterwards the Presidency circulates the draft to all member states, asking for written comments. At the next WPIEI Global the lead country presents the text to the other member states and the (written and oral) comments of the member states are discussed. That is the second stage, taking place among all member states in the WPIEI Global context. After the WPIEI Global has taken place, those two stages are repeated, giving the process an iterative character. Indeed, the lead country (together with its sub-group and in close cooperation with the Presidency) rewrites the draft text again, based on the received comments (stage 1). That new draft is then again discussed in the WPIEI Global (stage 2). At that time, the process of commenting and rewriting repeats itself until the WPIEI Global (or its equivalent on the spot) can adopt a final text. Draft documents can also be sent for approval to the member states by e-mail. In that case, the Presidency appeals to the 'silent procedure'. Member states are given the opportunity to comment on

the documents before a given deadline. If comments are not sent in before the deadline, the Presidency assumes member states agree with the document (Rasch 2008: 66-67).

Some Presidencies have tried to slightly structure the preparatory process, including the functioning of the lead countries, by suggesting a certain working method, a so-called 'road map', at the beginning of their Presidency. The French Presidency, for example, decided to work with 'tool boxes'. That implied that each lead country needed to work out a couple of by the Presidency determined questions about, for example, the main political message and the ceilings and bottom lines of the EU. Under the Czech Presidency, those tool boxes formed the basis for the development of the EU speaking points for the Intergovernmental Preparatory Meeting.

The system of lead countries seems to be working very well for helping the Presidency in preparing the EU common position. At the CSD, lead countries, however, do not take the role of EU spokesperson. This is a task of the Presidency, and to a lesser extent of the Commission. For all issues that are member state competences, which are the majority of CSD issues, the Presidency speaks for the EU. Yet, when Union competences are discussed, the Commission (also being a lead country in the internal preparations) takes the floor. For CSD-16 and CSD-17, that was the case for all discussions and negotiations with regard to agriculture and rural development. In that regard, it is important to mention that the Commission enjoys a full participant status in the CSD (Rasch 2008: 106). As for the lead countries, they assist the Presidency when the latter takes the floor at the international level. They provide input to the Presidency, which can be immediately used during the course of the international negotiations. Sitting next to the Presidency, they intensively follow the discussions and coordinate on the spot. Moreover, in practice, it has happened that the Presidency passes the floor to a lead country to represent the EU on a particular topic, but that practice largely depends on the capacities and the will of the Presidency.

4. Lead negotiators and issue leaders in the case of climate negotiations

Although the division of competences, and in particular the EU's new climate change legislation, may suggest a large formal role for the Commission in the EU's representation in international climate change negotiations, the Council still is the prominent body for external climate policy-making (van Schaik 2010). Consequently, the main responsibility, both for ensuring external representation and for adopting EU positions, lies with the Presidency (Lacasta et al. 2007). However, because of the reasons mentioned above, a system of informal division

of labour under the Presidency's auspices has been established, giving the member states and the Commission a larger role in the policy-making process than suggested by the formal framework.

The current system of informal division of labour, with so-called 'lead negotiators' and 'issue leaders', has been introduced during the 2004 Irish EU Presidency (Oberthür and Roche Kelly 2008). Before, the Presidency carried out the tasks, which are now informally assigned to lead negotiators and issue leaders. The Irish Presidency opted to change that practice because of a twofold reason. On the one hand, it considered itself as not having sufficient capacity to deal with the climate change dossier. On the other hand, it did not want to make the same mistakes as its predecessor, the Italian Presidency, which is said to have performed rather weakly on climate change. That seems to have worked as the necessary catalyst to adopt the system of lead countries and issue leaders.

In this informal system of division of labour, the burden that is shared is twofold: representation (to the lead negotiators) and direct support for the negotiator (to the issue leaders). Lead negotiators are well-experienced negotiators who represent the EU at the international level for a certain agenda item during a longer period. In other words, the lead negotiators express the EU's single voice at the international level. That mainly holds true for the international negotiations in the main day-to-day negotiation settings or so-called 'contact groups' or 'drafting groups'. The EU's statements in the plenary meetings of the COP or the CMP⁸ are still made by the Presidency. The lead negotiators are supported by a group of issue leaders, being experts whose main task is not to represent the EU internationally but to assist the lead negotiator on the spot. Similar to the lead countries in the CSD case, lead negotiators and the team of issue leaders in climate change negotiations function under the formal umbrella and authority of the Presidency. As the national or institutional affiliation of lead negotiators and issue leaders does not matter, they are *de facto* representatives from whatever member state or from the Commission.

Since 2004, the application of the system has evolved in accordance with the developments at the international level. Between 2004 and 2007, each agenda item of the various institutional bodies working under UNFCCC⁹ was negotiated by a lead negotiator on behalf of the EU. Some agenda items that were logically connected, were clustered and jointly assigned to a single lead negotiator. In that period, more than 25 different lead negotiators were deployed, each representing

⁸ The COP is the main meeting of the Parties to UNFCCC, whereas the CMP (Conference of the Parties serving as Meeting of the Parties to the Kyoto Protocol) is the main meeting of the Parties to the Kyoto Protocol.

⁹ These institutional bodies are mainly the COP, the CMP, the Subsidiary Body for Scientific and Technological Advice (SBSTA) and the Subsidiary Body for Implementation (SBI).

the EU for a particular (set of) agenda items. The number of lead negotiators has been drastically reduced since UNFCCC's COP 13 in Bali (December 2007), where climate change negotiations have been accommodated under two negotiation tracks. Indeed, the Bali Road Map introduced a two-track approach meant to reach an overall climate change agreement in Copenhagen in 2009 (Kulovesi and Gutiérrez 2009). The first track is negotiated with all UNFCCC parties in the institutional framework of the AWG-LCA (Ad Hoc Working Group on Long-term Cooperative Action under the Convention), whereas the second track implies negotiations among the Kyoto Protocol parties in the institutional setting of the AWG-KP (Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol). These two AWGs met eight times in 2008-2009 and they served as the main negotiation settings during the first week and a half at COP 15 in Copenhagen. In the period studied in this paper (2008-2009), the EU negotiation arrangement was adapted to those two-track negotiations, since the EU was represented in each AWG by a separate lead negotiator, each being surrounded by a group of issue leaders.

The assignment of these informal lead negotiator and issue leader tasks to various actors in the EU is similar to the assignment of lead countries in decision-making with regard to CSD, as it is based on informal consultations on the one hand and formal Presidency responsibility on the other hand. Before each meeting of the AWGs, the Presidency tables a list comprising the lead negotiators and the issue leaders. This takes place at a WPIEI Climate Change (WPIEI CC) meeting, which convenes in a 'heads only' configuration. Indeed, in EU climate change policy-making, the informal division of labour is decided upon only by the heads of the 27 national delegations. Since one of the main rationales behind the use of the informal system is to guarantee continuity among multiple Presidencies, it comes at no surprise that most of the lead negotiators and issue leaders maintain their informal function during multiple negotiation sessions. However, there are always people who cannot continue their function as lead negotiator or issue leader (mainly due to job changes), as a result of which each Presidency *de facto* has to find new candidates for fulfilling the tasks. Practice shows that Presidencies mostly take up the table with names from the previous negotiation session and that they informally consult with the member states on possible new candidates for the vacant positions of issue leaders or lead negotiators. Briefly, the choice of lead negotiators and issue leaders in climate change policy-making follows a very informal path in which member state representatives are cautiously approached by the Presidency, but also vice-versa.

To understand the role and the functioning of lead negotiators and issue leaders in international climate change negotiations, the internal decision-making process in the Council should be examined. Indeed, the institutional structure for decision-making in the Council and the informal system for EU representation – with lead negotiators and issue leaders – are closely connected. The WPIEI CC occupies the central place in the Council decision-making structure. On the one hand, before the international negotiations, it serves as the main preparatory body for respectively Coreper and the Environment Council, which adopts Council Conclusions determining the general EU position on climate change. Indeed, unlike for CSD, EU positions on climate change are decided at ministerial level. Moreover, also the ECOFIN Council and even the European Council have been involved in the decision-making process the last years. The former decides upon the EU position regarding the financial aspects of the climate change negotiations, while the latter has come into the picture to cut the final – and politically most sensitive – knots in case the sectoral Councils do not manage to find an agreement. On the other hand, during the international negotiations, the WPIEI CC is the principal body in which EU positions are defined, strategies discussed and position papers adapted to the need of the international negotiations. Indeed, the EU coordination meetings, which are organized mostly twice a day during the weeks of the international negotiations, take place in a WPIEI CC setting.

However, in order to deal with the complexity and multitude of issues on the international agenda, an additional decision-making structure is set up below the WPIEI CC level. Indeed, the traditional political (Environment Council and European Council), ambassadorial (Coreper) and administrative (WPIEI CC) levels are supplemented by an extra expert-level decision-making structure, which consists of ‘expert groups’. Similar to the WPIEI CC, those expert groups are composed of member state and Commission officials. However, since not every member state has a sufficient level of capacity and staff, not all expert groups are attended by every single member state. In the two-year run-up to the Copenhagen conference, eleven expert groups were operating. Ten of those expert groups have a thematic focus, since they deal with a specific topic, such as technology, mechanisms or legal issues.¹⁰ Their main function is the preparation of EU position papers and background documents on the various topics. The eleventh expert group, EGFA (Expert Group on Future Action), was initially conceived as the expert group dealing with mitigation issues, but has evolved

¹⁰ The ten thematic expert groups are EGAD (Expert Group on Adaptation), DCEG (Developing Countries Expert Group), TECH (Technology), EGIF (Expert Group on Investment and Financial Flows), LULUCF (Land Use, Land-Use Change and Forestry), REP (Reporting), LEX (Legal Issues), SCI (Science), BUDGET, and MEX (Mechanisms).

towards the coordinating body of the ten other thematic expert groups. In theory, EGFA's task is to aggregate the work prepared by the other expert groups and to transfer that to the WPIEI CC, which can then hold a political discussion on the basis of the expert groups' output. Policy-makers admit, however, that in practice, the distinction between EGFA's and the WPIEI CC's job is unclear and that both sometimes duplicate each other's work.

How are those EU positions now transmitted to and expressed at the international level? That is where the lead negotiators and the issue leaders come into the story. In the two-year run-up to Copenhagen, the two main lead negotiators, one negotiating the Convention track in the AWG-LCA and the other representing the EU for the Kyoto Protocol track in the AWG-KP, were senior, highly ranked officials coming from the WPIEI CC. The lead negotiator for AWG-LCA was a Dutch representative, while the AWG-KP lead negotiator came from the Commission. Indeed, not only member states are involved in this informal division of labour, the Commission is as well. In terms of the lead negotiator (and also issue leader) tasks it fulfils under the Presidency's umbrella, the Commission *de facto* acts like a (large) 28th member state. Its negotiation role has little to do with the division of competences between the EU and the member states. Apart from those two lead negotiators for the two AWGs, a third lead negotiator (from the UK) spoke on behalf of the EU for all forestry-related issues (LULUCF, REDD, etc.)¹¹ in both AWG's. Moreover, because of frequent parallel negotiations in the AWG-LCA, the function of deputy lead negotiator for the Convention track was created. That deputy lead negotiator (from the UK) represented the EU when the main LCA lead negotiator was involved in parallel AWG-LCA negotiations. Besides negotiating on behalf of the EU in climate negotiations in the institutional framework of UNFCCC, and more in particular in their respective AWG, the lead negotiators are also involved in representing the EU in other multilateral fora where climate change is discussed, such as the G20, the Major Economies Forum or the Greenland Dialogue.

Besides the representation, a second task is informally distributed among member state and Commission officials. That is the task of the issue leader who is assisting the lead negotiator during the international negotiation sessions. Those issue leaders are the right hands of the lead negotiator when the latter is representing the EU in the AWGs. They perform the practical background work for the lead negotiator, such as keeping up-to-date tables with positions and proposals from the external negotiation partners, the corresponding EU position

¹¹ LULUCF is short for Land Use Land-Use Change and Forestry; and REDD for Reducing Emissions from Deforestation and Degradation.

and rationale. When negotiations have come to a drafting stage, they examine the drafts lying at the international negotiation table and they suggest amendments the lead negotiator can propose to bring the draft closer to the EU position. That is done on the basis of the existing EU position papers adopted by the WPIEI CC and on the basis of the Council conclusions. Briefly, by converting EU position papers into practical input to be used by the lead negotiator, the issue leaders constitute the link between the EU's system of representation (by the lead negotiators) and its system of decision-making and preference aggregation (by the expert groups and the WPIEI CC). Their ability to link the EU representation with the determination of the EU position relies on the fact that they combine a central position in both systems. On the one hand, they attend the international negotiations sitting behind or alongside the lead negotiator. On the other hand, all issue leaders are member of EGFA, the expert group that coordinates and collects the work of the thematic expert groups. Figure 2 shows the link between the decision-making system and the representation system, emphasizing the central role of lead negotiators and issue leaders in the day-to-day international climate negotiations.

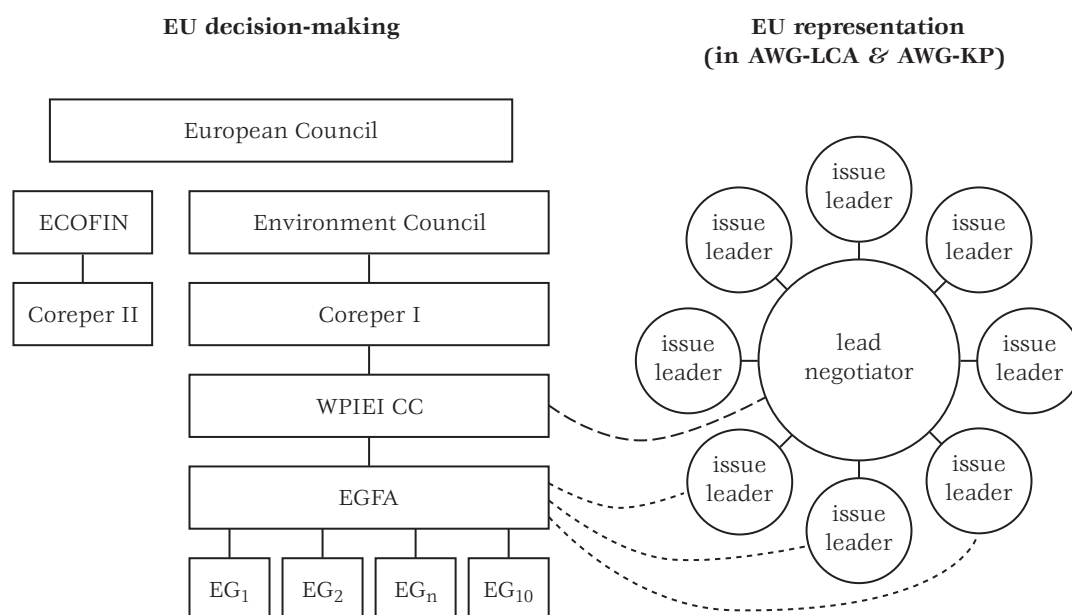


Figure 2: lead negotiators and issue leaders in the EU's external climate change policy-making [EG = expert group]

Whereas the expert groups prepare EU position papers for both tracks of the climate negotiations, the issue leaders work in two separate teams: one team working on the LCA-track, the other on the KP-track. Both teams comprised approximately ten issue leaders, each of them having a particular substantive focal point. These focal points mirror the various contact groups at the

international level. Indeed, all international negotiation partners in the AWG-LCA and the AWG-KP meet in different so-called 'contact groups', each of them dedicated to a particular issue discussed in that negotiation track. Examples of the LCA-track include the contact groups on shared vision, spillover effects or REDD. In the KP-track, contact groups focus e.g. on numbers, mechanisms or LULUCF. The focal points of the various issue leaders echo those contact groups. Consequently, there is, for example, an issue leader focusing on shared vision in the LCA-track. Practice shows that in all contact groups within each track, the EU is usually represented by the responsible lead negotiator. Only the issue leader(s) with the focal points corresponding to the focus of the contact group assist(s) the lead negotiator there. Hence, in different contact groups of the same AWG, the same lead negotiator relies on different right hands.

5. Opportunities and caveats

The informal division of labour between the Presidency, the member states and the Commission is applauded by many of the involved actors in the EU as it strengthens the EU as a player in international CSD and climate negotiations. However, the system not only implies opportunities, such as the ones we discussed in section 2, but possibly also caveats. Three of them deserve particular attention: the importance of personalities, the clarity in the EU's external representation and the overview on the whole negotiation package.

First, informally dividing the work in the EU is all about having the right person in the right place at the right time. Many of the qualities a lead country, an issue leader or a lead negotiator must have, can be deduced to the level of the individual. Both Commission and member states officials admit that the personal characteristics of the individual who fulfils the task are often crucial. Being a good lead country, for example, implies appointing that national expert with the necessary technical expertise and excellent drafting, coordination and communication skills. In addition, that expert needs to be cooperative and consensual in nature, taking into account the comments of other member states and working in a close relationship with the Presidency. Good issue leaders are said to need strong analytical skills and technical expertise, and they have to be good team players. The characteristics of a good lead negotiator, on the contrary, are strong negotiation skills – including its ability to approach the external negotiation partners –, solid language skills, and strategic insights.

Yet, relying on the capabilities of one individual may have a backside as well. One of them concerns so-called 'pet issues' or 'hobbyhorses'. Those are usually favourite topics of either a particular member state (because of its national

interest in the topic) or even of an official of a member state (because of its personal interest or technical expertise on the topic). If too much attention is paid to a pet issue in the EU, compared to the attention that issue gets at the international level, then that can result in redundant efforts. Moreover, although this phenomenon guarantees continuity, it may also hinder other interested member states to take the lead on that particular issue. Practice shows that the likelihood of facing this caveat is much higher in the CSD preparations than in the climate change policy-making process, since lead countries often individually take the lead, whereas issue leaders are embedded in a more collective effort. Another trap concerns the high turnover of experts involved in the negotiations on CSD and climate, because of persons changing jobs or retiring. However, decision-makers do not see that as an insurmountable problem. In CSD part of the problem is taken care of by working with sub-groups, since the members of those sub-groups are obvious candidates to take over the job of lead country. In the policy-making process on climate change, each issue leader has a second focal point, serving as a back-up for a colleague issue leader, whereas deputy lead negotiators are recently being appointed to solve this caveat for the EU representation.

Second, when looking at the informal system of division of labour, one could imagine that an external negotiation partner of the EU gets confused about who exactly to approach as main contact point of the EU. Does the system not jeopardize the clarity in the EU's external representation on the international scene? Like the first caveat that is linked to personalities, also this one seems to be more prominent in theory than in practice. In the context of the climate negotiations decision-makers emphasize that the clarity in the EU's external representation is guaranteed by working with two lead negotiators. Indeed, lead negotiators exercise their role for a longer time period (than six months) participating at multiple preparatory meetings and COPs. That increases the clarity in the EU's external representation because external negotiation partners already know who negotiates for the EU in a particular AWG. The question on the clarity in the EU's external representation is even less prominent in the CSD context, since the lead country system is mainly 'a backroom activity' and the EU is externally represented by the Presidency or the Commission.

Third, dividing the work among various lead countries or issue leaders and lead negotiators may at the end of the day result in losing the overview on the entirety of the negotiation agenda. Caveats that could arise are the isolation of the work conducted by the various lead countries or sub-groups (for CSD) or the

lack of coordination between the two lead negotiators (for the climate negotiations). However, that possible problem is mainly absorbed by the central place the Presidency keeps occupying in the policy-making process. Indeed, the Presidency holds the final responsibility over the whole negotiation package and it is its main task to ensure that the overview is maintained. First of all, it chairs the WPIEI meetings, where the final EU positions are adopted. Second, the Presidency overlooks the informally divided work by having a representative in each sub-group (CSD negotiations) and in each expert group as well as having issue leaders in each negotiation track (both in climate negotiations). Third, its input in the EU position mainly consists of avoiding overlaps and contradictions between various EU positions on separate issues.

From a theoretical perspective, the informal division of labour has some disadvantages, many of which result from the fact that the system is mainly personality-driven. In practice, however, many caveats are countered by the existing institutional provisions such as the role of the Presidency, the internal EU decision-making process with a central position for the WPIEI and the external representation of the EU.

6. Conclusion

The informal division of labour in the Council is key to understand the EU's day-to-day external environmental policy-making with regard to CSD and climate change negotiations. The lead country system for preparing CSD as well as the system with lead negotiators and issue leaders employed in EU policy-making regarding international climate change negotiations share a couple of common characteristics. First, as mentioned in the introduction, it is an informal system under the Presidency's umbrella in which member states or the Commission are assigned a certain task on which they are assumed to have a particular skill. Second, as discussed in section 2, the rationale behind and the advantages of this system are similar in both cases: burden-sharing, expertise pooling, involving member states, and guaranteeing continuity. Third, the two case studies show that the selection and appointment of lead countries, lead negotiators and issue leaders follow a similar pattern. They are a combination of, on the one hand, the Presidency approaching aspirant member states and, on the other hand, interested member states informally lobbying the Presidency. Fourth, both instances of informal division of labour differ little with regard to the role of the Commission. If the Commission (or at least a Commission official) takes up the function of lead country, lead negotiator or issue leader, it carries out that function in a similar way as most member states (or member state

representatives) do. Hence, rather than the institutional background, the informally assigned task determines the policy-making behaviour of actors who take the lead in the EU. The competence question only seems to play a role in the selection process of lead countries for CSD, where it is common practice that the Commission takes the lead on topics with EU competences. Fifth, lead countries and issue leaders partly perform the same function in the EU's representation, as they assist the EU's spokesperson (the Presidency in CSD, the lead negotiators in climate negotiations). However, the lead countries' main task is the preparation of the EU position papers, while that is mainly taken up by the expert groups in the climate case.

However, there are also dissimilarities between the CSD and climate change system of informal division of labour. First and foremost, the nature of the assigned tasks differs. Whereas the preparation of the EU position is the main task of the lead countries in the CSD case, negotiating on behalf of the EU and supporting the EU negotiator are the main responsibilities of respectively the lead negotiator and the issue leaders in the climate change case. Second, the internal hierarchy in the national delegation is an important factor in understanding the informal division of labour on climate change negotiations, but this does not count for the CSD case. Whereas the function of lead negotiator is preserved for heads of delegation and issue leaders are usually rather junior experts, the function of lead country can be taken up irrespective the representative's position in the member state's hierarchy. Third, in the CSD case, the task of a lead country is assigned to a member state (although the impact of personalities may not be underestimated). On the contrary, in the climate case, issue leaders and lead negotiators are individuals and their national or institutional affiliation does not matter.

Notwithstanding the dissimilarities sketched above, the similar dynamics and processes in both cases strengthen the external validity of our finding that EU's external environmental policy-making is often characterized by an informal division of labour in the Council. It would be plausible to expect that the degree of politicization of the negotiations and the extent of informality in the policy-making process are inversely interlinked. Nevertheless, since an equally informal system is also applied in climate change negotiations, which are more politicized and salient than CSD negotiations, it is apparently not the case that informal arrangements in the Council only occur in policy domains that are not politicized. However, it is important to note that the system of informal division of labour only seems to work up to a critical point of politicization. Once negotiations reach a political level and are attended by ministers, such as the high-level sessions of

CSD meetings or climate COPs, the informal system of lead countries, lead negotiators and issue leaders fades away and is replaced by its more formal alternative, i.e. the Presidency being in charge. Behind that critical point of politicization, the involved actors seem to relapse into formal rules. That also explains why the informal division of labour discussed in this paper often remains a concealed and hidden phenomenon for non-insiders. However, as we demonstrated, it may not be overlooked when one aims to understand the EU's day-to-day external environmental policy-making and the way the EU behaves in international environmental negotiations.

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