

EUROPEAN STRUGGLES AND AMERICAN RESISTANCE:
INCLUSION OF AVIATION INTO THE EU ETS

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Abstract

This research examines the process of inclusion of aviation into the European Union Emissions Trading System (EU ETS). The thesis investigates an environmentally-recalcitrant community (aviation industry) and its attempts to suspend the application of the EU ETS on the sector. It focuses on the decision-making processes at the European Union (EU) level and juxtaposes the European policy-making with the resistance to inclusion shown in the political system of the United States (US). More specifically, it seeks to understand the factors affecting the effectiveness of efforts to forge effective international environmental policy, especially those driven by the EU in the context of climate change.

Theoretically, this research draws on three theories: Multi-level governance, Policy Network Analysis and Interpretive Policy Analysis. These theories are advanced by considering the meaning-making activities pursued by the stakeholders and discursive aspects of the process analysed. Empirically the thesis is informed by a series of semi-structured interviews conducted in Washington, DC in 2013 and in Brussels, Belgium in 2014, policy documents, and media content analysis.

The thesis concludes that the climate ambitions of the (EU) may instigate international resistance leading to deterioration of relations with international partners. The thesis proves too that the conflict in the EU ETS case is related to the construction of interests both within the EU and vis à vis its international partners. The research contributes also to understanding the internal proceedings of the European Commission by showing discrepancies in decision-making between the Directorate Generals. It shows that the locus of policy making can be changed towards more non-material venues. Finally, the results show that aviation enjoys a particularly powerful position among other businesses both in the EU and in the US and is able to shape policy-making at the national and international level.

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List of abbreviations

A4A	Airlines for America
ACES	American Clean Energy and Security Act
ACF	Advocacy Coalition Framework
ACI	Airports Council International
ACI-NA	Airports Council International – North America
AEA	Association of European Airlines
AEF	Aviation Environment Federation
AIA	Airspace Industries Association
ALPA	Air Line Pilots Association
APA	Allied Pilots Association
ATAA	Air Transport Association of America
ATAG	Air Transport Action Group
CAEE	Committee on Aircraft Engine Emissions
CAEP	Committee on Aviation Environmental Protection
CAQDAS	computer assisted qualitative data analysis software
CBDR	common but differentiated responsibilities
CBDRRC	common but differentiated responsibilities and respective capabilities
CDM	Clean Development Mechanism
COP	Conference of the Parties
CJEU	Court of Justice of the European Union
CO	carbon monoxide
CO ₂	carbon dioxide
CRS	Congressional Research Service
DG CLIMA	Directorate General Climate Action
DG MOVE	Directorate General Mobility and Transport
EC	European Commission
ECAC	European Civil Aviation Conference
EDF	Environmental Defense Fund
EEA	European Economic Area
EPA	Environmental Protection Agency

ET	Emissions Trading
EU	European Union
EU ETS	European Union Emissions Trading System
FAA	Federal Aviation Administration
FOIA	Freedom of Information Act
GAMA	General Aviation Manufacturers Association
GHG	greenhouse gas
GWP	Global Warming Potential
IATA	International Air Transport Association
ICAO	International Civil Aviation Organisation
ICSA	International Coalition for Sustainable Aviation
IMO	International Maritime Organization
IPA	interpretive policy analysis
IPCC	Intergovernmental Panel on Climate Change
JI	Joint Implementation
MEP	Member of the European Parliament
MLG	multi-level governance
NAP	National Allocation Plan
NBAA	National Business Aviation Association
NO _x	nitrogen oxides
NRDC	National Resources Defense Council
PNA	policy network analysis
RECLAIM	Regional Clean Air Incentives Market
RFI	Radiative Forcing Index
SO _x	sulphur oxides
T&A	Transport and Environment
TTIP	Transatlantic Trade and Investment Partnership
UNFCCC	United Nations Framework Convention on Climate Change
WWF	World Wide Fund for Nature

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1 Introduction

In the Western world, flying became a part of modern lifestyles and with the advent of low-fare airlines it is no longer considered a luxury. While using planes for leisure, business or even daily commute, travellers are not always aware of their climate impacts. Little did they also know that the European Union (EU)'s attempts to instigate international action to tackle aviation emissions could have grounded EU civil aviation in 2012. The Eyjafjallajökull eruption in 2010 gave an idea of what Europe with empty skies means, and a potential paralysis in 2012 could have been even more painful both for passengers and EU economies.

This thesis focuses however on the process that led to this potential crisis. It advances knowledge of the genesis and effects of ambitious political action aspiring to tackle carbon dioxide emissions from civil aircraft. It unpacks the complexity of contemporary governance. Furthermore, it offers a unique account of many voices and even more interests underlying current regulations aiming at reducing green house gas (GHG) emissions globally.

The interviewees that took part in this study always started telling their version of the EU's attempts to regulate aviation emissions with worried faces. This thesis unpacks the reasons for these concerns, with the objective to provide a balanced account of the events, but also challenge some of the theoretical premises of the way scholars look at governance of climate change.

This first chapter of the thesis aims at showing the rationale for conducting the study presented here and proposes the particular approach taken. It also introduces the case analysed and lists the research questions together with research objectives. Finally, it explains the structure of the thesis by offering short summaries of the following chapters.

1.1 Research rationale

The rationale for this research is based on its relevance for contemporary research themes around the contestation of policies and the pace of climate change. These can be divided into three themes that are further developed below: international aspects of policy-making in the area of environment, EU's policy endeavours and sectoral exceptionalism in regulation.

Social science research on the European Union (EU), has flourished in recent years and the study of the EU has become a mainstream endeavour among economists, sociologists, planners, political scientists, geographers and others. The environment, and more particularly climate, joined EU policy-making agendas only in the 1970s, after the 1972 Paris Summit. Through a subsequent adoption of the first Environmental Action Programme, the topic has quickly become one of the most dynamic areas of research on the EU. This trend has been to a large extent motivated by the environmental and climate policies requiring essential cooperation between the EU Member States and various levels of governance.

Another important aspect is that the environmental and climate policies can be highly contested by the policy process participants as they pertain to differing interest at national, regional and local levels as well as differing concerns between the industry sectors, consumers and environmental organisations. What is more, the regulatory issues regarding climate change go beyond EU borders. For example, some of the regulations and standards directly affect foreign companies doing business in Europe.

Lastly, the alarming pace of anthropogenic climate change makes research on the environment and climate vital, not only with respect to its causes and implications but also with regards to the political tools that can be implemented in order to challenge the continued growth of global GHG emissions levels. Finally, this thesis is a result of a long-standing interest of its author in aviation issues and academic fascination in the market-based measures addressing climate change.

By looking at the EU's climate policy initiatives one can examine various political phenomena that condition the functioning of the international climate arena. One can identify insights regarding the nature of venues where policymaking is effectively taking place and also ask why certain decisions are being made and other initiatives abandoned. While the literature gives prominence to investigating the importance of various parts of the EU institutional architecture and the Member States, the broader picture of the EU confronting global sectoral organisations and non-EU states is much less thoroughly analysed, which creates an important research gap. Secondly, only via a critical assessment of the actual implementation of the ideas can one systematically consider the European position in the climate debate globally.

One of the recent and highly debated ideas of the EU has been the European Union Emission Trading System (EU ETS), an initiative created to address climate

change through putting a cap on emissions of GHG from specified installations in selected industries and allowing carbon trading between the participating entities. The EU ETS is considered the main pillar of the EU's fight against climate change and a flagship climate initiative of the EU (European Commission 2015a; European Commission 2015c; Skjaereth & Wettestad 2008; Ellerman *et al.* 2014). This strong affirmation for flexible mechanisms, such as emissions trading, provided by the EU itself directs the researchers to analyse the scheme not only with regards to its functioning but also pushing the enquiry towards the political intricacies of the largest carbon trading mechanism in the world. As will be shown in the next chapter, a variety of research projects have examined the EU ETS from economic and legal perspectives, however approaching the topic from a governance perspective has to date received limited attention. The case offers to address the following puzzle – what explains the EU's capacity to successfully implement its allegedly model policy?

Analysing the political construction of the scheme through its institutional and organisational architecture provides an opportunity to examine governance as a theoretical framework. Climate policies have also been identified as fertile ground for theory-testing, especially in the multi-level governance realm (Schreurs & Tiberghien 2007; Zelli *et al.* 2010; Blok 2013). This means that for example, the capacities of individual actors present in the policy process can be assessed and the relations between them explored by providing in this thesis adequate space for non-state actors, which have been previously ignored in the literature. Furthermore, the examination can consider the exercise of authority that takes place outside of the usual jurisdictions (Rosenau 2000, p.172). The EU ETS has also been a fruitful arena for lobbyists and the level of interaction between the stakeholders has been extremely high in this file. This allows further examination of the governance frameworks that gives prominent space to industry – policy-makers' interaction in relation to climate policy.

These three research rationales are pursued through a case study of a specific period and sectoral context for policy implementation: the inclusion of aviation operations into the EU ETS. Although regulation of aviation emissions has been at the discretion of the International Civil Aviation Organization (ICAO), the EU - responding to what it saw as ICAO's idleness - decided to add this sector into the EU ETS in order to curb rapidly growing aviation emissions related to increased demand for flying. Given the hitherto special position of aviation within international governance regimes, this

appears a substantial policy change¹ of multilateral dimension as all civil flights departing from and landing at European airports were to be included in the scheme, no matter what the country of an aircraft's registration. Indeed, the EU's decision on inclusion can be seen as an attempt to limit the exceptional treatment of the sector. The case offers a compelling example to analyse the process of change in public policy at the international level and the resistance to it given the sector in question and spatio-political dimensions of the issue. It addresses then the puzzle of extraordinary power of the aviation sector that disabled the implementation of the EU ETS and the remarkable situation in which the EU has been confronted with multi-directional international resistance blocking its policy.

The EU's decision to include aviation activities into the EU ETS led to various political controversies, which unexpectedly for the EU, involved a large number of countries including the US, Russia, China, India and Brazil as well as other important political and business partners of the EU. The countries opposing the EU ETS answered to the inclusion with threats such as involving the World Trade Organisation, grounding EU aircraft abroad and imposing additional levies on EU airlines. In this way, the opposition managed to block the EU's leadership. Legal bills enabling the prohibition of participation in the EU ETS as approved by the decision-makers of the US, China or India gave little room for the EU to manoeuvre. The situation has been further aggravated by some EU Member States trying to protect their national aviation-related activities and the European Commission's internal issues surrounding leadership of the ETS file. In the background of the high politics, environmental non-governmental organisations (eNGOs) tried to support the EU, but often their lobbying capacities were surpassed by the aviation's business flair for putting pressure on decision-makers.

The context outlined above allows this thesis to explain various aspects of international regulation. The thesis thus looks beyond the European regulations concerning aviation CO₂ emissions and provides an insight into the reactions coming from the non-EU countries and negotiating over the shape of the international rules

¹The EU policy-makers started to think about abolishing kerosene exemption from taxing back in the 1990s. According to the Directive 92/81/EEC Member States were able to limit the exemptions for jet fuel. In 1996 the European Commission endorsed abolition of the exemption as soon as the international situation is formed in a way that non-EU countries could be included in the project (EC Cons Doc 11452/96, 19 November 1996). In 2003, according to Article 14(2) of 2003/96/EC Member States are allowed to limit the exemption "to international and intra-Community transport" or where the states "entered into a bilateral agreement with another Member State."

concerning aviation emissions. In this way, this thesis addresses the gap in the literature pertaining to sovereignty of states, states' authority and regulatory jurisdiction but also engages with literatures pertaining to leader – laggard dynamics in the climate realm (Andresen & Agrawala 2002; Knill *et al.* 2012). It also contributes to bridging the research gap between scholarship focusing on climate leadership within the EU and research on climate leadership globally.

Given that the most vocal and organised response to the inclusion of aviation into the EU ETS has come from the United States, this country receives careful consideration in this thesis. From the US, “The European Emissions Trading Scheme Prohibition Act of 2011” (US House of Representatives 2012b) marks a dramatic disagreement with the EU policy and creates an international precedent. By examining the US's responses to the inclusion of aviation into the EU ETS, the thesis is able to look into transatlantic relations, their dynamics and the EU's ability to influence a country that has been visibly reluctant to adopt binding global climate agreements (Schreurs *et al.* 2009b).

A further facet of the debate that is analysed here concerns the EU's inclusion of aviation into the EU ETS as a unilateral step that happened without obtaining third countries' consent. This lack of consent resulted in significant resistance mostly from the US with support from China, Russia, India and others. Opponents emphasised problems such as protection of their sovereignty, breaking of international law, the creation of substantial costs for third country customers, and trade distortions. All these were represented as severe threats for aviation operations at EU airports as well as for operations of EU-based airlines globally. The case allows the analysis of multiple understandings of climate policies by non-EU countries to be brought to bear on understanding of the construction of EU climate policy.

Furthermore, given the EU's failure to implement the EU ETS in its ambitious, broad scope, it is crucial to analyse the fate of attempts to include aviation in the ETS, given that the EU is often regarded as a “leader”, setting the pace for environmental and climate policies worldwide (Vogler & Stephan 2007; Oberthür & Roche Kelly 2008; Mehling *et al.* 2013; Oberthür 2009; Rayner & Jordan 2013; Schreurs & Tiberghien 2007).

Another important theme that this thesis addresses pertains to circumstances under which aviation happens to operate. The aviation industry offers an interesting case of a sector whose main features are high levels of mobility and, partly as a corollary,

exceptional treatment with regards to taxation. Aviation's regulatory framework encompasses conflicting mandates among national, international and global institutions regulating the sector (Staniland 2012). Furthermore, the sector is seen as having enjoyed privileges from the very start of civil aviation regulation (Havel & Sanchez, 2012, p. 355). The exceptional treatment within systems of fiscal regulation is exemplified by the following: international flights are VAT exempted; there is no charge duty on fuel according to Article 24 of the Chicago Convention and Air Service Agreements allowing for further bilateral tax exemptions on aviation-related goods and parts. Its regulation is harmonized through international treaties. The sector also features strong lobbying capacities and is regarded as powerful (Woll 2004). Also, regulation of international aviation happens mostly at the level of International Civil Aviation Organization, which has been formally positioned by UN institutions as an exclusive venue to deal with aviation regulation.

A further remarkable feature of the inclusion is that in the European context, policy-makers did not expect to face that much resistance. The European Commission officials would often be taken aback by the reactions of the third countries to the scheme. Consequently, examining the internal workings of the Commission as showcased in the thesis contribute to a better understanding of the dynamics on the European side.

To summarise, the focus of this thesis is driven by a number of important aspects of international and climate policy. Firstly, it examines the problem of lack of sectoral action for emissions reductions in aviation and a strong resistance of the sector to cave in and comply under the pressure of ambitious EU targets. Secondly, the thesis seeks to extend our understanding of the EU's ability to shape international regulations. Thirdly, it considers the political dimensions of the problem such as legitimacy, authority and power in a fluid context of multi-stakeholder and multi-venue interactions based on national interests, particular benefits for industries on one side and the common good on the other side.

1.2 Research questions

The circumstances presented above pose a case for investigating complex governance and control issues at the international level and provide the justification for the following research questions, as below:

1. What were the effects of the EU's attempt to include aviation in the ETS?
2. Who are the most prominent actors of the debate on inclusion?
3. Why were particular venues of policy processes regarding aviation emissions preferred?
4. Why do EU and non-EU countries differ on the shape of a global aviation emissions policy?
5. How are the policy differences between the US and the EU being resolved at the international level?

More specifically, the first research question aims to understand the EU's potential to influence international climate decision-making (Kilian & Elgström 2010; L. G. van Schaik 2013), and is addressed by reconstructing the full picture of the issues surrounding the inclusion of aviation into the scheme both in the EU and internationally. Thus, while focusing on opposition it invites further queries. Which key discourses, interests, and actors have brought the EU to this decision? Why were these rationales met antagonistically by the EU's key international partners? What have been the political rationales and consequences of the EU's attempt to include aviation in the EU ETS?

The second question examines the claims regarding aviation's privileged position (Kopsch 2012; Havel & Sanchez 2011a; Havel & Sanchez 2012) and contributes to assessing the feasibility of a global agreement for aviation emissions trading systems (Susskind & Ali 2014). Furthermore, it addresses a frequently asked question: what is the nature of relationships between the state and non-state organisations? (Keohane & Nye 1971; Keohane 1984; Biermann *et al.* 2010; Chan *et al.* 2015; Newell *et al.* 2012;

Arts *et al.* 2001; Willets 2001; Bieler *et al.* 2004). It also uncovers the relationships between the actors included in the debate, and investigates in depth the following issues: the role of sectoral organisations such as International Civil Aviation Organisation (ICAO) in the facilitation of aircraft emissions' governance, the regulatory capacities of such organisations and the interplay between the sectoral organisations and the EU initiatives targeting emissions. The third question gives special attention to the decision-making process *per se*. By unpacking it, the thesis answers why some decision-making venues are more important than others, why less formal venues gained importance and what the nature of the venues is (material versus non-material). It advances the venue shopping theory (Baumgartner 2007; True *et al.* 1999; Pralle 2003) as it not only asks which are the important venues but inquires further why and under what circumstances their importance increases. At the same time it expands the scant research on intra-European Commission proceedings (Delreux & Van den Brande 2013; Kassim 2013). By tracing venues and actors the thesis is able to contribute to wider debates: the effects of unilateral action on international bodies, the ability of a non-specialized actor to influence a highly technical sector, and the leverage of one actor to regulate the transnational conduct and behaviours of other states.

Questions 4 and 5 tackle a broader, international area of investigation. They pertain to assessing the feasibility of EU leadership(s) with regards to climate policies (Schreurs & Tiberghien 2007; Zito 2005; Skodvin & Andresen 2006; Gupta & Van der Grijp 2000; Christiansen & Wettestad 2003) and further contribute to understanding the role and construction of the interests the involved parties have had. Furthermore, by building on comparisons between policy networks (Marsh & Rhodes 1992) it confirms that the EU and the US have divergent approaches to their respective climate policies (Skjærseth *et al.* 2013; Schreurs & Tiberghien 2007; Schreurs *et al.* 2009a). While the US and the EU have decided to deal differently with issues such as commitments towards Kyoto Protocol targets, renewable energies or emissions trading, this thesis shows that the transatlantic division may be deeper than generally assessed and the EU ETS case poignantly documents that.

The questions pertaining to the interactions between the EU and non-EU countries resonate strongly with debates on the EU's environmental and climate leadership (Gupta & Van der Grijp 2000; Oberthür & Rabitz 2013). Investigating

leadership facilitates interpreting the EU's position internationally and the level of its regulatory ambitions. It also contributes to understanding the base of the EU's political power, and a series of subsidiary questions. Is it based on coercion and threats to achieve its results? Is the EU's leadership based on a voluntary followership (Lindenthal 2009)? Or is the EU leadership structural and simply utilizing its power resources (Young 1991)? The inclusion of aviation into the EU ETS offers a case where a policy envisaged as a domestic (intra-EU) tool, started to be perceived, by some non-EU countries, as of an external, international character infringing their sovereignty. This thesis contributes thus to comprehending the EU's position for future involvements with climate change policies at a global level but also the EU's external policy in general.

Pulling these threads together, *the overall aim of the thesis is to assist in understanding how aviation came to be included within the EU ETS and what were its consequences*. It looks at the change that the EU aspired to achieve with regard to aviation emissions regulation. The "change" here is understood broadly following Convery's thinking:

"change is a product of many forces, including: an enabling legislative and institutional context; an international context and sense of crisis that stimulates and supports action; an intellectual framework and experience that provides the animating idea and evidence to support action; effective political and bureaucratic leadership" (2009, p.392).

Drawing on interviews with policy-makers, industry representatives, policy experts and non-governmental organisations in Washington DC (US) and Brussels (EU) as well as document and media content analysis the thesis aspires to look at the issue from a perspective of different national stances.

The range of issues that are tackled in this thesis enable it to speak to a number of current scholarly debates. Firstly, it addresses the problem of climate policy-making both in Europe and the reactions to it in third countries whose industries may be affected by EU regulations. It contributes also to understanding of inter- and transnational policy-making while looking at the role of state versus industry, venues of policy-making and political support for market-based mechanisms. While employing a multi-level governance framework, the research also serves to uncover transnational policy networks, the strategies they use to influence decision-making and their dynamics.

On the other hand, this thesis also focuses on the one-sided leadership of the EU that calls for a global answer for the issue of emissions. The leadership brokered by the EU is based on exporting its rules, attempting to bypass multilateral negotiations and in this way incentivise non-EU countries' action. This in turn marks a new dynamic in the multi-level governance context showing how modification of behaviour of other states can be induced by extension of authority (Buenger 2013). The mobile nature of the activities in the aviation industry presents a case for exploring the spatial extension of power beyond governmental boundaries.

This thesis supplements the existing knowledge on the EU climate policy and provides novel insights into the process of creating, negotiating and implementing policies that reach (at least according to the understanding of some) beyond the EU's borders. It talks therefore to literatures concerning policy processes at the international level and dealing with a collective action problem as well as pertaining to certain authors' concerns about the extension of the EU's regulatory power (Lavenex 2014; Damro 2012).

By employing empirical data and a multi-angled theoretical perspective, this thesis responds to the proposed questions while giving special attention to the variety of actors present in the policy process, their interests and their interactions with each other. Additionally, the proposed framing of the questions guarantees reaching beyond the mere analysis of the process within the EU structures, but allows additional important actors to be involved. This is due to the global character of climate change and the regulatory architecture of international aviation, which is based on ICAO's primary role and consensual decision-making. This research considers thus states, industry, non-governmental and trans-governmental organisations as well as less formal venues of decision-making. Furthermore, this framing takes into account the theoretical underpinnings employed and provides space for analysis of the non-state actors' roles and their importance for shaping international emissions policies. In this way, it contributes to examining interdependence and decentralization (Bevir & Rhodes 2003). In a similar manner, it explores interactions between markets and political actors (Pierre 2000). This is done by offering an in-depth analysis of the case and by drawing on literatures concerning stakeholders' participation (Newell 2000). This thesis instead of analysing the various actors of the political scene separately advances the debate by examining all the stakeholders' networks at the same time. Furthermore, special

attention is given to venues of decision-making and by this governance theories are better sited in a tangible, institutional context (EU institutions, ICAO, national governments, sectoral organisations, non-governmental organisations). Finally, theoretical advancement is offered by an innovative approach to global environmental governance, which is supplemented by interpretive policy analysis and policy network analysis.

1.3 Structure of the thesis

Taking into account all the premises mentioned above and responding to the arguments outlined, the thesis sets out firstly to examine the literatures concerning the EU ETS and the policy-making in the European Union. The second chapter is thus tasked with introducing concepts relevant to emissions trading and also provides an introduction to the regulatory context of international aviation, which is important for the contextualization of inclusion. The latter part of the chapter outlines the main assumptions behind the inclusion, based on the EU regulations. As a whole, the chapter indicates the main shortcomings of the available studies and supplies a context for the analysed issues.

In chapter 3 the main theoretical discussion is presented. The key contribution of the chapter is based on proposing a new way of investigating governance: by involving interpretive policy analysis (IPA) and policy network analysis (PNA). Firstly, drawing on the scholarship of Marsh and Rhodes (Rhodes 2006; Rhodes & Marsh 1991; Marsh & Rhodes 1992), a brief account of development of both types of analysis is presented. The rationale of this new approach is based on interest in the wider context of governance in action. This is followed by the explanation of blending IPA and PNA. It is explained how multi-level governance succeeds in grasping a macro perspective while network analysis provides a robust framework for investigating stakeholders' relations and their institutionalised contexts. Additionally, the chapter draws from Yanow (2000) and Wagenaar (2011) to explain the importance of interpretive policy analysis for supplementing multi-level governance with examination of beliefs and meaning making practices, which are crucial if an effective answer to the research questions is to be provided. Lastly, this part gives consideration to the issue of power in the conducted research and answers the question of how power is situated in the governance context.

In chapter 4 the methodology is explained and justified. This chapter is focused on the two waves of fieldwork conducted in Brussels and Washington, DC that informed the research. It clarifies how a case study design has been employed to provide a multi-angle perspective and also to be able to answer the “how” and “why” questions. The chapter explains the interviewing process, from drafting the interview schedule through to approaching potential interviewees, conducting the interviews, transcribing them and finally analysing the interview data. It also explains how other data (policy documents, media content and grey literature) contributed to increasing the quality of the study. Equally importantly, it briefly discusses ethical issues pertaining to the research.

Chapter 5, the first analytical chapter offers answers to research questions 1 and 2. It provides an historical account of ICAO’s involvement with environment-related regulation and explains how the EU came to a decision to lead global efforts by denting ICAO’s primacy in aviation regulation. Not only does it draw from documents and policies, but also employs first-hand accounts and judgements from interviewees who either worked at ICAO or have been close to the ICAO decision-making processes. Additionally, the chapter addresses an important gap identified by the interviewees: the disagreements between different parts of the European Commission with regards to how the inclusion of aviation should proceed.

Chapter 6 focuses on US perceptions of the inclusion of aviation into the EU ETS and the US’s actions against the EU ETS, and hence draws mostly on data gathered in Washington DC. It continues answering research question 2 and starts answering research questions 3 and 4. It also responds to question 5. The chapter provides a unique blend of accounts provided by policy-makers, representatives of sectoral organisations and non-governmental organisations as well as policy think-tank representatives. It is argued that the EU ETS has been to a large extent interpreted as a political rather than a legal or economic issue for the US and sectoral organisations were able to employ sovereignty arguments to undermine the EU’s plan to extend its scheme. It is also shown how venue shopping has played a role in amplifying counter-ETS arguments. This theme is closely related to the EU and US having different approaches to ICAO’s position concerning aviation regulation.

Chapter 7 positions the debate on the EU ETS in the context of global environmental governance while focusing on opposition to the scheme coming from non-EU countries. It thus concludes the response to questions 2 and 4. The chapter

further unpacks the dynamics of a global policy of aviation emissions and provides accounts of non-material venues for international policy-making. While the attention of this chapter is directed towards states' actions, it does not neglect the sectoral organisations and influences of individual companies. By offering an in-depth analysis of aircraft manufacturer involvement with the case it contributes to understanding what types of leverage can be effectively used to promote certain policy solutions.

In chapter eight theoretical aspects of this research are examined by building on the empirical material presented in the whole thesis. It draws together discussions that were started in chapters 5, 6 and 7 and speaks to debates on EU's international position. It discusses also the mechanisms enabling effective stakeholder participation and considers how multi-level governance is able to contribute to understanding a change in policy that is regarded as controversial. In its final part chapter eight offers additional reflections on aviation's special regulatory position in the context of EU mobilities and global regulatory approaches for aviation's regulation.

Finally, chapter nine reflects on the results that the study brings. By providing concise answers to the research questions asked at the beginning of this thesis, this part summarizes the most important findings and once again connects them to the on-going scholarly debates. The thesis suggests a larger focus on policy learning process that the EU should consider. Secondly it proposes a more intense involvement of the European External Action Service in issues pertaining to international climate regulation. The chapter concludes with suggestions of research that can be built on the foundations laid in this thesis.

2 Literature Review and Contextualization

2.1 Introduction

The previous chapter has outlined the main issues this thesis is aspiring to tackle and the RQs it seeks to answer. This chapter offers more detailed contextual information regarding the problems presented in Chapter 1. It introduces existing knowledge and points at the gaps that are filled in the following chapters. It also aims at evaluating the existing scholarship in the field of EU studies, governance and more broadly, political science.

The chapter is divided into four sections. Firstly, emissions trading is analysed as a concept for mitigating climate change. In this part attention is also given to the Kyoto Protocol that introduced the flexible mechanisms on a global scale. The second section focuses on the EU ETS. It is considered with regards to its initiation, implementation and issues that it faced in the first years of operation.

The third section examines aviation from two distinct perspectives: as a GHG producing sector and as an internationally regulated area whose policy patterns have developed over the years. The existing research on environmental impacts of aviation is presented to elucidate the rationale for engaging market based solutions to the problem.

Finally, the fourth section offers a closer examination of the aviation regulation over the period between the production of the Chicago Convention in 1945 and the introduction of the EU ETS for aviation. This allows identification of the determinants of policy-making in the area and circumstances under which the sector is operating. These considerations direct the argument towards the issue of “exceptionalism” (see: Section 2.6) that is enjoyed by the sector and its consequences for global environmental regulations of aviation. Finally, the issue of policy change is considered.

2.2 Emissions trading

The problem of GHG emissions has been present internationally as early as at the United Nations World Summit in Rio de Janeiro in 1992. It was however only the Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC) that proposed binding emissions targets. These were supposed to be reached through

various initiatives² aiming at reducing the volumes of emissions released to the atmosphere, but it also offered so called flexible or market-based mechanisms³:

“Any Party included in Annex I may transfer to, or acquire from, any other such Party emission reduction units resulting from projects aimed at reducing anthropogenic emissions by sources or enhancing anthropogenic removals by sinks of greenhouse gases in any sector of the economy” (Kyoto Protocol Art. 6.1).

The Kyoto Protocol assumed that this idea could be implemented through three policy instruments: Clean Development Mechanism (CDM), Joint Implementation (JI) and Emissions Trading (ET). The Protocol has also outlined that these should be only supplemental to domestic actions (Art 6.1d), and should not form the only mitigation effort of the parties to the Convention. According to Grubb, Vrolijk and Brack (1999) the idea of emissions trading was an issue that almost killed, but saved the Protocol. It is hard to disagree with them, as the flexible mechanisms were at the centre of a heated debate in Kyoto and without them, the Protocol would have been much weaker. Simultaneously, they caused a heated debate and led to disagreements between the Parties to the Protocol.

The discussion on market based mechanisms animated within the Kyoto Protocol framework would not have been possible however without intellectual foundations laid well before the climate change issues were of interest for the international community. When looking at the origins of emissions trading, Convery (2009: p. 396) looks back to Pigou’s “The economics of welfare” (1920) seeing the underpinnings of emissions market in the idea of avoiding internalising external costs via extra taxes. Another work quoted when it comes to inspiration for emissions trading is “The Problem of Social Cost”, where it is claimed that property rights and elimination of transaction costs would allow more efficient use of environmental endowments (Coase 1960). These ideas were brought further by Crocker (1966) and Dales (1968), however they still did not propose a spatially fixed ETS and rather speculated on market-based possibilities.

²The Kyoto Protocol lists among them enhancement of energy efficiency, protection and enhancement of sinks and reservoirs of greenhouse gases not controlled by the Montreal Protocol, promotion of sustainable forms of agriculture, Research on, and promotion, development and increased use of, new and renewable forms of energy, of carbon dioxide sequestration technologies and of advanced and innovative environmentally sound technologies, reduction or phasing out of market imperfections, fiscal incentives, tax and duty exemptions and subsidies in all greenhouse gas emitting sector (Art. 2.1a)

³Keohane, Revesz and Stavins(1998, p.317) include in the term flexible mechanisms also taxes and revenue-neutral taxes, however in this thesis the definition refers to emissions trading.

Soon after, Montgomery (1972) advocated explicit and transferable property rights (the rights to release emissions), so that the allocation of permits is efficient and also independent from the initial allocation. These theoretical underpinnings allowed more concrete experiments with emissions trading in the 1970s that started in the US.

Emissions trading mechanisms are based on the assumption that providing economic incentives will result in a decrease in the volume of any given emitted substance. In principle, there is a total number of allowances issued by the authority running a given scheme and these allowances are later traded between the parties involved in the scheme. In a case that an involved entity cannot meet the targets given by the authorities operating the system, it is obliged to acquire permits, usually from emitters who were able to decrease their emissions below the pre-given target. This means that if the abatement costs were high, one industry would rather buy allowances from another industry whose abatements costs are low. In this way the environmental benefit can be realized at the lowest possible cost.

2.2.1 Benefits of flexible mechanisms

The rationales for ETS are centrally concerned with the merits and realization of economic efficiency. Policy-makers assume that by allowing heavily polluting sectors to surrender their emissions where it is more cost-efficient, they are able to incentivise reductions happening across a range of industries. It is argued that in this way reductions are made in the most cost-efficient way and also the costs for society are low (Hansjürgens 2005, p.3). What is more, the regulatory costs are presumably lower than in the case of control and command policies that usually are more cumbersome to implement and monitor (Baldwin 2008; Tietenberg 1996; Harrington & Morgerstern 2007). It has been also argued that emissions trading discourages litigation and in the case of controversies, it is fairly easy to deal with them in case they arise (Ackerman & Stewart 1985, p.1342). This is particularly important in the case of international policy-making and the EU context, where there is a visible turn towards more general principles, instead of precise rules that the Member States have to comply with.

Ackerman and Stewart (1985, p.1342) also consider that in the US context, emissions trading reduces bureaucratic burdens and costs for the federal government. It is also added that if examined from a total-cost perspective, emissions trading is less expensive than emission standards (Keohane *et al.* 1998, p.348). One can see how this

might have merits in the case of aviation, as emission standards could mean extremely high costs for less green airlines because they would have to update their entire fleets, or if the process was to be introduced in phases, they would need to consider a long fleet's life and thus implement carbon reductions with considerable delays.

Furthermore, the Stern Review⁴ has endorsed emissions trading as it gives an international price for emissions and via market interaction indicates the most cost-efficient location for abatement. Consequently they were called a “very powerful tool in the framework for addressing climate change at an international level” (Stern 2007, p.327). This is claimed to hold true also domestically, while choosing flexible mechanisms can yield political advantages – emissions trading is regularly believed to be more welcomed by the regulated entities than for example fuel tax (Baldwin 2008, p.196). In line with this argument, Ackerman and Stewart (1988) consider emissions trading as enhancing democratic bargaining because flexible mechanisms are more focused on the level of reductions that are to be achieved instead of discussing at length issues such as best available technology or how to set standards. At the same time however, it is argued that “emissions trading is not a system in which ‘market’ and ‘democratic’ checks and balances can be brought into line with any ease” (Baldwin 2008, p.209). Similarly, the technical complexity of designing, implementing and running the scheme has led to a situation in which the industry has managed to establish an extremely strong position in all three processes mentioned above (Bailey & Maresh 2009).

There is also an assumption that emissions trading allows making the value of reducing emissions apparent via putting a price tag on each tonne emitted (Vis 2006, p.48). This realization affects then the economic reasoning. As explained by Braun (2009, pp.470–471) “emitting greenhouse gases becomes part of economic calculations as a direct or as an opportunity cost”.

Finally, emissions trading is claimed to foster innovation in controlling air pollution as there is a direct link between abatement and cost-efficiency embodied in allowances that can be sold (Goulder *et al.* 1999; Ackerman & Stewart 1985; Stavins 2002). What is more, in the aviation sector it has been claimed that market based

⁴The Stern Review is a report commissioned by the British government and authored by Nicholas Stern, which examines the effects of climate change on economy. The report has become one of the beacons of discussion about the climate change / economy interaction. Its conclusions underline the need for early action on climate change and also advocate introducing a price on carbon.

mechanisms are “manifestly the more flexible and less burdensome alternatives” when compared with command and control tools (Havel & Sanchez, 2012, p. 376).

2.2.2 Challenges faced by the emissions trading concept

In the previous section, the advantages of emissions trading were presented, however the concept is not free from challenges and problems. These usually pertain to issues related to allocation of allowances (Butzengeiger & Michaelowa 2004; Svendsen 2005), which can easily translate to over-allocation, extremely low prices of carbon credits as well as windfall profits that participating companies are able to harness. The literature also suggests difficulties in revisions of once established schemes, claiming that emissions trading is a “cheap fix” that actually weakens endeavours addressing pollution especially if prices of allowances are low and companies would prefer to render small fees (often passed on to customers) rather than innovate (Driesen, 1998). In the same manner, instead of investing in often-expensive technological upgrades, highly polluting sectors can purchase their allowances where the upgrades are less cost-intensive. A similar argument is made by Lohmann who says: “why bother making expensive long term structural changes if you can meet your pollution rights from operators that can cut their carbon cheaply?” (2006b, p.18). Also the advocates of imposing standards use the argument concerning low-cost solutions against emissions trading. If a standard is imposed by authorities, the sectors covered by it need to comply with the limits regardless of the price hence environmental benefit is realized in spite of financial circumstances. The standards would also provide quicker results compared to trading.

Besides this, Hayward (2007) looking mostly at a nation-state level argues that the idea of treating emissions as alienable rights is ethically controversial and he maintains that there is a significant difference between carbon emission rights (understood as property rights) and other fundamental rights. Although he sees carbon emissions essentially needed for providing subsistence, he disagrees with granting them a human rights status since that would oppose the individual’s right to a healthy environment. In a similar way Lohmann stresses that “if there is not enough political pressure to reduce emissions in the first place, the result will be merely a gaming of the system and continual over-allocation of pollution rights. Carbon trading does not offer a

way around tough political decisions”(Lohmann 2006a, p.90), hence market mechanisms are politically vulnerable.

Contrary to the advocates of flexible mechanisms – opponents believe that emissions trading does not encourage innovation as effectively as command and control policies (Driesen 1998;2003;2007; Fischer 2005). They also claim that at times, the public debate about a market-based mechanism may last long and therefore delay implementation and possible reductions for years (Colby 2000, p.650). Furthermore, there are some scholars who give accounts of situations, in which after introducing emissions trading, the regulated entities would hold off from investments in infrastructure addressing emissions until they are certain of how the scheme will work and what the prices of allowances will be (Sullivan & Blyth 2006; Ben-David *et al.* 2000; Leiter *et al.* 2011). Under such scenarios the reductions would likely happen with great delays.

Another set of arguments against emissions trading come from the proponents of the environmental justice framework. This perspective focuses more on low-income as well as minority communities rather than on cost-efficiency of emissions abatement (Chinn, 1999; Hayward, 2007; Lam, 2012). Firstly, it is reported that its proponents believe that trading schemes can contribute to the creation of areas where air pollution is high, mostly with regards to nitrogen oxides (NO_x) and sulphur oxides (SO_x) emissions, affecting local communities (Solomon & Lee 2000). These areas can be created if “a high concentration of emissions credits [is] purchased in an ecologically sensitive area” (Solomon & Lee 2000, p.40). For example, in a case study of Los Angeles pollution market it is claimed that thanks to allowing emissions trading, marine terminals were able to release volatile organic compounds to the atmosphere while acquiring credits from initiatives addressing scrapping high-polluting vehicles (Chinn 1999). This meant however that the credits were gained from all over the region where the market was operating and the marine terminal emissions were affecting only certain communities residing in the plants’ neighbourhood. In this way, emissions trading remains blind to spatial distribution effects. On a global scale, these inequalities may translate into cheap allowances being generated in developing countries where monitoring and enforcing of the schemes is poor and then sold in the developed countries (Richman 2003).

Carbon trading has also been called “a form of modern-day colonialism” (Rising Tide, 2011) and Christian Aid UK has underlined that it can “defraud developing countries of their rights to use the global atmosphere” (Whittington 2009). Baldwin (2008) also presents a development perspective of Mehmet (2002) and Richman (2003) who explain that trading emissions often happens between wealthy and developing countries, which may lead to a situation where even though there is transfer of money towards the developing world, these countries bear costs in the form of lost opportunities. The polluters are then still able to maximize their profits on the cost of developing countries holding carbon allowances. Richman would maintain further that

“emissions trading may conflict with the post-Rio developed country leadership principle in several ways. Most obviously, it allows developed countries to claim that they are meeting their reductions obligations through trading and to ‘double count’ trades as both domestic reductions and assistance to developing countries” (2003, p.170).

It is through such colonial narratives, that the spatial reach of emissions trading systems has been challenged. As this thesis will go on to explain, the issue of spatial extension of the EU ETS raises a host of other governance issues too, which are rather less examined in the existing literature. These are related to overlapping spaces of authority between international organisations and nation states, spatial reach of the ICAO regulations or the reach of regulations issued by the states themselves. Furthermore, emissions trading especially if discussed in the context of the EU ETS calls for special attention to issues related to justice not only of the trading processes themselves, but also while drafting the rules. This relates to procedural justice (Tyler & Blader 2003) (i.e. providing fairness in the processes related for example to burden-sharing of the consequences of climate change) and participatory justice for example via community-based projects (Shepard 2002) as well as the importance of broad involvement in global decision-making. It has also been underlined that public participation is limited in the case of emission trading schemes as they are very much industry-centred (Kaswan, 2008; 2011). Finally, some authors draw attention to the ethical framework, which ensues the emissions trading concept while asking about the common but differentiated responsibilities principle with regards to the systems or by looking at how the raised finance is used (Light 2012; Caney 2010; Ott & Sachs 2002).

Another important issue that pertains to emissions trading is so called carbon leakage, which means that carbon-intensive activities can be relocated outside of the

territory that is covered by a given scheme (van Asselt & Brewer 2010; van Asselt & Biermann 2007; Levy & Newell 2005). This, in an obvious manner limits effectiveness of a scheme. Another result of carbon leakage can be the displacement of products made under stricter emission regimes by imported substitutes that are cheaper due to non-existent climate-related fees. Although these adverse consequences can be addressed by additional regulatory measures such as border adjustments for imported goods or mitigating the costs of compliance for the producers (Neuhoff 2008) they themselves have disadvantages. For example they create threats to energy security or internal energy markets (Kama 2014) and would require considerable cooperation and policy learning between regions (van Asselt & Brewer 2010).

The arguments pertaining to carbon leakage need to be also considered for investigating how carbon markets are arranged spatially. The only way of factoring in the spatial aspect of where the reductions are being made is based on the assumption of introducing carbon border measures. These can potentially mitigate effects of some countries having carbon policies whereas others having them in a rudimentary form or not at all (van Asselt & Brewer 2010). Although such a solution could in theory reduce the negative aspects of differentiated policies, they may be challenged by the World Trade Organisation regime as creating obstacles for free trade. Furthermore, it is also not entirely clear how various carbon mechanisms should interact with each other and if such interactions would not water down the regulations and decrease effectiveness. Linkage can create various issues and so far no substantial links have been created between major emissions trading schemes (Pustelnik 2013; Flachsland *et al.* 2008; Tuerk *et al.* 2009).

The debate concerning space and boundaries in the EU ETS has been reflected also within the EU. As some claim responding to the EU ETS meant a conflict: “negotiations on the scheme involved an intense struggle between the differing territorial logics of the European Commission, the member states and industry NSAs [non-state actors], with state and industry actors forming defensive-territorial ‘alliances’ that stressed ‘fairness’ in national and sectoral emissions allocations” (Bailey & Maresh 2009, p.447). These alliances negatively affect the level of ambition of the ETS and led to a situation, in which at the design stage, the Member States and industries have been creating coalitions that would advocate for “national territorial interests” (Bailey & Maresh 2009, p.452). What is more, these coalitions were able to influence the

territorial distribution of the EU ETS allowances (Smale *et al.* 2006) and in this way establish business-state alliances working against the legislation produced at the EU-level (Bailey & Maresh 2009, p.457). As it will be shown, the territorial interests played an important role in the EU ETS for aviation file while Member States tried to safeguard long-lasting alliances with the airlines based within their territories.

This section has reviewed the ways in which emissions trading systems are claimed to work, and different approaches and evaluations of the concept. The introduction allowed situating the issue analysed in a wider area of climate change mitigation strategies. This allows delving further into the details of the EU ETS itself. The next section gives a further overview of the mechanism.

2.3 The European Union Emissions Trading System

Once the emissions trading concept has been sketched, the thesis can continue with the presentation of the EU ETS. Between 1990 and 1997, the European Commission was mostly interested in exploring possibilities to introduce a carbon tax (Boasson & Wettestad 2013, p.1) and the ideas related to the carbon trading system had to wait for a more favourable period. Given that the preliminary proposals regarding a European carbon tax presented by the Commission (Commission of the European Communities 1992; Commission of the European Communities 1991) met with unprecedentedly fierce lobbying activities against the proposal (Skjaereth & Wettestad 2008; Svendsen 2005), quite soon it became obvious that the Commission's plans would not be realized. Opposition was coming both from the industry, worried about the potential costs related to the scheme, but also from the Member States who did not want to grant the EU an opportunity to decide about an EU-wide tax (Convery 2009, p.392). As a result, the EU had to decide on an alternative way of tackling the issue of excessive CO₂ emissions. The idea of carbon tax failed but the shape of the Kyoto Protocol directed the EU to look at the US experiences with emissions trading for other types of pollutants (mostly NO_x and SO_x), and later to consider implementing such market-based measures on European ground.

Paradoxically, the EU was drawing its own scheme looking at a country that did not ratify the Kyoto Protocol, even if the US's endorsement for emissions trading has been always evident. The EU did not however regard the US's lack of action internationally as a major issue. The Commission took advantage of the US experiences

with emissions trading design going back to the 1960s (Voß 2007; van Asselt 2010) and learnt from their successful implementation in the 1970s (Ellerman, Convery, & Harrison, 2003; Stavins, 2001). The US Acid Rain Program initiated with Clean Air Act Amendments in 1990 was a flagship initiative that aimed at reducing nitrogen oxide and sulphur oxide emissions (Environmental Protection Agency 2013). Another example is the Regional Clean Air Incentives Market (RECLAIM), which had a more regional scope and was the first regional emissions trading scheme (Harrison 1998). These two schemes received considerable academic attention (Hahn & Noll, 1990; Joskow, Schmalensee, & Bailey, 1998; Schmalensee, *et al.*, 1998; Stavins, 1995) and later inspired the EU when the EU ETS legislation was under construction.

At the beginning of 2000 the European Commission put forward a “Green Paper on greenhouse gas emissions trading within the European Union” with the aim of establishing an EU scheme for trading carbon (Commission of the European Communities 2000; Viguier 2001). The paper asked the following question: “Should there be a common emissions trading scheme within the European Community for certain sectors in the interest of fair competition, maximum transparency and legal certainty for companies?” Countries such as Norway (not an EU Member State though), United Kingdom and Denmark (probably the most disposed towards flexible mechanisms in the EU) that in some form were already experimenting with emissions trading domestically would answer positively to the idea. Also Sweden, France and Germany were interested in realizing Kyoto commitments through carbon trading (Ellerman 2000, p.12). However the German industry lobby was concerned about competitiveness issues related to carbon trading (Convery, 2009, p. 402). Initially the EU ETS was planned as a very centralized system with strong control from the European Commission and wide auctioning of allowances but the EU eventually yielded to the pressures coming from industry and Member States and limited its ambition (Boasson & Wetttestad 2013, p.54; Skjaereth & Wetttestad 2008).

In 1999 the Commission would consider the Kyoto mechanisms “fundamentally different from the way the European Community and its Member States have organised their environmental policy over the last decades” but would still encourage investigating them closer (European Commission 1999b). Shortly after, a threat for the binding commitments included in the Protocol was embodied by a spectacular failure of COP 6 that took place in 2000 in The Hague (Grubb & Yamin 2001). Later, in March 2001, the

US withdrew from the Kyoto Protocol but this step gave the EU another argument to push for a European emissions market to save the Kyoto regulations (Cass 2005). Following the US withdrawal and revival the Kyoto Protocol experienced through the Bonn Agreement⁵, the EU ratified the Protocol in May 2002 and encouraged other countries to follow its steps (European Commission 2002a). Without the US on board and with a weak response from the then EU Member States and EU candidate countries, the Kyoto Protocol would have become a major climate regulation failure. After the Canadian and Russian ratifications in 2002 of the Protocol, it entered into force in 2005 with its first commitment period set for 2008-2012⁶. The EU governments understood that an emissions trading system was needed in order to fulfil the obligations of the Protocol (Ellerman & Buchner 2007). The Kyoto Protocol together with disagreement for a EU-wide carbon tax can be considered the largest EU ETS catalysts (Braun 2009). The EU ETS provided then a platform for the EU Member States to further involve with the Kyoto Protocol flexible mechanisms (CDM, JI) since their allowances are considered compliance tools for the EU ETS.

As a result of the policy debate documented in great detail elsewhere (Skjaereth & Wettestad 2008; Delbeke 2006; Lefevere 2005; Egenhofer 2007) the EU ETS was established in 2005 and then quickly became a flagship of the European Union's Climate Action Programme. It is the first international cap-and-trade scheme in the world that operates at the company level. The EU ETS has been nicknamed "a parade horse" (Peeters & Deketelaere 2006, p.8), the "eight-hundred-pound gorilla" (Ghaleigh 2010, p.48) and "a political pet that the EU has aggressively implemented and promoted" (Parker & Karlsson 2010, p.930). Its pioneering role was visible not only through its size in terms of tonnes of carbon traded but also in terms of the sectoral scope of the project. Although at the beginning of its operation the "flagship seemed lost in the sea" (Boasson & Wettestad 2013, p.53), following the revisions introduced in 2008 many commentators believed it had made progress (Juergens *et al.* 2013; Wråke *et al.* 2012).

⁵ The Bonn Agreement has been reached in July 2001 and established operational rulebook for the 1997 Kyoto Protocol. In this way, the parties managed to come to an agreement on carbon sinks, compliance, concern of the developing countries, implementation of the Protocol's flexible mechanisms and further steps regarding the negotiations. The meeting in Bonn concluded the adjourned COP 6. The political will of the Bonn meeting has been later translated into concrete decisions during COP 7 in Marrakech, when Marrakech Accords were reached.

⁶ According to Article 25 of the Protocol it enters into force when "on the ninetieth day after the date on which not less than 55 Parties to the Convention, incorporating Parties included in Annex I which accounted in total for at least 55% of the total carbon dioxide emissions for 1990 of the Annex I countries, have deposited their instruments of ratification, acceptance, approval or accession".

Until 2008 the EU ETS included spatially-fixed plants generating heat and power, energy intensive industries such as oil refineries, steel works and production of iron, aluminium, metals, cement, lime, glass, ceramics, pulp, paper, cardboard, acids and several organic chemicals, which all together accounted for more than 45% of the EU's greenhouse gas emissions (European Commission 2013b). The principle rule of the EU ETS is the premise that it is a cap and trade mechanism based on both grandfathering and auctioning of the allowances. This means that the companies receive a part of the allowances for free and a certain share of credits is auctioned. In Phase III of the scheme (2013-2020) the Commission estimates that at least 48% of allowances will be auctioned (European Commission 2013b) compared with 10% in Phase II (Hepburn, *et al.*, 2006) and almost all allowances given for free in Phase I (2005-2007). What is more, the overall aim is to stop the free allocation no later than 2027 (Official Journal of the European Union, 2011). One exception has been established though: for aviation only 15% of allowances will be auctioned through the whole of Phase III and 85% will be given to the aircraft operators for free (European Commission 2013a).

From its very beginning the EU ETS has attracted a broad scholarly interest both in terms of its design and functioning as well as in terms of its economic dimensions. An important review of the research on the EU ETS can be found in works by Convery (2008) and Zhang and Wei (2010).

There are several approaches from which the EU ETS has been viewed in the existing literature: the structure of the system (allocations, decision-making, monitoring, implementation, etc.), the price of the allowances, issues related to the separate trading periods, competitiveness, and possible links between the EU ETS and other mechanisms.

The allocation process of the EU ETS has attracted greatest attention. This is related to the initial overallocation of allowances (McAllister 2009) and dramatic decline in carbon prices and consequently windfall profits of participating companies (Sijm *et al.* 2006). These profits, caused mostly by free allowances awarded to the industries, were gathered for example by the power producers, who increased prices by 12-27% compared with no emissions trading scenarios (Lise *et al.* 2010, p.42). They also estimate that the pass-through rates (costs of complying with the EU ETS) are between 70-90%, which indicates that both producers and end-pipe consumers are affected by the scheme (Lise *et al.* 2010, p.42). Buchner, Carraro and Ellerman (2006) look at the initial mechanism of allocating allowances. This picture is complemented by

Georgopoulou and colleagues (2006) who focus on the allocation issues that they were projecting in the second phase of EU ETS operation.

Through looking at credits distribution within the EU ETS one can also observe how separate Member States were dealing with this issue in their National Allocation Plans (NAPs) (Gilbert *et al.* 2004). With regards to this issue it has been claimed for example that the NAPs were important as they set the level of reductions and only by looking at them can the effectiveness of ETS as a policy tool can be evaluated (Soleille 2006). Even though there were problems with the number of allowances available on the market, there is consensus with regards to the success of the first trading period: the implementation was effective, no major technical issues arose, first changes in the energy production towards greener sources were observed (Anderson & Di Maria, 2011; Delarue, Voorspools, & D'Haeseleer, 2008; Ellerman & Buchner, 2008).

The experiences from allocating credits for stationary sources are crucial for more advanced analysis of the EU ETS for aviation, whose dynamics are inherently different as aviation receives a separate cap, however aircraft operators can buy credits from fixed installations to cover their needs, but not the other way around. This solution was enabled also because of the reform of EU ETS design: from 2009 there is only one central ETS registry (that includes aircraft operators) controlled by the Commission instead of NAPs and the member states' role was decreased to liaising in opening accounts in the central registry.

While allocation issues with regards to the energy industry received considerable academic attention, much less has been said about this problem with regards to aviation. Malina and colleagues (2012) look at this issue from the perspective of the US carriers claiming that the windfall profits these carriers may receive can be considerable. Elsewhere a stimulation model was employed to estimate these profits for Lufthansa, a German airline operator (Vespermann & Wittmer 2011).

Another frequently discussed feature of the EU ETS was the aforementioned fluctuation of prices that at some point in 2007 came close to zero (Zhang & Wei, 2010: p.1807). The volatility of the prices has been an issue mainly for power plants whose investment plans are usually long-term (Convery & Redmond, 2007). The value of the credits has been central also to several other analyses (Convery & Redmond, 2007; Creti, Jouvét, & Mignon, 2012; Hintermann, 2010).

Convincing arguments have been presented with regards to the process of learning from “practising” the ETS (Betz & Sato 2006; Zhang & Wei 2010). This strand of research answers the EU’s pledge that implementation of the EU ETS is still a learning-by-doing process. Interestingly, the case of inclusion of aviation in the EU ETS is not viewed as another “practice” but it is looked at separately. It is worth noting that no other country or group of countries was trying to implement such a system, therefore the EU has been obviously experimenting while producing the EU ETS framework.

The more recent criticism of the EU ETS was even suggesting that the system was a failure to the extent that it should be terminated as the reductions achieved are low, the scheme was not immune to frauds and carbon leakage was not prevented (Branger *et al.* 2015). Some also argued that the abatement achieved by the EU in 2005-2012 was mostly caused by the economic crisis instead of effective carbon policy. In spite of these criticisms expressed from the very institution of the EU ETS, the EU has developed its scheme dynamically and in the EU’s Roadmap for moving to a competitive low carbon economy in 2050 the scheme was considered “critical in driving a wide range of low carbon technologies into the market, so that the power sector itself can adapt its investment and operational strategies to changing energy prices and technology” (European Commission 2011b). However, this issue has not been brought to any closer investigation with regards to aviation.

It may seem that the critique of the EU ETS and emissions trading in general is substantial and designating it as a tool to tackle CO₂ emissions in the EU is not adequate. However, there have been various steps taken by the legislators to mitigate the issues stated above. For example, from 2008 on the European emissions market stabilized thanks to increased liquidity and transparency as well as larger participation (new EU Members as well as Norway, Lichtenstein and Iceland joining from the Phase II (2008-2012) on (Sanin *et al.* 2015). In order to facilitate the running of the scheme, the National Allocation Plans were phased out and replaced with a EU-wide registry (Newell *et al.* 2013). The EU, answering to the criticism concerning grandfathering decided to sharply increase the number of auctioned allowances and decrease those given for free. This however causes issues related to carbon leakage as the manufacturers may suffer from unfair competition based outside of the EU. At the same time the exemptions offered to the industries particularly exposed to competition may undermine the effectiveness of the scheme (Martin *et al.* 2014) Additionally, to increase the prices of allowances, in the

Phase III, the Commission managed to backload (postpone auctioning) 900 mln allowances until 2019-2020 in order to address oversupply in the market (Official Journal of the European Union 2014). Also, the Commission implemented new rules in order to boost integrity of the scheme and safeguard from manipulations pertaining to "recycling" allowances and value-added tax differences in the EU Member States (Newell *et al.* 2013). Finally, the Commission believes that the stakeholder input has been taken into greater consideration for the future of the scheme thanks to both events and written consultations (European Commission 2015b).

For all the criticisms, the EU's activities within the sphere of greenhouse gas regulation have been seen as highly significant. It has been argued that the mechanism itself is an important form of international institutional entrepreneurship (Boasson & Wettestad 2013, p.76). Furthermore, it is explained that the developments within the climate regime (Kyoto Protocol, US failure in leading international climate policies, development of regional carbon trading schemes) strengthened the EU's policy decision regarding initiation of its ETS (Boasson & Wettestad 2013, p.76). It has also been viewed as concomitant of the institutional proclivity to favour multi-level governance structures within the EU, and at the same time consistent with the global regime's endorsement of emissions trading schemes (Boasson & Wettestad 2013).

2.4 Aviation, climate change and the EU ETS

With the framework for emissions trading and the EU ETS outlined, the thesis now proceeds to its main focus: the inclusion of aviation in the EU ETS. Firstly, attention is given to the impacts of the airline industry on the environment and legal regulations with respect to this sector, concluding with a review of literature on inclusion per se.

2.4.1 Impacts of aviation on climate change

The ecological sustainability of air travel has been questioned many times (Gudmundsson & Höjer 1996; Goetz & Graham 2004; Chapman 2007) and aviation is considered a threat to reaching international GHG reductions commitments (Macintosh & Wallace 2009). Apart from the GHG emissions, aviation's environmental impacts such as noise or water pollution have become increasingly important (Mahashabde *et al.*, 2011: p. 16) and they still constitute an acute environmental problem. There are various studies that aggregate the environmental impacts of aviation looking at air, water and

noise pollution as well as climate impacts (Lee *et al.*, 2010; Mahashabde *et al.*, 2011) or separately look at CO₂ emissions (Vespermann & Wald 2011; Morrell 2009; Hileman *et al.* 2013). The Intergovernmental Panel on Climate Change (IPCC) also points out that non-CO₂ emissions double or even quadruple aviation's impact on climate (Metz *et al.* 2007). Also, the aforementioned substances are released at high altitudes, thus they impact differently than if released on the surface (Chapman 2007; Frömming *et al.* 2012) and may possibly affect the climate through contributing to the formation of contrails and cirrus clouds (Marquart *et al.* 2003; Stubenrauch & Schumann 2005; Carleton & Travis 2013; Zerefos *et al.* 2003), This thesis deals however with CO₂ emissions from aviation, the other effects will be referred to only briefly. Nonetheless, it is important to remember that when burning jet fuel an airplane's engine produces several environment-affecting substances. These include nitrogen oxides, hydrogen oxides, water vapour, soot and particulates as listed by a supplementary report to the IPCC proceedings (Penner *et al.*, 1999). More detailed evidence of processes that take place in atmosphere and troposphere can be found elsewhere (Azar & Johansson 2012; Wild *et al.* 2001; Unger 2011).

As far as climate change is concerned, the substance that is central in the debate is CO₂. Aviation itself is responsible for approximately 2-2.5% total CO₂ emissions globally (Lee *et al.*, 2009) and 13% of all GHG emissions related to transportation (European Commission 2005). The growth trend is continuous, according to estimates aviation emissions will increase by 230% to 667% by 2050 (Runge-Metzger 2011). In 2006 aviation emissions amounted to 630 Mtonnes CO₂ where 62% of the volume was produced by international aviation and 38% by domestic operations (Lee, Lim, & Owen, 2013). According to the data reported by the Annex I countries to the UNFCCC, the European Union accounted for more than a half of international aviation emissions (European Commission 2005a, p.5).

Even though it may seem that there is an abundance of research on the environmental and climate impacts of aviation, various aspects of this issue are perceived as being not fully understood. The controversies include accuracy of the measurements and precision of estimates. In 2004 the US Congress was alerted by a group of scientists that “the topic of greatest uncertainty and contention is the climate change impact of aircraft” (Waitz, *et al.*, 2004, p. 18). At the same time, some argue that “there are tantalizing hints of possible aviation impacts on climate and climate trends”

(Carleton & Travis 2013, p.422). The lack of certainty has been raised recently with regards to radiative forcing and atmosphere chemistry related to it (Holmes *et al.* 2011; Wuebbles *et al.* 2010) and with regards to uncertainties in short-lived effects from aviation (Dorbian *et al.* 2011). More recently, there have been also voices asserting that the use of the Radiative Forcing Index (RFI), which combines the non-CO₂ impacts of aviation, should be abandoned for a more comprehensive Global Warming Potential (GWP) index (Airport Watch 2015). These uncertainties apply also to the measurement of the level of emissions from the aircraft's engine: there are large differences between emissions from an airborne plane and a taxiing one.

As far as one can be quite certain of airborne emissions, when it comes to those produced on ground there is much less precision in estimates (Garcia-Naranjo & Wilson 2005). Similarly, it is known that the formation of clouds is related to aviation activities, however it is not certain how these contribute to a larger radiative impact of aviation (Lee *et al.* 2009). Scientists struggle even with assessing the thickness of contrails, which is crucial for further estimates of their climate impact (Lee *et al.* 2010; Meyer *et al.* 2002). These uncertainties have been important enough to deter policy-makers from attempts to introduce emissions trading for substances other than CO₂ (Unger 2011, p.5).

2.4.2 International regulation of aviation emissions

Considering historical policies regarding aviation allows for a better understanding of the complex circumstances of regulating this sector. Historically aviation has been treated separately in trade treaties (Havel & Sanchez, 2011b) and has enjoyed exceptional treatment from the IPCC that decided not to include international aviation activities in the Kyoto Protocol (United Nations 1997).

The regulation of aviation in general has been shaped via agreements of a bilateral character, which are remnants of post-war arrangements still visible today. This bilateralism concerns not only relations between countries but also relations between countries and airlines registered with their governments. For example, the US was powerful because of the technological advancement of its aviation industry, however its potential was locked due to British (mostly) resistance to letting Americans access their bases for refuelling and British airports as final destinations (Taneja 1980). While drafting the Convention on International Civil Aviation, which is considered the

main treaty regulating international aviation, governments were very much focused on absolute sovereignty (this means that a state is entitled to regulate entry and operation of both domestic and international flights within its airspace that overlies a country's territories and waters) over their airspace but they were at the same hoping that the signatories of the document would grant access to airspace to other signatories (Button & Stough 2000c, p.135). The optimistic vision has not been realized and the world of aviation started to operate on the basis of bilateral agreements. These had repercussions regarding how the airlines were operating: what were their routes, passenger capacities, where would they pay for the kerosene burnt, which is crucial while fuel constitutes 25-40% of all the costs that airlines bear (Fitzgerald 2011, p.215). Obviously, with technological advancements, the state of affairs has changed but the bilateral character of agreements prevails until today.

Although the US, then an aviation giant, was trying to establish a minimally regulated regime for the international air transport back in the 1940s its endeavours failed (Taneja 1980, p.19). The American idea was based on liberalization principles that would make aviation work as any other sector of economic activity. This perspective has however been confronted internationally. The international community felt safer about retaining a possibility to negotiate rules separately with nation-states instead of having an established international framework of aviation rules. This resulted in a largely piecemeal approach. One of the first examples was the Bermuda Agreement between Great Britain and the US in 1946 (Library of Congress 1965)– it set a precedent for the bilateral regulation of landing and passage rights. Notwithstanding the fact that the system of bilateral agreements seemed to work quite smoothly at the beginning the development of new routes made the network of bilateral agreements highly complex. This became very visible when the EU started to think about the inclusion of aviation into the EU ETS. It is claimed that with regards to the problem of aviation emissions the bilateral character of the regulations makes it virtually impossible to set national emissions caps/targets. The consequences of such steps would be an unsettling of the web of agreements between the countries. If they decided to look for different ways of achieving reductions in emissions, the piecemeal approach could even hamper air traffic (Miller 1998, p.727).

As explained by Doganis (2001, p.19): “while each country and government tightly controlled its own domestic air services, the traditional regulatory framework

affecting international air transport operations was based essentially on bilateralism and emerged in the aftermath of the Second World War". The emergence of this kind of system was founded on the Convention on International Civil Aviation, commonly known as the Chicago Convention (ICAO 2006a), which delineated the foundations of today's aviation regulations. The Convention drafted by 54 participants of the Chicago meeting has been ratified by 190 countries so far, which makes it a truly universal framework for aviation activities. Its main aim was to create consistent post-war regulation for the sector (Miller 1998, p.706). Furthermore, the Convention's cornerstone were the freedoms of the air – rights that become valid once embedded in bi- or multilateral agreements between countries (ICAO 2004b). These freedoms include both transit (refuelling and transit over territory) and traffic rights (rules regarding carriers operating outside their country of registration, cabotage). The Convention also created ICAO.

It must be underlined however, that even if these still seem today to be a perfectly accurate framework, there have been voices claiming that the Chicago Convention has become out-dated and does not embrace the whole complexity of aviation in the 21st century (Havel & Sanchez 2011a). In addition, the Convention did not include economic rights between the countries leaving space for further bi- and multilateral negotiations and agreements. Furthermore, it was underlined that the Convention restrains full globalization of the aviation market and its further liberalization for example by allowing cabotage.

While a general introduction to ICAO is provided below, the importance of the organisation for the analysed case will be explained further in Chapter 5. In terms of a forum for discussion, the shape of the aforementioned post-war regulations gave a monopolistic position to ICAO, which is a United Nations agency established "to promote the safe and orderly development of international civil aviation throughout the world" (ICAO 2013). In the context of thousands of bilateral agreements, ICAO remains the only venue for global aviation issues, such as climate change. What is more, the Kyoto Protocol has indicated that ICAO is the organization best placed to deal with aviation emissions:

"The Parties included in Annex I shall pursue limitation or reductions of emissions of greenhouse gases not controlled by the Montreal Protocol from aviation and marine bunker fuels, working through the International Civil

Aviation Organization and the International Maritime Organization, respectively” (United Nations, 1997).

A similar statement was placed in the Revised 1996 Guidelines for National Greenhouse Gas Inventories of the IPCC: “emissions based upon fuel sold to ships or aircraft engaged in international transport, should not be in national totals, but reported separately” (United Nations 1999). More recently, in 2011 the same opinion concerning separate reporting has been reiterated by the ad hoc working group investigating a long-term cooperative action under the Convention (United Nations 2011). Its members urged ICAO “to continue without delay their activities for the development of policy approaches and measures to limit and reduce greenhouse gas emissions” (United Nations 2011). It has been claimed however, that the “ICAO does not have exclusive stewardship” (Havel & Sanchez, 2012, p. 358) with regards to regulating standards for reducing emissions from the sector and therefore other entities should be allowed to tackle that issue outside of the ICAO framework.

The Chicago Convention does not set emissions standards for CO₂. Annex 16 to the Convention, in a limited way refers to engine standards in respect of hydrocarbons, carbon monoxide (CO) and NO_x released to the atmosphere by aircraft. Regardless of this gap, ICAO became interested in tackling the problem of emissions as early as the 1970s. At the time of the UN Conference on Human Environment of 1972, ICAO maintained that

“in fulfilling this role ICAO is conscious of the adverse environmental impact that may be related to aircraft activity and its responsibility and that of its member states to achieve maximum compatibility between the safe and orderly development of civil aviation and the quality of human environment” (ICAO, 1972).

Five years later, in 1977 the Committee on Aircraft Engine Emissions (CAEE) was established at ICAO, which was the first step to formally looking at the problem within ICAO. The Committee’s efforts led to the elaboration of aircraft emissions standards. Shortly afterwards, in 1983, CAEE was replaced by the Committee on Aviation Environmental Protection (CAEP), which comprises 23 member countries and 16 observers (the EU among them). In 1999 the Committee endorsed “development, dissemination and, to the maximum practical extent, use of the best operating practices to achieve near term reductions in aircraft [GHG] emissions” (ICAO 2006b), which was

welcomed by a European Commission that expected further work on ICAO's side (European Commission 1999a).

This process however was not as quick and efficient as many had expected. In 2004 ICAO Resolution 35-5 endorsed emissions trading as a tool to mitigate CO₂ emissions from aviation and requested the ICAO Council to work on that issue in two ways: by looking at the development of a voluntary trading system proposed by the Contracting States or international organizations (ICAO 2004a). If the second option were agreed on, ICAO would be responsible for developing guidance for the Contracting States (ICAO 2004a).

The following Assembly in 2007 still kept emissions trading as a priority and saw it as "a major tool" to be used in order to control emissions (ICAO 2007). During that meeting a formula of participation in a global market-based measure containing an element of mutual consent was developed. The EU Member States placed reservations on that solution however, which basically made the proposal void (ICAO 2007a). Also a group was created to propose "an aggressive Programme of Action on International Aviation and Climate Change, based upon consensus" (ICAO 2007). Visibly, ICAO has been addressing the issue, however this was with no tangible effect on the airlines, no realization of goals has happened and progress was characterized mainly by its slow pace (Mehling & Haites 2009).

More importantly, the ICAO resolutions are not binding for the Contracting States and were called "bloodless soft law" (Havel & Sanchez, 2012, p. 359). No matter how much work can be done via ICAO-based groups, the results must be transposed by the Contracting States as, formally, ICAO does not have the capacity to promulgate international aviation law (Havel & Sanchez, 2011b, p. 9). There are two solutions to that problem that can be argued: "a big bang argument" – a multistate treaty on aviation emissions, or a change introduced incrementally by a coalition of countries of similar mind-set (Havel & Sanchez, 2012; p. 372). The main issue with this reasoning however is that competing interests and a powerful industry are likely to block or at least postpone indefinitely such proposals. The infeasibility of the second approach proposed became visible when the EU, which actually in this case is a group of like-minded countries, began trying to expand the EU ETS to non-EU carriers.

2.4.3 Aviation in the EU ETS

The EU had become dissatisfied with progress at ICAO in 2005 when it pointed out that “as recognized in the policy statements agreed by all its Contracting States it is not realistic to expect ICAO to take global decisions on uniform, specific measures to be implemented by all nations” (European Commission 2005) and came to the conclusion that pace needed to be accelerated (for further analysis see Section 5.4). In relation to this, the EU committed itself to treat aviation as another sector to be included in its emissions trading scheme. In this way the EU bypassed the need to create a separate system and avoid larger international negotiations on its shape. When the Commission was proposing the inclusion of aviation into the EU ETS it had strong arguments in hand. The growth of aviation emissions and air traffic in Europe was exponential: between 1990 and 2006 GHG emissions from both intra-European and intercontinental flights increased by 87% (Europa 2006). The situation looked even worse if only flights within the EU are taken into consideration: there, aviation emissions grew by 748% between 1972 and 2002 (Holden, 2007, p. 172). These two features, coupled with 58% more fuel burnt annually by civil aviation in 2000 compared with 1990 (European Commission 2003), could have helped persuade the Commission that steps needed to be taken in order to address this problem.

The principle of the Directive 2008/101/EC, later called the Aviation Directive (Official Journal of the European Union 2008), which formally establishes the principle for including aviation within the ETS is based on the assumption that an aircraft is a mobile source of CO₂ emissions⁷. The inclusion comprised all the planes landing at and departing from EU airports. In practice this meant that also the airlines that are registered outside of the EU needed to comply with the scheme and surrender allowances (Official Journal of the European Union 2008). This decision can be considered a continuation of EU climate change contingent unilateralism, a situation in which one entity aims at regulating emissions produced outside the territory of the EU and on the other hand it remains at the EU’s discretion to exempt third countries from complying if they applied similar solutions (Scott & Rajamani 2012, p.469).

Although the EU believes that the best solution would be a global agreement, it still decided to include aviation as the EU ETS “may serve as a model for the use of

⁷In the Directive the word “installations” was changed to activities in order to broaden the scope of the EU ETS.

emissions trading worldwide” (Official Journal of the European Union 2008). Further, it underlines that the EU and its Member States should continue efforts to reach a global agreement and hence project their leadership in the case.

The EU decided to set a cap on emissions from international aviation taking as a baseline the period 2004-2006, which is different than the standard ETS baseline of 1990. This change was motivated by a rapid growth of the aviation sector in recent years. The Directive assumed that 85% of the allowances would be given for free in the first trading period and later the percentage would be lowered to 82% in the second period. When it comes to the reductions of emissions, the system works the same for aviation as for any other sector in the ETS – to satisfy the EU requirements airlines should either implement technologies to decrease their overall CO₂ production or buy allowances from other sectors, CDM projects or Joint Implementation. The third way would be to decrease the number of flights to and from the EU.

In case of non-compliance of aircraft operators, the EU can fine them with a 100€ penalty per missing tonne emitted on top of the obligation to procure and surrender allowances. What is more, if the failure to submit allowances continues the country where the carrier is registered⁸ “may request the Commission to decide on the imposition of an operating ban on the aircraft operator concerned” (Official Journal of the European Union, 2008).

The Directive also provides several exemptions, among them exclusion of operators who provide fewer than 243 flights per period for three consecutive four-month periods or with total annual emissions lower than 10 000 tonnes of CO₂ per year, and military flights⁹. One more exemption is granted for countries that took “equivalent measures”, i.e. covered aviation with their domestic emission trading systems. If the EU ETS for aviation had not been suspended it would have included carriers from 62 countries (Motaal 2012, p.11).

The European Commission estimated that if all these provisions were taken into account and countries complied with the scheme it would bring savings as high as 183 million tonnes of CO₂ by 2020, which is a reduction of 46% when compared with ‘business as usual’ (European Commission 2011). These estimates can easily change

⁸Aircraft of a particular airline landing in the EU need to be registered in one of the EU member states.

⁹ The full list of excluded types of flights can be found in the annex to the Directive.

though as the number of credits allocated to airlines can be revised by the Commission from 2015 onwards (Malina *et al.* 2012).

To conclude, it merits mentioning that there has been plenty of scholarly attention given to the inclusion of aviation in the EU ETS *per se*. This academic interest mostly pertains to the issue of wider EU transport and aviation policy. At this point, only one argument concerning the cohesion of EU climate policy will be raised. Fitzgerald (2011) claims that the European Commission is inconsistent in its policies concerning transportation. Instead of strongly promoting the virtually emission-neutral high-speed railway that caused the Member States substantial costs, it allows its regions to subsidize low-cost airlines. This in turn often may lead to stimulation of demand for unnecessary air travel. Although the exact costs of environmental impacts of aviation are difficult to estimate (Vespermann & Wittmer 2011), it is agreed that the low prices of tickets do not reflect these environmental footprints (Chapman, 2007), especially given the preferential position that the cheap airlines are being provided at regional European airports (Fitzgerald 2011). The next section will investigate the issue of the special position of aviation industry.

2.4.4 Exceptionalism in aviation policy and regulation: origins, path dependency and retrenchment

The previous sections have hinted that aviation has been enjoying a special treatment both in international and domestic realms. Its impacts on climate change are significant, however until the EU decided to include the sector in the EU ETS there was no international answer to this problem that would compel airlines to limit or offset their emissions aggressively. Visibly, aviation interests remain strong enough to keep their privileged position. Alternatively, it has been considered a special sector of the economy that should be kept under umbrellas of national support and defended from any kind of additional costs.

This comfortable position can, in theoretical terms, be viewed as a certain kind of path dependency (Peters *et al.* 2005; Pierson 2000). The literature on path dependency would claim that even if circumstances have changed, the policies might remain persistent and not adjust accordingly. In the analysed case, the dependency was related to the framework of the Chicago Convention and the exclusive sovereignty of the country over its airspace, which has been challenged by the EU, who questioned the

aviation *status quo*. On the other side, Krasner claims that once a decision has been taken to change the path it is very difficult to return to the original policy (1984, p.225). Elsewhere the situation has been explained as the joint decision trap – a situation in which a large number of decision-makers cannot agree on a particular policy solution (Peterson & Bomberg 1999, p.19). Perhaps the most comprehensive explanation of the emergence of the EU ETS is offered by Convery who claims:

“change is a product of many forces, including: an enabling legislative and institutional context; an international context and sense of crisis that stimulates and supports action; an intellectual framework and experience that provides the animating idea and evidence to support action; effective political and bureaucratic leadership” (2009, p.392).

Indeed, in the case of the EU ETS, “an economic-political hybrid” (van Asselt 2010, p.140), many actors were engaged to launch and develop the project, however given the international scope of the inclusion of aviation and the step being perceived as unilateral (Leggett *et al.* 2012; Motaal 2012), this case can be viewed as a dramatic policy change with implications for non-EU countries. The circumstances of aviation (more examples from the US context are offered in Section 6.2) provide an example where competing regulations or their visions and the tensions between them (Feindt & Flynn 2009) (for example ICAO *vis à vis* EU) are driving policy change.

How is this change situated on a larger canvas? Policies addressing global environmental problems appear to be more complicated for policy analysis than is the case for national issues (Evans 2012). It seems that given the interaction between states, international organizations, industry as well as NGOs (as the analysis will show) and a diffusion of the problem, the most promising framework for understanding the boundaries of aviation emissions regulation is a multi-level governance framework. Environmental governance is understood here as “the use of institutionalized power to shape environmental processes and outcomes” (Lemos & Agrawal 2009, p.71), which relates strongly to international environmental politics.

Similarly as in the sphere of regulation, the inclusion of aviation has however remained outside the mainstream literature concerning global environmental governance, which in the area of climate change would focus on more energy-consuming sectors such as energy production or on emissions trading in general (Voß 2007). The inclusion of aviation has been looked at systematically from a legal point of view (Bogojević 2013; Kulovesi 2011; Bartels 2012; Bogojević 2012; Meltzer 2012; Ghaleigh

2009; Denza 2012; Hertogen 2012; Hartmann 2013; Mullen 2013; Romera & van Asselt 2015) and also its international dimension would be seen mostly in legal or economic terms (Staniland 2012; de Paula Domingos 2012; Reagan 2008) or as a possible preparation for including shipping into the EU ETS (Ringbom 2011). What is more, the legal analyses are usually limited to the Air Transport Association of America filing a case to the High Court asked the Court of Justice of the European Union (CJEU) to determine if the Aviation Directive was valid. The mentioned articles would focus exclusively on the “legality” rather than on how legislation fits within more comprehensive governance patterns. While they justly evaluate the EU ETS for aviation, they ignore the nature of change that has happened in the regulation of aviation emissions. Also, the further implications of this are usually limited to observing that the EU ETS is an instance of the EU’s green leadership (Staniland 2012; Mehling *et al.* 2013; Lindenthal 2014), without then tracing how this leadership is enacted.

2.5 Conclusions

This chapter has outlined the main policy areas in which the topic of the thesis is situated as well identifying literature relevant to the subject matter. The EU ETS has been placed within a larger policy-making spectrum. Furthermore, it has been shown that the EU’s decision to focus on aircraft emissions was not only an expression of its leadership in environmental policy-making but was also seen as a necessary step to address the burning issue of soaring levels of CO₂ emitted from airplanes.

As it emerges from the material presented, for the emissions trading systems and for the EU ETS too, the issues at stake pertain mostly to governance rather than to the environment. For the latter, they are based on the claim that potential environmental benefit can be realized by the overall decrease in CO₂ emissions achieved as well as mitigation measured separately according to the included sectors. The evidence for reductions varies however from sector to sector. The second environmental aspect is the issue of some areas being still more exposed to pollution as the emissions trading systems do not affect the location of the polluting entity: allowances can be purchased and the emissions levels at a given emitter remain at the same level. The main governance issues identified relate to the extension of authority of the regulating entity, the process of design of a mechanism, interaction between the emissions trading systems as well as between the economic areas that feature different climate policies.

Another contentious issue, introduced above, is the role of industry in designing the mechanisms and their implementation. While environmental and governance issues are tightly connected, the political side of the issues seems to be a prevalent puzzle for analysing the EU ETS. As some claim, the choice of policy instruments, including emissions trading “are often an important and enduring outcome of intense political struggles to govern the society and important generator of new forms of politics and policy” (Jordan *et al.* 2013, p.166).

This chapter has also identified gaps in the literature concerning the EU ETS. While there are authors interested in the introduction and evolution of the scheme, they are very much focused on the legal and economic dimensions. The political angle is usually limited to partial analysis of aspects like EU ETS and EU’s leadership, bargaining over the shape of design for various sectors, but there are still important areas that are scarcely addressed. Those relate to the international aspects of the EU ETS and its political impact outside of the EU. Also, while investigating the ICAO’s role in the processes, the literature omits the importance of the ICAO-industry links as well as the importance of power exercised by blocks of countries within the organisation. In relation to this, also the issue of common but differentiated responsibilities is not fully considered in studies on the EU ETS. Furthermore, there is scarce evidence of research concerning the translation of aviation’s powerful lobbying in general into the climate regulations that cover the sector in particular. Finally, available scholarship does not fully recognize governance issues on a global scale that the carbon markets are facing such as uneven access to stakeholders for industry versus NGOs, the multiplicity of venues, intersecting spaces of jurisdiction and different levels of administration responsible for design, monitoring, implementation and reforms of mechanisms.

3 Theoretical discussion

3.1 Introduction

The previous chapter gave an overview of the substantive issues that this thesis seeks to address. It has provided the context for this research and the areas of contention, puzzle or disagreement. As it becomes visible one can identify several issues that are particularly important and will be analysed in the subsequent chapters. These problems definitely include the nature of change that the inclusion of aviation into the EU ETS has caused and the differences between the EU and the US with regards to firstly, aviation pollution policies. Secondly, the dynamics of a debate on a global mechanism for tackling the aviation emissions problem have to be taken into consideration. Finally, it is crucial to reflect on the location of the debate surrounding aviation emissions in general – the capacities of the actors involved in decision-making at a global level, role of international organisations and unilateral regulation of aviation emissions. In order to pursue exploration of such a wide plethora of issues, careful choices with regards to theoretical underpinnings of the whole project were made.

This chapter engages therefore with the theoretical perspectives of the thesis to explain its theoretical underpinnings. As becomes clear, the case of climate policy-making in the EU related to aviation is enmeshed in larger debates, notably: debate on sovereignty versus unilateral action, the role of the EU as a green leader globally (see: Chapter 5), and the dialogue between the EU and non-EU countries with regards to larger climate goals that extend beyond aviation itself.

The issues mentioned above can be viewed from various perspectives and the chosen path of political science may be challenged with economic perspectives that would look at issues like market distortions caused by the EU ETS or more psycho-sociological approaches where the perception of carbon trading would be explored. Similarly, one can employ a legal theoretical framework and investigate the judicial side of the carbon mechanism in question. More of these could be listed, however as mentioned before, this thesis is involved with policy-making, power relations in the policy process and modes of governing climate problems, hence its theoretical background draws more heavily on political science than any other discipline. Indeed, the previous chapter has indicated that economic instruments tend to be shaped by

political choices and political constructs such as state boundaries – important political science concerns – and so here these concerns are juxtaposed with the theories this thesis involves. In a broader sense, this chapter offers explanation of how the theories applied characterize the world this thesis investigates. It also gives an account of the explanatory mechanisms they provide. Adopting and integrating a model based on multiple theoretical perspectives is motivated by the intersections of various spheres of authority that are present in this research. While testing one theory to evaluate its usefulness for a given policy problem could be an alternative for the model employed here, it would not be equally powerful in explaining the phenomena this thesis aspires to address. In particular, the model created enabled grasping both the inner dynamics of the organisations investigated while keeping the analysis of a broader governance picture still present. Secondly, it has allowed combining methods that stem from the approaches employed.

Further in this chapter it will be explained how and why multi-level governance (MLG) became the main theoretical framework for the thesis and why two more approaches supplement it: policy networks analysis (PNA) and interpretive policy analysis (IPA). The next sections engage first with more straightforward approaches: PNA (3.2) and IPA (3.3) by showing their basic assumptions, criticisms that they encounter and their appropriateness for this research. The latter sections (3.4, 3.5) engage with perspectives on MLG and explain theoretical choices made. They also look at MLG's ontology and theoretical relevance for the analysed issue. The rationale of supplementing MLG with additional theories is explained, along with potential challenges and trade offs. Finally, the last section briefly discusses alternative theoretical frameworks that could have been employed in this thesis (3.6).

3.2 The first pillar of the investigation: policy network analysis

In this section policy network analysis is presented with special attention given to its advantages and disadvantages for this particular project. Among the three theories applied here, PNA promises to be the one that is the most straightforward but crude at the same time. Again, it is important to look at the context of the analysed issue to understand the merits of this theoretical perspective.

Central to this thesis is a need to understand policy change, for which PNA has advanced a series of important propositions. Firstly, PNA investigates the success

factors of groups working together for a common policy goal and changes these groups undergo over time (Heaney 2004). Secondly, it allows one to investigate the connectivity between stakeholders across a given policy domain while they are attempting to affect decision-making. Thirdly, this approach provides for classification of the policy-relevant stakeholders, thus it allows the mapping of the territory of a given policy realm. Finally, PNA has been also able to strengthen understanding of how power is shared in a society and in this way directly involve with governance (Atkinson & Coleman 1989; Jordan 1981). More precisely, the PNA theoreticians would claim that ‘instead of emanating from a central authority, be this government or the legislature, policy today is in fact made in a process involving a plurality of both public and private organizations’ (Mayntz 1993, p.5); an observation also clearly picked up by MLG scholars.

The change that is analysed in this thesis pertains to broadening and tightening the environmental regulation of aviation. A sector whose environmental impacts were regulated only partially (chiefly via noise standards) and its impact on climate change in the context of international policy-making has usually been concealed. Only when the European Union started to consider aviation as another sector that potentially could be included into its carbon trading mechanism, did the issue gain momentum in political agendas in Europe and beyond.

Policy change has been a focal point for policy analysts for a long time and the PNA approach derives from policy scientists who employed it in the late 1970s and 1980s (Hanf & Scharpf 1978; Milward & Wamsley 1985). Network analysis is used in many branches of social science: it has been widely explained as social network analysis (Scott & Carrington 2011), in cases of information revolution (Castells 2000) or intercultural analysis (Lin, 1999). In political science network analysis took the form of policy network analysis and has been viewed as one of the most common tools to look at the policy process (Rhodes, 2006). At the same time, understanding of policy networks has been divided into two concepts based on how the networks are perceived: policy networks as an analytical tool and policy networks as a theoretical approach, as further developed by the Interest Intermediation School and Governance School (Börzel 1998). Some see the analysis of the policy networks approach as a “heuristic device” and others as “having explanatory utility” (D. Marsh 1998b, p.3), hence answering the questions that political scientists tend to ask: “who?” “what?” and “why?”– these clearly correspond with the research questions this thesis is asking. Over time, the approach

has become further refined and gained additional concepts as reported in Rhodes (2006): issue networks (Heclo 1978), iron triangles (Ripley & Franklin 1981), policy sub-systems or sub-governments (Freeman & Stevens 1987), policy communities (Richardson & Jordan 1979) and epistemic communities (Haas, 1992); these however will not be expanded on here.

For anyone who engages with policy networks it becomes clear early on that their conceptualizations vary. Some even call the variety of policy networks “Babylonian” (Börzel 1998). While trying to find a common definition, Börzel proposes to find a common denominator across a variety of approaches to policy networks and suggests the following definition:

“a set of relatively stable relationships which are of non-hierarchical and interdependent nature linking a variety of actors, who share common interests with regard to a policy and who exchange resources to pursue these shared interests acknowledging that co-operation is the best way to achieve common goals”(1998, p.254).

Another widespread definition comes from Benson (1982, p.148); for him the policy network is “a cluster or complex of organisations connected to each other by resource dependencies and distinguished from other clusters or complexes by breaks in the structure of resource dependencies”. As will be shown in Chapter 6 and 7, these resource dependencies will be crucial for understanding states’ involvement in the case.

In more practical terms, Klijn for example points out “the policy network approach draws attention to the importance of the institutional context for the issue of governance. If policy processes takes place within certain institutionalised context, it becomes important to understand that context” (1997, p.33). This context is for example a stable relation pattern between organisations and in the case of this research, the EU institutions and the EU ETS itself. Furthermore, attention given to the institutionalised context provides for investigation of the EU – ICAO dynamics (see: Chapter 5).

Sometimes the definitions of policy networks can be even broader than those proposed above: “the notion of policy networks does not so much represent a new analytical perspective but rather signals a real change in the structure of the polity” (Mayntz 1993, p.5). This view helps to position the research questions related to the nature of change and the actors who influence EU policy membership. Further, Mayntz argues that policy-making goes beyond the central role of the government but engages a

multitude of public and private actors (1993). Similarly, it is claimed that “a policy network includes all actors involved in the formulation and implementation of a policy in a given policy sector” (Börzel 1998, p.260). The analytical inclusiveness appears to be important in the context of complex, interrelated memberships that one observes in the analysed case.

While going beyond the government and nation-state position, network theory opens up the analysis towards the issues surrounding the problem of environmental policy integration that exemplifies a situation that goes well beyond “unilateral adjustment of national regulatory arrangements” (Knill & Tosun 2011, p.171). It has also been regarded as a prominent approach with which to analyse sectoral regulation (Börzel 1998), which is crucial for the issues investigated in this thesis as for example it accommodates sub-sectoral differences (here based on the differences between aircraft operators, aircraft manufacturers and airports).

Finally, a good summary of the strengths of this approach is given by Klijn who sees policy network analysis as “a perspective that focuses on the interactions and relation patterns between different actors and their strategies and thus tries to contextualize the policy process” (1996, p.94).

The network approaches have however encountered several problems that need consideration. Firstly, Dowding would argue that the explanatory power of this approach is questionable because the independent variables that are employed in the analysis “are not the network characteristics per se but rather characteristics of components within the networks” (1994, p.69). This means then that not only the nature of the network, but also the nature of the policy process are explained by these components. Dowding concludes that this type of theory building is “reductionist” (1994, p.69). Marsh (1998b) too, observes that simple classification of networks and differentiating between issue networks (with a large number of participants with a rather loose relationship and disparate power between participants) and policy communities (limited number of participants, close relationships, common basic values, conscious exclusion of some groups) is too straightforward. Even though these categories are applicable for this thesis, they may be insufficient given the complexity of the issues tackled and variety of actors involved. The question is then what groups does one want to investigate, how to provide an inclusive approach and how this translates into the research agenda.

Secondly, one needs to be cognizant that the policy network approach is a meso-level concept and deals with the issues that are situated between the micro and macro levels. These for example are issues pertaining to the work of the eNGOs that can be qualified as working on the meso-level. It has clear implications: comprehensive views require some integration of micro- and macro-level approaches, in the sense that more details are taken into consideration and the relations between the actors can be analysed with more nuance (Daugbjerg & Marsh 1998, p.52). Some authors see that networks operate on the sectoral rather than sub-sectoral level (Dowding, 1994; Jordan, Maloney, & McLaughlin, 1994) whereas others place them on the sub-sectoral level, citing examples from the British context (Smith, 1991) or claim that the networks operate at both levels (Cavanagh, 1998; Rhodes & Marsh, 1991). The meso-level needs supplementing to address issues related to the broader structures and processes this thesis aspires to study. This approach offers then an insight into what is occurring between individual actions (on the human behaviour level) and macro-level processes such as bargaining between civil society and governments. Indeed, networks have been conceptualized as an interaction system (Burns & Flam 1987).

Finally, this theory does not reflect an important feature of the policy-making process, which is its dynamics. Policy network analysis does not address the inherent unpredictability of the policy process (Klijn, 1996, p. 94). Also, it is noted that “networks are no final solution to decision-making problems in bargaining systems” (Börzel 1998, p.263) thus relying on PNA as the only tool of investigation would be unwise.

In summary, PNA is employed as a theoretical tool in this thesis as it gives prominence to the networks that have been clearly visible and active in EU policy-making in general, and in the analysed case in particular. Secondly, it allows analysing the change itself (of policies, networks, policy problems understanding). While promising these merits, it clearly cannot become the only analytical lens mostly because it fails to account for cases that are not consistent with such patterns. Furthermore, PNA has been mostly used to analyse stability and outcomes rather than change in the policy process (Jordan & Greenaway 1998). For PNA theorists, change is primarily caused by exogenous factors (Bulkeley 2000). Attention to these factors is however limited as PNA places central importance on resource exchanges and their outcomes rather than discursive construction of policy issues. Policy networks are also much more concerned with larger block of actors (policy communities, coalitions), which distances the theory

from closer involvement with interactions happening on smaller, often even personal levels. These issues are recognized and addressed by supplementing PNA with interpretive policy analysis, whose advantages are explained in the next section.

3.3 The refinement provided by interpretative policy analysis

Following the explanation of PNA's appropriateness, this section shows how IPA advances the understanding of the political landscape drawn by PNA. IPA is more of a "political cartography" type of activity whereas there is a need for a *mise-en-scène* to refine PNA's simplifications. Network analysis does not fully explain how networks are held together and sees only the simplest resource exchanges within the network. Some of these deficiencies can be addressed by employing interpretative approaches.

As explained by Bevir and Rhodes (2003, p.1) "interpretive approaches begin from the insight that to understand actions, practices and institutions, we need to grasp the relevant meanings, the beliefs and preferences of the people involved". Elsewhere they add that "interpretive approaches to political studies focus on meanings that shape actions and institutions, and the ways in which they do so" (Bevir & Rhodes, 2004, p. 130). These initial premises already seem extremely useful for the analysed issue: the understanding of the inclusion of aviation into the EU ETS. As it was signalled earlier, the parties involved in the inclusion, including the legislator itself, states, industries and NGOs or think-tanks, were interpreting the step differently thus investigating these interpretations allows to uncover the mechanisms, which affected production of emerging understandings. IPA looks then at the exchanges between the stakeholders in a more refined manner by focusing much more on "why" questions rather than simply "what".

IPA gives special attention to change, but in a different, complementary to PNA, manner. As explained by Kay: "policy change is a shift in the framework of agreed and shared meanings amongst influential policy stakeholders" (2009, p.49). The idea of change in meanings complements PNA's focus on exchanges of resources within the networks and thus gives foundation for inquiry into more thorough understandings of change.

Furthermore, interpretive policy analysis provides tools for a better understanding of the context of the policies enacted. What then is the interpretive policy approach? Wagenaar argues that it is much more than just a method, he sees it as a

doctrine, as a set of beliefs about “how to address a number of epistemological and methodological problems in the social sciences in a fitting manner” (2011, p.4).

Some argue that “interpretive policy analysis asks not only *what* a policy means - a context-specific question about a specific policy - but also *how* policies mean” (Yanow 2014, p.139), and this is crucial for the analysed case. It has been clear what the EU has been aspiring to achieve through the inclusion of aviation onto ETS, however the meaning of the policy has been neglected. The IPA allows putting into spotlight the learning, knowing and communicating of a given policy. Furthermore, it allows interpretation of multiple meanings as provided by policy-relevant groups (Yanow 1993; 1996; 2014). Since the method is based on the reading of the policy, it allows investigating further the understandings of the policy participants identified through network analysis. In this way, it allows to investigate the case further and ask: was the inclusion of aviation a step to expand leadership? Was it a consequential development of a policy for which the legislators presumed no external effects? Has the EU been trying to dethrone ICAO? Investigating these interpretations is thus crucial in order to paint a full picture and enable an informed answer to the research questions.

In addition, interpretive policy analysis focuses on accommodating multiple possible meanings and drawing on Pierce (1955) favours abductive approaches to the deductive or inductive (Fischer, 2001; Kapitan, 1992). It also looks at confusion caused by the expectations of the researcher who goes to the field and actually looks for the puzzles and surprises (this issue will be analysed closer in the next chapter). Interpretive policy analysts are thus less focused on the contestation of reality but look more closely at “the human possibilities of knowing the world around us and the character of that knowledge” (Yanow 2000, p.7). This kind of analysis pays more attention to the broader audience: policy-relevant public, those who implement the policies, legislators, etc. – all of them are engaged in the meaning-making and trying to understand reality (Yanow 2000, p.8).

Furthermore, this type of analysis emphasises the beliefs of people and, given that the data for this research comes from interviews, it is vital these beliefs are included in analysis. These are advanced to an even higher level: “interpretative approaches do not merely study beliefs, ideas or discourses. They study beliefs as they appear within, even frame, actions, practices and institutions. Interpretative theory applies to all of political science” (Bevir & Rhodes, 2003, p. 17). So, whereas policy

network analysis focuses narrowly on what is happening between the actors, IPA brings into the picture a wider contextualisation. At the same time, while being broadly concerned with the context, it closely investigates the individuals, which is crucial for this thesis given it is mainly informed by first-hand accounts of stakeholders involved in the analysed process.

Finally, it is important to investigate the role of discourses in forming and holding networks together. There are two distinct ways within policy networks scholarship, in which the formation of coalitions and their interactions is explained. The first one is proposed by Hajer who espouses the idea of “discourse coalitions” and argues that analysing discourse within the policy networks allows determination of “why a particular understanding of the environmental problem at some point gains dominance and is seen as authoritative, while other understandings are discredited” (Hajer 1995, p.44). The coalitions themselves are not necessarily built around goals or interests that the coalition’s members share but based on common terms of understanding the nature of the problem tackled as well as their meanings (Hajer 1996, p.247). The members subscribe also under a certain frame and try to impose it on the other members present in the policy process, hence there is a strong focus on participants of the process (Hajer & Versteeg 2005a). The second approach, less applicable for this research, is based on Advocacy Coalition Framework (ACF) that compete with each other within policy subsystems (Sabatier 1998; Sabatier 1988; Jenkins-Smith & Sabatier 1994). They are based on actors who “share a set of normative and causal beliefs and engage in a non-trivial degree of co-ordinated activity over time” (Sabatier 1998, p.103). The applicability of the ACF is limited here as it very much focuses on implementation, learning from implementation and from policy performance. Given that the implementation process of the inclusion of aviation into the EU ETS has been blocked, the explanatory power of ACF would be limited. By employing the IPA attention can be given to interpretation of negotiations leading to a change. PNA in turn investigates interactions that may be occurring between the communities, but also gives attention to the outliers.

As it is shown above, interpretivism is employed to fill the need for elucidating the narratives in this study and inclusion of contextual nuances of the research. It helps to provide a fuller explanation, in conjunction with tracing the relations between actors, of policy stability and change. As far as generalizability is concerned, this issue is solved

by the network approach that offers a framework that is perfectly replicable (see: Chapter 3).

Although the IPA approach has important features contributing to the understanding of the issue, there are several criticisms it faces. The first argument of the critics of interpretivism is its descriptive approach to reality and at the same time poor possibility to replicate the research elsewhere – therefore the generalizability of the findings can be questioned. As reported by Lin, positivists tend to see interpretive approaches as using anecdotes to construct claims (1998, p.172). This pertains later also to the validity standards that are used to assess the validity of research - using the same criteria to evaluate the two approaches would be detrimental for both of them.

One more objection is made in relation to interpretivism in the British context: although policy interpretivists believe that their main explanatory tool has been ‘tradition’ they do not elucidate how these traditions emerged, developed or what are their results (Dowding, 2004, p. 145). These are usually taken for granted and are not analysed in depth, which can be regarded as an oversimplified approach. Interpretive policy analysis does not, however, aspire to decide between positivist and constructivist views on the nature of facts or perspectives on reality. It sees its role as a reconciling one between the different views while rather democratizing knowledge (Fischer, 2003, pp. 223–224; Hoppe, 2011, pp. 43–44).

Finally, once the approach has been evaluated it is useful, briefly, to investigate its relationship with governance. Similarly to PNA, IPA users also consider links between their theory and governance. Some believe that the discursive turn in IPA has countered the “denial of agency to those ‘targets’ on the ‘receiving ends of policies’ and helped in re-linking policy analysis to forms of governance that are more participative and ‘democratic’” (Yanow 2014, pp.137–138). Indeed, the link to participation in the process is crucial and focusing on the traditional power bases such as the state alone, would be inadequate in the analysed case.

There is also a belief that there is an intimate relationship between governance and interpretivism. Some authors argue that “if we are in the midst of a shift from top-down ‘command and control’ to a looser framework of ‘governance’, then the time of interpretivism may well have arrived” (Finlayson 2004, p.129). Indeed, it appears that interpretive approach answers better questions that are situated in a more fluctuating

context. In highly regulated systems, based on indicating what is prohibited and what is allowed, the space for beliefs and meaning making practices would appear to be of more limited use. In the analysed environment, where the regulation is in the making, IPA offers then a framework to elucidate these beliefs and see how they affected the policy-making process. The struggle to give fixity to policies under formulation in times of flux may make discourses more important. These discourses can serve thus as a tool to pursue closure on areas of controversy that subsequently can be treated with IPA lenses.

3.4 Governance and Multi-level governance

The two previous sections discussed two fairly disconnected theories. This section builds on the claims already made and introduces multi-level governance theory as a binding arch between the two and answers some of the deficiencies they struggle with. It provides thus a perspective on the scalar structure of the institutional architecture on which the actors interact. It also investigates how discourses are structured and mobilized. Firstly, the main features of governance are shown and are followed by introduction of MLG theory (Section 3.4.1). Next, implications of the use of MLG theory with regards to power are offered (Section 3.4.2) and the relationship between MLG theory and geography is more closely investigated (Section 3.4.3).

Chapters 1 and 2 demonstrated that the EU, its structures and its institutions occupy a central position for this research. The thesis is however not limited to the EU only and has strong international components. This again clearly translates into theoretical choices made. A very classic approach to governance indicates that a global problem requires a global solution (Paterson *et al.* 2003; Ford 2003). The negative reaction of the US was *inter alia* based on the understanding that the EU attempted to preclude a global solution by implementing a piecemeal approach. Governance provides a framework to capture and explain interest intermediation between stakeholders within the EU and internationally.

How then can governance be conceptualized? What are the modes it operates within? How does it conceive of the policy process? Governance as a term in scientific debate has been very widely used and so far there are competing definitions given to the topic. Indeed, governance appears a capacious idea and as a result of this it has started to be divided into subcategories. It is understood here in a way that Rosenau defines it (2000, p.172): “governance occurs on a global scale through both the co-ordination of

states and the activities of a vast array of rule systems that exercise authority in the pursuit of goals that function outside normal national jurisdictions". Elsewhere he also claims that it includes much more than just institutions or organizations that are dealing with international issues (Rosenau 1995, p.13). For him governance also aspires "to search for order in disorder, for coherence in contradiction, and for continuity in change" (Rosenau, 1995, p. 13).

An alternative view is offered by Schmitter (2002, p.52) who describes governance as "a method/mechanism for dealing with a broad range of problems or conflicts in which actors regularly arrive at mutually satisfactory and binding decisions by negotiating with each other and co-operating in the implementation of these decisions". Notwithstanding that this definition may seem idealistic as it believes in a straightforward relationship between negotiations and a satisfactory decision (the EU ETS case proves that it is not always that effortless), it adds a process-oriented aspect to the framework. This happens through consideration of a sequence of events.

While building on the definitions above, there are merits in asking what are the levels that MLG theory is addressing, hence where is it applicable? The Rome Council explains as follows:

"We use term governance to denote the command mechanism of a social system and its actions that endeavour to provide security, prosperity, coherence, order and continuity of the system... Taken broadly, the concept should not be restricted to the national and international systems but should be used in relation to regional, provincial and local governments as well" (King & Schneider 1991, pp.181-182).

A further elaboration is provided by the Commission on Global Governance:

"Governance is the sum of many ways which individuals and institutions, public and private, manage their common affairs. It is continuing process through which conflicting or diverse interests may be accommodated and cooperative action may be taken" (The Commission on Global Governance, 1995, p. 2).

These two definitions add a higher level of inclusion as well as an emphasis on non-state actors. By valuing the incremental manner of building governance both with regards to territory and the types of activities it involves, they complement Rosenau's ideas (1995, 1997, 2000).

Two competing perspectives on governance were taken into consideration in this thesis. The first one suggests a more horizontal view of governance as arenas that are translated into policy networks (Börzel 1998; Kohler-Koch & Eising 1999; D. Marsh

1998a). They, therefore, build on and advance the classic policy network analysis that “develops the notion of insiders and outsiders by examining the mechanisms used for inclusion or exclusion and the impact they have on policy” (Smith 1993, p.3). The governance framework has matured since the 1990s and insiders-outsiders dynamics have become outdated. A response to this development came in a form of a multi-level approach (Fairbrass & Jordan 2005; Bulkeley *et al.* 2003; Hooghe & Marks 2001b) that instead of looking at detached policy areas and venues focused on “multiple tiers of government” and “spheres of governance” (Bulkeley & Betsill 2005, p.48). This meant also that by looking at the EU context governance scholars were able to show that interactions happening between levels of decision-making outside of the state-centered paradigm are more efficient and include larger constituencies. The turn towards governance was conditioned by the development of international cooperation in the late 20th and early 21st century. Based on this approach, MLG develops more independently and “emphasises political devolution, fragmentation and interdependence, and decentralization” (Bevir & Rhodes, 2003, p. 60).

How are these definitions reflected in the real world? What are their applications in the policy processes? How do concepts like devolution and fragmentation play out in international forums? The literature focuses largely on spaces and venues where governance “is happening”. It is important hence to investigate what these are. As some argue “global environmental governance is driven primarily by global meetings, which are organized to coordinate multilateral responses to environmental issues” (Evans 2012, p.77). As it will be shown in Chapter 7, this attention to meetings is crucial as through a series of consultations, an international anti-ETS block has been formed. According to the theory, the meetings are then supplemented by growing networking between the public and private sectors and more importantly into moving responsibilities towards the private sector (Eckerberg & Joas 2004, p.405). These processes are not following a traditional, hierarchical pattern where more powerful actors would impose their views or solutions. From the political science perspective this means that what is observed can be qualified as “erosion of traditional bases of political power” (Pierre 2000, p.1). Pierre sees that the traditional interactions between political actors, markets and individuals change and the role of nation states decreases (2000). Similarly, it has been argued that “life issues” of the type analysed here display “less emphasis than did their predecessors on hierarchy and the state” (Bevir 2011, p.1).

These claims show that MLG offers a more precise characterization of the field. In certain areas however, nation state territoriality may be still very alive.

3.4.1 Multi-level governance

After having conceptualized governance, one can proceed to studying its multi-level dimensions and variations. As argued by Piattoni (2009, p.164) MLG is constituted by “networks, which may include, in a rather haphazard way, legitimately constituted deliberative assemblies together with other public and private, individual and collective actors”. As a consequence of this, pure representative democracy is advanced – MLG theory offers a more inclusive framework. Since Marks’ seminal work (1992) on decision-making in the EU the concept has been used in various instances. Marks was mostly looking at the cohesive dimension of European integration and its structural policy: how EU Member States can have a similar standard of living, how to work on common legal frameworks, how to make the European budget work – these were his points of interrogation. His scrutiny is important for this research since he analyses the EU as a set of institutions nested in national and regional contexts where both cooperation and competition occur. These ideas were later developed into a fully-fledged MLG theory of the EU (Marks 1996). The inclusiveness offered by MLG theory allows for a more detailed analysis that goes beyond the mere observation of simplified power relations that can be seen in international policy-making and policy bargaining.

MLG theory aspires also to explain how non-state entities become visible in international policy-making, why changes in policy-making were occurring and to what extent they were a part of larger strategies. These contributions translate in this thesis into investigating the role of sectoral organisations as well as their meaning-making activities regarding inclusion. On the other hand, the EU structures for example establish a meaningful platform to convey their ideas that used to be restricted mostly to regions or countries (Marks & McAdam 1996; Imig & Tarrow 2001; della Porta & Diani 2009). Citing examples of cities taking part in the Cities for Climate Protection project, Bulkeley (2005, p.891) underlines that in the case of global environmental governance the state needs to be rescaled and “new spheres of authority within which climate change is being governed” need to be created.

In the MLG perspective, the main challenge that is posed to the state-centered thinking of international policy-making is the argument that non-state stakes can

influence EU policy-making without recourse to the nation state's help (Moravcsik 1994; 1998). MLG theory helps in analysing this shift while looking at process and venues. Political actors strategically choose policy venues to reach their goals: "they try to alter the roster of participants who are involved in the issue by seeking out the most favourable venue for consideration of their issues" (Baumgartner & Jones 1991, p.1045); a process also called "venue shopping" (Baumgartner & Jones 1991, p.1050).

Furthermore, MLG theory is able to contribute to understanding the issues analysed in this thesis as in governance frameworks there is a consensus that some of the states' power is being transferred to or given up for NGOs or epistemic communities as well as other actors (Bulkeley 2005, p.878) interacting with each other globally. Not only this, also the scales of environmental problems intersect with each other – the global is being disembodied into various "sites and scales of governance" (Bulkeley 2005, p.878). Thanks to this, a larger picture of interactions can be mapped and, what is more, the interactions can be considered at a dynamic stage instead of being a set of monolithic institutions. The activity of rescaling contributes thus to mapping the fluctuating opportunity structures for different actors.

Even more importantly, the environmental policy of the EU has been seen as exemplifying the essence of MLG (Fairbrass & Jordan 2005). The EU's complex and multi-level decision-making, intersecting constituencies and pressures coming from non-EU countries are all ingredients of the MLG approach. The EU has been viewed as a complex entity that MLG theory manages to grasp:

"the EU is transforming politics and government at the European and national levels into a system of multi-level, non-hierarchical, deliberative and apolitical governance, via a complex web of public private network and quasi-autonomous agencies, which is primarily concerned with the re-regulation and de-regulation of the market" (Hix 1998, p.54).

In a similar way Marks looks at the EU in the MLG context using a dynamic and process-focused language: "system of continuous negotiation among nested governments at several territorial tiers –supranational, national, regional and local – as a result of a broad process of institutional creation and decisional reallocation" (Marks 1993, p.392). These two quotes show that the EU's complexity can be grasped only if these various levels, venues and actors are duly taken into account.

One more argument needs to be presented here. The analysed issue concerns the EU ETS, which is a market mechanism, devised by a political organization (and not just

one individual nation state). The political part of the issue is well explained by Lederer who observes that carbon markets “deal with a highly fictitious commodity, depend entirely on good regulation in order to function properly” (2012, p.3). By employing the EU ETS, the EU aspires to regulate non-state actors and in the analysed case this regulation goes even beyond the EU borders. This extension of the scheme to aviation meant however that the regulation of non-state actors (airlines) that were coming from non-EU countries compelled engagement of nation-states as regulators of national carriers. MLG theory enables uncovering of the relations between institutions that address market regulation and how it is being run. It looks at the interacting levels, includes private authority and new modes of claiming legitimacy (Vira 2001; Hudson 2001). Furthermore, through the use of global level analysis not only can the interactions of non-EU countries be grasped, but applying MLG theory also brings into the spotlight relations between the EU ETS and other global climate initiatives. By employing this perspective, links to Kyoto Protocol mechanisms, ICAO negotiations and WTO proceedings can be brought into the explanatory framework, as they can be seen as concurrent processes of negotiation that affect EU policy-making in climate arenas. Given that the geographical impact of the EU ETS goes beyond Europe, this additional level needs to be included in the analysis.

To sum up, MLG theory is able to contribute to this thesis thanks to its potential in bringing order to the multiple activities, hierarchies, jurisdictions and authorities. It also offers an institutional focus and explores the spatial dimension that permeates the decision-making process and pertains to the problem of extending sovereignty.

As with every theory, MLG theory also has its shortcomings. Probably the most widespread one pertains to the lack of territoriality when MLG theory is in question. The theory while focusing on the roles and positions of individual actors misses the territorial aspects of policy-making arrangements. Faludi coming from a planning perspective (2012) asks however: can we criticize MLG theory for this, if the interactions it talks about are obviously nested in between territorial administrations? He concludes, “multi-level governance is ambiguous. It often refers to vertical relations between bodies of government within a multi-level polity and not to the more comprehensive process called governance” (Faludi 2012, p.207). The second criticism he formulates relates to MLG theory’s failure to “problematise the territorialist underlying metageography” (Faludi 2012, p.207) and hence it conceptualizes the issues

of boundaries, spatial jurisdictions and administrations in an inadequate manner. As further argued, MLG theory fails to comprehend “that the EU cannot be grasped solely in terms of territorial vocabulary associated with the modern state system” (Murphy 2008, p.16). Is it however the role of MLG theory literatures to explain these? It appears that it poses a problem for planners and geographers rather than political scientists or economists. The MLG theories never had an ambition to execute such problematization. However, Murphy (2008, p.8) argues for the view that MLG should not be only about politics, economy and institutions but “with a concern for the ways in which territorial understanding and arrangements are shaping how things are organized on the ground and how people conceptualize Europe as a geographical construct.” Even more interestingly, he also looks at the problem of sovereignty that follows: it “can no longer be understood in terms of the sovereignty norms of the modern state system because governmental competencies are no longer concentrated in discrete political spaces organized at a single scale or level” (Murphy 2008, p.7). Although MLG theory does not focus on the issues related to sovereignty it implicitly assumes that the world is in a sort of “post-sovereign” state (Karkkainen 2004). If one looks at policy-making through the post-sovereignty lenses, they would see the state that operates, just as one of many actors, on various levels. For this thesis, the analysed context is non-hierarchical and exclusiveness in decision-making processes is rare. Indeed, theories of post-sovereignty capture some of the issues that MLG theorists seek to explore.

In the MLG theory context discussion about sovereignty is somehow blurred if one understands sovereignty as a right to regulate (McCarthy 2005). The theory considers large inputs from business, think-tanks or NGOs, which clearly undermine the state’s position as the main policy-provider. The state’s role is even more limited in cases of self-governance. As some claim, “multilevel governance pulls the private sphere into the political” and “eradicates the traditional distinction between domestic and international politics” (Aalberts 2004, p.24). For this thesis, deliberations concerning state sovereignty within the EU (Hooghe & Marks 2001a; Marks *et al.* 1995) are not sufficient, since one of the important issues analysed here is international resistance to the EU ETS. In such cases, the literature offers references to transnational (climate) governance (Pattberg & Stripple 2008). The authors illustrate this with reference to CDM, a carbon mechanism linked to the EU ETS, where “authority is delegated to a range of non-nation state actors and their responsibilities diverge in every step of the CDM

project” (2008, p.375). Additionally, the whole mechanism has been created through international bargaining within the Kyoto Protocol framework, hence in a context of sovereignty exercised by aligning blocks of like-minded countries. The issue of sovereignty in the ETS / governance context has been picked up by opponents of the inclusion of aviation (as shown in Chapters 5 and 7), who did not feel compelled to comply with regulation coming neither from ICAO nor themselves. While MLG theorists would like to see a gradually decreasing role for sovereignty, it will be shown that the state’s sovereignty still plays an important role in international policy-making with regards to climate.

What has been described as “frustrating” with regards to the multi-level governance perspective is its focus on “context, processes, and bargaining” (Peters & Pierre 2004, p.75). Peters and Pierre (2004) claim that instead the interest of scholars should be strengthened in the area of the incremental character of the changes that occur in international policy-making. They would also argue that the multi-level governance concept has been employed in a too optimistic manner: as a “cozy” and “consensual process”, which given the lack of legislative framework and sometimes unofficial character of negotiations is obviously missing a large part of hard bargaining over power (2004). In such a context a re-scaling of governance, extending the territorial reach of some entities over others is often being contested. As an answer to these they suggest that governance should be looked at from four distinct angles. Firstly governance should be considered an intellectual concept, secondly a notion that comprises several levels of government. Thirdly they use a notion of “negotiated order, which characterizes the relationship among these multiple and often at least partially autonomous levels”. The final angle views governance as a political game where democratic values can be exchanged for successful and efficient policy-making (Peters & Pierre 2004, p.77).

3.4.2 Space for power

Multi-level governance theory looks at explaining how and why reality is changing and how these changes are related to power that causes them. While MLG theory focuses on authority on various levels in a context of expanding collective power, careful attention needs to be given to the notion of power itself. Additionally, presented circumstances of the research indicate that actors or groups of actors were bargaining

over power to influence the shape of inclusion of aviation into the EU ETS. What is probably the most exciting feature of governance theories is the attention they give to the changes that are happening in decision-making.

The conceptualizations of power in political science are numerous and this paragraph is only touching the surface to explain governance approaches to power by firstly involving with widely applicable considerations for power by modern theorists. Bachrach and Baratz (1962) would argue that instead of investigating who possesses power, researchers should rather study so called “mobilization of bias” and look at Dahl’s paradigm: “A has power over B to the extent that he can get B to do something that B would not otherwise do” (1957, pp.202–203). On the other hand, they should also look at agenda setting activities. For Bachrach and Baratz this too is an exercise of power. Lukes (2005) advances their view by claiming that there are three dimensions of power. He criticizes the previous two faces of power for superficiality. He engages therefore the third face of power and argues that only by adding the third layer of arguments power can be viewed apart from a behavioural focus. It is explained: “What one may have is a latent conflict, which consists in a contradiction between the interests of those exercising power and the real interests of those they exclude” (Lukes 2005, p.28). His ideas are then build around a non-conflict and a situation in which one actor may be in a situation when they are not aware of the best interest they have. As a result of following this reasoning, he delivers the third dimension: “is it not the supreme exercise of power to get another or others to have the desires you want them to have – that is to secure their compliance by controlling their thoughts and desires” (Lukes 2005, p.27). Therefore, in the context of international environmental policy-making it is not about one actor setting a standard or procedure, which can be seen as ambitious, but it is about gaining capacity to influence the actors more subtly.

The subtlety is further explained by Flyvbjerg(1998), who not necessarily drawing on Lukes, focuses on the rationality and rationalization that in his eyes are crucial for the exercise of power. As suggested: "Power determines what counts as knowledge, what kind of interpretation attains authority as the dominant interpretation"(Flyvbjerg 1998, p.226). Flyvbjerg was also able to prove that “(...) rationality is context-dependent and that the context of rationality is power. Power blurs the dividing line between rationality and rationalization. Rationalization presented as rationality is shown to be a principal strategy in the exercise of power” (Flyvbjerg

1998, p.2). These claims are particularly important given the interest for IPA this thesis espouses.

Where is the space for power in the governance debate? Governance theories characterise a leaving behind of stable reality and switching towards “a change in the meaning of government, referring to a new process of governing; or a changed condition of ordered rule; or the new method by which society is governed” (Rhodes, 1996, pp. 652–653). In a natural way, it looks more at process than institutions (Peters & Pierre 2004, p.77). It has been argued that by giving priority to a neoliberal-institutionalist approach, power in general becomes obsolete in the governance debate. Some even see this deviation as one of the important deficiencies of governance as a research framework since it does not take into account for example social power relations (Kütting & Lipschutz 2009, p.3). These however are of lesser important for the research conducted in this project.

Similarly, governance is seen, normatively, as a means of uniting the public and the private for the common good (Pekkonen, 1994; Rhodes, 1996; Stoker, 1998) – retaining however the central role of the state. MLG challenges this approach while looking at processes. In the same way it questions the spatiality of power. It does not look any more at power that accumulates around certain centres of resources (Agnew 1994, p.501) but it looks at the recently mobilized actors: international social movements and advocacy coalitions that are more detached from the centre–periphery dynamics of resource-centered theories. Governance investigates the actors that are not easy to include in the classic power debate as they “operate outside existing structures of authority” (Williams 1994, p.100). Consequently, it may be deduced that power would be considered merely as the ability of some actors to affect the others in the way they wish to see reality, however the power constituency is enlarged.

For this thesis scale and space need to be considered as subthemes of the power debate. The transboundary aspect of the issues tackled here calls for a geographical take on this debate. How should the scale be understood here? In the very conventional approach, scale is viewed as a nested hierarchy (Haggett 1965) but such perspectives have proved to be anachronistic given the complexity of dynamics between scales related to each other (Howitt 1993, p.36). Today’s understanding of scale became much more fluid. It has been argued that scale is transformed regularly and cannot be viewed as fixed (Herod 1991). This means that scale is not a given but socially constructed and

the process of construction is closely related to economic, social and political processes (Delaney & Leitner 1997; Howitt 1993). What is more this process is seen as continual or even an “unending chain of events” (Delaney & Leitner 1997, p.95). Similarly, Swyngedouw observes that scale therefore cannot be seen as politically neutral if constructed – it conveys power relationships (1997). As some argue, in this way the (re)construction of scale is essential to reconcile contradictions that stem from capitalism (Kelly 1999, p.382).

This feature of the process creates challenges for analysts: the product of the process will always be likely to change and difficult to grasp. What is more, “scale is not as easily objectified as two-dimensional territorial space, such as state borders” (Delaney & Leitner 1997, p.97). Similarly, when one looks at networks, they operate by transcending boundaries and they are engaged in “dividing the spaces of hierarchical modes of governance (e.g., they may cross national boundaries or boundaries between the states in a single nation), thereby making it harder for network activities to be regulated or governed from within existing geographical spaces” (Leitner *et al.* 2002, p.287).

Such discussions about scale have consequences for MLG theory as well. The constant constructing and re-constructing of scale reshapes the role of actors active on different levels of governance. These reconfigurations are probably most visible in the position of the state (Kelly, 1999; Swyngedouw, 1997; Weiss, 1997); it is claimed for example that the power of the state is reconfigured through re-scaling (Kelly 1999, p.391); but implications are not confined to state actors.

3.4.3 Geographical approaches vs. MLG theory

The issue of scale that concludes the previous section relates to the insights that geography can offer in this thesis. There is a visible link between MLG theory and geographical perspectives on scale and governance, which is further explored in Chapters 6 and 7 where sovereignty issues are concerned. As presented by Piattoni (2009, p.172), “the levels connected by MLG must be understood primarily as territorial levels each commanding a certain degree of authority over the corresponding territory and the individuals residing in it”. However, there are claims that such territories are becoming obsolete: the issue-specific authority of one state can be questioned or even contested and challenged by another when facing global issues such as environmental

externalities (Agnew 2005, p.438). This may happen as those issues usually cannot be dealt with only on a state-level without both regional and international actions. At the same time, Agnew would claim that sovereignty or political authority “may be exercised non-territorially or in scattered pockets connected by flows across space-spanning networks” (2005, p.441). The geographical perspective focused on spatial relations contributes to understanding the changes of decision-making processes in an international dimension. “The local” is being upgraded in its importance and the number of interactions towards a global level increases (Held *et al.* 1999). As some would put it, “political power, therefore, is exercised from sites that vary in their geographical reach” (Agnew 1994, p.501).

Another claim made by political geographers refers to relations between property and territory. As Agnew claims “there is a concomitant decreased association between property rights and state territoriality” (Agnew 1994, p.513). On one side it means that the competitiveness between firms in one industry is increased by non-territorial factors. If we then look at the emissions trading concept as an issue of property rights (see: Section 2.2) the debate needs to be opened towards ideas related to territoriality. Market mechanisms work across territories, and the EU ETS is a prime example of this. EU ETS through its architecture flattens out state territoriality and MLG theory does not really address this problem. Rosenau would claim that governance happens via “spheres of authority” (1997, p.159) and these can be either linked to any given territory or not. He puts therefore emphasis on the coordination of activities rather than the area where activities are conceived or performed. Territory takes then a secondary position in MLG, it is even taken for granted, a self-evident element of the framework. Finally, aviation is seen as a “multi-territorial activity” given that passengers or goods are transported between states, the planes fly over international waters and enter airspaces of various countries while in transit (Hertogen 2012, p.282). For the case of aviation and its inherent mobility, it is important therefore to be mindful of territorial issues when engaging in debate related to sovereignty.

3.5 Combining the three approaches to the policy process

This final section draws together the material presented in Chapter 3 and explains how the three approaches are integrated and employed in this thesis. IPA and PNA can be considered complementary to each other and they will address several

issues that are examined in this thesis: policy change, policy stability, attention to beliefs and the focus on narratives. IPA and PNA talk to each other by involving directly with policy actors and both pay attention to change and stability dynamics. What is more, IPA provides a structure that holds together the networks observed by PNA. These two approaches call however for a framework that could bind them and offer a better understanding of a larger policy context present in the EU as well as in the US. Here, MLG theory is charged with this task. It succeeds better in grasping large scale, multi-level perspectives. It has been employed in studies on international policy-making where indeed it has been supplemented by other approaches (Gupta & Pahl-Wostl 2013; Howlett & Newman 2010; Kassim & Le Galès 2010). MLG allows a more sophisticated spatial structure where the interactions tracked by interpretive policy and policy network analysis are projected against dependent and independent systems focused on negotiation, coordination and regulation. These reciprocal influences are ordered in space by MLG theory. The approach answers also the criticism of policy analysis that looks at discourses (and to certain extent both approaches employed here use them) as it does not neglect the “localized patterns of political activity” (Murdoch 2004, p.50). Discourses and interactions between the stakeholders involved are both, as in Murdoch’s work, pinned down and kept closer to the spaces they originated from.

MLG theory addresses also the lack of neatly separated areas of policy-makers and policy-receivers that both PNA and IPA would like to see, however the reality of environmental policy is more complex. In the case of environmental or climate policies, the boundaries between the makers and receivers are blurred and the links between various stakeholders tend to be more entwined. While PNA and IPA would conventionally be employed to smaller-scale analyses, where these intertwinements are relatively easy to see, here MLG theory allows upgrading PNA and IPA to investigate a large-scale issue. Secondly, MLG theory is centered on the actors and a larger polity they operate within, rather than their networks only. It also allows grasping the global aspects of the problem analysed while looking at supranational mobilization in the policy-making sphere. At the same time, MLG theory is derived from research on the EU, adding to its suitability for the problems investigated in this thesis.

As mentioned before, IPA and PNA contribute to understanding better the nature of the change in regulation that this research examines. MLG theory is able to look at these changes from the pure international policy-making perspective. Additional issues

such as the interests of individual actors and actors' groupings as well as their underlying motivations are targeted by the IPA lenses. Network analysis complements the MLG theory mapping of actors by indicating relations across the institutions while the interpretative approach contextualises these interactions and gives a more humane angle to the whole topic going beyond power relations, economic trade-offs and policy-bargaining. What is more, it also helps to show how discourses, through which power is exercised, are legitimized.

Additionally, MLG operates via networks seen as "a cluster of actors, each of which has an interest, or 'stake' in a given...policy sector and the capacity to help determine policy success or failure" (Peterson & Bomberg 1999, p.8), hence, there is a visible link between the MLG and the network approaches. These networks operate across institutional networks and therefore this can ideally supplement levels that MLG theory is looking at. In practice, such configuration translates into investigating the effects of stakeholders' networks involvement in a more horizontally oriented policy-making. Given the international dimension of the research, the most relevant angle of the network analysis is the one that looks at transnational governance networks (Keohane & Nye 1971), through which decision-making processes are influenced. As argued by Betsil and Bulkeley (2004) there are three types of those networks: epistemic communities, transnational advocacy coalitions and civil society networks of global scope. For this research the analysis of transnational advocacy networks is particularly suitable as these networks gather around values (Evans 2012, p.107). Moreover, according to some "the analysis of governance networks as discourse can illuminate the bonding in networks that, initially, may seem disjoint and unstructured" (Hajer & Versteeg 2005b, p.341).

Similarly to interpretative policy analysis, networks analysis is rather scale free. Had this thesis employed a-scalar interpretive analysis and the policy network approach exclusively, the attention to intersecting hierarchies and boundaries would have been lost. This is where MLG theory recompenses these aforementioned deficiencies by inclusion of institutional and scalar dimensions to the argument.

One more angle needs to be underlined while looking at the advantages of blending the three theories. Interpretivism assumes that various types of data can be engaged to analyse an issue (Bevir, 2003, p. 283). The practical angle of this theory cannot be missed. While MLG offers a sophisticated framework to scale the events and

actors it does not talk much about how data should be gathered or worked with (see: Chapter 4). This deficiency is in turn addressed by a wealth of methodological tools offered by both PNA and IPA. Finally, while underlining the intimate relationship between the parts and the wholes, the interpretative approach allows one to elucidate links between the levels and large concepts and their understanding of individuals.

As it was mentioned in Section 3.3, employing IPA itself puts into risk the generalizability of given research due to its emphasis on rich description. This however is remedied by MLG theory, which provides a robust framework and allows greater level of generalization. At the same time, it needs to be underlined that since a case study approach is adopted, the generalizations extend only as far as the research design allows.

Furthermore, MLG theory appears to be the most inclusive and appropriate theory to use in the context of this research. It was shown that it successfully investigates the processes and is able to engage with various actors. These capacities mean however that some of the smaller interactions between the actors or the contextual subtleties may be missed. This is the main reason for employing two additional approaches while using MLG theory as the main framework.

The composite methodology of this thesis allows going beyond what each of the approaches offers but could be seen as cumbersome. Although, not instantaneously straightforward, the utilisation of three approaches helps to capture the various dimensions of interactions between the stakeholders and, importantly, organizes them in a scalar way. The three approaches applied situate the stakeholders geographically (PNA and MLG) as well as institutionally (IPA). The interactions are captured and analysed simultaneously through three theoretical lenses chosen. The difficulties of this three-way approach however include a time-consuming process of applying the three theories to the empirical material gathered. This translates also to limiting the wealth of the material that can be considered for this study due to time limitations. At the same time, the material collected achieved discursive saturation and thus further collection would not affect the results to a significant extent.

Apart from this, such an approach makes the replicability of the study potentially difficult, as the decisions concerning how the theoretical lenses are applied may differ according to the stakeholders considered. At the same time, it is not possible to explain the application of the theories to each and every policy statement (document, media

appearance, part of a research interview). Nevertheless, the explanatory power of the composite theoretical model outbalances the risks related to limited replication possibilities.

Thirdly, as with other more conventional approaches, the applicability of this theoretical approach across the research area needs to be tested, to see if it genuinely delivers additional insights. In this way, this approach is to some extent experimental and requires further testing in order to confirm its validity, value and applicability to cases different than the EU ETS.

3.6 Conclusions

Drawing on the context of the research, the research questions and contemporary approaches to studying policy-making with regards to climate change under EU circumstances, this chapter has set down and explained the theoretical underpinnings for the study. As demonstrated, the three approaches employed stand out among the others used in the discipline. Recognizing the weaknesses and building on each other's strengths the current approach offers a more robust theoretical framework to answer the research questions.

More precisely, the theoretical framework chosen extends the three approaches (PNA, IPA and MLG) thanks to drawing from their strengths and mitigating their shortcomings. While MLG offers a global and inclusive perspective, it tends to miss the meso-level accommodated by PNA or closer investigation of understandings on individual and institutional levels. The theoretical framework employed allows a focus on the process (including stakeholders, venues, effects of policy decisions) and the issues related to the international dimensions of the problem in question. Furthermore, as shown above, all three theoretical approaches have been previously successfully utilized for research on the EU and thus the framework applied here can involve literatures from these three strands. Finally, by supplementing MLG theory with PNA and IPA, the investigative framework is enhanced by the methodological toolkits they advance, which in turn is quite limited for MLG theory.

The three approaches are principally blended together, as it was mentioned, to address weaknesses of IPA, PNA and MLG, and to construct explanatory pictures that could link small-scale interactions and arguments to wider political and international

institutional changes. More precisely, the researcher was applying the three approaches to the events analysed and this resulted in a more comprehensive and contextually sensitive conclusions. For example, when analysing the relations between the DGs (see: Section 5.5) PNA provided for an inclusive picture of the EC partnerships and the relations between stakeholders and the two DGs considered. At the same time, IPA helped understanding what justified the EU, but also various EU individuals within the EU institutions to lead the file in a given way. Finally, MLG allowed an elucidation of the international aspects of the Commission's work (interacting with ICAO, attempts to affect partner countries through EU representations). The synthesis, then, involves using the theoretical frameworks to examine different facets of the policy episode, to explain its emergence, evolution and ultimate consequences.

This chapter has demonstrated that MLG theory considers policy processes as involving a dynamic, actor-rich and venue-shifting context. It indicated also the critical junctions where the theories intersect and supplement each other. In this way, it also indicated how the theories guided methodological choices for this thesis.

Until now the thesis has shown the context of the research and the questions asked as well as the state of the literature in the analysed field. This was followed by Chapter 3 explaining the thesis's theoretical framework. The next chapter is tasked with providing insights into the methods that are used to study phenomena this thesis aimed to observe and explain. It engages hence with contexts and concepts that were already mentioned in chapters 1-3 and also outlines the methods used for gathering and analysing data.

4 Methodology

4.1 Introduction

The previous chapter has explained the theoretical principles that this thesis follows. It has shown that the choices regarding the theoretical underpinnings clearly translate into the methods that need to be employed in order to answer the research questions. This is mostly due to extended considerations regarding methodology that IPA and PNA can offer. On the other hand, MLG directs the research towards a more global approach to the problem tackled in this thesis. As previously discussed in Chapter 3, policy analysis itself (be it analysis focused on interpretation or network) has major shortcomings that need to be addressed not only at a theoretical level, but also in the methodological realm.

If a straightforward policy analysis approach toolkit had been employed for this thesis, the results would not extend beyond a map of interactions supplemented by an investigation of policy understandings. Similarly, IPA is claimed to be able to employ various data such as “participant-observation, questionnaires, interviews, mass surveys, statistical tests, and models, as well as read memoirs, newspapers and official and unofficial documents” (Bevir 2003, p.283) but it is parsimonious in discriminating between them. Elsewhere, Bevir together with Rhodes (Bevir & Rhodes 2004, p.170), would call for the following: “we would urge political scientists to study the texts – the writings, lectures, interview transcripts and actions – of civil servants to identify their beliefs. Second, conventional accounts offer the reader the author’s analysis substantiated by short quotes from civil servants selected to support the argument”. This being said, there is no consensus if the interpretive methods pertain more to political science, as claimed by Yanow(2000) or Wagenaar (2011) while Bevir(2003) sees them more suitable for anthropology and history. Thirdly, MLG does not offer much precise guidelines responding to the question: “how to design and execute a study?” These considerations, reflecting the theoretical choices, lead to a composite methodology based on a case study design informed by interviews and document/media analysis that allow an in-depth involvement with the issues investigated.

The methodological choices made here derive from two main flows. Firstly, they are theory-driven and draw from the methodological guidelines provided by the

theories employed. This allows building a methodological framework, which is coherent with the theoretical framework and hence reinforces the robustness of the research. It also means that inquiry into causal processes and meaning-making activities must be conducted through insiders of the process, i.e. stakeholders involved. Furthermore, given IPA's interest in beliefs, the interview schedules have to be relatively loosely structured in order to elucidate these beliefs.

Secondly, the choice of the methods employed has been influenced by the questions this thesis poses. For example, identification of the important stakeholders is carried out both via media analysis and through interviews, which limits an opportunity to downplay or eliminate certain stakeholders from the case. On the other hand, analysis of the differences in the shape of regulations or resolution of these on a global level stems from the document analysis and is advanced through interviews.

This chapter explains the methodological principles that drive this thesis. It focuses first on briefly presenting the logic of inquiry driving this thesis (4.2). Section 4.3 justifies the use of a case study design and Section 4.4 explains the principles of the desktop analysis conducted. The next section, Section 4.5 presents interviews as the main source of data. It also demonstrates the range of methods used while interviewing. Sections 4.6 and 4.7 give detailed accounts of the course of fieldwork in Brussels and Washington, DC respectively. Further, in Section 4.8 the chapter explores the methods of analysing the data obtained. While Section 4.9 addresses the issues of research ethics that are relevant to this thesis, Section 4.10 concludes the methodological considerations.

4.2 Logic of the inquiry

Drawing on the theories employed, this section presents the underpinnings for the inquiry presented. The two most often used research strategies employed are deductive and inductive reasoning. While the first one sets a hypothesis and tests it using the data, the second approach begins with data collection followed by drawing conclusions from the context-rich data. Additionally, there are also deductive-inductive approaches that aim at mitigating problematic issues that applying either of the two brings (Fereday & Muir-Cochrane 2006). They advise to inductively formulate the concepts and subsequently interpret them by using deductively derived theoretical frameworks and explanations. As it has been mentioned before, the attention to the

context, in which decisions are made, is crucial for this research. Equally important is the focus on the agent (Yanow 2006, p.13). This closely relates to the wider research philosophy, as explained by some: “post-positivist approaches hold that to understand policy change fully requires focus on the meanings that particular policies have for particular stakeholders, in particular how different actors in the policy process interpret, or make sense of, or give meaning to policy-making” (Kay 2009, p.51). These premises have clearly affected the research strategies that IPA recommends. For example, Yanow explains:

"interpretive research follows an abductive logic of inquiry: it begins with a puzzle, a surprise or a tension arising from the juxtaposition of expectations - themselves deriving from a priori knowledge, whether theoretical or experimental - with field observations, experiences, and/or readings"(2014, p.143).

Yanow’s idea has been followed in this research as the rationale, for this thesis derives from a whole set of puzzles: ranging from why the reactions to the inclusion of aviation into the EU ETS have been so powerful, through a surprising sureness of the EU that the inclusion would succeed, and ending on inaction in the area of curbing aviation emissions regardless of a growing awareness of climate change. Such an approach results in a situation when the processes of collecting data and juxtaposing them with theories is simultaneous: “in some sense, the researcher is simultaneously puzzling over empirical materials and theoretical literatures” (Schwartz-Shea & Yanow 2012, p.27). This approach helps to underpin the collection of a wealth of data while at the same time preserving their details. This means that it departs from setting a set of hypotheses and allows the researcher to be surprised while collecting the data. In this way, the research framework is more open towards the new and the unexpected while the rigorousness of research is maintained.

4.3 Case study design

Before engaging with the case study design as an inquiry method, it is important to reflect on a question fundamental for this part: what is the EU ETS debate a case of? The first chapter has indicated several ways, in which this thesis advances knowledge by analysing the prospective extension of emissions trading to aviation. These pertain, to name a few, to international policy-making, climate leadership and state-industry relations. The main contribution is however, provided by analysing a case of policy

change embodied in the inclusion of aviation into the EU ETS and reaction (or as discussed here: resistance) to it. While being a case of change in policy-making, it takes the EU as the field of analysis, which is enriched by the international background. The analysed situation is thus a case of change in the international context that provides special attention to the non-state actors. By such discrimination, the case study allows for an in-depth analysis of the process of inclusion, negotiation and resistance to a new policy. As explained in Chapter 1, the thesis pertains to a phenomenon of a blocked implementation of a EU policy but also to a more general governance problems such as role of state sovereignty versus non-state actors or importance of sectoral organisations. The case of the EU ETS exemplifies this by both its content and its setting. As far as the content of the issue is concerned it considers sectoral regulation with regards to CO₂ emissions mitigation being implemented by an agent non-specialized in the matter (EU). It also involves the issue of resistance to the change and how this resistance is being dealt with. The change happens in an internationally-saturated context of ICAO, EU Member States representing differing interests and non-EU countries opposing the scheme. These issues are being grasped through an extensive contextual analysis of the case and mapping of the networks present within the inclusion of aviation into the EU ETS.

The case study design presents a trade-off between investigating the depth and the breadth of the issue in question. Firstly, an extensive inclusion of positions of states that were vocal in the EU ETS case would allow capturing the breadth of the case and its international setting. Secondly, collecting data in more regions (especially in China, Russia and India) would enable building a more comprehensive picture. Although considering these two approaches would warrant valid and rich data, the in-depth analysis of the process was found more relevant due to a series of reasons. Firstly, capturing the networks between the aviation sector and policy-makers in the EU and the US addresses a topical and controversial research gap. Secondly, focussing on these issues in depth allows answering the questions pertaining to the understandings and beliefs that would inevitably be lost if a big picture perspective was adopted throughout. Thirdly, the in-depth study made the study respond to the current research on the ETS that has been calling for a more detailed analysis of the aviation case (Lindenthal 2014).

This thesis is also informed by the case study approach in the desire to gather a full, multi-faceted understanding of a conceptually bounded phenomenon. This has been

chosen while discriminating against surveying high profile officials, business representatives and other possible partners (NGOs, think-tanks, media) and employing quantitative methods of analysis. The surveys could provide a broader participation basis however for the research questions this thesis asks, a more important facet was related to gaining access to the figures central to the process and receiving from them an in-depth account. Employing a case study does not automatically prescribe using qualitative or quantitative methods (Becker 1992). Also, the PNA scholars clearly indicate that even if a case study is chosen as an enquiry method, their theory can be researched both quantitatively and qualitatively and both approaches are complementing each other (Sciarini 1996). However, as argued by Börzel: “the qualitative approach (...) is more process oriented. It focuses less on the mere structure of interaction between actors but rather on the content of these interactions using qualitative methods such as in-depth interviews and content and discourse analysis” (1998, p.255). While this thesis concentrates indeed on the process, the qualitative approach appears more suitable for the theories applied and research questions asked.

The case study design allows investigation of “a contemporary phenomenon within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident” (Yin 2003, p.13). In the case of policy-making this claim seems to be extremely valid – the larger canvas on which the processes happen cannot be omitted. Moreover, this design is chosen as “the issue is not explored through one lens, but rather a variety of lenses which allows for multiple facets of the phenomenon to be revealed and understood” (Baxter & Jack 2008, p.544).

Having this in mind, the case study focusing on governance and policy processes is employed to research the EU ETS in the multi-level governance context. Firstly, it allows the investigation of the wider phenomena that this case highlights: sectoral exceptionalism, emissions trading as an economic and policy tool as well as green leadership of the European Union. Secondly, MLG assumes that “actors are driven by a mixture of behavioural mechanisms” (Skjaereth & Wettestad 2008, p.17) and as will be shown below, a case study design enables in depth analysis of such mechanisms by employing qualitative methods.

Following Yin’s (2003) reasoning, there are four principles that ought to be covered if a case study is to be employed: “how” and “why” questions are the main focus of the research, the researchers do not influence the case by their enquiry, contextual

nuances are important for the study, and finally it is difficult to differentiate between the phenomenon and its context. The case study approach gives an excellent opportunity to provide illustrative examples of the wider phenomena, as here: the case of a governance process as well as the case of actors (both within the EU and from the third countries) colliding with each other to produce a policy outcome.

In the research on the EU, especially the EU environmental and climate policies, the case study design seems to be overwhelmingly predominant (Burch *et al.* 2014; Johannsdottir 2014; Matzdorf & Meyer 2014). Also while addressing the EU ETS scholars would often use a case study research design to analyse various sectors included in the scheme (Laurikka & Koljonen 2006; Demailly & Quirion 2008). The studies of influences of the EU policies on various sectors would also use case studies to explain how these rules work or do not work in practice. The method became prevalent in the EU studies and has advanced in the last years from simple description of the EU reality to multi-linked studies displaying a “theoretically pluralist research community” (Pahre 2005, p.114).

A number of decisions were taken in delineating the boundaries of the case. By investigating the non-EU reactions to the EU ETS inclusion of aviation and the global dimension of the issue, it is assumed that a view of outsiders needs to be included. This is also related to the governance theory used in this thesis, which as discussed in Chapter 3 underlines the importance of non-state actors, which have been extremely active in the US. The boundaries of this case study thus go beyond the EU and equal attention is given to the US policy-makers, US aviation industry and eNGOs based in the US. This allows gathering primary data from these actors who exercised pressure on the EU, however, given the politico-spatial context were not directly involved in the EU policy-making. Furthermore, this approach supports the construction of a rich contextualisation for the analysed situation. Even though the EU and US are the areas where the data are gathered, it is not a comparative study. This thesis addresses rather a multi-arena situation. As some describe the EU policy process, it is a “multi-level, multi-arena and multi-venue game” (Richardson 2000, p.1013) and here it is further complicated by added non-EU actors. This means that a simple comparative design would not sufficiently explore and analyse the complexity of the issue and would not address fully the research questions asked in the MLG context. The choice of one case only, instead of comparative design is also related to the “extensive immersion in a

setting” (Yanow 2014, p.146), which is needed to properly elucidate data needed by IPA. At the same time the two stages of the fieldwork inform each other and have to be seen as inseparable for the analysed case: analysis of the US opposition cannot be conducted without in-depth investigation of the EU policy-process and consideration exclusively of the EU side cannot yield sufficient results for the proposed research questions.

Simultaneously, there are more arenas than just the EU and the US that play important roles for this research. These for example are: Russia, China, India and to a lesser degree Brazil. An ideal scenario, would involve conducting interviews with similar sets of stakeholders in these countries, however, this level of ambitiousness was not possible to achieve. In order to employ empirical data from outside the main EU/US axis of this research, instead of directly interviewing the representatives of the above, the EU- and US-based interviewees were asked about BRIC positions, actions and “behind the scenes” activities. To safeguard objectiveness, the answers were juxtaposed with official documents (press releases, declarations, etc.) and also media content drawn from quality and sectoral press, as explained below. The table below summarises the methods used for particular research questions:

Table 1: Outline of the research methods used

	Interviews	Policy documents	Media	Grey literature
Research Question 1	x	x	x	x
Research Question 2	x	x	x	
Research Question 3	x			x
Research Question 4	x			x
Research Question 5	x	x	x	x

4.4 Desktop analysis

Although the abductive logic employed here would advise researchers to depart from a puzzle and be open for the surprises, essential desktop work needed to be conducted before the beginning of data collection in the field (for example: to identify

the actors and prepare the interview schedules). Once the fieldwork has been started the desktop analysis continued due to new documents emerging from the interviews.

How has the case then been examined? Having in mind the principles of policy network analysis, firstly attention was given to the actors present in the debate and through their participation the events can be reconstructed chronologically as well as placed in space. Since PNA pays special attention to the influence produced within the network, especially, dependencies between its actors, the data it is concerned with can be derived both from policy document analysis and later supplemented by the interviews. In relation to this, a series of official documents were looked at – these were policy documents accompanying the actual Directive, that included aviation into the scheme, as well as the materials available at the Directorate General’s Climate Action (DG CLIMA) website. Similar data collection has been conducted with regards to the EU ETS Prohibition Act through the “Thomas”, an on-line legislative service of the Library of Congress, and allowed accessing the minutes from the hearings as well as submissions of the stakeholders who took part in them. This involvement with the official documents was complemented with policy statements, legislation and media content concerning the issue of EU ETS and aviation. However, this research does not address directly the policy-making process per se, therefore, the choice of the documents was dictated mostly by their usefulness for deepening understanding of the legislation and to see the positions of the actors involved, as much as it was possible.

Once all the most relevant documents were downloaded and saved, the researcher started identifying other key actors engaged in the debate. This proceeded in three ways: firstly via scholarly literature reviews regarding the EU ETS, then through analysis of the media related to the carbon market, (Reuters Point Carbon) aviation (GreenAir Online) and finally, systematic searches were run with the quality press by using their web-enabled search engines. The media outlets chosen were: “The Guardian”, “The Independent” “The New York Times” and “Frankfurter Allgemeine Zeitung”, which were used in previous research to look at environmental policy issues (Feindt&Cowell 2010; Feindt&Kleinschmit 2011; Feindt&Oels 2005). The searches included words “EU ETS”, “aviation” and “coalition of unwilling”. Since this tool was used only as an additional means of identifying the actors engaged in the debate, there is no further need to present the exact results (such as number of articles mentioning the EU ETS or their detailed content) offered by the searches performed. In

the next step, the positions of actors identified as active in the debate that were publicly available were tracked. These were reports, press releases, official policy statements by industry and NGOs. It is widely argued that as much data as possible needs to be collected before engaging with any further fieldwork, particularly if the method chosen are interviews (Richards 1996; Lilleker 2003; Leech 2002). This allowed tailoring of the interview guidelines, but also ensured that interviews focused most closely on those questions that have not been answered somewhere else.

The desktop analysis led also to a decision to group the actors present according to three groups. The employed research framework suggested structuring the research around three sets of actors: the industry, the NGOs and a group of states and EU institutions together. The last group includes both states and the EU, as for the analysed case they can be considered equal counterparts. As it will become clear in the next chapters, there have been also other representatives (for example think-tanks and media), who escape this categorisation, however, they should be seen more as providers of supplementary information than important players in the case. This categorisation of actors into three main groups is pertinent both to the research questions that investigate the importance of stakeholders and in two ways relates to the theoretical framework. Firstly, drawing on governance theories, it provides space for the industry and NGOs. Secondly, deriving from PNA, it aims at uncovering networks and the relationships between them. Dividing the actors present into three groups, enhances clarity and also allows observing differences within these categories. Such research strategy is also able to advance the research on the EU climate policy in general and on the EU ETS in particular. This is possible as instead of focusing on the industry only (Markussen & Svendsen 2005; Pinkse & Kolk 2007; Skodvin *et al.* 2010) or giving priority to the non-governmental actors (Betsill & Corell 2001; Doh & Guay 2006) and only rarely considering both groups (Gullberg 2008) it provides a more complex picture, covering also interactions between groups. The previous research has been limited as far as bringing a wider representation of interests or showcasing (dis)unity of positions between the groups is concerned, which is mitigated here.

4.5 Interviews – why interview?

The decision to interview is related to the emic perspective taken in this study. This means that the data is provided by the persons who have experience in the field

and are able to expand on the investigated issues in detail. As the members of the policy networks, they are able to give accounts not only about what happened but also how and why things happened. This in turn is crucial for the theoretical framework applied. Moreover, given the MLG framework involved, interviews promise to be the most feasible when it comes to collecting data. Also, MLG while looking at the relationships between the various levels of governance is very much focused on the actors who operate at and between these levels. Consequently, the account provided by those who are participating in the interactions and those who are observing them (media, think-tanks) indicate the usefulness of interviewing as a source of data. Finally, given all these circumstances, it is important to conduct interviews in a one-to-one format, which provides space for firstly a more detailed account and secondly, allows sharing some of the details that would probably remain unrevealed in a focus group or a discussion setting. One to one interviews are also easier to arrange in a high-profile environment where tight schedules prevail and coordination of for example focus groups would be almost impossible.

What is more, given that the EU ETS for aviation is a relatively new project, any historic analysis is rather difficult. Furthermore, the literature does not seem to offer studies in the context of MLG where participant observation or focus groups are employed.

As Wagenaar underlines “interviewing is not about asking questions, but about working with the respondent to produce useful data” (2011, p.251). The process of “working” was based on the prior literature and media search focused on the proceedings of the decision-makers (US House of Representatives Committee on Transportation and Infrastructure, US Senate Committee on Environment and Public Works and the European Commission – DG CLIMA and DG Mobility and Transport (DG MOVE) as well as the European Parliament (EP) – Committee on Environment and Committee on Transport and Tourism), views of the industry and eNGOs expressed in their various media appearances, policy papers or press statements (as noted above). By completing the preceding investigation, the researcher was then able to direct the interview towards the areas that are not explained in the policy documents or publicly available documents. The choice of the particular policy-makers interviewed was determined by their participation in the drafting of the legislation including aviation into the EU ETS (EU side) and the EU ETS Prohibition Bill (US side).

There are various reasons to employ interviews as a data collection tool. For example, they help in looking at “the activities that take place out of the public or media gaze, behind the closed doors” and “machinations between influential actors and how a sequence of events was viewed and responded to within the political machine” (Lilleker 2003, p.208). This choice is also linked with the case study design that, as already mentioned, is attentive to the context of a given phenomenon.

Moreover, interviewing has been one of the most powerful ways of researching policymaking on a federal level in the United States. Many renowned empirical studies were based on this method as early as the 1960s-’ (Dexter 1969; Huitt & Peabody 1969; Matthews 1960) and later in the 1970s-’ (Fenno 1978). This method was also used by Kingdon (2010) in his seminal work for all those who study politics in the US Congress “Agendas, Alternatives, and Public Policies”. Kingdon says that an interview helps to confirm what a researcher already knows (2010). His work however, based on the interviews conducted with the high-profile policy-makers in Washington and, for all Kingdon’s modesty, delivers more than just “confirmations”. His data obtained while analysing transport and health policies in the US were mostly provided by the staff people of the US Congress treated as those who were the closest to the policy-making process at the time.

A similar rationale is taken into consideration in this research on aviation policies aiming at reducing CO₂ emissions. At the Congressional level, this research focuses on the staffers closest to drafting the documents, provided the access. Following Kingdon’s reasoning, the interviewees chosen were engaged in direct negotiations on wording on the bill and discussions with the constituency – in this case, mostly the aviation sectoral organisations and environmental non governmental organisations (eNGO). A similar approach is postulated by Berry (2002, p.679) who sees interviewing American policymakers as both “quizzing” them about the issues they were working on at the Congress and “conversing” about their practices. In that respect, the European Union’s policy-making and its structure is not much different than the one in the United States, which became especially visible through the accounts provided by the advisers to the political groups. In the previous research on the European Union, the authors were to a great extent focusing on the European Commission in the context of governance and would employ various interviewing techniques. Here an excellent example is offered by Hooghe’s book based on 137 interviews she conducted (2001). The EU policies are often

analysed via the policy-makers as they offer the very first-hand account and are able to explain motivations and context that are rarely visible in the official documents. These are particularly visible in studies about cooperation between EU institutions and wider governance topics (Puetter 2012; Bouzarovski *et al.* 2012).

4.5.1 Semi-structured interviews

Once the rationale for the interviews has been outlined, one can proceed to a more detailed explanation of the process of interviewing itself. This study employs semi-structured interviews, as they “can provide detail, depth, and an insider’s perspective, while at the same time allowing hypothesis testing” (Leech 2002, p.665). The open-ended questions are claimed to give the interviewees an occasion to express their thoughts in the way they prefer to structure their views. This consequently “increases the validity of the responses and is best for the kind of explanatory and in-depth work (...) but it makes coding and then the analysis more difficult” (Aberbach & Rockman 2002, p.674) as the answers may include a growing body of new topics, which has also been the case for this study.

Others argue that semi-structured interviews ensure also “openness to change the sequence and forms of questions in order to follow up the answers given and the stories told by the subjects” (Kvale 1996, p.124). Furthermore, while interviewing elites in the semi-structured format, one can expect to receive a coherent, and well-developed answer (Aberbach & Rockman 2002, p.675). This form of interviews can thus “yield rich insights into people’s biographies, opinions, values, aspirations, attitudes and feelings” (May 2001, p.131). Most importantly, semi-structured interviews are “open to new and unexpected information” (Daugbjerg 1998, p.15), which in cases of relatively unexplored ground provide an unmissable opportunity. This rationale follows also the abductive research strategy utilised in this thesis. At the same time, it is also seen sometimes as “the riskiest but potentially most valuable type of elite interviewing - requires interviewers to know when to probe and how to formulate follow-up questions on the fly” (Berry 2002, p.629). Finally, it has been underlined many times that the open-ended questions are preferred by elite interviewees as they dislike being limited by a structured interview (Schoenberger 1991; Aberbach & Rockman 2002; Rice 2010).

The interview guidelines (two examples of master guidelines are provided in Appendices A and B) used both in the US and Europe were adjusted to the groups of interviewees, with some parts tailored to individuals where more detailed issues were investigated. The schedules were designed to cover broad areas rather than being restricted to set questions (Richards 1996, p.202). The interviews were divided into four parts relating to: background of the interviewee and of the organisations they represented, issues and experiences regarding the EU ETS and aviation, policy-making in the context of the EU ETS (in the US with a special focus on the EU ETS Prohibition Bill), the involvement of various actors and their coalitions in the examined case. At the end of each interview, participants were given an opportunity to add any other information that they were not asked during the interview and that they think may be important for the study. The participants were also asked for recommendations for other potential interviewees.

4.5.2 Who are the experts?

The interviews for this study were conducted with persons who were experts in their field, however, this is not reduced to technical, scientific expertise, but also expertise about the political processes. The expertise was attributed to the experience the interviewees had and positions they were working on.

It needs to be underlined though, that in general, the expertise is granted by the researchers themselves, as they are responsible for choosing the pool of experts they contact. While Meuser and Nagel argue that an expert in an interview can be identified as a person, whose knowledge assumed by the researcher is “not accessible to anybody in the field of action under study” (2009, p.18), in the case of this research the knowledge was accessible to a number of staff, however due to busy Congressional schedules, the researcher was able to interview only one person per office.

The main reason to employ expert interviews in this project was related to the issues researched here being closely related to the activities in which the interviewees had been engaged. This means that the interview partners offered a first-hand account of the process. Apart from that, they are aware of the whole set of actors who have been involved in setting the agenda and defending their positions. As underlined by Bogner, Littig and Menz (2009, p.2), the expert interviews offer an efficient and intensive method at the explanatory stage of the project. They see experts as “crystallization

points” and they “are interviewed as surrogates for a wider circle of players” (2009, p.2). Therefore, this type of interview aims at uncovering a broader context than just the individual circumstances of the interviewee. It needs to be remembered, that the expert interview “is not a specific method of data collection but includes all forms of qualitative interviews that are conducted with experts” (Gläser & Laudel 2009, p.119).

It becomes quickly apparent that there is an additional facet of the interviewing process, namely, the interviewees enjoy a high social status and can be viewed as elites. These can be defined as “those with close proximity to power or policy-making” (Lilleker 2003, p.207). They would also “hold or have held a privileged position in society and, as such, as far as political scientist is concerned, are likely to have had more influence on political outcomes than general members of the public” (Richards 1996, p.199). This position of the interviewees needs to be taken into consideration initially at the stage of designing questionnaires and later while interviewing. “In elite interviewing (...) the investigator is willing and often eager to let the interviewee teach him what the problem, the question, the situation, is” (Dexter 2012, p.19). The elite label in the context of this research is attributed to the high ranking aviation industry representatives, staffers of the senators and representatives as well as the staffers of the DG Climate. The elite interviewing in the semi-structured format, is however, sometimes seen as contentious: “the valuable flexibility of open-ended questioning exacerbates the validity and reliability issues that are part and parcel of this approach” (Berry 2002, p.679). This risk was however minimised by engaging with non-elite interviewees, juxtaposing the content of the interviews with policy documents and press statements as well as very careful preparation for the interviews themselves.

Finally, the question that remains to be addressed is the sufficiency of the number of interviews conducted, or ‘saturation’. It has been argued that “saturation is the key to excellent qualitative work” however, it is also noted that “there are no published guidelines or tests of adequacy for estimating the sample size required to reach saturation”(Morse 1994, p.147). The issue of saturation needs to be viewed separately for the fieldwork conducted in Brussels and in Washington, DC. While interviewing in Washington after having conducted approximately five interviews, the interview partners began suggesting the same potential interviewees. There were no other potential partners suggested at all after the fifteenth interview. It became visible that in terms of policy network the number of people engaged in the discussion

concerning the EU ETS was limited. Also the answers provided by the interviewees were coherent within the group of interview partners they represented.

The situation was much different in the EU where there were new potential partners proposed until the very last interview given a very large policy community present in Brussels and EU ETS being conceived by the EU. Therefore, in the European context the researcher was more focused on the saturation of the narrative. It would not have been possible to interview all the suggested partners, therefore, the focus was placed on the repetitiveness of the answers provided by the interviewees, especially, to the questions concerning the process and actors who were able to shape the legislation processes both in the EU and in the US. Overlaps and recurrence of themes and understandings began to appear after two interviews with Commission staff and two interviews with the Parliamentary staff. Obviously, certain issues would still appear new in the interviews conducted at the end of the data collection period, however, the core narrative would remain the same. The only negative influence of reducing the number of interviewees on the European side was probably related to the continuous divergences with regards to prioritising the importance of the actors present in the debate. This issue is dealt with in the analysis part of this thesis.

4.5.3 Preparation for the interviews

The potential interviewees were informed about the research project via e-mail, via phone call or an on-line form on the Senator's or Representative's website (where appropriate). If there was no answer for the e-mail sent or form submitted, a reminder was sent. If this in turn did not yield any effects, the offices were called. The researcher would call the Congressional offices, as this is a more efficient way of proceeding in Washington. The Congressional offices or individual staffers usually would not disclose their e-mail addresses and would prefer to be contacted through phone. With interviewees recommended by a previous interviewee, e-mails were sent including: a participant information sheet and a participation consent form. In Brussels, however, e-mail communication proved to be more useful than calling. The e-mails to the interviewees included also a description of the project to provide informed consent (see: Section 4.7). The potential interviewees contacted were also offered a possibility to receive the interview guideline prior to the interview, however, only three interviewees asked for the questions to be supplied.

Drawing on the literature regarding interviewing one more aspect needs to be addressed: vulnerability of the interviewees (Olson 2011). The issues around vulnerability mostly pertain to studies that involve particularly vulnerable populations, which is not much a case here, however, several points need to be addressed. The “vulnerability” in this project is mostly related to anonymity and a possibility that the interviewees could be identified.

As mentioned before, the chosen interview partners would not find an interview situation uncommon, thus the interview context would not be a stressful situation. The data generated was anonymised and the personal identification of the interviewees was made impossible. In several interviews, the participants were extremely careful about the anonymity and quotation from the interviews. Twice, the researcher was asked if he wished to receive a version of the discussions around the inclusion of aviation, that presents the organisation’s official statement or a more insightful account that must not be attributable to the entity represented. In these cases, given the official press releases, documents and media coverage that provide evidence of the official line, the interviewees were asked to disclose the less official interpretations. Also close attention was given to the practice of anonymization. Within the Congress, the interviewees would prefer to be quoted as Congress staffers. Another interviewee asked to remain anonymous also with regards to the type of organisation represented. Similarly, the European Commission interviewees would prefer to be referred to as “Commission staff / official” with no further details concerning their position or DG they worked for. The same participants were also interested closely in data storage and the use of data in any other publications beside the thesis itself. They were interested in tentative schedules for publications and submission of the thesis that might be seen as proof that the issue under investigation was very “live” at the time of the research. As shown above, various steps have been enacted to reduce the vulnerability and ensure the anonymity of the interviews.

The next two sections present the data collection process in Brussels (Section 4.6) and in Washington (Section 4.7). For practical and methodological reasons the first set of interviews was conducted in the US. The rationale to begin with the fieldwork in Washington was related to the political situation in the European Union. The debate on the EU ETS for aviation was still very intense in the EU in 2012 and 2013 and therefore, even if the questions to the interviewees would pertain mostly to the processes taking

place as early as in 2006, they would probably not offer a possibility to interview them. In the USA in turn, the EU ETS Prohibition Bill was already approved by the time the fieldwork was planned and the discussions were much more settled at the beginning of 2013. The decision was therefore to first gather background information on the EU policy process related to the EU ETS and aviation to later engage with the epicentre of the resistance to the inclusion. Even if for practical reasons the Washington interviews were conducted first, the explanation of the Brussels fieldwork is presented in the thesis first, due to the centrality of the EU in this study’.

4.6 Fieldwork in Brussels

This part of the study was conducted in Brussels in the period between March and May 2014. In this time, the researcher was based in the Royal Library of Belgium (Bibliothèque Royale de Belgique) and the European Commission Central Library, both headquartered in Brussels. Given the period between the two waves of fieldwork and the possibility to engage with the data gathered in the US, the data collection process in Brussels was informed by the data already obtained in the US. This in turn allowed further refinement of the interview schedules and a perspective on the issues with the wider international context in mind. At the same time, the researcher took great care not to be biased by the ideas already gathered. This period to conduct field work in Brussels was chosen due to both the political situation (upcoming elections to the EP in late May 2014 that could possibly reshuffle the EP membership) and the developments of legislation related to the EU ETS – further suspension of the application of the EU ETS to flights from outside of the EU¹⁰. Several interviewees preferred to schedule the interviews after the vote, even though they were aware of the fact that the interview would not concern any events after 2013. In the European part of the study 21 interviews were conducted and are reported in the table below (see: Table 2). The interviews lasted from 45 to 110 minutes.

¹⁰The European Council endorsed the compromise 7th March 2014. Following this the Environment Committee of the European Parliament voted on it 19th March 2014 and the plenary vote took place 3rd April 2014 where EU ETS for aviation was reduced in scope to flights between the airports within the European Economic Area (regardless of the nationality of the carrier).

Table 2: Interviews conducted in Brussels

Interview date	Category	Details
06.03.2014	Industry association	International Air Carrier Association
14.03.2014	NGO	Transport & Environment
18.03.2014	Industry association	Airports Council International - Europe
25.03.2014	European Parliament	Staff of a MEP
25.03.2014	Airline	Lufthansa
26.03.2014	European Commission	Cannot give further details due to anonymity reasons
2.04.2014	European Parliament	Advisor to an EP political group
7.04.2014	European Parliament	Staff of a MEP
8.04.2014	Airline	KLM
9.04.2014	Media	GreenAir Online (via Skype)
14.04.2014	European Commission	Cannot give further details due to anonymity reasons
16.04.2014	European Commission	Cannot give further details due to anonymity reasons
17.04.2014	Industry association	European Business Aviation Association
22.04.2014	European Parliament	Advisor to an EP political group
28.04.2014	European Commission	Cannot give further details due to anonymity reasons
28.04.2014	European Commission	Cannot give further details due to anonymity reasons
29.04.2014	European Parliament	Advisor to an EP political group
1.05.2014	Carbon markets	International Emissions Trading Association
9.05.2014	Carbon markets	Verifavia (via Skype)
28.05.2014	Airline	Air France (via phone)
16.06.2014	NGO	Aviation Environment Federation (conducted in London)

4.6.1 Identification of the interviewees at the European Commission and access to the high profile interviewees

The Commission has been called "one of the world's most powerful international administrations" (Kassim, Peterson, Bauer, *et al.* 2013, p.1) and therefore access to its staff can cause numerous issues. The specificity of the European Commission communications is that they are always conveyed by the Commissioner respective to the field a DG deals with. For this particular issue, the person in question would be Connie Hedegaard who took up the position on 10th February 2010 at the newly established directorate. It was created through splitting the DG for Environment and separating climate change related issues from larger environmental policy.

DG Climate Action was contacted firstly in February 2014 via a form provided on the DG's website, however no answer was given. Following this failure, the researcher involved his personal contacts in order to identify suitable interviewees within DG Climate Action, which yielded positive results. Eventually, four officials from DG Climate Action were interviewed, their positions are not revealed for anonymity reasons. All of them were serving also in other positions in the last five to ten years, where they were dealing with the EU ETS for aviation.

Additionally, two more high-ranking officials DG Mobility and Transport were interviewed as they were indicated by the DG Climate Action staff, however due to anonymity reasons no further details can be provided.

4.6.2 Accessing the European Parliament

Given the intensive pre-election period at the European Parliament, this constituency seemed to be the most inaccessible among all considered in Brussels. In principle, the interviews conducted in the EP can be divided into two categories: advisors to the Parliamentary groups and staffers of the Members of the Parliament (MEP). The advisors to the political groups were chosen due to their role in the Parliamentary Committees. They are following very closely policies within the Committee they work for and advise the Committee Members with regards to voting decisions. Thus, they are considered the agents able to provide a broader rationale for the position taken by the group and the motivations of certain policy decisions.

However, given their limited availability only advisors of three major groups were interviewed.

4.6.3 Accessing the environmental NGOs

The environmental NGOs landscape in Brussels proved to be very different to that in Washington, DC. In Brussels, there is only one organisation that was dealing with the EU ETS for aviation, namely Transport and Environment (T&E) whose “mission is to promote, at EU and global level, a transport policy based on the principles of sustainable development” (Transport and Environment 2014). T&E represents around fifty European organisations and coordinates the International Coalition for Sustainable Aviation (ICSA) that holds observer status at ICAO (Transport and Environment 2014). All the other Brussels-based interviewees have confirmed the status of T&E as the only all-European eNGO active in the discussions about the EU ETS for aviation.

Additionally, a representative of a UK-based NGO Aviation Environment Federation (AEF) was interviewed. Although its constituency is mostly British, AEF holds an observer status at ICAO and can be considered the European eNGO community representation at ICAO.

4.6.4 Accessing the aviation industry

The European aviation industry is strongly represented in Brussels. All major European carriers (British Airways, Air France, KLM, Lufthansa) have their offices there. Similarly, associations of airlines, airports and aircraft producers are very visible. Altogether, six interviews with industry representatives were conducted. No problems arose in accessing the industry interviewees.

4.6.5 Interviewees representing other sectors

The aforementioned set of interviewees was supplemented by interview partners representing the carbon markets: International Emissions Trading Association and Verifavia, a specialised verification body for the aviation sector (for dates and categories of the interviews see: Table 2). Additionally, one interview was conducted with an editor for GreenAir Online, an online media outlet that has been reporting on the EU ETS for aviation since the very beginning. All three interviewees were suggested by the previous

ones and seen as those able to offer a perspective different to that offered by industry, government or NGOs.

4.7 Fieldwork in Washington, DC

This study has been firstly informed by a series of semi-structured interviews conducted between March and May 2013 in Washington, DC (see: Table 3). In that period the researcher was a Research Fellow at the John W. Kluge Center at the Library of Congress. Altogether, for the US part of this study nineteen people were interviewed in seventeen interviews (two interviews were given by two persons simultaneously). Fourteen of them were face-to-face meetings that lasted between forty and ninety minutes. Two more interviews were conducted over the phone due to the interviewee's limited availability in Washington. Additionally, one interview was conducted via Skype in May 2013, when the researcher had returned to Cardiff.

Table 3: Interviews conducted in the USA

Interview date	Category	Details
01.03.2013	US Senate	Staff of a Senator
22.03.2013	eNGO	World Wide Fund for Nature
08.04.2013	not to be disclosed	not to be disclosed
09.04.2013	EU Representation to the USA	European Commission
17.04.2013	Industry association	Airports Council International – North America
18.04.2013	Aviation organization	ICAO (former officer) via phone
19.04.2013	US House of Representatives	US Congressman staff
22.04.2013	US Senate	US Senate Aviation Subcommittee (former staff)
24.04.2013	eNGO	Environmental Defense Fund
25.04.2014	Industry association	Airlines for America

30.04.2013	Other	US Congress Research Service
30.04.2013	US Senate	US Senate Aviation Subcommittee (former staff)
01.05.2013	Industry association	Aerospace Industries Association
02.05.2013	Industry association	National Business Aviation Association (via phone)
02.05.2013	US Senate	US Senator staff
03.05.2013	Think-tank	Center for American Progress
22.05.2013	Non-profit public interest law organization	Earth Justice

4.7.1 Identification of the potential interviewees at the Congressional level

A pivotal point of the discussion on US participation in the EU ETS was the announcement of the EU ETS Prohibition Act in the House of Representatives, which shows formal American disagreement with the EU-brokered idea to curb emissions from aviation. The discussion around the Bill clearly translates into the potential interview partners in the US, as the individuals involved with the Bill had stakes in the debate.

Interviewees were identified in two main ways. “In a case study, respondents are selected on the basis of what they might know to help the investigator fill in pieces of a puzzle or confirm the proper alignments of pieces already in place” (Aberbach & Rockman 2002, p.673) – this guideline was followed in the whole process of contacting potential interviewees. In the US, firstly the federal legislative process of the US Congress was taken into consideration. This means that the researcher focused on the European Union Emissions Trading Scheme Prohibition Act that was passed by the US House of Representatives (H 2594) and the US Senate (S1956) and looked at the politicians who were sponsoring the bill in both the House of Representatives and the Senate. These were accordingly representatives John Mica and senator John Thune. Contacts were made with their offices via phone to schedule an appointment with their staffers who were dealing with the issue of the EU ETS and aviation. Simultaneously, media search was run to identify other representatives and senators to broaden the

scope. Interviewees were conducted with four members of staff at the Senate and one staff member at the House of Representatives. Representative Mica's staff were not willing to take part in the research – numerous attempts to contact them were unsuccessful. At the same time letters inviting participation in the research were sent to the Committee of Infrastructure and Transportation and to the Aviation Subcommittee that work at the House of Representatives.

Secondly, snowballing (Flick 2007) played an important role. As mentioned before, each participant was asked to nominate potential interviewees. This not only provided a broad list of contacts and establish networks (Richards 1996, p.200) but also enabled the researcher to understand which actors were seen as important players in the discussions on the EU ETS. Interestingly, there was one recurring reference in all of the interviews, namely the Airlines for America, as the entity that in view of the participants had to be interviewed. This was not the case with regards to the other potential interviewees – for example different eNGOs were suggested by different interviewees or different persons to access at the Congressional level. The saturation of the network was achieved when no new participants were suggested and the same names were being suggested. Also, it became visible that the discourse surrounding the issues discussed is saturated as answers to questions asked started to re-appear. The next sections describe the sampling among other groups.

4.7.2 Accessing the eNGOs

A different approach to the one used for the Congress was undertaken to identify the interviewees representing the eNGOs. The media search proved that several eNGOs were more vocal than others, namely World Wildlife Fund (WWF), Environmental Defense Fund (EDF) and Natural Resources Defense Council (NRDC). Additional groups were identified through a joint letter that American eNGOs sent to the senators and to the President¹¹ All the organisations who signed the letter where contacted with an interview request. The researcher received answers to all e-mails, however, most of the organisations preferred to provide contacts to people they felt more engaged than themselves. This was the case for the Sierra Club, Friends of the Earth and Climate

¹¹ The letter was made available by one of the US eNGO interviewees. It was signed by 350.org, Center for Biological Diversity, Climate Solutions, Conservation Law Foundation, Earthjustice, Environmental Defense Fund, Environment America, Environment Northeast, Greenpeace USA, League of Conservation Voters, Natural Resources Defense Council, Oxfam America, Sierra Club, US Climate Action Network, and World Wildlife Fund.

Action Network (which mostly serves as an umbrella organisation and is not an independent entity). Finally, two NGOs have been surveyed: WWF and EDF. The interviewees representing WWF and EDF, indicated the same list of people and claimed that although the list of signatories of the letters opposing the EU ETS was large, only three environmental NGOs were particularly active in the debate: WWF, EDF and NRDC. WWF is an international eNGO mostly dedicated to the wildlife conservation and endangered species, but also working with climate change, hence the interest in the EU ETS. EDF understands its mission as “to preserve the natural systems on which all life depends” (Environmental Defense Fund 2013). They are seen as a strong court player in the US.

4.7.3 Accessing the sectoral organisations

The third group of interviewees consisted of representatives of the industry who were identified through various channels. Airlines for America (A4A) was approached first, given the importance, other interviewees attributed to it. Moreover, their representative testified at the hearing of Senate Committee on Commerce, Sciences and Transportation on June 6th 2012. The National Business Aviation Association was identified by the interviewee from A4A and was approached via their Press Office. Airports International Council – North America (ACI-NA) and Airspace Industries Association (AIA) were recommended by one of the interviewees who reserved their own complete anonymity, including the type of organisation they represented. In all four cases, the interviews were conducted with staff that were dealing directly with the EU ETS.

The Air Line Pilots Association (ALPA) and General Aviation Manufacturers Association (GAMA) that have been recommended by a number of interviewees did not respond to the researcher’s numerous queries – neither their press office, nor persons indicated by the interviewees.

4.7.4 Accessing the administration

The fourth group of the interviewees can be labelled as a mouth-sealed group and it included the Federal Aviation Administration (FAA), the White House, the US Department of Transportation, the Environmental Protection Agency and the US Department of State. Within these organisations, only individuals who were directly

engaged in the issue were contacted – this was possible through recommendations by the previous interviewees. All of the listed actors expressed their interest in the research, however, declined participation in the interviews. The reasons given were related to the fact that the issue investigated is still in progress. One of the answers framed the issue as following: “these negotiation are at a sensitive point and I do not think it would be appropriate for me to participate in your research at this time”. Another answer had a similar undertone: “I’m afraid the issue of your research remains very much a “live issue” today and consequently one that would be difficult to discuss fully”. In relation to these, the remaining strategy to analyse the positions of the aforementioned actors is to track their statements in media and official press releases as well as rely on the other actors’ perceptions. It could be argued, that the researcher could have waited for a more suitable moment to come back to the interviewees, however, given the further suspension of the scheme until 2016, the time of expectation would prolong the duration of the project excessively.

4.7.5 Other types of interviewees

Finally, three interviews were conducted with persons that do not fall into any of the groups above. The first was a representative of the Congressional Research Service (CRS), a legislative branch agency that provides analysis exclusively for the Congress. The CRS was identified as an important source of information by one of the NGOs interviewees and was also identified while reviewing literature since the agency authored a report on the inclusion of aviation into the EU ETS (Leggett *et al.* 2012). The second interviewee represented the Center For American Progress and was indicated by one of the previously interviewed organisations. This think-tank describes itself as “an independent nonpartisan educational institute dedicated to improving the lives of Americans through progressive ideas and action”(Center for American Progress 2013). The third participant, represented Earthjustice that define itself as “a non-profit public interest law organisation dedicated to protecting the magnificent places, natural resources, and wildlife of this earth, and to defending the right of all people to a healthy environment”(Earthjustice 2013). This description and also additional information related to the organisation’s background given during the interview would make it an outlier if qualified as one of the eNGOs.

4.8 Data analysis

4.8.1 Remarks on transcription

Once the interviews are concluded the researcher transcribed them unaided. It is believed that this increases the reflexivity of the researcher as well as the trustworthiness of the data (Alcock & Iphofen 2007). Also, given the need to secure data, self-reliance assures that any information gathered will not be leaked. Although, the transcription process was time-consuming, the process was beneficial for the research and allowed further reflection on the data collected.

4.8.2 Data analysis

The data analysis was based on the material gathered in the field triangulated with the policy documents on one side and media content on the other. The explanatory part of this thesis calls for variation of the sources of data in order to better understand the context and look at the problem from various perspectives. For example, the information provided in a confidential non-recorded interview with a European Commission official is different than what is presented in the official statements issued by DG CLIMA. However, at the same time, the official line is the one that reaches the regulated entities and cannot be downplayed. Equally, it has been rightly pointed out that the information provided by the interviewees cannot be seen as “unproblematic windows onto the social or natural world” (Potter & Mulkey 1985, p.266), therefore, the role of the researcher is to interpret how the reported world is constructed in their accounts.

The data has been analysed with assistance of NVivo – one of the leading computer assisted qualitative data analysis software (CAQDAS) packages. The software was used for coding the data and developing theories. The main reason of deciding to use CAQDAS is to increase rigour and consistency without compromising speed and efficiency (Stewart 2012, p.503). Although, some claim that using CAQDAS may distance the researcher from the data (King 2010), here, given that all the interviews were conducted and transcribed by the researcher, the close connection to the interviews content was not jeopardised unduly. In this research, all the saved secondary data as well as transcripts and field notes were uploaded to NVivo and coded within the software environment.

In relation to the research questions that this thesis asks and the theoretical framework chosen, the coding process (see: Table 4) was centred on three main themes: EU's leadership, the nature of the opposition to the EU ETS, international implications of the countermeasures to the EU ETS (such as at ICAO and International Air Transport Association (IATA) levels). Thus, the codes emerge from the research questions (Mauelshagen *et al.* 2014), but are also informed by the actual material gathered. The themes chosen were divided into sub-categories (Saldaña 2015) pertaining to the types of actors interacting with each other (states, institutional, non-governmental, media, private companies or their associations) and types of interactions (influence, observation, criticism, etc.). The themes and the sub-categories underwent revisions once all the data collection has been finished. For example the data collected in the EU demonstrated that focusing on the US exclusively is not sufficient and the implications of the EU ETS are much more international rather than only affecting EU-US bilateral relations. While rather broad, the codes were able to cover the whole research agenda of the thesis and allowed navigating through a rather complex and multi-faceted set of data.

Table 4 Types of codes employed

Theme	Sub-category (types of actors)	Type of interaction
EU's leadership	state, NGO, media, private company, sectoral association, think-tank	observation, criticism, influence
Nature of the opposition		
International implications		

Apart from that, the discourses reflecting the interpretation of the motivations and interests that the members of the policy network have (coming both from interviews and textual data), are coded separately to provide a distinct analysis of the meaning-making activities that the policy community engages with. The other two elements of the theoretical frameworks were reflected in the coding process as well. The MLG component translated into the main theme of "International implications". The focus on various layers and geographies of policy-making was derived from the MLG interest in

interactions between stakeholders. Additionally, for this research, these interactions were mostly international. The coding process involved the PNA through observing influence between the stakeholders mapped via PNA.

The codes enabled the researcher to systematically analyse collected data and limit the risk of missing any significant answers provided. Given the qualitative character of this project, focus has been placed more on a larger discourse present in the narratives than quantification of phrases and drawing conclusions from frequencies of certain expressions or words. The approach taken here is guarded against viewing the policy process “not of its participants’ making, but of its analysts’ insistence” (Schegloff 1997, p.183) by a careful triangulation to limit speculation or subjectivity. At the same time, while relying on coding and NVivo, there has been an on-going process of reading full transcripts and listening to the recorded interviews over the whole period when analysis has been conducted.

4.9 Research Ethics

Special attention has been given to research ethics throughout the duration of the project. The researcher complied with the best practices available in the discipline (BSA 2002; ESRC 2010; SRA 2003) and received the appropriate ethical approval from the School of Planning and Geography at Cardiff University. Given that the research design included conducting interviews, several issues needed to be addressed: informed consent of the participants, confidentiality and anonymity of the interviewees and storage of the data.

4.9.1 Informed consent

The concept of informed consent assumes that “prospective research participants should be given as much information as might be needed to make an informed decision about whether or not they wish to participate in a study” (Bryman 2008, p.121). Following this rationale, all the participants were provided with information concerning the project, its background, aims and objectives. They were informed that they could withdraw at any time without stating the reason. Information regarding audio recording of interviews was included in the communication with all interviewees. Before each interview, the interviewees were handed a hardcopy of the research outline and were asked to sign a consent form. None of the participants withdrew.

4.9.2 Confidentiality and anonymity

All the participants of this study were granted anonymity and the data gathered was kept only in the digital form in a password-protected computer and in a password-protected file. In order to guarantee anonymity to the interviewees, their names have been translated into alphanumeric codes. These procedures follow the Flick's reflection on confidentiality: "in the analysis of qualitative data, anonymity and confidentiality are central issues from the angle of ethics – in transcription, in analysis itself and most of all in presenting results and excerpts from data" (Flick 2007, p.103). The interviewees were given a choice if they wanted to receive the transcription of their interviews and several availed themselves of this opportunity.

4.10 Conclusion

Conducting any research is more complex than proceeding from crafting its design, going into the field and then analysing the data (Desmond 2004, p.268). This chapter has explained the most important methodological aspects of this research. It has also justified the applied research strategy and the logic of inquiry.

More precisely, this chapter offered insights into the process of preparing a research framework that could ensure collecting data that would answer the research questions. It has also further addressed the issue of casing, that has been already mentioned in Chapter 1. As far as data collection is concerned, the detailed explanation of the process provides for replicability and robustness of the analysis. The main issues pertaining to research design, data collection and their subsequent analysis were highlighted. Once the research framework is explained, the proceeding chapters engage with the analytical dimension of this research.

5 The EU goes into trenches to stimulate ICAO: EU's leadership in the climate policy

5.1 Introduction

The previous chapters have given an overview of the researched area and the contexts of the case employed here, as well as the methods used to answer the questions that are addressed. The following chapters will present the analysis of the empirical data collected. The data is organised in the following way: the next three chapters respond to the research questions while chapters 8 and 9 conclude the thesis. In particular, Chapter 5 addresses question 1 (What were the effects of the EU's attempt to include aviation in the ETS?) and 3 (Why were particular venues of policy processes regarding aviation emissions preferred?) and to a lesser degree addresses also question 4 (Why do the EU and non-EU countries differ on the shape of a global aviation emissions policy?). Chapter 6 responds to research question 2 (Who are the most prominent actors of the debate on inclusion?) and continues addressing research questions 3 and 4. It also responds to question 5 (How are the policy differences between the US and the EU being resolved at the international level?). Finally, Chapter 7 completes the response to questions two and four. Given the interconnectedness character of the issues analysed and empirical data derived from two waves of fieldwork, chapters 5 to 7 engage with the research questions in a thematic way rather than a sequential way, and seek where possible to present coherently the way that the policy change unfolded at different levels and arenas.

The main aim of this first empirical chapter is to look at the EU's actions related to climate policy and the parallel process at the ICAO level. This chapter looks closer at the EU's actorness¹² and the policy network relations within the analysed case. Firstly, it looks at the ICAO initiatives addressing curbing CO₂ emissions, as well as, recent changes to the internal dynamics of the organisation. Further, it pays special attention on the interplay between ICAO and the EU in the context of the inclusion of aviation into

¹²Actorness is used in here the meaning of „ability to act” and agency, which is a widely employed language in literature looking at the EU effectiveness, legitimacy and external relations (Groen & Niemann 2013; Čmakalová & Rolenc 2012).

the EU ETS. In the final part, it looks at the power dynamics between the two Directorate Generals that were engaged in including aviation into the EU ETS. The last part gives a more nuanced view on the Commission's work related to the EU ETS and presents some of the internal tensions that so far have received insufficient attention in the literature. Special attention is given to the nature of the interplay between EU and ICAO with regards to CO₂ curbing initiatives and the potential of the EU to accelerate action at the ICAO level. On a broader canvas, the chapter also considers the extent, to which the inclusion of aviation is a step to expand EU's leadership in climate policy.

Given the theoretical framework employed in this thesis, the analysis takes into consideration a wide range of voices present in the policy networks involved. It goes therefore beyond the role of individual EU Member States, but looks at the EU and ICAO architectures interplaying on various levels, including the bureaucratic side of the European Commission. The interactions between the organisations and within the Commission, which is a focal point here, uncover the governance patterns on both macro and micro levels. The latter is expressed by close engagement with the data coming from the interviews to explore the meaning-making activities and the role of individuals in policymaking and climate governance. Finally, the governance perspective allows consideration of the EU's endeavours to become an important player in a rather nation state-dominated context like ICAO.

On a broader perspective, this chapter addresses, the overarching issue of the EU's potential to change aviation regulation patterns and the EU's ability to exercise its leadership in regulation of a sector that has been exceptionally treated with regards to taxation, government aid or subsidies. ICAO being the main aviation forum worldwide provides the first layer of the interactions between the two areas analysed. The chapter is structured as follows: it begins with the analysis of ICAO's involvement with aviation emissions and continues to analyse EU-ICAO relations. Furthermore, the focus is moved to the EU's role in catalysing international action with regards to aviation emissions. Finally, this chapter unpacks the issues that emerged between the Directorate Generals for the analysed case.

5.2 The emerging role of ICAO in CO₂ emissions regulation

At the beginning of this chapter, a brief account about the ICAO's historical activity in the realm of CO₂ curbing is given. This is to provide the contextualisation

needed while engaging with policy network analysis and to show the developing relationship between ICAO and the EU. It also allows observation of the dependencies between the structures and enables engaging both public and private actors who are present in the network. The historical ties are extremely important in the considered context, as the EU has mobilised discourses of ICAO being inactive against emissions and the EU needing to take action instead. This was also one of the prime arguments when including aviation into the EU ETS.

ICAO was established in 1944 by representatives of governments who gathered in Chicago to discuss post-war aviation issues. ICAO was called into being by the Convention on International Civil Aviation signed by 52 states out of 54 present at the meeting. Although at the beginning it was controlled mainly by a group of the winners of the World War II, "it evolved into a truly diverse and global international organisation" (Mackenzie 2010, p.x). The main objective of ICAO is "to promote the safe and orderly development of international civil aviation throughout the world. It sets standards and regulations necessary for aviation safety, security, efficiency and regularity, as well as for aviation environmental protection"(ICAO 2013). The organisation's structure consists of the Assembly, the Council and the Secretary General. The Assembly includes all the Contracting States and meets at least every three years. The composition of the Council is limited to 36 states elected (among the Contracting States) for mandates of three years taking into consideration the following rules: "States of chief importance in air transport, States which make the largest contribution to the provision of facilities for air navigation, and States whose designation will ensure that all major areas of the world are represented"(ICAO 2014). While the Assembly is understood as "a sovereign body of ICAO" (ICAO 2014), the Council governs the organisation and the Secretary General heading the Secretariat is ICAO's chief executive officer. ICAO's "prime governance instrument" (Oberthür 2003, p.194) are Annexes to ICAO Convention that are binding without ratification and are adopted by two thirds of votes of countries that are present in the Council.

In the first sixty years since its inception, ICAO has been the main forum for deliberation on the international aviation regulation. Its environmental capacity, however, was not seen as its "prime role" (Oberthür 2003, p.194). Although, it has been widely agreed that given the hyper-mobile character of the sector, its regulation should be entrusted to an international body, implicitly to ICAO. Thus, the organisation itself

consists of different interests, which are not necessarily mutually constitutive and may therefore produce conflicting policies emerging from ICAO structure, as shown below in the context of regulations concerning CO₂ emissions from aircraft.

Nevertheless, issues related to the environment were not in ICAO's focus until the 1970s, when ICAO became first interested initially in noise from aircraft. The environmental impacts of aviation became recognised for the first time, when the Committee on Aircraft Engine Emissions (CAEE) was established at ICAO in 1977. This was the first step to formally look at the issue of emissions within ICAO. In 1983, it was replaced by the Committee on Aviation Environmental Protection (CAEP), which comprises 23 Contracting States and 16 observers (the EU among them) and still worked within ICAO.

An explicit recognition of climate change as an issue for air transport was given by ICAO in the early 1990s (Crayston 1993, p.53). This recognition later led to a request filed by ICAO in 1996 to the IPCC to prepare a report on aviation's influence on climate change (Oberthür 2003, p.195), which was published in 1999 as the IPCC Special Report on Aviation and the Global Atmosphere (IPCC 1999). In the meantime, in 1998, ICAO Assembly adopted a resolution that called

“to study policy options to limit or reduce the greenhouse gas emissions from civil aviation, taking into account the findings of the IPCC Special Report on Aviation and the Global Atmosphere and the requirements of the Kyoto Protocol.” (ICAO 1999)

In the time of preparation for the Kyoto Protocol, ICAO became the main UN body that would tackle the emissions from aircraft. In 1997, it received strong United Nations support embodied in the Kyoto Protocol. Article 2.2 of the Protocol explains:

“The Parties included in Annex I shall pursue limitation or reductions of emissions of greenhouse gases not controlled by the Montreal Protocol from aviation and marine bunker fuels, working through the International Civil Aviation Organization and the International Maritime Organization, respectively” (United Nations 1997).

This was reiterated also in 2011 by the ad hoc working group working in long-term cooperative action under the convention (United Nations 2011). The members of the group also urged ICAO “to continue without delay their activities for the development of policy approaches and measures to limit and reduce greenhouse gas emissions”(United Nations 2011).

Following the Kyoto mandate, in 1999 CAEP endorsed “development,

dissemination and, to the maximum practical extent, use of the best operating practices to achieve near term reductions in aircraft emissions” (ICAO 2006b), which was welcomed by the European Commission that expected further work on the ICAO's side (European Commission 1999b). In the mid 2000's a change occurred at the ICAO level. In 2004, the CAEP stated that a market-based measure for aviation facilitated by ICAO “...seemed sufficiently unattractive that it should not be pursued further”(European Commission 2006). On the other hand, in 2004 ICAO Assembly Resolution 35-5 and the “Consolidated statement of continuing ICAO policies and practices related to environmental protection” recommended emissions trading and supported producing non-binding guidelines for the states that would be interested in incorporating aviation into their domestic carbon control mechanisms. It also endorsed two approaches: the first one supporting development of a voluntary carbon scheme for aviation for interested contracting states and the second, where ICAO would support states to incorporate aviation into their emission trading systems conforming to the UNFCCC process. This can be seen as an obvious endorsement of the mechanism that CAEP would see as “unattractive” and made the ICAO narrative inconsistent.

This discrepancy was further amplified by yet another change that happened at the subsequent Assembly in 2007. At that time, ICAO appealed to its Members “not to implement an emissions trading system on other Contracting States' aircraft operators on the basis of mutual agreement between those States” (ICAO 2007). This resulted in the EU Member States together with other countries that belong to the European Civil Aviation Conference (ECAC)¹³ placing a statement of reservation, which generally is a rare practice (GreenAir Online 2011b), to the Resolution A37-17/2 – Consolidated Declaration of the Permanent Policies and Practices of ICAO Related to Protection of Environment – Climate Change. The statement commented on the Assembly decisions as follows:

“The programme put forward for agreement at this Assembly is unambitious, piecemeal and lacking in credibility on market-based measures (both greenhouse gas emissions charges and emissions trading).”(European Commission 2007)

Conventionally, the reservations submitted by the countries are understood as opt-out

¹³ECAC has been inaugurated in 1955 and today includes 44 European countries and its mission is mission is “promotion of the continued development of a safe, efficient and sustainable European air transport system” (ECAC 2014).

legal caveats. In this case, the criticism was especially hard on the issue that the countries should obtain mutual agreement from all the parties involved in case they wanted to incorporate aviation into regional emission trading schemes, for example, the EU would need to obtain US agreement to include into its ETS flights coming from the US and landing at any European airport. The EU claimed in its statement that as long as the measures are consistent with the Chicago Convention, mutual agreement does not need to be sought. It has also called for more initiative: "Europe strongly urges ICAO to demonstrate the type of leadership that is being demonstrated in other bodies such as the UNFCCC" (European Commission 2006). The EU perceived ICAO as a UN arena and as a concomitant of that, a body that by definition should be more environmentally-minded. From the EU perspective, ICAO has been ignoring the mandate to tackle aviation emissions given by UNFCCC. The organisational architecture does not grant UNFCCC authority over ICAO; it only delegates the task to a specialised agency, without any capability to control execution of the entrusted charge. Finally, the EU's ability to exert pressure on the parties of UNFCCC after the Conference of the Parties (COP) to the Protocol in Copenhagen has decreased and therefore, this avenue of arguments to persuade ICAO appears to be ineffective. As presented above, the matrix of institutions: ICAO, UNFCCC and the EU, further complicates the regulatory competition between the venues and multiplies the effects of the EU's attempt to include aviation into the EU ETS. The EU could try to focus on the UNFCCC process and require exerting more pressure on ICAO's work on climate change targeting policies, as that may have seemed a more efficient approach. This however never happened. The UNFCCC negotiations since the Copenhagen conference were shadowed by a lack of ambition and struggles to agree on a binding agreement. Apart from that, the negotiations faced criticisms of the (un)democratic nature of the Copenhagen Accord (McGregor 2011; Bernstein *et al.* 2010).

There are two discourses that emerge from the ICAO narrative presented above. The first is focused on the technical measures to mitigate emissions and the second locates its hopes in emissions trading. At the ICAO level they seem to compete with each other while the implementation ideas are merging the two discourses. For example, IATA suggests a four-pillar strategy, where "positive economic measures (carbon offsets, global emissions trading)" are viewed as gap-fillers that "are not expected to drive technological developments" but are still worth considering (IATA 2013a, p.18). The

FAA in turn endorses so called Five Pillar Environmental Approach, where the two discourses are married and emissions trading is seen as a way to achieve carbon neutrality (FAA 2015). At the same time, some airlines saw CO₂ compensation as a last resort (Interviews 25.04.2013, 25.03.2014). Strikingly, at the EU level, DG CLIMA would entirely focus on the market-based measures and its only answer to the problem is the EU ETS, while DG MOVE - almost ignoring the EU ETS - channels its efforts to the Single European Sky initiative, which essentially reflects the above mentioned pillars but excludes emissions trading.

This lack of coherence in the vision concerning the use of market-based measures can be viewed from two distinct perspectives. The first one focuses on the strategy of the ICAO process and debates that take place around the Assemblies. As explained by one of the interviewees who was close to the ICAO process in their US Congress capacity:

“I’ve heard a story from Congressional staff person who wanted to attend an ICAO meeting and was told that was not possible because there wouldn’t be enough seats in the room. It’s a very different kind of process and the secretiveness of it and restriction of it really makes it very difficult for people to understand it.” (Interview 30.04.2013)

The interviewee claimed also that after observing closely the ICAO processes since 1998, they saw this lack of transparency as a strategy to become more powerful:

“By not being transparent it’s not very accountable for the decisions that it makes it allows more public spin, spin to the public, what is actually happening.” (Interview 30.04.2013)

Although accountability did not appear as an issue in other interviews, NGO representatives both from EU and the US would agree that access to the documents and to the forum itself is difficult. They would often use unofficial channels (such as the state representatives leaking information) to be aware of the proceedings of closed meetings during the assemblies and ICAO committee meetings.

Another explanation of the changes in thinking about emissions trading for aviation was provided by a high level official of the European Commission. They saw these revisions as direct results of the Americans blocking the idea of emissions trading at ICAO. Although, the guidance document has been agreed by CAEP it has not been approved by the ICAO Assembly and therefore remains only on paper. The explanation is following:

“they [Americans] made, if you like, a coup at the ICAO Assembly in 2007 and overturned it and forced through the changes to the guidance document, so it was no longer the one that was negotiated and reached consensus about that was finally published, it was the one demanding mutual consent, so I think they were busy with the resistance there (Interview 28.04.2014).

Indeed, the dominant narrative concerning the ICAO process would be rather negative as the interviewees saw the organisation as extremely slow, excessively deliberative or even “sluggish” (Interview 14.03.2014). The airline industry interviewees would point however that ICAO has to work at its own pace as the changes they suggest influence a whole global industry. This explanation should be complemented by a strong opinion coming from the eNGO community and to some extent from the Commission officials who considered ICAO as an entity very much run by the ex-aviation professionals. As framed bluntly by a representative of a European NGO:

“They are all ex-aviation people basically. I mean there are few that aren't. They are all very pro-aviation industry. Not that I want to take down the industry or whatever, but their all careers have always been about “more aviation is better”, “aviation brings economic growth”, “aviation creates jobs”, aviation yeah yeah yeah...” (Interview 14.03.2014)

A similar view has been offered by one of the interviewees from the US side. They saw that the aviation industry is very influential at ICAO as opposed to any other international forum. Concomitantly, the industry is afraid of moving any kind of aviation regulation out of the ICAO arenas (Interview 30.04.2013). Finally, a high-ranking EC official portrayed ICAO as “de facto transport ministries meeting and discussing and transport ministries, which are very close to the airlines that they generally tend to regulate or defend”. Accordingly, the role of the airlines and aircraft manufacturers in shaping the debate in Montreal cannot be underestimated also in the case of emissions trading.

These views on ICAO should be juxtaposed with the view that the industry itself has on the organisation. One of the representatives of the European airlines associations admitted that the ICAO process is time-consuming, however they still saw it as effective:

“The ICAO was a very slow, it is a very good machine, the ICAO is more or less consensus [-based], it takes time and there is enormous procedural slow rhythm in ICAO, so whenever somebody says ‘We will arrange it at the ICAO level’ – it takes 10 years to arrange something. ICAO works, once it is there it is a very strong principle, very strong recommendations, very strong policies.” (Interview 6.03.2014)

It has also been underlined that ICAO itself has undergone significant changes that it has not seen before and the participants of the policy community do not fully know how the new circumstances will affect the decision-making processes at ICAO.

“For a long time, ICAO was dominated by the US and the EU, now that’s over and it means for environmental regulation that... We are not going to get any time soon, I think it is going to be a really really difficult process.” (Interview 14.03.2014)

A somewhat similar understanding is present in the US, where one of the eNGOs interviewees stated “The United States has a history of throwing its weight around in ICAO and getting what it wants there.” (Interview 24.04.2013) Although the ICAO Assembly that took place in 2013 remains outside of the scope of this research it is worth mentioning that for the first time in history the developing countries managed to outvote the developed countries. This step was seen by one of the Commission officials as a game-changing event: “You have now ICAO, which is a UN body, which is there clearly taking a position of developing countries” (23.03.2014). Thus, the position of the US and the EU countries changes and in the realm of environmental impacts of aviation, this is a crucial reorientation. Developing countries are very much focused on the “common but differentiated responsibilities” (CBDR) principle to be applied also in mitigating aviation emissions (see: Section 7.3). As argued by Pierre, in the context of environmental governance the polity is experiencing aforementioned “erosion of traditional bases of political power”(2000, p.1) and what may follow is then the emergence of new bases with new sets of principles, here embodied by the importance of the CBDR postulates.

“We were seeing CBDR inserted into international conversations everywhere, so I think that to me this is really, it is impossible to disentangle the ICAO process from what’s going on with UNFCCC.” (Interview 3.05.2013).

The need to include CBDR language in climate negotiations has been strongly expressed at various occasions by India and China (Torney 2014, p.7). The change of power dynamics at ICAO becomes also visible in the discussions about market-based measures for aviation originating from the EU. One of the interviewees expressed that the disagreements over how to tackle emissions from aviation are a part of a larger strategy that the developing countries have:

“There is that suspicion, I am not saying that it is well-founded, but they [the developing countries] are suspicious and I think overwhelmingly amongst the developing countries there is also this fear that we are coming to 2015, we have

UNFCCC talks and if they seem to have accepted any action on their carriers to tackle climate change than it's a precedent to say, well your aviation industry is part of the battle, why not the rest of your national economy." (Interview 16.06.2014)

Given the change of dynamics at ICAO and the motivations offered above it is plausible that the ICAO's work on climate issues will be hampered by the developing countries as a collateral to their tactics towards UNFCCC negotiations and responsibilities. On the other hand, however, it can be claimed that the developing countries are unhappy with regional schemes on the basis of delegating their sovereignty to an international body. This has been the argument used by the US when challenging the EU ETS inclusion of aviation though it seems perfectly applicable to other ICAO Contracting States, including developing countries. The developing countries' issues "had always been marginal to the thrust of the UNFCCC, have become even more marginalised in recent COPs as energy has had to be diverted to get reluctant northern countries to accede to the Kyoto Protocol" (Najam *et al.* 2003, p.222). The change of dynamics in ICAO gives them a space to raise their concerns and influence the international policy-making with regards to aviation emissions, which will be growing in developing countries due to aviation expansion (Airbus 2013).

5.3 The ICAO and EU intersection on tackling CO₂ emissions

This account about the interaction happening at ICAO serves as a background but also gives a platform for discussion on the opposition to the EU ETS and governance mechanisms that can be observed in the relations between the EU and ICAO. As a reminder for this section, it needs to be underlined that the EC work that is being done at the ICAO level is mostly led by DG MOVE, however the EU ETS file was led by DG Climate Action, which caused some tensions that are analysed later in this chapter.

Having outlined the ICAO's initiatives related to aviation emissions, one can proceed to investigating the EU's involvement with the global organisation. Parallel to the discussions about mitigating CO₂ emissions from aircraft at the ICAO level, the European Union was also thinking about tackling the issue and, as explained in an interview by one of the EC officials:

"the whole reflection on whether or not aviation should be included in the EU ETS was going on, I would say around 2000. I say that because it was in 2001 that ICAO was also looking at how best to mitigate CO₂ from international aviation." (Interview 28.04.2014)

The answers to the question related to the beginnings of an idea to include aviation into the EU ETS vary and this one seems to be the most persuasive given the public consultation in 2005¹⁴ and the impact assessment prepared by the EC.

The EU, observing the slow pace of action at the ICAO level, wanted to more effectively push for action at a global level while working on the Aviation Directive. From the very beginning, already at the stage of the impact assessment, the EU saw inclusion of aviation in the EU ETS as “a model for aviation emissions trading that can be a point of reference for the EU's contacts with key international partners and be extended or replicated worldwide”(European Commission 2006). Consequently, a visible EU presence at ICAO as a single block was crucial. Additionally, this view was also put forward during the preparatory work for the Assemblies or ICAO working groups via ECAC.

In relation to this, the Office of the EU in Montreal had been established in 2005 and then officially opened in 2007. This strengthened the EU's position at ICAO until that moment was based only on the observer status to the Assembly and the ICAO committees offered to the EU in 1989(European Commission 2013c). Additionally, the EC was considering that the European Community should become a full member of ICAO in order to “not only speak with a single voice but, above all, to ‘influence those organizations’ activities in the common interest and in support of sustainable development”(European Commission 2002b). The recommendation formulated by the EC was however rejected by the European Council and the EU remained at the observer level (Lindenthal 2014, p.7). The literature tends to portray the position of the EU at ICAO as “anomalous” as “it is clearly more active than most regional organisations, but it does not enjoy the voting and speaking privileges of members” (Birchfield 2015, p.1277).

Even though the EU has managed to reach only observer status at ICAO, it still has been described by a high-ranking EC official as a visible player:

“I think the strength that we have is that although our status is weak in terms of just being an observer, in practice other ICAO Member States consider us a block and they know that we are acting together although of course there will be attempts to try to divide and conquer but generally our coordination works very effectively.” (Interview 28.04.2014)

¹⁴Only two Member States, France and the United Kingdom submitted formal government positions via the public consultation concerning inclusion of aviation into the EU ETS that was organized by the EC in March – May 2005 (European Commission 2005b).

Another high-ranking EC official underlined the importance of the EC's involvement before the ICAO Assemblies while it is responsible for equipping the Member States with common positions or information notes. These are discussed at the European Council in order to have a coherent strategy and a unified position before sending representatives off to Montreal. As evaluated by the interviewee: "Normally it works, with a lot of work it works fairly well" (Interview 28.04.2014). The ICAO process is then much less formal than preparation of positions for international climate negotiations or in the United Nations Commission on Sustainable Development process (Delreux & Van den Brande 2013).

Another interviewee admitted that in case of discussions on emissions trading: "There was a bit of frustration and a lot of criticism but nobody broke the EU ranks" (Interview 24.09.2014). On the other hand, the interviewees highlighted also that at times the EU Member States felt that they did not really receive instructions on how to act with the EU ETS file at ICAO. What is worse, they sensed that there is a dual voice coming from the EC, probably a result of division of tasks between DG CLIMA and DG MOVE (see: Section 5.5).

5.3.1 The role of the EU Member States

EU involvement at the ICAO level had also consequences for the internal EU dynamics. At the moment, when the EC has become very engaged at the ICAO level and its presence in Montreal, this resulted in the EU Member States being less active in the ICAO debates. According to a representative of a prominent European NGO, because of one outstanding official from the EC, the Member States would decrease their involvement:

"He was so good that a lot of the Member States, in the context of that recession, got lazy: "Why should we do the analysis? The Commission will do it. The Commission will coordinate. The Commission will tell us what to do." And I would say with the possible exception with the UK and the Netherlands, we saw very low levels of participation amongst the other Europeans, who would just turn up to the strategic meetings and there was "[the name of the official], what do you want us to say?" (Interview 16.06.2014)

There is one more part to the narrative of the EU presence at ICAO worth mentioning that alludes to another powerful European official, Jos Delbeke, who used to serve as Director General and Deputy Director General at both DG Environment and DG Climate Action and also as the chief negotiator of the Commission at the UNFCCC

Conference of the Parties on Climate Change between 1999 and 2003. As mentioned before, the EU has only had observer status at ICAO therefore the only pressure it can exert is through its Member States. However, Jos Delbeke who was considered by many of the interviewees as the father of the whole EU ETS (but not particularly of the idea of including aviation into the scheme) represents Belgium at ICAO *de iure*, however *de facto* his role is to convey the Commission's views and negotiate solutions. Also, he was in charge, as Director-General for Climate Action, of delivering a testimony concerning inclusion of aviation into the EU ETS for the Committee on Commerce, Science, and Transportation of the United States Senate in June 2012. By engaging Delbeke in the ICAO process, the Commission could make sure that it would have a first-hand account of the Montreal proceedings on the governmental level without a need to recourse to the Member States.

It has also been emphasised that in the debate on the EU ETS that the countries would look to the Commission to suggest possible solutions as long as the enforcement of the rules was not considered. When it came to discussions about fines for non-compliance that would need to be imposed on airlines that do not comply with the scheme entered the debate, EU Member States would be much more cautious in following the Commission's briefs:

"The Member States at this point started to think about enforcement, but it's all very well to have this common European legislation but we the Germans or we the British or we the French will have to go in and physically enforce action and fine and there's quite a lot of precedent in other sectors where there have been breaches of EU regulations where for example France has enforced and China has not responded with the general sort of trade war with the whole of Europe but picked on France as the enforcer and started talking about trade bans and import bans for French goods and I think a lot of them got very nervous" (Interview 16.06.2014).

A similar narrative is present when one looks at the role of the EU Member States in the discussions on aviation emissions around 2011-2012. When the so-called Airbus countries (UK, Germany and France) became very active in the discussions about including flights coming from non-European countries they started using less formal channels to influence the EU policymaking. Once the issue became highly politicised the national interests came to be even more visible than at the European Parliament level. One of the interviewees who used to work at the Parliament during the period of heated debates on the EU ETS and aviation presents the following account:

“As I understand there was a phone call or an urgent meeting from a few European heads of states with Barroso, so the French, German, maybe the Netherlands, the UK calling Barroso saying “This is not feasible, you need to find a solution” so two weeks later a new Commission proposal comes out. It's politics. It's kind of a bigger issue than the actual topic here. It's pure... It's so international, so much money at stake, trade war threats, everything. It's nasty, nasty discussions and threats going on.” (Interview 1.05.2014)

This however, is not a new phenomenon within the EU climate policy on a global level that some countries step ahead of the Commission or the Council. During the 15th Conference of the Parties in 2009 at the final stage the EU was represented by Jose Manuel Barroso¹⁵, the President of the Commission and the Swedish Prime Minister Reinfeldt who represented the Swedish Council Presidency but there was France, Germany and UK who seemed to have overtaken the negotiations. Although it seems to be a coincidence that the same trio partly overtook the EU's roles, visibly, in the critical moments, the Member States tend to interplay in a much stronger way than on a daily basis at the EU level with regards to climate policies. It has been argued several times that the Commission presents more ambitious goals and its strategy is usually long-term (Goetz 2009; Grzymala-Busse 2011) while the Member States are able to attenuate the high-aiming Commission goals at the Council level and match them with the expectations of the Member States constituencies. It has been claimed also elsewhere that the role of the state actors in the EU policy-making processes at the EU level cannot be underestimated (Schneider *et al.* 2007). An alternative explanation could be that the EU's leadership can be accepted by the Member States as long as softer domains are taken into consideration such as emission targets or less controversial areas like research. When there are distributive effects of regulation the acceptance decreases.

Going back to the way ICAO works on one side and to the EU's green leadership on the other side, it becomes more and more visible that there is a strong national component that to a certain extent steers the processes at both ICAO and EU levels where the nation states want to have as much influence on them as possible. Climate change and reductions of emissions are highly politicised and any decisions taken in this realm depend on the nation states. No matter how much aviation seems to be international, in reality, it is still a very national business while the countries of

¹⁵This dynamics of nation states taking over the lead is even more illustrative for a wider phenomenon here. Even though José Barroso was seen as an extremely powerful President, some even claim that he is second to Jacques Delors (who steered the Commission for three terms)(Kassim 2013, p.281)when it comes to power, he still was not able to halt strong national voices.

registration may hold shares of the airlines and the airlines employ large numbers in the countries of registration. Lufthansa Group for example employs almost 120 000 people in Europe and beyond (Interview 25.03.2014). As highlighted by one of the Commission interviewees: "From the outside aviation may look like a very international sector but in fact it is about the flag that is placed on an aircraft." (Interview 29.04.2014)

Given the context provided above, it becomes clear that the EU could not impose on ICAO a preferred solution or obtain an agreement from EU's international partners where they would assure compliance with the EU ETS when arriving at or departing from the EU airports. The EU was therefore trying to exercise its power via transgovernmental networking based on learning and socialising (Checkel 2005; Dobbin *et al.* 2007; Gilardi 2012). As claimed by the Commission's interviewees, there has been a lot of educational work, discussions and exchange of information done before the inclusion of aviation was actually enacted. The EU, and mostly the Commission, was trying to approximate the global aviation policy as much as possible to the EU planned standards in order to firstly lower the costs of implementation and secondly address the possible discontent of third countries who were against any aviation regulations outside the realm of ICAO. The familiarisation and involvement with the EU polices (Freyburg 2014) that could be expected as a result of the aforementioned actions did not happen. Even though the networks used by the EU provided a venue 'to push their vision of sector best practices' (Bach & Newman 2007, p.672), these strategies did not bring expected results.

Finally, before ICAO experienced regulatory competition coming from the European Union, it was seen as competing with the UNFCCC regime that in the late 1990s and early 2000s was powerful in establishing its own regulatory authority. For example at the 10th Conference of the Parties in 2004, Rajendra Pachaur, chairman of IPCC insisted on including aviation into the Kyoto regime (Wit *et al.* 2005, p.80). This competition would be observed by the ICAO Assembly as rather unwelcome interference within its exclusive realm of aviation (Abeyratne 2001, p.38; Oberthür 2003, p.196).

5.3.2 The EU and ICAO: non-environmental venues

In the discussion about the intersections between the EU and ICAO, one more important aspect can be brought up – neither ICAO nor the EU are environmental

organisations. They cannot be seen as venues exclusively dealing with environmental or climate problems. In the context of multi-level governance, specialisation is highly prolific, which is shown for example by the success of coalitions of cities addressing climate change (Lindseth 2004; Betsill & Bulkeley 2007). While the cities did not institute an organisation that would oversee the actions, the networked potential proved to be fruitful, however, the scale of their endeavour was tiny if compared with regulating international aviation. As far as aviation is concerned, ICAO is already dealing with a multitude of issues and their list is ever growing. It can be argued that the EU structure allows for a closer attention to aviation emissions, however both DG CLIMA and DG MOVE are trying to tackle emissions from all the transport branches. Apart from this, there are strong pressures from the industry that advocates for subsidies as well as special treatment for aviation given the financial crisis. The industry's own estimates are that aviation provides directly 1.9 million jobs in the EU producing around 132 billion euros of economic benefit and if indirect and induced benefits are taken into consideration, the number grows to 365 billion euros and 5.1 million jobs in the EU exclusively (Association of European Airlines 2012). These numbers were probably taken into consideration by the EU institutions when the costs of curbing emissions are to be partially covered by the industry.

As highlighted by Dirix and colleagues "the poor results achieved by the top-down approach are a consequence of the fact that existing multinational institutions are simply not designed for, and did not evolve in response to, global environmental problems" (2013, p.366). Indeed, the EU has been underlining the importance of environmental policy integration, meaning that environmental aspects have to be taken into consideration whatever policy measures are being taken. ICAO in turn seemed to answer to the expectations of the global society to address the issue of carbon emissions, but it needs to be emphasised that it is more of an add-on than an interest that would be placed high in the agenda. As claimed by some, this delegation of power to ICAO by UNFCCC proved to be dysfunctional because the organisation "has failed to act on the mandate it received from the climate regime" (Oberthür & Stokke 2011, p.15). ICAO has always been facilitating unhampered development of aviation and currently it supports sustainable growth taking into account the environmental impacts of aviation. However, limiting emissions and at the same time providing conditions for aviation expansion are two concepts difficult to marry. The ICAO's avoidance of accepting

binding targets caused the aviation trade association IATA to propose its own commitments. The pledge of 50% reduction of emissions by 2050 compared to 2005(IATA 2009) is however more technology following than technology forcing.

Furthermore, dynamics like this translate into any process related to the EU ETS. The expertise needed is usually used from outside, for example the EU commissions the studies related to its policies (Wit *et al.* 2005). Both at the ICAO level and the EU Representation at ICAO, as mentioned before, the representatives have transport backgrounds and environmental impacts of aviation are not their main focus. The redistributive effects of the EU ETS are higher on the agenda if the organisations dealing with the issue are not specifically environmental.

This does not however mean that ICAO and the EU are not delivering any results in the aviation emissions area. Conversely, it appears that due to this uneasy relationship the problem started to receive international attention and entered the wider climate change discourse. The lack of a specific environmental organisation that would tackle the problem meant that the frictions between the EU and ICAO produced a fertile ground for a discussion on holding the aviation sector responsible for its CO₂ emissions.

5.4 “Without us there would be no development at ICAO!” Can the EU be seen as the ICAO's accelerator?

The previous sections gave an account of the work that is being undertaken at the ICAO level and the nature of the intersection between ICAO and the EU in this regard. The following section looks closer at the role of the EU in intensifying this work at a global level. Consequently, it further examines the role of venues where policies are made and explains the effects of the EU actions on ICAO. The analysis provided here, is mostly based on the answers given by the interviewees to the following question: “Do you think that the steps that the EU has taken with regards to the EU ETS and aviation make the ICAO work closer on a global deal for aviation?” The same question was used for the EU and American side of the study. Even though the fieldwork has been split in a way that the American interviews were conducted before the ICAO Assembly in 2013 and the European ones not long after it, the answers given were based on a longer experience of the interviewees who always responded providing a broader context.

Consequently, the results of the Assembly have, if any, only incidental influence on the answers.

In the study, commissioned by the European Commission the work done at the ICAO level has been assessed as insufficient: "it would be reasonable to speculate that under current rates of progress and the recognised difficulties of achieving international consensus under ICAO, it may take longer, if achieved at all" (Wit *et al.* 2005, p.45). Elsewhere the Commission stated "as explicitly recognised in the policy statements agreed by all its Contracting States it is not realistic to expect ICAO to take global decisions on uniform, specific measures to be implemented by all nations"(European Commission 2005a). Indeed, the discussions about including aviation emissions in any sort of market-based measure have been present for a long time, however there was an evident lack of political will to accept the need to act in order to address the missing regulation internationally. As explained by a representative of a US eNGO:

"There's also been a conversation about a global MBM on and off for 15 years and so the question is, is this discussion that people are serious about and I think the answer to that simply depends on how serious the EU is." (Interview 22.03.2013)

The interview quoted above, was given in the context when the EU by derogation of the Aviation Directive has stopped the application of the EU ETS to international flights outside of the EU. At the same time the EU was assuring the international partners that the EU ETS would apply to aviation in full once the derogating regulation expires in November 2013. During the period of fifteen years that the interviewee mentions, the EU was trying to use its green leadership and seize the window of opportunity created by the idleness of ICAO. This could have been possible by "demonstrating the pre-eminence of particular solution alternatives" (Skodvin & Andresen 2006, p.14) and backing it with "the bargaining leverage that stems from structural power" (Karlsson *et al.* 2011, p.104). Furthermore, this leadership has been positively seen from the outside (Kilian & Elgström 2010; Karlsson *et al.* 2011), although the positive reactions should be taken with caution as they may appear stronger than they really are (Torney 2014).

Not surprisingly, the EU officials asked about the advancements brought by the EU to the ICAO process of debating a global market-based measures are confident as long as discussing commencement of action there: "Without us there would be no development at ICAO! It is a difficult one, it is a long struggle but what would be

otherwise the urgency?" (Interview 26.03.2014). Another EC interviewees confirmed this view:

"I think that clearly what this policy has done is put this topic very firmly on the agenda at ICAO (...) I think even they would acknowledge that the EU's policy has very much driven the admittedly rather slow progress at ICAO but it certainly put it on the agenda. I think without it ICAO would have tried to ignore the issue as much as possible and they have in some ways maybe attempted to do that but it just hasn't gone away because the EU ETS was there" (Interview 28.04.2014).

Some even see the EU's leadership as an obligation given that it represents a group of countries that possess the economic resources and political structures to be in the forefront of the climate change mitigation efforts (Maltais 2014). Furthermore, Maltais claims that unilateral leadership in climate governance context is desirable as it possibly can spur international action: "highly developed states are most strongly connected to the problem of global warming and thus it is appropriate to single them out as having the strongest obligations to act unilaterally" (2014, p.624). This would justify the Commission's officials who saw themselves as the only ones who could have saved the debate about aviation emissions.

The conclusion that the EU needs to focus on is stepping up its policies, which has been underlined also by Lavenex (2014, p.886) who claims that "embedding the EU's internal working structures into the broader sites of global governance, (...) plays a pivotal role in promoting EU rules around the world". As shown above, the Commission officials found it important that even if the EU ETS has been strongly opposed they managed to influence the global agenda setting and keep the item in the working programme of ICAO as well as involve third countries in the discussion.

The debate on the EU's power seen from the economic perspective would normally follow to claim that the third countries conform to the EU rules in order to access its market fearing the costs that would incur if they do not do so (Damro 2012; Barnett & Duvall 2005). This apparently was not the case for the EU ETS and aviation. Whereas, the empirical material clearly indicates that the EU was able to spur action at the ICAO level, it definitely did not lead to exercising any sort of European authority that would persuade the third countries either to establish schemes similar to the EU ETS or at least agree to the full, international scope of application of the EU ETS.

If the economic perspective is not able to tackle the issues analysed in this thesis, it merits investigating the politics behind them. There were also other effects that the EU

wanted to achieve by the inclusion, reaching beyond asserting its leadership. On one side, the EU would believe that it had the authority to regulate flights landing and departing from the EU airports. On the other side, the EU was hoping to inspire other countries to join its efforts to establish a market-based measure for aviation and hence induce leader-follower dynamics. The EU ETS for aviation remained however isolated and no third country was even mildly interested in participating in the scheme. Even though the EU managed to establish itself as leader in various environmental issues such as stratospheric ozone depletion, biotechnology, biodiversity and UN reform related to these (Oberthür & Roche Kelly 2008, p.35), it did not succeed to translate such leadership to the aviation realm. Furthermore, the leadership shown within the UNFCCC or United Nations Commission on Sustainable Development processes has been a closely coordinated effort with visible lead countries (or lead negotiators), intensive work by the Council's Presidency (Delreux & Van den Brande 2013) and the Commission. In these instances, the EU is a much stronger player and enjoys a higher status than at ICAO while having full negotiation authority there.

Another theoretical perspective of tackling the change would involve with the context created by an attempt to expand leadership. One could argue that the ICAO's deadlock and a general feeling that action should be taken against growing aviation emissions creates "opportunity structures" (after Kitschelt 1986), which is "the exogenous context of events and ideas that enables or constrains EU action" (Groen *et al.* 2012, p.311). In the analysed case, the opportunities on the EU side seemed promising. The EU had a functioning ETS architecture, bargaining power of the overlapping ICAO and EU memberships as well as a recognised leading position in international climate policy. The EU's actorness has been usually conceptualised within the larger debates in comparative politics and international relations (da Conceição-Heldt & Meunier 2014). Elsewhere, it has been argued that the EU is able to act globally depending on its capacity to influence third countries beyond its borders, opportunity and its own capabilities (Bretherton & Vogler 2006). "The EU might use its normative power by setting standards and diffusing principles and norms" (da Conceição-Heldt & Meunier 2014, p.973). The context provided here has been logically translated by the Commission to an outward-directed action. The Commission aimed at accomplishing emission reductions within the EU on one side and on the other side at diverting the sector's attention from ICAO towards an agent that was actually demanding reductions

and applying respective fines if the rules were to be ignored.

The US aviation industry representatives would admit that the EU leadership was an important factor in motivating ICAO to engage more concretely with the issue of aviation emissions, but they would not be as sure about the pace-setting provided by the EU:

“I think it is fair to say that the EU ETS has given an urgency to for the progress at ICAO... the progress was happening anyway, it's stepwise kind of progress, but the EU ETS is out there as something like that countries don't want... If you don't want something, you have to say and I think it is probably less affecting of the United States and maybe more effective of some of the other countries that don't engage at ICAO that often or as much.” (Interview 25.04.2013)

The US eNGOs perspective would assess the EU involvement very optimistically. When it comes to debates on a global deal for aviation, they underlined that it was exclusively the EU that stimulated the debate: “We were not even thinking about it before. Now there's a conversation” (Interview 22.03.2013). They did not see too much of a change in the US behaviour at the ICAO level with regards to emission reductions caused by the ETS until 2013. At that point, the administration understood that by accepting a roadmap to a global MBM might be a way of defusing the issue of aviation emissions for another two or three years and give them some time to work some solution in the UNFCCC context. Also, according to the one US eNGO, IATA could reach an agreement that would be implemented by ICAO and if any issues arise, than it is not the Obama administration that needs to tackle them.

The perspective that comes from the US Congress also confirms the role of the EU as a catalyst of ICAO processes, however, the interviewees did not necessarily see any other effects than just the stimulation of discussion:

“If you view the EU ETS as a catalyst for this whole process, it has certainly sped things up. It forced us to pass a bill that basically forces our airline industry and our government to get more serious at ICAO about an international agreement.”(Interview 1.03.2013)

The Americans would look at the EU actions from the perspective of their own context. The US partners saw the EU as “forcing” action on them, therefore going well beyond just offering a model to replicate. This view is countered though by a Congress interviewee representing a Senator who was against prohibiting US carriers from participating in the EU ETS, who did not see the EU actions and the US reactions as moving the debate. In their opinion, the discussion in the Congress was “a political win”

(2.05.2013) rather than constructive discussion on the future regulation of aviation. The Congress interviewees did not delve into the dynamics of ICAO extensively as opposed to the EU interviewees. They agreed that the EU managed to influence the process and would refrain from commenting any further.

All things considered, it can be maintained that the EU has succeeded in exerting pressure internationally to accelerate and intensify the discussion on aviation emissions. It is claimed that “a leader is not only a party that fulfils theoretical criteria; a leader is one that is perceived as a leader” (Gupta & Van der Grijp 2000, p.67). In the context of the EU ETS, the recognition of the EU programme has been widely acknowledged and made the ICAO Contracting States bring the issues related to the aviation emissions to the working groups and assembly deliberations. Although the definition “enactment of environmental policies to address global problems while other countries remain inactive” (Urpelainen 2013, p.26) describes unilateral action, and one can argue whether the inclusion of aviation into the EU ETS can be classified as one or not, it perfectly elucidates the stepping up strategy of the EU. The issue of aviation emissions did enter the discourse at the global level and, once it proved to be a complex issue, it also gained a lot of attention within the EU.

5.5 “Perhaps it wasn't pain in the ass... but a bit it was”: issues between the EC Directorate Generals

Finally, given the broader picture has been set out, in this section of this chapter the internal problems of the Commission with regards to leading the EU ETS file are analysed. As mentioned before, there is a division of work on the inclusion of aviation between two DGs. The issues related to environment are seen as horizontal (Jordan & Schout 2006) and therefore, the interaction between the DGs is greater here than if compared for example with education or waste management. There is, however, a division between various parts of the Commission and it is not a new phenomenon. It has been observed already in 2001: “step by step integration, which has characterised the [EU's] development, has tended to slice policies into sectoral strands, with different objectives and different tools; over time the capacity to ensure coherence has diminished”(European Commission 2001, p.28). In the case analysed here, the interaction is situated at the axis between DG MOVE and DG CLIMA. The EU's

Representation to ICAO is staffed with DG MOVE officers and ICAO in general is largely populated by officers related more to transport than environment ministries. While engaging in the discussion on DGs competencies, the institutional context is uncovered, which is crucial for studying governance (Klijn 1997).

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

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

The same interviewee strongly emphasised that DG CLIMA feared massive non-compliance for other sectors learning from successful lobbying of the airlines and the whole EU ETS would be at stake (Interview 16.06.2014). There is an obvious divergence of interests here and quite high stakes on the DG CLIMA side. What is more the same mechanism appeared at the level of the Member State:

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

In the context of governance and interpretive policy analysis, it is important to remember the role played by the personalities and various personal convictions. The first example of these was the power embodied in Jos Delbeke but apparently there are also smaller agents of change. One of the Commission interviewees argued unprompted that this part of the issue should not be underestimated and they provided an example of a DG MOVE desktop officer who was close to the process at that DG level. Given the pro-environmental mind-set of that person the resistance of DG MOVE to the original idea was smaller than one could have expected. This again shows the important role of the individuals who participate in the process and the human factor involved. Indeed, the networks are holding together thanks to the people who cooperate between each

other. What is more, it has been claimed elsewhere that even though EC is a procedurally rich administration nevertheless the importance of informal networking and experiences of working together and exchanging views are extremely important for the Commission's effectiveness (Kassim, *et al.* 2013).

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

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

When one investigates inclusion of aviation into the EU ETS it may seem to be a tactical mistake from the Commission's side: DG MOVE was more able to understand the ICAO dynamics and the general climate in Montreal better, however, DG MOVE was not the lead service for the EU ETS. Conversely, DG CLIMA led the file but was too slow when

reacting to developments happening at ICAO. The stiff position of DG CLIMA that did not want to allow the concessions DG MOVE deemed necessary to ease the resistance built up at both ICAO and non-EU countries levels.

Also the European airlines were able to observe issues related to coordination arising within the Commission. A representative of an EU airline argued that the services chosen to deal with the aviation inclusion were inadequate:

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

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

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

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

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

An obvious question to ask would be then why, if the EU ETS file was so closely related to DG MOVE and at the same time as an entire system was led by DG CLIMA, did not the President of the Commission decide to make DG MOVE so called co-chef de file, and therefore extend the ownership of the issue. Apparently this procedure is rather unpopular and as explained by Commission's officer “Usually it is inefficient to have two DGs formally in the joint lead because then no one can really act any more, except if they act together” (Interview 14.04.2014). The lead was therefore given to DG CLIMA and DG MOVE coordinated the ICAO proceedings. Also there has been always somebody from

DG MOVE present in the meetings in Brussels concerning the EU ETS, which is a fairly standard pattern with regards to issues that are of interest of more than one DG.

It is difficult to assess to what extent the issue would have been addressed differently under the DG MOVE lead or co-lead, however, while looking at the EU ETS from the governance perspective, this ambivalent relation between the DGs negatively affected the bargaining power of the EU and its leadership at the ICAO level. The “bad vibes” mentioned by one of the interviewees would affect the EU interests well beyond the environmental issues and could have undermined long-lasting alliances at ICAO. Furthermore, the EU was not able to fully employ its ICAO position and knowledge of the Montreal environment, as there were discrepancies between the two Directorate Generals. The efforts to make the EU a visible and strong actor were confronted with diverging visions of how the file should be led and to what degree the EU should be pushing for ambitious goals globally and allow discretion for regional solutions.

From the perspective of interpretative policy analysis, the tensions reported above represent also a discursive clash. It is based on how to treat aviation compared with other businesses and to what extent the EU wanted to curtail exceptional treatment of the sector. In short, DG MOVE underlined the sectoral context and the need to comprehend the legal framework under which aviation operates, while DG CLIMA propagated the view that this exceptionalism should be ceased. These discourses, as any other, clearly translate into socio-political relations and also have policy implications (Hobson 2002) or even directly affect policy-makers. This division raises then challenges about fitting abstract market models to particular sectoral and spatial contexts. Firstly, it fragments the messages coming from the regulator and thus weakens its impact on the regulated entities. This matters a lot for the analysed case, as ambiguities concerning how to read the inclusion have been mounting even before the split between the DGs became visible. Secondly, lack of clear message regarding equal cross-sectoral treatment can be translated into resistance coming from any other new sectors to be included or those already covered by the system.

5.6 Conclusions

The EU's actions with regards to CO₂ emissions from aviation definitely mark a change in the way of discussing these issues. The debate that the inclusion initiated can be considered a sign of a wider change of governance of aviation since a larger number

of stakeholders has become involved and climate and environmental concerns became more prominent. The environmentally recalcitrant policy community has been challenged by strong and multilateral actions by the EU playing a role of the dominant actor in the debate. The prevailing discourse presenting ICAO as the only venue for the discussions, but also a forum reluctant to take action with regards to curbing aviation emissions has been dented with the EU's inclusion of aviation into the EU ETS. While the venue where emissions-targeting policies are made is strategic – as certain actors enjoy more power in certain venues – the EU has been too weak to shift the onus of the debate towards itself or UNFCCC. Nevertheless, a strong shift of attention in the policy community was observed: the EU challenged the persistent view that only ICAO is competent to regulate aviation emissions. In this way, the path dependency that has been creating hurdles for any actor acting outside of the organisation has been confronted. What is more, the EU did not need “turbulent” or “formative moments” (Peters *et al.* 2005, p.1276) to induce the discourse change and subsequently included aviation into its scheme. The Commission most probably was aware only to a limited extent that they are entering a long debate and a time-demanding process.

This change has been brought about by a grand entrance of the EU ETS for aviation into the narrative about implementing tools to address emissions from aircraft. The ICAO's idleness has been energised by a conflict between the competing visions provided by the EU on one side and most of the world on the other side. This change however, at the time of writing (January 2016) did not translate to any binding regulations that would be actually accepted by the Contracting States. The urgency to act became a part of the discourse and this should be attributed to the EU's pressure at the ICAO level.

The analysis provided in this chapter offers emerging implications for the broader theory, in particular in relation to the issue of policy venue choices. It helps rethinking the policy process by putting into the spotlight a variety of venues involved in the process and featuring institutional cleavages relating to the spatio-political arrangements. The material analysed indicates that the struggle over power within a policy issue may occur not exclusively between the states and organisations but may penetrate internal organisational structures as it happened within the EC. This observation is made possible thanks to blending PNA, which elucidates networks and

IPA allowing uncovering the discursive clashes and meaning-making processes and meaning-making processes performed by the policy actors.

As far as venue shopping is concerned, this chapter confirms the assumption that the policy actors would seek venues where they are more powerful (i.e. US and US aviation sector pushing for an ICAO-branded solution). Simultaneously, the material presented shows that the EU urged for reorientation of policy instruments towards out-of-ICAO solutions and by offering its ETS, the EU wanted to become an interim venue for regulation. This move can be considered unconventional as venue-shopping would assume moving towards international forums to avoid judicial constraints, increase the number of like-minded actors and at the same time exclude opponents (Guiraudon 2000). The EU deployed an alternative channel by claiming its right to regulate.

The EU is not a monolithic institution and became much more than a sum of its constituents (Čmakalová & Rolenc 2012, p.260) but it becomes also very visible that the EU as an actor of international policymaking activities is shaped by much more than the opinions and demands of the Member States. To a similarly large extent, also it is formed by the conflicts between the DGs and the powerful industries. The structures that interact are much more horizontal than vertical and assessing who has a larger bargaining power is a problematic exercise. In the analysed case, especially, the role of internal Commission governance affected the external actions of the EU. Although the administrative coherence at the DGs level seemed to be difficult to manage for the EU officials, it does not appear that it hampered the process at the ICAO level. In the media, the EU would be seen as a unified actor and no third country would observe the divisions mentioned by the interviewees. The disagreements or differences of opinions have been carefully veiled from the wider public.

As long as the EU ETS as a whole project is concerned, it can be seen as a programme to communicate the EU's green leadership. The inclusion of aviation appears though more like a sign of impatience and lack of faith and trust for the ICAO mechanisms and the ICAO processes that have been moving slowly. Some scholars see the EU's leadership as an obligation given that it represents a group of powerful actors that can be in the forefront of the climate change mitigation efforts (Maltais 2014). The EU ETS being an important pillar of the EU climate policy was expected to grow and include more and more sectors. Undoubtedly, the EU has managed to test its power at a global level of sectoral regulation but at its origin, the decision to include aviation into

the EU ETS was an incremental step, a policy development that was not presumed to cause various negative feedbacks that are analysed in the following chapters. The inclusion has also uncovered a tension that exists between Directorate Generals and in this case, it proved that this sort of relationship could translate into the EU's role diminishing.

Finally, the EU has been an area "replete" with networks (Peterson 1997), in the case of the EU ETS one can observe the creation of a strong and voluminous issue network focused on aviation emissions. There was a large interest to inspire action within ICAO and also strengthen the EU ETS that has been struggling with a variety of issues. The interests of the actors engaged in promoting inclusion varied and the Commission has definitely been the main pushing actor. The quality of the interactions within the policy network is a result of the determination of DG CLIMA to have the EU ETS for aviation implemented as widely as possible and the resistance to this idea on various levels and in various settings or venues. The next chapter will investigate closer how this determination has played out in the US policy context.

6 The nature of the opposition to the EU ETS for aviation in the US

"I feel that aviation will have a greater influence on American foreign interests and American foreign policy than any other non-political consideration" (reported in (Mackenzie 2010, p.3).¹⁶

6.1 Introduction

This chapter investigates the parties opposing the EU ETS with a special focus on the US and brings further insights from the empirical work conducted in Washington, DC.

The chapter firstly unpacks the US approach to aviation regulation (Section 6.2) in order to later delve into the structured opposition resulting in the EU ETS Prohibition Bill (Section 6.3). Next, it gives attention to the industry by engaging with the views of aviation sectoral organisations (airlines, airports, manufacturers, business aviation) and also looks at the actors who were against the US counter-ETS steps (Section 6.4). Section 6.5 concludes the chapter. Having these preliminary observations in mind, the chapter addresses research questions 2 (Who are the most prominent actors of the debate on inclusion?), 3 (Why were particular venues of policy processes regarding aviation emissions preferred?) and 4 (Why do the EU and non-EU countries differ on the shape of a global aviation emissions policy?). In some respects, question 1 (What were the effects of the EU's attempt to include aviation in the ETS?) is also addressed in Section 1.3. Drawing on the theoretical framework adopted, the chapter also seeks to investigate the interpretations held by various US policy actors of the EU ETS inclusion of aviation.

With regards to the US opposition to the EU ETS, the chapter proceeds chronologically starting from the opposition building up to the legal case against the EU ETS and finishing with the EU ETS Prohibition Bill entering into force (see: Table 5: EU ETS Prohibition Act Timeline).

The quotes provided in this chapter were obtained mostly from official appearances at the Congress or official submissions to the Congress. The second

¹⁶This is a fragment of a letter that in September 1942 Adolf Berle, the assistant secretary in the State Department wrote to Cordell Hull, the US Secretary of State.

tranche of data was gained through research interviews as they provide a wider context than the rather terse statements found in the media that comment on rather than explain beliefs and understandings.

Table 5: EU ETS Prohibition Act Timeline

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

6.2 The aviation industry in the US

This first section investigates briefly the regulatory circumstances of the US airlines in order to set the scene for the US opposition to the EU ETS. The analysis provided here starts from the late 1970s’, which is a period that shaped modern aviation in the US. The milestone year for US passenger aviation¹⁷ was 1978 when the government decided to deregulate the sector¹⁸, which reflected the general agenda among the aviation powers such as the US, Britain, France or Germany with regard to aviation policy. This step meant that the government withdrew itself from the control of market entry for new airlines, and regulation of tariffs and routes. Aviation became exposed to free market powers and US aviation, pioneering this solution, faced strong competition from non-US airlines that were still protected by their countries of registration (Gourdin 1998, p.13). Only later, in the 1980s’, did the US deregulation, via spillover effect, influence

¹⁷Aviation understood as carriers, aircraft manufacturers and airport operators feeds many more interrelated sectors, some of them closely knit with the operations such as security firms, fuel providers, companies servicing aircraft or hotel chains that are located at the airport terminals and even agricultural or gas drilling sites situated at the airport lands.

¹⁸“An Act to amend the Federal Aviation Act of 1958, to encourage, develop, and attain an air transportation system which relies on competitive market forces to determine the quality, variety, and price of air services, and for other purposes” (Air Deregulation Act) was signed into law by President Jimmy Carter on October 24, 1978.

the global structure of aviation business and the 1990s' are seen as a decade of transatlantic liberalization¹⁹. In Europe deregulation was carried out either via bilateral Air Service Agreements or later via multi-lateral policies of the European Commission (Schipper 2001). Now it is the EU that best approximates to "a market without state-imposed, anti-competitive restrictions (Dempsey 2004, p.4).

In the United States, the initial extreme growth in demand has slowed down and the prices remained at a much lower level than they used to be before deregulation. As claimed by Graham (1993, p.130), deregulation in the US caused "attenuation of competition through consolidation and bankruptcy". In relation to this, the post-deregulation market was a brand new world for previously state-protected airlines. The carriers quickly became aware that while operating on the profit margins in a still highly regulated environment (for example in the area of safety and security) they needed to have substantial bargaining and lobbying power at the US Congress. Such a strategy was necessary to protect their interests in a competitive environment. According to some authors, the US airlines were given a special recognition for their position with regards to policy development and implementation as early as the late 1970's and since then the sector has been enjoying its exceptional position (Button & Stough 2000b). Margolis (2014, p.95) would argue that until today the airline lobby is powerful enough to oppose any reforms that would affect the aviation business in the US, even at the expense of consumers.

Apart from individual airlines approaching Congress members for lobbying purposes, most US airlines are united through Airlines for America (A4A)²⁰, an organisation established in 1936 that today includes 90% of US passenger traffic and cargo (Airlines for America 2014a). Its main aim is advocacy on behalf of the member airlines related to safety and security, which is based on collaboration with labour organisations, the Congress and Administration (Airlines for America 2014a). A4A's presence at the Hill was

¹⁹More details about the deregulation between the EU and the US in the context of varied character of the EU-US agreement can be found in Margolis (2014).

²⁰The organisation changed its name in 2011 and was formerly known as Air Transport Association of America. For the clarity of the chapter, A4A is consistently used in this thesis referring both to actual A4A and ATA.

visible also during the period when the Civil Aeronautics Board (federal aviation regulation authority) was created. The Association took also an active part in the deregulation debate. According to the US Lobbying Disclosure, in the period between 2011 and mid-2014, A4A spent 18,8 million dollars on lobbying activities at the House of Representatives and the Senate (US House of Representatives 2014). A more detailed analysis of A4A's role in the EU ETS issue is provided in section 6.4.

The United States is an important aviation market with over 800 million passengers departing or landing in the country in 2012, which is approximately 29% of global passenger traffic. According to A4A, aviation provides the US economy with 11 million jobs and approximately 5% of GDP (Airlines for America 2014b). Airlines alone employ over 380 000 workers in the US (US Department of Transportation 2014) and contributed 19 billion dollars in federal taxes and fees in 2013 (Airlines for America 2014c). Together with the EU, the USA constitutes 60% of world traffic (European Parliament 2007).

As far as regulation is concerned, civil aviation in the US at the federal level is regulated by the US Department of Transportation, and its modal organisation Federal Aviation Administration (FAA). The FAA's vision underlines that the organisation strives "to reach the next level of safety, efficiency, environmental responsibility and global leadership" (FAA 2014). FAA has been called (together with the US Nuclear Regulatory Commission)

"perhaps the most prominent regulators of complex technologies anywhere in the world: framing, promulgating and implementing an extensive network of specifications and regulations governing the design, use, and manufacture of civil aircraft in the world's most significant aviation market"(Downer 2010, p.84).

The US policy-making for aviation is, however, seen as "concerned largely with the regulation of imperfections in the liberalized, competitive and increasingly globalized market-place" more than with sustainability issues (Goetz & Graham 2004, p.265). If these enter the interest of policy-makers, they rather pertain to regulating airports than carriers. At the same time, there has been a strong conviction that international bodies should have as little to say about international operations and aviation regulation in the US as possible. There is an on-going concern among the US policy-makers "about losing control of what is

considered a domestic matter” (Button & Stough 2000d, p.68). This, however, is not an exclusively US way of thinking. In general, governments tend to favour that their national carriers satisfy the demand and they believe that the less international intervention there is, the better (Margolis 2014, p.84).

To supplement this background description of the US aviation situation, it is important to mention that the US aviation enjoys several environment-related exemptions. For example glycol-based deicing fluids have long been exempt from regulations concerning discharge of substances to the environment (Bridger 2013, p.49). The US Environmental Protection Agency (EPA) released its Effluent Limitation Guidelines only in 2012, containing rules explaining how and to what extent the residual deicing substances need to be collected and disposed of (EPA 2014). The animal rights campaigners also bring up the issue of airport authorities receiving permissions to kill protected bird species at airport premises to ensure flights’ safety (Bridger 2013, p.65).

Finally, as has also been pointed out elsewhere, the interests of the airplane manufacturers are aligned with the interests of their regulators (Downer 2010, p.92). To some extent this is exemplified by one more exemption. In the US Freedom of Information Act²¹ (FOIA) there is a special clause that states that conversations between the government and the industry on matters affecting international competitiveness of aviation do not fall under the FOIA regulations²².

6.3 “Sending the money to Europe did not seem like a good idea to anybody” – between financial and sovereignty issues

This section analyses the beliefs and interpretations of the EU ETS in the US, as well as the actions these interpretations fuelled. It opens with the introduction to the legal case against the scheme (Section 6.3.1), which is more

²¹The Freedom of Information Act, 5 U.S.C. § 552, As Amended By Public Law No. 110-175, 121 Stat. 2524, and Public Law No. 111-83, § 564, 123 Stat. 2142, 2184 is a US law first enacted in 1966 and “provides that any person has a right, enforceable in court, to obtain access to federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure by one of nine exemptions or by one of three special law enforcement record exclusions” (US Department of Justice 2014).

²²Aviation is not explicitly listed on the official record of exemptions from FOIA. The information concerning the clause for aviation was provided by an interviewee whose organisation filed a FOIA request being concerned about the US government role in the EU ETS case at the European Court of Justice. The request met refusal on grounds of special exclusion of aviation.

industry centred, then follows the Congressional legislative process against the EU ETS (Section 6.3.2). Section 6.3.3 highlights the main issues related to the EU ETS Prohibition Bill, while Sections 6.3.4-6.3.6 explore the reasons for the US resistance to the EU ETS.

The previous chapter outlined how the EU was working on emissions trading for aviation within the ICAO framework, whereas in Section 6.3 the focus is placed on the EU ETS as perceived in the US. At the same time, it is not an “outsider” perspective as the US became deeply engaged with the issue. This way of proceeding allows an examination of different interpretations and how they are significant for various parts of the policy network. Furthermore, it allows an investigation of how discourses support network building. In relation to the above, the boundaries of the EU policy community are stretched geographically and the external understandings are seen to complement the views from the inside, which altogether feed back to the global nature of aviation framework. The US became engaged with the EU ETS due to a variety of reasons shown below but, to reiterate, the volume of air traffic between the EU and the US left the Americans highly exposed to the EU ETS-related regulations. With a strong tradition of a powerful airline lobby and sensitiveness towards its sovereignty, it was predictable that the US would become the most important player in this file, no matter what narrative was to be employed.

The resistance in the US started to build up first in the airline industry, without much formal and open support from policy-makers. At the ICAO level, the US would signal its reluctance to accept regional emissions trading schemes, but the language of sovereignty, infringement of international law that appeared later, was absent. It was only the EU ETS that triggered legislative action at the federal level and activated the use of this new language.

6.3.1 Legal case against the EU ETS

The issue that probably received most of the scholarly attention in the EU ETS context was the court case submitted to the Court of Justice of the European Union (CJEU). Drawing on the existing literature, this section further unpacks this issue.

A4A was unhappy with the idea of including all the flights landing at and departing from the EU airports within the ETS from the very beginning. In 2008 at the Sustainable Aviation Network Europe conference, the A4A representative Nancy Young underlined that the way the EU wanted to include aviation breached Articles 1,12,15 and 25 of the Chicago Convention. Young said:

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

This quote manifests the carriers' self-confidence and that a strategy was in their minds as early as 2008. Consequently, unsatisfied with the policy responses of the European Commission to the proposition to exclude the third countries from complying with EU ETS for aviation, the predecessor of A4A, Air Transport Association of America (ATAA), filed a case to the High Court of Justice of England and Wales on December 16th 2009²³. The case was filed to a British court as the UK was the administrator of the ETS for the US airlines challenging the legislation. The rationale behind the case was based on three grounds: breach of principles of customary international law, the fact that international aviation should be negotiated and adopted under the auspices of ICAO and finally the ATAA claimed that the EU ETS is in practice, a tax. Therefore it interferes with the freedoms granted by the Chicago Convention on International Civil Aviation (Bogojević 2012). In the media the issue was depicted by A4A's spokesperson as an attempt to preserve the rights of A4A's members “to challenge implementation of the EU ETS as applied to aviation” and also to move the issue of emissions trading back to ICAO (GreenAir Online 2009). The A4A interviewee would also add that

“the legal issues are a very specific stylized way to reflect our concern, but the bigger picture is what is the right way to regulate international aviation and we think that the unilateral approach that was taken was wrong and it leads to the policy concerns that we have.” (Interview 25.04.2013)

²³The EU ETS as a whole was also challenged beforehand. There were over 40 cases brought to courts both by member states and private operators .

These concerns were then brought to the court as mentioned above. The British court asked the CJEU to determine if the EU directive was valid²⁴ and therefore the proceedings in the UK were stayed. The CJEU represents the “seminal constitutional part in the EU legal order” (Bogojević 2013) and is seen as the key institution with regards to the EU’s legal system (Scotford 2013; Tridimas 2013), and thus was seen as more appropriate to deal with the case.

The first result of the court proceedings was announced on October 6 2011 with the release of an advisory opinion on behalf of the CJEU where Advocate General Juliane Kokott found that the inclusion did not infringe the sovereignty of non-European countries, neither did it infringe the treaties the file listed (CJEU 2011b). On December 21st 2011 the European Court, taking on board Kokott’s opinion, announced that the Directive in question did not infringe the principles of customary international law at issue or the Open Skies Agreement (CJEU 2011a). The judgment of the CJEU has cut the legal proceedings against the directive itself, however it did not rule whether the EU or rather ICAO should be the primary organization responsible for CO₂ emissions from aviation. In the literature, the two CJEU pronouncements would be seen as complementary and also seen as “rhetorical ammunition to one side, while failing to convince the other of the wrongness of its cause” (Havel & Mulligan 2012, p.8).

The proceedings of the Court, important as they are for this thesis, create only the context for the whole issue. The focus here is placed more on the reactions to it and how it determined further actions. Indeed, the ruling of the Court has met with varied responses in the US. An interviewee representing the US airline industry would underline for example the fact that there could be different legal evaluations of the same legal case:

“I think we still very strongly believe that we are right on the law. We understand that different courts will interpret things differently and all of that and we respect their decision and as you

²⁴Case C-366/10 The Air Transport Association of America, American Airlines, Inc, Continental Airlines, Inc, United Airlines, Inc, v The Secretary of State for Energy and Climate Change.

have seen, our airlines have abided by their decision.²⁵” (Interview 25.04.2014)

A European Commission interviewee was even more direct by stating that even though the CJEU states that the EU ETS is not a tax, A4A would still use the word “tax” when discussing the issue. According to that interviewee, the Commission was happy with what CJEU established, but the feeling was that third countries have taken relatively little account of this. When asked about the influence of the Court’s verdict on the Americans, they would underline:

“even though the airlines took the EU ETS to court when the ECJ [EC] is another abbreviation used for CJEU] brought out its judgment I think it was viewed quite dismissively by the airlines and by third countries, which again is a shame in terms of importance of the rule of law (...)I don’t see that it has changed their views. The Court said it is not a tax and they continue to say it’s a tax. It is not a tax.” (Interview 16.04.2014)

A further explanation was provided by an interviewee close to the Climate Commissioner who thought that the case had shown that the third countries would not stop opposing the inclusion of aviation once the verdict was published:

“We of course were very happy about that ruling and we saw it might make a difference but ultimately this was a political issue and the opponents played it very well, they played it politically.”(Interview 28.04.2014)

A different reading of the actions following the lost case was provided by an interviewee representing a green NGO:

“After the court case really was decided, A4A got really aggressive. And I think they thought there were going to win the court case and then they got really aggressive and they started travelling all over the world and convincing other countries to oppose the EU ETS” (Interview 22.03.2013).

This allegation was dismissed by an A4A representative in a research interview. They claimed that A4A was a US organisation focused on the US and therefore they would not focus on external lobbying. A4A was assuring that the

²⁵The airlines abided by the decision in a way that they continue reporting their emissions according to the EU ETS rules, however they did not end lobbying activities against their participation in the scheme.

organisation was not engaged in running a coalition of the unwilling. The understandings of the actions and reactions of policy actors were therefore diverging, which supports the claim that the actors of the policy community such as sectoral organisations, eNGOs and policy-makers were networked. Although they were operating in a relatively small policy community, they were still disparately make meanings of actions. At the same time the core beliefs located at the extremes of the spectra would remain stable: agreement with the inclusion or sharp opposition to the project. Furthermore, one can observe here a smaller policy community (aviation sector) that exists within a larger issue network and operates at a meso-level. The closely integrated communities are set on a larger policy network canvas “because of continuity and consensus or because there is a powerful dominant interest” (Marsh & Rhodes 1992, p.250). The differences between a policy community and an issue network are visible for example through the lenses of discrepancy between the level of integration of the groups (for example stable membership for policy communities and differing membership for issue networks). They are observable also through broad spectrums of interests versus mostly economic ones as well as through the power struggles that appear in the large network but are more balanced within the policy community (Marsh & Rhodes 1992, p.251). The aviation community has been strongly solidified by its economic interest, and given their resources, their access to the policy-makers was virtually unlimited.

With regards to the legal case against the EU ETS, one more quotation merits discussion. It was offered by an EU representative working in Washington who was close to the EU ETS. They explain that the US aviation industry once defeated at the CJEU did not consider further litigation. Although the feelings towards the EU ETS for aviation remained negative, the new strategies of opposing it had to be taken on board:

“I think that the aviation industry has accepted that this was no longer an avenue for them to go forward, even though in private conversations you hear that they are convinced that this is legally wrong. So some of the aviation lobbyist are themselves lawyers and have very strong opinions about this.” (Interview 9.04.2014)

After the second failure and the CJEU ruling, the US airlines and their allies focused on lobbying the Congress to block the application of the scheme. At the

same time, A4A was assisting some of its members in preparation to comply with the scheme, in case opposition would not bring about the desired effects and compliance was enforced. The airlines found themselves in an insecure position and the decision to intensify lobbying activities at the Congress was taken. The next section looks at the concrete steps taken at Congress level.

6.3.2 US formal resistance against the EU ETS

This section looks at specific steps taken by the US aviation sector and US authorities, with regards to the EU ETS, once the Court case was lost by the US airlines. It unpacks the reasons for the US resistance and narratives employed in arguing against the inclusion.

The discussions about the EU ETS inclusion of aviation started in the US almost parallel to the European debates. These, however, did not translate directly into legislative action. Given that none of the interviewees were able to recall when precisely the topic of blocking the application of the scheme to US carriers entered law-making agendas in the US, an assumption is made that this issue emerged first through airline circles around 2007-2008. This has been indicated by numerous interviewees during the legal case against the EU ETS at the CJEU. Firstly, it was the aviation industry (mostly airlines) that approached the US policy-makers. The issue reached the US eNGO community only later on. This delay was an effect of the US eNGO community not monitoring closely the House Transport and Infrastructure Committees and Senate's Committee on Commerce, Science and Transportation (Interview 22.03.2014).

US pressure on the European Commission had been growing, however there was no answer from Brussels that would satisfy the US aviation or the US policy-makers. Interestingly enough, the idea of Americans resisting the EU ETS for aviation was first present in the EU stakeholders' circles, probably before the Americans actually learnt about the European plans. When the European Commission was initially discussing the possible inclusion with the European aviation representatives, they would very quickly flag up the possible US resistance and tried to sensitize the EU officials towards that issue. In the interviews conducted they claimed that the issue had been overlooked and the EC did not consider the US resistance as viable (Interview 28.04.2014).

There have been some signs however that could have alerted the EU policymakers. In 2010 for example, the United States had signalled its concern over the EU ETS in the reservation placed to the Resolution A37-17/2 – Consolidated Declaration of the Permanent Policies and Practices of ICAO Related to Protection of Environment – Climate Change stating “that States must engage in constructive negotiations in order for MBMs to be applied” (ICAO 2011a). The US Delegation also underlined the importance of accepting ICAO as the venue for these discussions to take place. However, this was only a prelude for the whole anti-ETS front in Washington, DC (GreenAir Online 2011b).

At the US federal level the issue of the EU ETS also appeared shortly in the discussions about the FAA Reauthorization and Reform Act of 2012²⁶. In the House Transportation and Infrastructure Committee Report of March 10th 2011 it was pointed out that the inclusion into the EU ETS was inconsistent with the Chicago Convention and the EU was recommended to come back to ICAO negotiations (US House of Representatives 2011b). The final version of the Act, passed February 14th 2012, employs stronger language:

“U.S. Government officials, particularly the Secretary and the FAA Administrator, should use all political, diplomatic, and legal tools to ensure that the EU's emissions trading scheme is not applied to U.S. aircraft or the operators of such aircraft, including the mandates that U.S. air carriers provide emissions data to and purchase emissions allowances from or surrender emissions allowances to European Union Member States”(US House of Representatives 2012b).

This statement was, however, included into the Bill as a so called Sense of Congress, which is a tool that can be added to any bill but does not have any legal force as it does not need to be signed by the President (Davis 2013). In this case, the FAA Bill was a comprehensive aviation authorization that needed to be passed in order to keep the FAA funds secured (Interview 30.04.2014),

²⁶The preamble of the Act says that the law is passed “to authorize appropriations for the Federal Aviation Administration for fiscal years 2011 through 2014, to streamline programs, create efficiencies, reduce waste, and improve aviation safety and capacity, to provide stable funding for the national aviation system, and for other purposes” (US House of Representatives 2012a). Under several titles, the Act regulates various aviation-related issues, among them: authorizations (funding), NextGen Air Transportation System and air traffic control modernization, safety, air service improvements, environmental streamlining, FAA employees and organization, aviation insurance, federal aviation research and development.

therefore, the EU ETS was not its core interest. Nevertheless, the reference to the scheme shows that the US policy-makers were well aware of the potential repercussions of the inclusion and of therewith-related airlines concerns. The Sense of Congress prompted the US eNGO community to address a letter to Senators urging them “to reject the House-passed ‘Sense of the Congress’ language asserting that the European Union’s Aviation Directive is inconsistent with international law”(EDF 2011d). The eNGO community decided to bring up the issue as the Senate’s version of the bill (S. 233) did not mention the EU ETS at all, and the EU ETS part was introduced only at the House.

Formally, one of the first EU-US closer discussions on the EU ETS for aviation once the court case was lost, took place in Oslo June 22nd 2011 (US Department of State 2011). During this meeting, the US delegation also delivered also their formal objection against the inclusion of US carriers into the EU ETS (US Department of State 2011). The meeting took place just 10 days after the EU ETS Prohibition Act was introduced in the Senate (read and referred to the Committee on Commerce, Science and Transport).

Not long after, the US pressure intensified, as can be seen in *the Financial Times*-leaked letter signed by the US Secretary of State Hillary Clinton and Secretary of Transportation Raymond LaHood to the EC top officials²⁷. Clinton and LaHood said “we strongly object on legal and policy grounds to the EU’s plan to subject our operators to the EU’s ETS”.²⁸ Further, they argued that the EU ETS inclusion of aviation is “inconsistent with the legal regime governing international aviation and with ICAO guidance on emissions trading”. The letter closes with: “we will be compelled to take appropriate actions” and a list of 43 countries publicly opposing the application of EU ETS to non-European airlines. Although the “actions” are not specified, one could expect immediate blocking of the compliance by the US Department of State or US Department of Transport or even forms of trade war against the EU countries. At that time, the letter and its

²⁷The addressees of the letter included: EC Vice President Catherine Ashton, EC Vice President Siim Kallas, European Climate Commissioner Connie Hedegaard, Johannes Leitenberger, Head of Cabinet of the EC President Jose Manuel Barroso, Franciskus van Daele, Head of Cabinet of the European Council President Herman van Rompuy.

²⁸Information about the letter was first published by Financial Times 19.12.2011(Clark & Parker 2011) (Clark & Parker 2011), the researcher received a copy of the letter from one of the interviewees.

content was probably not a big surprise for the Commission, though it can also be seen as another way of showing that the administration took on board the arguments of the industry. The coordinated and well-organised pressure was becoming more and more visible. One of the interviewees representing an organisation independent from the legislative process would mention the letter unprompted:

“We had a letter from Secretary Clinton and Secretary LaHood, basically stating opposition on this bill around the EU ETS and I think that [the EU ETS Prohibition Act] was just a mirror of that. because during the hearings on this, especially I remember going to the hearings to the House, the members were hiding behind the administration. The letter that LaHood and Clinton sent provided cover for that.”(Interview 3.5.2013)

This explanation was given only by one interviewee, however the minutes from the hearing clearly indicate that indeed the letter was used as one of the reasons why the Congress should engage legislatively in the EU ETS discussion. The arguments used by Clinton and LaHood very much resembled the narrative employed by the airlines and only added potential action that may be taken, which was absent in the aviation community message.

6.3.3 The EU ETS Prohibition Bill and its significance as observed by the policy actors

This section analyses the way US aviation industry, policy-makers and eNGOs viewed the inclusion of aviation on a larger regulatory context. It engages thus in studying the EU ETS from the US perspective and concentrates on the multiple understandings of the inclusion. Secondly, it focuses on the EU ETS Prohibition Bill and its significance for the Americans.

According to most of the US interviewees, the EU ETS Prohibition Bill was started by the US airline industry that believed that the European project needed to be prevented from applying to US carriers. To achieve this, a Congressional action was essential. An interviewee representing a legal firm closely working on the EU ETS in the US declared:

“The tactics of the airline industry shifted [after the CJEU ruling] to lobbying in Washington. They drafted [a proposal] and had Senator Thune proposed for them this Bill that would prohibit the

US airlines from complying with the EU ETS". (Interview 22.05.2013)

Slightly different explanations were given in the EU. An interviewee representing a European aviation-related organisation, would argue that:

"From the American point of view, I think, it started off being that they didn't see an alternative or credible alternative to the EU ETS so why pay more if we don't have to. Fight it because if this doesn't happen nothing will." (Interview 16.06.2014)

This statement can be complemented with a view of a Congress-related interviewee: "For the EU it was a natural extension of what they were doing and kind of a final component of the EU ETS but this situation is quite different here" (Interview 30.04.2014). The interpretation of the issue among the eNGO community was also in line with an "offensive" narrative, as claimed by one of the interviewees: "my notion at the beginning was just that there were US companies attacking EU climate law" (Interview 22.03.2014). One of the high-ranking members of staff of a Representative engaged in the process would see some reluctance with regards to actual prohibiting the airlines to comply with the EU ETS:

"I don't think anyone was really willing to have to do something like that. I think there was hope that "OK, the EU will somehow change or abandon or revamp the program" that kind of thing." (Interview 19.04.2014)

This quote reveals that some of the US policy-makers would firmly believe that the EU ETS would undergo changes in a way that it would not be applicable to extra-EU flights. Secondly, it indicates that the desire to pro-actively confront the project was not an instant reaction to the EU ETS at the House level. The same interviewee would also provide insights into understanding the nature of the problem and importance of venues in the case:

"We didn't see that as a purely environmental issue. That wasn't really the argument that was in the discussion. That was just 'Can EU do this to non-EU carriers in non-EU airspace?' our concern was more the kind of aviation ICAO regulatory structure versus climate change. We did not make that the argument: 'We shouldn't be doing this because climate change is not an issue.' That wasn't the question. It was 'What's the proper forum to address those

issues for a global industry or a global activity like aviation?
(Interview 19.04.2014)

As mentioned before, the eNGOs were, however, not as important as the aviation sector in discussing the EU ETS Prohibition Bill. Clearly, the distribution of power has been unequal, which is emblematic for the issue networks (Rhodes 2006). Ingold (2011), employing in her research ACF, also confirmed a hypothesis that if the power balance between actors is not preserved, the coalition equipped with better resources is able to substantially influence policy-making and achieve its policy goals. In the US context, claims that “established economic interests” (McFarland 1987, p.135) prevail were present in the in the late 1980s. Although the US policy-making has changed in the past 30 years substantially, the eNGO representatives would still claim in the interviews that their access to decision-making circles would be limited and incomparable with the access available to the industry.

Furthermore, it is enough to look at the title of the 2011 hearing on the Bill: “The European Union’s Emissions Trading Scheme: A Violation of International Law” (US House of Representatives 2011a), to understand the feelings towards the EU ETS when the issue entered the House. Also the composition of the witnessing parties suggests that industry was in the spotlight at the initial stages of Congress proceedings on the bill. The first panel of the hearing was populated by state officials, featuring representatives of the US Department of Transportation, the US Federal Aviation Administration and the US Department of State. The second part was entirely given to the industry represented by Air Line Pilots Association and Air Transport Association of America (before it changed name to A4A). The industry perspective was reinforced also by the statements from the Allied Pilots Association, Coalition of Airline Pilots Association and also a declaration by the Latin American Civil Aviation Commission.

The EU Delegation to the US submitted its letter and a 16-page brochure explaining the scheme and partly addressing the US’s concerns. The Delegation, however, did not testify at the hearing. Additionally, EDF submitted its paper opposing the EU ETS Prohibition Act as well as a letter from a charity and an

environmental organisations group²⁹ was sent to the Representatives arguing that prohibiting the participation of the US in the scheme is not the way forward to reach a global agreement. They underlined that the passing of the Bill would “worsen the air pollution” and make the US passengers use only European carriers as US ones would not be able to serve the routes to Europe (US House of Representatives 2011a). Although it has been claimed that the civil society representatives, such as eNGOs engaged in the case, are able to exert more influence in the situation where there is “a changing institutionalization of political authority” (Sending & Neumann 2006), they did not succeed in preventing the industry claiming victory. The situation of the EU proposing a policy solution and others aligning to the new situation provided eNGOs with a space to express their views on a previously unexplored topic. The eNGOs were, however, not able to achieve their policy goals: the rejection of the proposed Prohibition Bill.

The second hearing took place on June 6th 2012 and the composition of the panels was more inclusive. The testimonies were given by: Raymond LaHood - Secretary of Department of Transportation, Jos Delbeke - Director-General for Climate Action, Sean Cassidy - First Vice President representing Air Line Pilots Association, Edward Bolen - President and CEO of the National Business Aviation Association, Annie Peterson - International Counsel for EDF and Nancy Young, A4A Vice President for Environmental Affairs. This hearing added more tension between the Congress and US Department of Transportation. The discussion between Secretary LaHood and the Senators appeared to accuse the Department of a lack of proactivity in the case, for example by not considering filing complaint under Article 84 of Chicago Convention on a similar procedure through WTO agreements. LaHood would claim though that the Department would discuss various approaches that could be applied to the EU ETS issue. The ground was then left to the Congress and its action to oppose the EU ETS.

The invitation to the EC to send its representative was a fairly unusual procedure, as normally the international partners would not be invited to testify at hearings. As explained by the Chairman of the Commerce, Science and

²⁹The letter was signed by Action Aid USA, Earthjustice, Environmental America, Environmental Defense Fund, Greenpeace USA, League of Conservation Voters, Natural Resources Defense Council, Oxfam America, Sierra Club, World Wildlife Fund.

Transportation Committee, John Rockefeller, Delbeke was invited “to help us better understand EU’s carbon trading policy” (US Senate 2012). As one of the interviewees, also present at the hearing would say: “US Senators do not get elected by people from Brussels, so while they occasionally have foreigners come in and testify they hardly ever listen to them really” (Interview 24.04.2014). The EU representative focused on explaining how the EU ETS is different from a tax and that EU ETS’s application to non-EU routes is consistent with Chicago Convention, and therefore addressed the issues most debated in the US. The statement prepared by Delbeke triggered only a few questions and the discussion that followed the testimonies focused on use of the revenues from EU ETS in Europe and also potential cuts of emissions in general, not referring to the EU ETS itself.

The two statements that were presented by the airlines (and as mentioned before, also a larger aviation community’s view) feature several elements that merit closer scrutiny. The speech delivered by Nancy Young, A4A’s Vice President for Environmental Affairs, opens with a strong description of the scheme saying that it is “the unilateral and extraterritorial European Emissions Trading Scheme, a scheme that poses a threat to our Nation’s airlines, economy and jobs, and also to advancing the right kind of measures to further address aviation greenhouse gas emissions”. A very similar opening was provided a year later before the Senate Committee on Commerce, Science and Transportation in 2012.

Studying more closely the A4A’s appearances at the 2011 and 2012 hearings allows the identification of additional frames used to look at the EU ETS. The 2011 speech was followed by a further discussion on the scheme where Young claimed:

“(...) but the fact that they’re [EU] choosing to tax US citizens in US airspace to fund whatever Europe decides to spend the money on in European pet project I think is a fundamental flaw with the scheme, and it violates our sovereignty” (US House of Representatives 2011a).

It becomes then visible that the sovereignty claim is closely related with earmarking of the EU ETS revenue. The issue expands from “sending money” to “what happens with the money”. There has been a belief in the US that the funds

raised via EU ETS were to be spent according to the needs of governments and not environmental urgency.

Furthermore, the portrayal of the EU ETS as a tax was prevalent in the US aviation community. At the 2011 hearing the ETS was nicknamed by an A4A representative an “illegal, exorbitant and counterproductive tax on US citizens diverting US dollars and threatening thousands upon thousands of US jobs” (US Senate 2012). The arguments related to labour were also reiterated by the pilots’ representation.

The persistent representation of the EU ETS as a tax is in strong opposition to the EU-branded discourse where the scheme is always viewed as a cost effective policy instrument, but never as a tax. Although the EU ETS enables the EU to raise revenue, the Commission would always underline flexibility that the partaking entities had (establishing their own scheme, limiting emissions, agreeing on a global scheme, etc.). The US aviation business dismissed this flexibility and would always see the mechanism as a tax allowing negative connotations and also elucidating arguments related to sovereignty, as taxes are essentially national in their ambit.

One more document merits recalling here to show how broad the anti-EU ETS industrial coalition in the US was. A letter sent to the Secretary of State Hillary Clinton and the Secretary of Transportation Ray LaHood dated 30th July 2012 that advocates prohibition of US participation in the EU ETS for aviation and encourages Administration to file a case against the EU under the article 84 of Chicago Convention was signed by nineteen aviation-related organisations³⁰. These included the actors very vocal before such as A4A and Air Pilots Association, but also those who were not visible earlier in the debate such as Global Business Travel Association or the Airline Division of the International Brotherhood of Teamsters. The composition of the group shows large mobilization within the aviation community. The arguments though, were

³⁰The full list of signatories includes Aerospace Industries Association, Air Line Pilots Association, Aircraft Owners and Pilots Association, Airlines for America, Airports Council International-North America, American, Society of Travel Agents, Cargo Airline Association, Consumer Travel Alliance, Independent Pilots Association, Interactive Travel Services Association, General Aviation Manufacturers Association, Global Business Travel Association, National Air Carrier Association, National Air Transportation Association, National Business Aviation Association, Regional Airline Association, International Brotherhood of Teamsters – Airline Division, U.S. Chamber of Commerce, U.S. Travel Association.

similar to these presented beforehand. The EU ETS was described as unlawful and undermining the US position internationally: “As each day goes by without an EU act to halt or suspend the ETS, the harm to US airlines and aircraft operators and the threat to U.S. sovereignty grow while the U.S. government’s credibility is weakened” (NBAA 2012).

In the debate on prohibiting US carriers’ participation in the EU ETS, the dominance of the industry is to some extent apparent. Several interviewees would perceive the aviation sector as the author of the Act proposal. Even if that was true, the Bill has been heavily edited. If one looks at the EU ETS Prohibition Act retrospectively and analyses the original idea of blocking the US compliance with the Aviation Directive completely and then looks at the Prohibition Bill as signed into law, it becomes visible how significant the changes made were. For example, instead of simply prohibiting the airlines complying with the EU ETS rules, the Bill instructs the Secretary of Transportation to prevent airlines from participating only if that is deemed necessary and only after a public hearing has been organised. Apart from this, the operators of aircrafts were promised to be “held harmless” from the EU ETS, which means that the airlines would not need to cover the costs of the penalties for noncompliance (100 euros per tonne)³¹. One of the members of the US eNGOs community saw their role in the policy debate as extremely important:

“We made that bill [EU ETS Prohibition Act] toothless. We’ve spent, X, Y[names removed for anonymity reasons] and I spent a lot of time making that bill toothless. It is toothless. It doesn’t do anything” (Interview 22.03.2014).

Their view, however, was moderated by the others from the same eNGO community:

³¹ International Air Transport Competitive and Fair Pricing Act explains that if the Secretary of Transportation finds that a third country is treating US airlines unfairly or is discriminating against them in some way, the Secretary is authorized to impose penalties on that country’s airlines when they fly into the United States. Secretary holds those penalties on a special account and once the airline is able to prove how much it has been harmed, the Secretary then gives the money to the disadvantaged airlines. If this route was followed then a fully-fledged trade war scenario could be enacted with Americans blaming European countries and the other way around for subsidies and penalties.

It [The EU ETS Prohibition Bill] is not entirely toothless but the changes we made were able to put into the Bill do raise hurdles for actually getting a determination and the statement that the airlines are prohibited from complying, so yes, I think that was successful as damage control (Interview 22.05.2014).

When the House of Representatives interviewee was asked to respond to the claim that through changes made to the original proposal the bill became “toothless”, the reaction would be a smile and an answer followed by laughter:

“That was the major part that was saying that the airlines should be prohibited from participating, but I think that the fact that you passed legislation like that in a relatively easy way, hopefully it has effect, I would have imagined the Europeans were watching that” (Interview 19.04.2014).

This directs the reading of the significance of the Bill outwards, and suggests that it should be considered a signalling tool to the EU, but also to a larger community interested in the topic: the international aviation industry and their regulators as well as other third countries who indicated possible legal actions against the EU ETS for aviation. The Congress would see then the EU ETS Prohibition Bill as an instrument to affect the actors on all possible levels.

As mentioned above, the eNGOs were considerably weaker in persuading the Congress to accept its claims. This was related to poorer resources but also, as ACF would assume, that “in a high conflict situation”, and the EU ETS debate can be qualified as such, opponents are viewed as more powerful: the actors “remember defeats more than victories” (Sabatier 1998, p.109). The eNGOs were aware of their modest positioning within the US policy-making structures and could feel their bargaining inferiority when confronted with the aviation industry. This translated also into the small, albeit larger than in Europe, number of organisations involved with the case. EDF, WWF, and NRDC were the only US-based organisations who were actively trying to influence the policy-making at the Congress level to block the EU ETS Prohibition Act and persuade the Congressmen that opposing the Europeans will not redirect discussions back to ICAO but only prolong the global process. Although the eNGOs’ efforts targeted both industry and policy-makers, they were unable to mobilize significant resources for this file. The organisations would explicitly defend the EU, for

example by addressing the industry. In a letter signed by several eNGOs³² and sent to the Chairman and CEO of American Airlines they claimed: “The European Union deserves kudos, not lawsuits, for acting to reduce airline pollution - particularly given that the international community has proven incapable of doing so despite more than a dozen years of negotiations”(EDF 2011b). A similar endorsement for the EU’s actions is provided in the letter concerning the Sense of Congress.

The environmental organisations would act even beyond promoting the EU’s approach and they would assume a role of the industry critics. In a letter to A4A, they claimed “American [Airlines] and United/Continental [both are Members of A4A] are hypocritically and publicly touting their commitment to environmental protection while simultaneously working actively to undercut the world’s first program [EU ETS] to reduce carbon pollution from aviation activities” (EDF 2011c).

Furthermore, the US environmental organisations engaged with the EU ETS file saw the EU as the only advocate for a timely response to the growing aviation emissions while their faith in ICAO’s delivery of a global solution was low. In another letter, the eNGO community tried to persuade the US president that “rather than seeking to block the only program in the world [EU ETS] that sets enforceable limits on carbon pollution from aviation, the Administration should join with the EU in taking meaningful steps to ensure that the aviation sector significantly reduces its contribution to global warming”(EDF 2011a).

The understandings of the EU ETS Prohibition Bill can be supplemented here by a perspective offered by a Senate interviewee who in general was against the idea of prohibiting the airlines compliance with the EU law:

“it’s largely a political manoeuvre by two Senators who are trying to improve their credentials, their conservative credentials (...) I think they jumped on that opportunity to be against Europe and their socialist policy. That’s what was driving it. The significance I think (...) it feels like probably this Bill had to some degree some impact on the EU’s decision to delay, because if you have major air carriers in your sovereign airspace that are not going to participate” (Interview 2.05.2014).

³² The letter was signed by Center for Biological Diversity, Earthjustice, Environment America, Environmental Defense Fund, Natural Resources Defense Council and Sierra Club.

The staff of a Senator that was supporting the Bill would argue, however, that the main impact of the Bill was the fact that it forced a delay in implementation (Interview 1.03.2013). A staffer of the Senate subcommittee who was working on aviation until just before the work on the EU ETS Prohibition Act started, saw the significance of the bill as a tool to initiate dialogue. They also stressed the importance of the industry's further steps once the bill has been signed into law: "they [the industry] are they going to work their asses off to drive the ICAO agenda. Or is ICAO going to do an honest job here? [This] is what we worked out and [we] see if they can actually get that from the industry" (Interview 30.04.2013).

Finally, arguably, as mentioned above, the idea of the Bill emerged from the aviation industry, therefore, it is crucial to see how the sector understands the importance of the bill given all the changes that were introduced to the original text. The A4A interviewee provided an extensive comment on the importance of the bill identifying two main points:

"at the time that was really critical in terms of application of the EU ETS to our 2012 flights and the requirement to surrender allowances in 2013, it was a very very clear statement of US policy that the president signed that we don't want to see this kind of unilateral measure" (Interview 25.04.2013)

Apart from demonstrating their disagreement, the interviewee would also see the bill as a tangible tool that can be used against compliance: "so I think having that tool if it needs to be employed and direct us not to comply, is an important one. Not just as a signal but as an actual defence" (Interview 25.04.2013).

The situation drawn above presents a case of two fenced communities that communicate mostly formally between each other and operate under different circumstances and different capabilities, which were mostly related to lobbying. According to some, "the existence of networks cannot be denied. It is far better to face this fact and analyse how they work, looking for ways to improve them rather trying to ignore or abolish them" (Kickert *et al.* 1997, p.171). The networks emerging here definitely merit a closer analysis as they constituted a whole body of content crucial for this case: the two separate policy networks, one based on the aviation industry and the other one on the

environmental organisations and their supporters. The two clusters would concentrate on different values that bound them. The eNGOs and their supporters tended to underline the EU's leadership and the need to address the problem given the stalemate at ICAO. They would therefore strive to orientate the discussion towards making rapid steps and agreeing on binding solutions. On the other side, there was the aviation industry line of argumentation that based its discourse on sovereignty, the global solution as the only viable one and the dissent concerning any payments to be made to cover the cost of the EU ETS allowances. While examining the US policy networks Rhodes would make a distinction between the insiders and outsiders, where outsiders "are kept on arm's length" and seen as extremist (2006, p.427). It is claimed here however that in the issue analysed, this dynamic did not appear. The eNGO community would argue however that due to limited resources they were able to employ for this file, they were not in a position to engage as fully as the industry. This in turn may have influenced the decision-making process of the policy-makers who were much more exposed to the business lobbying, both in terms of number of meetings requested but also the timing – the aviation industry started lobbying the Congressmen well before the others.

6.3.4 Financial issues: what money is to be sent?

Apart from policy and legal issues related to the inclusion, a narrative regarding financial burden of compliance was present. An airline representative pointed out:

"sending the money to Europe did not seem like a good idea to anybody (...) I mean, you can have all kinds of concerns about the mechanism but the thought that the US consumers and US airlines will be pinning money to the European governments for those governments to do whatever they wanted with it..." (Interview 25.04.2014)

Claims related to finance, but pertaining to actual costs rather than earmarking of the funds raised, were made in a letter submitted for the hearing at the House of Representatives Subcommittee on Aviation on July 27th 2011 by the president of Allied Pilots Association David J. Bates,:

“APA’s opposition centres on the adverse economic impact the ETS would have on our nation’s airline industry(...) the ETS could cost US carriers \$1.3 billion in the first year alone, and potentially rise to an annual cost of \$3.5 billion 2020” (US House of Representatives 2011a).

The APA’s vision, similarly to A4A’s, represents the EU ETS as a cost not a policy instrument and rejects the possibility of the aviation sector being held accountable financially of its externalities. In the view of the actors opposing the EU ETS, the sector needs to remain outside of the EU regulations. The same numbers were reported by A4A’s Nancy Young, who additionally calculated that this amount would support over 39.000 jobs provided that the airlines do not comply with the EU ETS (US House of Representatives 2011a).

The literature suggests however that the impact of the EU ETS would probably be limited. For example Malina and colleagues conclude that the effects on running the aviation business in the US would be low if any (2012). Moreover, a paper by Brian Pierce, IATA’s chief economist, was published in 2007 about how limited the impact of the EU ETS would be on the airline industry. This paper was then withdrawn from the Internet and Pierce was asked not to publish texts similar to the 2007 one (Interview 28.04.2014).

These cases call for alternative explanations of the US’s opposition, and there are two possible explanations that can be offered here. Firstly, the opposition was gathered around discourses that were the binding substance for the participating actors. The interviewees would most often quote sovereignty.

One could argue that the sovereignty recalled here appears under its Foucauldian form of governmentality, where the eminence of non-state actors represents a wider change embodied by non-state entities becoming both object and subject of government (Foucault 1982). This in turn means that no transfer of power towards the non-state actors occurs. Elsewhere Rosenau (1999; 2002) states, however, that the political authority transfers from the sovereign state towards “spheres of authority” operating via policy networks where the state’s role is diminished. Although the case analysed here features the non-state actors’ ability to strongly influence policy-making, the venues where the discussions take place are still inherently state-centred (e.g. Congress, ICAO, European Parliament). Indeed, the states cannot ignore the interests and bargaining power

of industry or eNGOs due to their “significant moral, financial and knowledge resources” (Benner *et al.* 2004, p.195), but the sovereignty argument brought up in the US appears to be very much state-centred, marginalising any wider governance structures. The discourse produced chiefly by the airlines was pertaining to sovereignty in its very fundamental, almost Westphalian meaning. By recalling the Chicago Convention, for which sovereignty is a cornerstone, the sovereignty frame’s propagators clearly alluded to the power of an independent state to challenge any regulation that would infringe the boundaries of US legislative reach. The sovereignty issue was therefore played out as a disagreement to US-registered businesses being held accountable to the EU for the emissions produced over the US territory or over international waters.

The second explanation relates to the possible increase of prices of carbon allowances and the need to spend substantial amounts on acquiring allowances. This explanation was backed by one of the interviewees who provided the following narrative:

“I think that airlines were sitting there and thinking, and this is a fully rational version. The airlines were completely rational, they were sitting and thinking and going: shit, when this thing gets up to like a hundred dollars per metric ton as all these models are saying it’s going to be 50 years from now and we are really cracking down on climate change, we are going to have a huge burden and that’s going to really increase the cost of air travel and it is going to label us as this huge polluting entity and that’s dangerous to our long-term interest, so we are going to fight it.”
(Interview 8.04.2014)

This quote above shows also that in the eNGO perspective, the airlines did not see any substantial reductions in emissions as viable and therefore needed to vigorously oppose the scheme.

Finally, by accepting the EU’s scheme, the US airlines would have shown that the door for further regulations that the EU may consider is half-open for the US consent and the renouncement of the ICAO’s pre-eminence in regulating international aviation. The disagreement to being regulated by the EU has also been understood as an expression of solidarity with other international partners:

“The Americans to this day are still concerned that if they signed up with Europe to do something that we may still end up exempting the Chinese or the Indians and they are really worried

about the message (...) would be perceived as unequal treatment by carriers.” (Interview 16.06.2014)

6.3.5 Competition issues: measures equivalent to the EU ETS

The EU-US air transport policy is believed to be based on concerns over ensuring competitiveness in the marketplace (Goetz & Graham 2004). The concerns over competitiveness were taken on board by the European legislators while working on the EU ETS exactly by including all the flights that land at or depart from the EU airports. However, there was a clear exemption for the countries that would apply comparable measures, for example by establishing another regional emissions trading scheme. The Article 24a, of the Aviation Directive states that:

“Where a third country adopts measures for reducing the climate change impacts of flights (...) the Commission (...) shall consider options available in order to provide for optimal interaction between the Community scheme and that country’s measure” (Official Journal of the European Union, 2008).

This feature was also mentioned in the CJEU Advocate General opinion (CJEU 2011b) and subsequent ruling of the CJEU (CJEU 2011a). Even though these provisions were underlined by the European representatives dealing with the issue internationally, the discourses around the EU ETS in the United States did not include comparable measures as a viable option. Once the American Clean Energy and Security Act (ACES)³³ (also known, after its authors, as Waxman – Markey Bill) that would have established a carbon trading system, border carbon adjustments and would have covered transportation fuels, was blocked by the Senate, any discussions regarding pricing carbon disappeared from the legislative agenda at Congress. Although the eNGOs pressed to enact the Bill into law (EDF 2009) and later, also were underlining the possibility to receive EU ETS exemption for aviation (Interviews 24.04.2014 and 22.03.2013), there was not enough political will in the US to use this idea as a vehicle for rethinking ACES or any equivalent of it.

³³ “A bill to create clean energy jobs, achieve energy independence, reduce global warming pollution and transition to a clean energy economy” Introduced in the House of Representatives as H.R. 2454 on May 15th 2009 (US House of Representatives 2009).

Moreover, the idea of equivalent measures was represented by the US aviation community again as a sovereignty issue. Nancy Young claimed at the 2012 hearing “(...) that our government should take orders from the EU on how to fashion US law is an astonishing proposition. Moreover, it’s a recipe for chaos” (US Senate 2012) and the 2011 statement was followed by one more sentence: “With the EU unilaterally determining equivalence, the prospects for competitive distortions and discriminations are enormous” (US House of Representatives 2011a). Similarly, the administration was not convinced by this way of proceeding. In the aforementioned letter by the Secretaries of State and of Transportation, they say:

“Simply offering the possibility of partial exemption under the ‘equivalence’ provisions of the Directive does not satisfy the need for constructive negotiations and ignores the strong legal and policy objections that have been articulated by countries around the globe³⁴”.

It is true that the EU did not specify what the equivalent measures should be exempted from compliance. However, given the opportunity to release administrative burdens that the Commission (mostly DG CLIMA and DG MOVE) was charged with the EU ETS, they would most possibly welcome the equivalent measures rather than hamper them by counting on negligible revenue from the allowances bought by the US carriers. This seems to be especially valid given that 90% of allowances for aviation were provided for free. The EU policy-makers would have been aware that any ill will to recognise US’s (or others) endeavours would meet with enormous opposition.

6.3.6 Policy change or continuity?

After having analysed the situation of US aviation and the narratives employed in negotiating and then fighting the EU ETS, this section discusses a larger regulatory picture. As indicated in the previous sections, there is an on-going debate on the dynamics of aviation-related regulation. The understanding of the Bill has been extensively presented above, thus this section focuses only on analysing its “change” aspect.

³⁴The researcher received a copy of the letter from one of the interviewees.

According to some, “air transport is a business naturally dominated by short-termism and opportunist response and, crucially, by a fragmentation of responsibility among its policy-makers” (Goetz & Graham 2004, p.266). To some extent this may lead to an exclusively incremental approach to regulating the sector with various policy-makers focussing on adding to the existing regulations. The EU ETS case allows thinking that US incrementalism is confronted with EU “brinkmanship” (Prum & Kisska-Schulze 2015) and as some argue, with unilateralism (Scott & Rajamani 2012). For the US policy community the EU ETS was a policy leap that they could not imagine after the Waxman-Markey Bill failure. The US policy-makers started to view any carbon trading initiatives at a federal level as unattainable.

All the US interviewees were asked whether the EU ETS Prohibition Bill constituted a change in approach to how the emissions from aviation are being dealt with in the US. Given incrementalism is not able to explain completely the way policies are formed (Baumgartner *et al.* 2014, p.69), it is important to consider the explanations of policy choices provided. The interviewees were consistent in answering the above stated question and although some claimed it was unprecedented, they would not see the Bill as a move towards a policy change.

The airline sector would view the US disagreement as a result of the long-standing consensus among US policy-makers that international aviation emissions should be regulated via ICAO. Secondly, the US policy-makers underline that at the federal level no industry is included in any kind of market-based measure to reduce emissions. In the second part of their statement, the airlines representative while answering the question would argue:

“We don’t want the Europeans grabbing some jurisdiction over our airlines when we are still formulating what is the role for market-based measures in general. I think the anti-EU ETS legislation is our Congress reacting to what it sees as European overreaching on this issue” (Interview 25.04.2014).

A similar answer was provided by an interviewee from within aerospace manufacturers and suppliers who saw that the Bill confirmed the line of thinking about emissions regulation and offered a remedy to the “jurisdiction-grabbing”

problem: “if there is something to be done in emissions and it is through aviation, it needs to be done internationally” (Interview 1.05.2013).

Another interviewee, who preferred to remain anonymous, claimed that not only does the EU ETS Prohibition Act does not constitute a change in approach but even solidifies the US’s Kyoto Protocol denial as well as is in line with US aviation policy,

“which has always been that we demand, we impose on other countries, we don’t always respect their opinions on aviation policy and so it needs to be our quality level of screeners in European airports and international flights cannot have gambling on them because of the US law. We believe that our standard is the most important standard” (Interview 08.04.2013).

The idea about the US standards being viewed as the most appropriate by the US policy-makers has been confirmed also by other interviewees who would underline the US’s self-confidence at ICAO. The EU ETS Prohibition Act was instrumental for the US’s position and outlook on any changes in the regulatory constellations. Moreover, it has been also argued that the Prohibition Act is consistent with the US perspective because the US would prefer to see action that would help lower emissions on a global scale and the EU ETS has been viewed by the Americans as clearly hindering the ICAO solutions (Interview 30.04.2013).

A Senate interviewee, however, dismissed any policy importance of the Bill: “I think that it was political winner for some people who needed some political points. I don’t think it says anything about our policy, what it ought to be” (2.05.2014). This pertains to a larger Congressional issue that has been pointed out by Rabe (quoted in Sussman & Daynes 2013, p.54) who claims that the Congress is not able to reach an agreement on climate policy but is prolific in discussing it. The debates and hearings then can serve as the venue for “collecting political points” without any binding decisions. Also, if one looks into the Bill, it only instructs the Secretary of Transportation to prohibit participation, rather than directly banning compliance.

These ideas related to the Congress being reliant on its long-standing policies are complemented by the view that if any changes in emissions reductions were to be agreed on in the US, it would be EPA-branded, even if

some see it as an unelected, bureaucratic body (Sussman & Daynes 2013). This, among other factors too, is caused by the fact that the Congress constantly challenges the Agency and is reluctant to accept pro-climate proposals (Interview 3.05.2014).

The opposition to the EU ETS needs to be then seen as a continuation of the US not addressing the CO₂ emissions from aircraft. Neither is it a departure from the stance that international aviation issues should be dealt at an international venue, unlike the noise or water and air pollution issues that are more federally regulated. At the same time, the power of the EU ETS was not significant enough to lead to a punctuated equilibrium situation when stability and incrementalism are challenged and the policy alterations are dramatic and drastically change the trajectory of policy direction (True *et al.* 1999; Baumgartner *et al.* 2009). If one understands the stalemate at the ICAO level as a situation of crisis, then the broad inclusion of airlines into the EU ETS could be viewed as questioning the status quo³⁵ and offering the non-EU countries an opportunity to move away from it. As claimed, "American political institutions were conservatively designed to resist many efforts at change and thus to make mobilizations necessary to overcoming established interests" (Baumgartner *et al.* 2014, p.62). The mobilization provoked by the EU ETS was focused, however, on retaining the status quo. More importantly, the potential punctuation in the US could have happened owing to the incremental policy-making in the EU – if one sees the inclusion of aviation into the EU ETS as a natural extension of the system's scope. Furthermore, the punctuated equilibrium theory would assume much more bounded contexts for understanding changes, mostly national. However, the case of aviation regulation clearly exhibits regulatory regimes spanning from global reach down to regional or local regulations (pertaining to airports for example) that interact with each other.

³⁵In the Punctuated Equilibrium Theory, the broad inclusion of aviation into the EU ETS could also be seen as exogenous shock or exogenous circumstances given the external to the US policy system actors (Jones *et al.* 1998; Baumgartner *et al.* 2014).

6.4 The importance of a single aviation organisation

In this final section, attention is given to the US airline industry whose role in the case was accentuated previously. This section addresses several aspects of research questions 2 and 3 concerning the actors in the case and their preferences. Firstly a picture of a larger airline community opposing the EU ETS is presented before proceeding to look at A4A itself.

6.4.1 US carriers in international sectoral organisations

The analysed media content unambiguously indicates that the US interest around the inclusion of aviation into the EU ETS was focused on the aviation sector – government line, though the onus of the lobbying was obviously placed on the sector and its links beyond the US. According to a representative of the US airline industry, the sector was already engaged in commenting on the initial EU proposals related to the EU ETS in the early stages of the EU work:

“As the EU is developing its proposals we worked with the International Air Transportation Association and the Association of European Airlines and others to provide input into the European process, so it started then as the legislation was adopted we very immediately put comments in on the development of things like the monitoring, reporting and verification requirements and other requirements” (Interview 25.04.2014).

The US sector was not working, however, in isolation. From the very beginning of the debate the International Air Transportation Association and the European Airline Association are mentioned here as venues (IATA) or partners (AEA) for discussion. Although, the networked activities should not be of any surprise in a business that is so closely interlinked, here the policy priorities were not always converging. The A4A would not have too much contact with its European counterpart. The A4A interviewee would mention the AEA activities only with regards to the initial proposals of the Commission concerning EU ETS. The discourses the two organisations were engaged in played out differently. While A4A was underlining the illegality of the scheme, the AEA was rather underlining the importance of the global solution to be developed at the ICAO level. In a statement concerning the legal case against the EU ETS the Association stated: “AEA supports the European Union’s commitment to reduce the impact of

all sectors, including air transport, on climate change. However, instead of taking the lead and paving the way towards a global solution, the European Union's environmental strategy is alienating key partners" (AEA 2011). The AEA was not sure to what extent the European Commission would cover the EU carriers and in the case that all the transatlantic routes were to be incorporated in the scheme then there would be no competitive distortion for the European airlines. Apart from this, the AEA member airlines had a perspective of being regulated by the Commission in the future, while for A4A there was no such likely necessity in the future. The main implication of such divergence was the limited influence of A4A through AEA on the shape of the EU ETS legislation concerning the inclusion of aviation. Secondly, this further deepened the division between the EU and US policy communities as they were focused on different venues where they lobbied and were also using different arguments.

The US airlines understood and portrayed the EU ETS for aviation as a threat to US sovereignty while IATA was more inclusive in the way the EU ETS was to be tackled, therefore, it did not condemn the EU ETS entirely. It rather referred to the regionally applied schemes in general: "IATA urges governments to agree on a global approach to market-based measures and refrain from applying regional or national measures" (IATA 2013b). IATA's policy paper explains further:

"While it is simple for government to account for emissions from stationary sources, doing this with mobile sources such as aircraft is a lot more complex. Also, with some aircraft operators flying to almost one hundred different countries, the multiplication of regional and national measures results in an unsustainable patchwork of uncoordinated administrative and reporting requirements" (IATA 2013b).

In the IATA 69th Annual General Meeting Resolution published in 2013, it was underlined that a global solution needs to be developed "as opposed to a patchwork of unilateral national and/or regional policy measures" (IATA 2013c).

A similar idea was conveyed by an even broader coalition under the umbrella of Air Transport Action Group that apart from the airlines (IATA) includes also airports (Airports Council International), air navigation association (Civil Air Navigation Services Organisation), business aviation (International

Business Aviation Council) and air space industry (International Coordinating Council of Aerospace Industries Associations)(ATAG 2013). These organisations were probably influenced by their US members who, while preparing to block the EU ETS for aviation, had already provided ideas and narratives to counter the European project. The mentioned position papers seem to offer a balanced opinion about the European ambitions concerning aviation emissions regulation. This, however, is not the case for the statements of the prominent IATA figures. For example, the previous Director General and CEO, Giovanni Bisignani, who was serving at IATA between 2002 and 2011, would already strongly oppose the scheme in 2007:

“This is a global industry and we need a global tool. Regional trading schemes will not work. That is why 170 countries will challenge Europe. Instead of working together to build a global trading scheme, governments will be discussing legal issues”(Milmo 2007).

Later, in the period of the most heated debate on the EU ETS, Tony Tyler, the Director General and CEO of IATA would be quite pointed in his public appearances concerning the scheme:

“As we approach 2012 the attention of the aviation world is focused on Europe with its misguided plans to bring international aviation into its emissions trading scheme (ETS). It is a \$1.2 billion mistake that neither the industry nor the environment can afford (...) But the relentless determination to implement a flawed regional ETS is dividing the world just when we need unity” .

Elsewhere he would claim that the explanations provided by an EU representative at the Orient Aviation's Greener Skies were “fascinating linguistic gymnastics of a wonderfully European type” (Winn 2011). Even though the statements by the directors do not bear the same importance as the policy papers that are developed by the whole organisation, they show well the atmosphere and emotions that the industry had towards the EU ETS for aviation. Secondly, IATA and ATAG provided international venues for resistance to the EU ETS – these were probably the places where the strategies had to be discussed and measures to counter the EU scheme were developed.

The atmosphere around the EU ETS in the United States very much reflected the words of the IATA CEO. The narratives were mutually reinforcing.

The A4A's strategy attempted, firstly, trying to influence EU policy-making. Once this failed and the EU ETS was enacted into law, the organisation, on behalf and on direction of its members, challenged the European Commission legally by filing a case against the EU ETS.

The counter-ETS actions were, however, very much US-centered, even though one could expect a much more networked chain-type reaction. It is argued also that airlines were working in alliances in order to stimulate demand but also to extend their yield management (Button & Stough 2000a, p.32). Given that 54% of world's global capacity in 2001 was operated through airline networks (Button 2005, p.43), it is surprising that this did not translate into visible political alliances between the airlines in the case of EU ETS. Although there are well-functioning market alliances between EU and US airlines, this did not lead to a creation of transatlantic industry counter-ETS alliances. The networks without which global operations would be virtually impossible (Goetz & Graham 2004, p.267), did not affect the policy-influencing dimension of the airlines' strategies. The reason for this may be related to the fact that the US carriers were acting in these files much more via their association (A4A) than individually. Although any particular discussions between the EU and the US airlines were not mentioned by the US interviewees, one of the interviewees representing a European carrier would flag up that the airline they represented, received plenty of queries concerning the EU ETS. The countries addressing the carrier were not listed though.

The dynamics between the airlines and their associations (especially those of global reach) versus the EU, have shown that the whole discourse of regulatory complexity of global civil aviation is able to block any other solution than one brokered by ICAO. The complexity is used as a tool to discipline the regulators in a way that only a "perfect, global market-based solution" is a palatable option for the industry. At the same time, this solution does not seem to be attainable, or at least has not been for the past 20 years. The ICAO deliberations were not able to produce much progress in the case and apart from the EU, no other countries have tried experimenting with establishing a scheme that would cover international aviation. The arguments based on a need for a global solution simply delay any action out of ICAO. The core belief that ICAO is

the only venue to regulate aviation and that the inherent complexity of the sector needs to be considered, was able to solidify the anti-ETS efforts. Sabatier would consider these “fundamental ‘glue’ of coalitions” (1998, p.103).

6.4.2 Consolidation of lobbying efforts in Washington

One of the most striking features of the interviews conducted in Washington, DC was the agreement among all the interviewees that it was crucial to discuss the EU ETS with an A4A representative. Similarly, A4A was seen as the key player by the Europeans. The quote below shows perfectly how A4A was seen in Europe:

“I think the American Airlines Association [the interviewee meant here A4A] has been particularly adamant, particularly vigorous in this opposition. They have been lying about what the scheme implies. The spin they’ve been giving to the Congress about what this is, is incredible and contradicting the funding... The US government has funded research by the MIT [Massachusetts Institute of Technology] (...), who have found that the scheme would be net economic benefit for the US as a region because of the free allowances and windfall profits that allow this and yet they’ve continued to claim that this would cost thousands of jobs in the US. It’s just over the top and ridiculous.(...)It is still hard for me to understand why the airlines haven’t taken a bit more strategic approach to this. I think they basically have gambled on the bet that they can avoid this and anything.” (Interview 28.04.2014).

A very similar view emerged from the interviews provided by the eNGO community, who considered the industry, but mostly A4A, as those actors who were deciding how the issue will be played out in the Congress. On one side it can be understood as a tactic of an actor whose arguments were not accepted by the policy-makers. They may be then trying to diminish its initial bargaining power and also amplify the impact of the rivals. On the other side, as shown in this chapter, the US’s aviation sector is treated by the policy-makers in a special manner as well, as it is able to engage substantial financial resources in lobbying activities. The financial perspective on this issue has been well-captured by one of the interviewees in the following words:

“From the perspective of someone who works for a public interest organization, for non-profits and for local communities, Washington is a particularly unfriendly place. In that it is money

and lobbying power that really pulls the strings in Washington and so we always seem to be operating at a distinct disadvantage” (Interview 22.05.2013).

An eNGO interviewee also argued as follows:

“It was the airline industry that has poured so many resources, not just travelling around the world to getting people worked up but also in the US getting a Bill passed through the House of Representatives without anyone noticing is no joke. They put, I mean... they talked to 435 members of Congress, multiple, multiple times; they had a lot of resources put in this.” (Interview 22.03.2013)

Airlines for America’s strategy with regards to the EU ETS can be seen as exemplary and followed a well-rehearsed scenario of gaining access to the policy-makers, “creating an attitude” of convergence between the policy goals and A4A’s goals and finally persuading the policy-makers to vote or at least be in favour of the identified objectives in the future (Thomas & Hrebentar 2009). The lobbyists were very much focused on framing the issue in the way they wanted to portray it, hence the sovereignty and infringement of international law that were present in their arguments. As claimed by Baumgartner, lobbyists “spend much of their time attempting to convince others that their issue should be seen in a particular light” (2007, p.485). Furthermore, for this issue, the success was based not only on employing an effective strategy but also the whole aviation industry played in accord, as explained by one of the Senate interviewees:

“Often when it comes to aviation industry, aviation industry issues, you typically have the companies on one side of the argument and the unions on the other side or you have trade versus passenger, but this is an example where the entire industry was unified, so it made it a lot easier for Congress to unify” (01.03.2013).

Indeed, as it emerges from the interviews with other sectoral organisations in the US, there is a consensus that A4A was the lead one working on the EU ETS, while the others would rely on its expertise. At the same time the wider unity of airlines, pilots, business aviation, tourist organisations or general aviation manufacturers made the opposition in the US viable. What is more, the individual airlines would remain relatively silent in the media as far as the opposition to the

European scheme is concerned. Two major US airlines approached for a research interview on the EU ETS deferred immediately to A4A for the EU ETS queries.

Furthermore, the aviation industry lobbying was issue-based, which is seen as the most efficient where communication with policy-makers is concerned (McGrath 2005, p.87). Building on this, and the fact that the issue in question was quite technical and involved foreign and international aviation law, the aviation practitioners were seen as essential to interpret the regulations. This task was assumed by A4A who provided Congressman with their insights into the process. In the context of aviation law, A4A was seen as an adequate interpreter, however according to several eNGO and European Commission interviewees, the organisation would often misinterpret core ideas of the legislation, to make the EU ETS look more costly for them. Also, the claim that all the fees gathered through the EU ETS would feed the EU countries' budgets was widely spread. In line with this, a representative of the EU Delegation in Washington underlined that their staff had to spend a considerable amount of time "trying to dispel the untruths that were circulating [in the US]" (Interview 9.04.2013).

The industry must have been also aware that for them it would be easier to block the application of the EU ETS in the US than to impact or challenge the EU legislation within 27 EU Member States who were implementing the ETS regulations. Apart from this, Washington is considered a distinctively different ground for lobbying than Brussels, with different strategies and approaches to influencing the policy-makers (McGrath 2005; Woll 2006). The US lobbying style would be much more aggressive and would not necessarily be listened to in a much "softer" EU world (Gardner 1991). The Congress was thus an immediate venue offering easier access for a more effective lobbying impact. As explained by one of the Senate interviewees who was close to the process of drafting the legislation:

"In a meeting with Senator's Thune [co-sponsor of the EU ETS Prohibition Act] staff about it, on Commerce Committee, they [senators and their staff] were very knowledgeable about the issue, there's no question about that. I am sure that they worked very, as do most of us, worked very closely with the industry to come up with the policy that they actually put forward and

making sure that it was exactly... it was what the industry wanted." (Interview 2.05.2014)

The ease of access, knowledge of the ground and a much stronger voice or bargaining power being a corollary of aviation's contribution to the US's GDP and the fact that the sector is a large employer in the US, made the Congress the most suitable venue for the airlines to argue their points with regards to EU ETS. Even though it was a European regulation that they were opposing, the US was much more fertile soil for their arguments.

6.5 Conclusions

This chapter has shown that there was no one, exclusive factor that exacerbated the US in terms of aviation's inclusion into the EU ETS but rather a variety of issues that played their roles at different points of time and at different venues. The data analysed demonstrates that in the US the EU ETS for aviation was very much a political, rather than a legal issue, which is embodied by intense opposition to the EU ETS even after the CJEU verdict.

First of all, portraying the EU ETS as a tax strongly affected the Members of Congress as taxes are viewed as inherently national instruments. This mechanism of redefining the issue so it is well-accommodated by the discourse sitting at the institution lobbied has been explored, with similar results, in the Canadian context (Pralle 2003, p.242). It is not possible to unambiguously state whether the tax-discourse was the real concern that the industry has had or rather a rhetorical tool that aroused the interest of the Congress. In the analysed context, where aviation is largely exempt from taxes (mostly international taxes, while covering some domestic taxes) and its externalities would be split into various fees, the tax narrative seems to be instrumental here. The airlines were underlining how much they are contributing to the US budget and another financial burden would render their operations below profit margin. The tax narrative also ensured large support for their disagreement with the EU policy and maintained the issue high in the agenda. The presentation of the EU ETS as a tax has clearly been what Hajer sees as producing and reproducing of "specific ensembles of ideas, concepts and categorization" (Hajer 1995, p.44). The "tax ensemble" produced played extremely effectively in the US. Additionally, the

sovereignty arguments reinforced the tax narrative. Furthermore, this production means that certain facts are omitted and only one discourse solidifies and solutions become preconfigured as a part of the narrative (Hajer 1995, p.44; Fogel 2007). Provided that the EU ETS was presented as a tax imposed by a foreign government on US companies and on activities exercised outside of the EU territory the predetermined solution had to be strong opposition.

Secondly, attention needs to be given also to the international dimension of the US opposition. The discussion concerning the EU ETS that was taking place in the US would not take into consideration alternative scenarios to actually opposing the scheme as it was. As explained above, the Americans were not interested in introducing equivalent market-based measures or any type of environmental charges that would reciprocate the EU's steps. Although reciprocity in international relations is usually more likely (Keohane 1986), it did not occur in the analysed case. One of the reasons was probably the Waxman-Markey proposal's failure and poor interest in setting up a federal market-based measure for aviation. Moreover, the US would then break the line of their international partners co-opposing the scheme and could be seen as compliant with the EU requirements. Other than that, imposition of charges or authoring a new scheme would be much more resources-consuming than flagging up a strong opposition that would pressure the EU to change its policy concerning the scope of application of the scheme.

Thirdly, the issues surrounding sovereignty that are presented in this chapter might not be easily extrapolated to other US sectors. As it has been explained, the aviation community enjoys a strong position at the Congress and apart from that it is one of the last businesses whose regulation (or at least regulation of the international civil aviation) is inherently based on inter-state agreements rather than anything else. The sovereignty frame was easily related to the presentation of the EU ETS as a tax and created a coherent narrative that was not countered effectively with the EU or eNGOs arguments.

On a broader canvas of policy-making, more issues come into play. The EU policies in relation to climate change have been successfully evolving for the past 40 years. If one takes into account the first Environmental Action Plan, and the fight for low-carbon society, ambitious climate policies have definitely been an

unifying factor for some of the Member States (L. G. van Schaik 2013, p.127) that were able to see value added in an enhanced collaboration between the countries, targets becoming more and more ambitious and regulations growing stricter. The US's disagreement to ratify the Kyoto Protocol, the fallen Waxman-Markey Bill, and a context of climate change denial in both Congressional and public discourse provides a starkly different background of national policy-makers perfunctorily dealing with climate change only if the pressure exercised on them was insurmountable.

Finally, both the EU and the US filed reservations to the ICAO's Resolution concerning aviation emissions (A37-17/2). Albeit different in tone, they strongly showed in 2010 that there is no consensus or even a will to find one on a global level. When at the 2013 ICAO Assembly the US joined the EU camp with regards to aviation emissions regulation and it was outvoted by the G77 group, it was not a sign of the two camps becoming closer to each other, but rather a changing dynamics of decision-making at ICAO, where the developing countries for the first time were able to outvote the developed (see: Section 5.2).

As it has been shown, according to the US interviewees, the EU ETS is very much consistent with the US position on regulating aviation emissions and does not create any precedence. The Americans did not oppose the idea of emissions trading for aviation, but profoundly disagreed with the way of tackling the issue proposed by the EU. As a result it can be viewed as a path-dependency situation where even though the reliance on established framework is ineffective, i.e. no ICAO consensus on market-based measure, the alternatives were dismissed. In this case the dependency can be viewed as an effect of sectoral lobbying focused on belittling the EU ETS and directing policy-makers' attention towards ICAO solution.

7 The voices of the unwilling: the opposition to the EU ETS on a global scale

7.1 Introduction

The EU ETS case offers one of the few examples of a structured and persistent country-based coalition characterised by otherwise heterogeneous interests, which all together coordinated an attempt to block an EU policy. Furthermore, the case illuminates the role of industry in derailing application of the EU carbon scheme to aviation. This chapter expands the global dimension of the explanation by presenting more actors involved in the case and analysing their reaction to change. Apart from creating a whole new block of opposition, the actors presented here have also strongly influenced understandings and interpretations of the EU Member States, and at the level of EU institutions, but also affected the EU-US bilateral discussion on the EU ETS. Analysis of the coalition also shows the extent to which individual EU Member States became involved in the debate due to threats they faced.

This chapter focuses thus firstly on the so-called ‘coalition of the unwilling’, secondly on the simultaneous involvement of BRIC countries (Brazil, Russia, India and China) and thirdly on aircraft manufacturers’ influence on policy-making in the European Union. At the theoretical level, this part draws mostly on theories related to policy networks. Provided that various actors are taken into consideration here, mapping their involvement in an institutional context (Klijn 1997) is crucial for drawing any further conclusions. This mapping is also important for looking at the governance side of the issue characterised by continuous negotiation taking place between industry and civil society (Marks 1993). The chapter also engages with interpretive policy analysis, specifically by looking at how discourses concerning the inclusion of aviation into the EU ETS have been produced by opposing countries.

The EU ETS Prohibition Bill analysed in the previous chapter was one of many pronouncements against the EU ETS, however the research literature has focused primarily on the US (Malina *et al.* 2012; Scott & Rajamani 2012) rather than other international actors. This chapter addresses this gap by examining

more closely arguments of the non-EU states and industry, the steps they took and the results they achieved.

Similarly to the US, in other countries aviation is a sector that has so far received exceptional treatment. Although this will not be scrutinized in detail here, it merits mention that drawing on the EU ETS experiences, countries such as China, South Korea, Japan, India, New Zealand, Australia (though for a limited time only) (Dirix *et al.* 2013) were pursuing or planning implementation of their own emissions trading schemes. Yet in parallel, they would oppose the scheme's application to aviation. Furthermore, there is a prevalent feeling in the aviation sector globally that issues pertaining to international aviation regulation should remain at the discretion of ICAO. This thinking is firmly present also in the four big actors in this case: as shown previously, the US, but as this chapter shows also China, India and Russia. These countries were indicated by the interviewees both in the EU and the US as those most involved in the issue and also the most powerful.

By zooming out and looking beyond EU – US relations, this chapter aspires to answer research questions 2 and 4. These questions are split and linked with more detailed considerations regarding extent to which the move of the EU marks a change in the wider governance of the aviation industry and the characteristics of the EU – BRICs cooperation on a global policy for aviation.

7.2 Coalition of the unwilling

Accumulation of tension around the EU ETS globally had to find its vent and in this case it was embodied in a coordinated attempt to block application of the EU ETS to non-EU carriers serving EU-bound international routes. This section examines the coalition of the unwilling and its importance for the EU ETS inclusion of aviation. It considers therefore, the dynamics of the debate happening outside of ICAO. Due to confidentiality of the coalition's meetings, the information gathered through interviews is not exhaustive and collected indirectly but allows analysis when supplemented with media content (for details see: Chapter 3).

The coalition of the unwilling has never been a formally organized group but rather a loose alliance of countries bound by a belief that the inclusion of

non-EU routes into the scheme was against the principles of the Chicago Convention and infringed non-EU countries' sovereignty. The name of the group was most probably coined by an EC high-ranking official who wanted to underline the negative approach of the coalitionists. This was then quickly picked up by the media (Interview 29.04.2014). The initiative to establish the coalition is not officially attributed to any of the group's participants but some of the interviewees, especially those based in the EU, saw the US playing an important role in the process. For example, an EC interviewee claimed: "it was the US that to a large extent organized the coalition of the unwilling" (Interview 26.03.2014). Similarly, the American eNGOs believed that the coalition was inspired by the US government and to a large extent instructed by the airlines and their association (Interviews 22.03.2013, 24.04.2013). Identifying one exclusive actor running the coalition is difficult as opinions on this leadership vary. As claimed by one of the interviewees, who was engaged in reporting on the EU ETS for aviation since the very inception of the scheme:

"If you talk to the Indians for example, which I haven't but through sort of other sources, they will say the coalition of the unwilling was their idea, they would be the main ones behind it. I am sure the Americans will see themselves as kind of a lead force in it. The Russians too, I am sure will come across as being a leader on this issue. And I am sure the Chinese equally." (Interview 9.04.2014)

There were several steps that led to a more consolidated answer to the EU ETS at a global level. Although some interviewees believed that it was the American airline industry, represented by A4A, which mobilized governments internationally this was dismissed by the A4A interviewee. They claimed that it was exclusively the US authorities that were engaged in the coalition and not the airlines (Interview 25.04.2013). Indeed, in the meetings of the coalition, representatives of the airlines were absent and the invitation to attend was extended to government officials only.

Before the coalition became a fully-fledged undertaking there were earlier signals that third countries might oppose the EU ETS. One of these is a letter that was sent to the Ambassador Peter Witt, Deputy Permanent Representative of Germany to the European Union on April 6th 2007 (Germany was presiding the Council of the EU in that period) signed by the representatives of Australia,

Canada, China, Japan, Republic of Korea and the US to the EU Member States (Corporate Europe Observatory 2007). The signatories argued:

"we want to convey our deep concern and strong dissatisfaction with the December 20, 2006, European Commission proposal to include international civil aviation in the EU ETS. Inclusion of our airlines in the EU scheme would potentially violate EU Member State international obligations under the Convention on International Civil Aviation, as well as bilateral aviation agreements".

This statement was however only a prelude for much stronger resolutions that were to come from an even larger anti-ETS coalition.

7.2.1 Coalition meetings: from New Delhi to Washington via Moscow

The coalition of the unwilling met officially for the first time in New Delhi in 2011 where the parties worked on a common statement expressing their views on the EU ETS for aviation. The meeting resulted in a Joint Declaration (Government of India 2011; GreenAir Online 2011a) that was produced by a large group of 26 countries that met between 29th and 30th September 2011³⁶. Although the composition of the coalition may surprise, its breadth was probably imperative to achieve the desired effects and gain attention of the EU institutions, EU Member States and international media. As one of the Commission's interviewees summarised: "they could not entertain such an agreement unless China and India were part of it, again for obvious competitive reasons" (Interview 28.04.2014).

The Joint Declaration expresses views that the opposing countries hold on the illegality of the EU ETS and call the Aviation Directive "inconsistent with applicable international law" (Government of India 2011). The document also underlines that ICAO is the body that should tackle this issue and promises to discuss measures to counter the EU initiative (Green Air Online 2011). Although quite balanced in its message, it warns that "the members present most importantly decided to intend to continue to work together to oppose the imposition of the EU ETS on our operators and invite any other State to associate

³⁶The Declaration was signed by representatives of: Argentine Republic, Brazil, Canada, China, Chile, Colombia, Cuba, Egypt, India, Japan, Republic of Korea, Malaysia, Mexico, Nigeria, Paraguay, Peru, Philippines, Qatar, Russian Federation, Saudi Arabia, Singapore, South Africa, Thailand, Turkey, United Arab Emirates and United States of America. Five of the countries present (Chile, Cuba, Paraguay, Peru and the Philippines) do not have any obligations under the EU ETS as at the moment of signing the declaration they had no carriers serving EU destinations.

itself with this Declaration” (Government of India 2011). The open formula proposed resulted in later changes to the composition of the group. It has shown that the coalition was not a one off meeting but had a longer-term strategy in mind. The coalition also features a certain level of polycentricism where actors operate autonomously and transnationally, but at the same time are interdependent (Hajer & Versteeg 2005b). This interdependence has been, exactly as argued by Hajer and Versteeg, not the absence of rules, but rather lack of “consensus about which rules should be applied” (2005b, p.341). Indeed, the CJEU ruled that the inclusion of aviation into the EU ETS has been lawful, however the coalition of the unwilling would still believe that it is against the international law and UN’s guidance to give ICAO priority to tackle regulation of CO₂ emissions from aviation.

Subsequently the countries that signed the Declaration proposed that the ICAO Council takes steps against the EU ETS, that would be in line with the decisions taken in New Delhi, which is an unprecedented way of dealing with any problems at the ICAO level (ICAO 2011b). The working paper submitted to the ICAO Council explains: “the inclusion of international civil aviation in the EU ETS violates the cardinal principle of state sovereignty laid down in Article 1 of the Chicago Convention *viz.* ‘the Contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory’ ” (ICAO 2011b). Further, the paper implicitly adds the common but differentiated responsibilities (CBDR) language dressed as “different social and economic circumstances of different States, in particular developing States” (ICAO 2011b). The paper builds on the claims made in the Declaration: in a case of continued application of the EU ETS to non-EU routes, the opposing states may establish similar schemes as retaliatory measures (ICAO 2011b). It expressed the coalitionists’ ideas in a more pronounced way mentioning possible reciprocation.

The 2011 actions of the coalition showed however, that opposition to the EU ETS for aviation was not a series of fragmented pronouncements that were spatially and politically disconnected but evolved, for the first time, into a semi-formal (no steering institution, but official declarations) body objecting to non-EU countries’ inclusion in the scheme. This was definitely aimed at building up a more viable opposition that could affect policy-makers in the EU. However, none

of the interviewees believed that the Joint Declaration would affect EU policy with regards to inclusion of aviation. One of the interviewees representing a European airline claimed that the EU was merely trying to keep up appearances and did not reveal how strongly the coalition has influenced their Commission's decision-making:

“Because it is quite different if you hear from us that the Chinese would not accept the system as oppose to Director General of Civil Aviation of China tells Connie Hedegaard “Listen, what you thought of, we are not going to buy into that, forget about it” that's far more credible. That made them realize that they have taken a step too far. Of course they could not admit that to us.” (Interview 8.04.2014)

Not long after the first meeting, the coalition convened again in Moscow between 21st and 22nd of February 2012. This second meeting resulted in the Moscow Joint Declaration signed by 23 countries and the composition of the signatories changed from the Delhi Joint Declaration³⁷(Russian Aviation 2012). The countries that did not sign the Declaration have not provided any reasons for this; it was not commented in the media either. The tone of the document approved in Russia was more determined than the Delhi Declaration and its purpose was outlined “as a clear manifestation of their [the signatories] unanimous position that the EU and its Member States must cease application of the Directive 2008/101/EC to airlines/ aircraft operators registered in third States” (Russian Aviation 2012). In the period during which the coalition met in Delhi and Moscow, the application of the Directive was however limited to requiring the submission of emissions data, but no actual trading for aviation had been launched. In addition, the coalition included a list of possible actions and measures that the coalition was considering against the EU: filing application for a resolution of dispute to ICAO, continue with national bills to prohibit airlines from participation or using existing regulations against the ETS, hold further meetings to discuss reciprocal measures, requiring additional data from EU carriers, assessing consistency of the EU ETS with the WTO Agreements,

³⁷Canada, Colombia, Egypt, Turkey, United Arab States, Qatar, Malaysia, Peru were the countries who signed the Delhi Declaration, but did not sign the Moscow document (Canada, Egypt and the UAE abstained from signing, though were present at the meeting), whereas Armenia, Republic of Belarus, Cameroon, Guatemala, Uganda, Seychelles joined the coalition of the unwilling at the Moscow's meeting.

reviewing Bilateral Air Services Agreements, and discontinuing negotiations to improve operating rights for EU airlines (Russian Aviation 2012). While explaining the nature of possible retaliatory actions the Russian Deputy Minister of Transport stated: “Every state will choose the most effective and reliable measures, which will help to cancel or postpone the implementation of the EU ETS” (Murray 2012). The EU did not respond to these threats either. The lack of response might also have been caused by airlines of the coalition countries (apart from India and China), as instructed and required by the EU Aviation Directive, submitting their CO₂ emissions data concerning 2011 to the countries where they were registered. By the deadline of March 31st 2012 only eight Chinese carriers who were instructed to do so by the government (Leung & Kotoky 2012), and two Indian airlines, failed to provide their figures. Concurrently, around 1200 emission reports were submitted by the deadline (European Commission 2012a) On the other hand, the lack of official statements could have been offset by the Commission’s efforts to negotiate with its international partners. As explained in chapter 5, the Commission also had internal issues pertaining to competencies of DG CLIMA and DG MOVE. This could have influenced reactions to steps taken by the coalition of the unwilling. As explained by one Commission official who was engaged in the EU ETS file at the ICAO level:

“We reacted quite strongly, I would say, to that [to the coalition of the unwilling] because particularly in the context with relationship with United States we were very disappointed to see that the United States was sort of spearheading this initiative to bring all these countries in a kind of alliance against us and do that very... at the end quite an open and active way.” (Interview 28.04.2014)

The language employed and the possible retaliatory actions received special attention from the European airline industry. For example the AEA published a press release stating: “airlines must not become a target for retaliatory action, triggered by a battle of sovereignty over European policy” (AEA 2012). Further, its Secretary General underlined:

“This situation is totally unacceptable. Airlines must not be taken hostage by politicians or be forced to compete with serious market distortions. We urgently need both sides to focus on the core objective – managing global aviation emissions – rather than on winning a battle of sovereignty.” (AEA 2012)

The EU again remained relatively reticent with the Climate Commissioner only tweeting: “Wonder if the next meeting hosted by Saudi Arabia will give a climate-friendly answer to the key question: what's your concrete alternative?” (Hedegaard 2012). When one considers the severity of the proposed retaliatory actions it appears that the EU employed quite a relaxed strategy in response to challenges from its international partners. The EC interviewees implied though that EC representation at ICAO was especially very constructive in improving the situation. It became apparent to ICAO-based EC officials that simple enforcement of the EU ETS and imposing fines for non-compliance would not solve the problem. This however did not mean that there were any changes made to the Directive to accommodate issues mentioned in the Moscow Declaration.

The most recent meeting took place in Washington 31st July 2012 and was hosted by the State Department and the Department of Transportation (GreenAir Online 2012a) and was populated by representatives of 17 countries: Australia, Brazil, Canada, Chile, China, Colombia, India, Japan, South Korea, Mexico, Nigeria, Russia, Saudi Arabia, Singapore, South Africa and the United Arab Emirates and the hosts, the US. A day before the meeting a press teleconference was held with Senior Administration Official from the US Department of State, where they said:

“The purpose of this [coalition] meeting is different. I would not regard this as a third in the line of the Moscow and Delhi meetings. The purpose of this meeting is really to try to explore whether there might be a basis for a global solution to addressing greenhouse gas emissions from aviation and a global solution that would include the EU and would set aside or would include the setting aside of the ETS as applied to foreign carriers.” (US Department of State 2012b)

The approach taken in Washington was much more conciliatory, even though the date of the meeting coincided with the US Senate Committee on Commerce, Science and Transportation markup hearing on the EU ETS Prohibition Act that accepted the bill. This, in practice meant further exacerbation of the conflict over the ETS. The representatives who met in Washington DC did not produce any concluding document, and the meeting was called “an informal small group conversation” (US Department of State 2012a). However even if a more relaxed format was used, the EU officials were not invited, but only called and informed “in a very broad sense what transpired in the meeting”(US Department of State 2012a). The aforementioned Senior Administration Official stated after the

meeting that it “confirmed the very solid and strong opposition to the ETS as applied to foreign carriers, but also indicated that there was a lot of interest among countries in continuing to work on the suite of activities that ICAO has been working on” (US Department of State 2012a). The European Commission reacted to the outcomes as follows: “We welcome that they expressed their commitment for concrete action and progress at ICAO, and hope this will accelerate the process towards a global solution – we have always pushed for this, as you know” (GreenAir Online 2012a) and also IATA appreciated “the positive outcomes of the Washington meeting” (IATA 2012).

After the Washington meeting, the coalition did not meet again. The US Department of State Senior Administration Official explained in a post-meeting briefing: “In terms of whether we are meeting again in this group or in any other grouping, we haven’t made any decision on that yet. I think it’s entirely possible, but really – there isn’t any decision.” (US Department of State 2012a). Given that the Commission announced suspension of enforcement of the inclusion of the non-EU countries into the EU ETS on November 12th 2012 and the scheme has not been applied to non-EU countries ever since, the coalition apparently did not see the exigency to meet as its objective to delay or block implementation of the EU ETS to third countries was accomplished. The EU deferred enforcement of the EU ETS for aircraft operators flying into and out of the EU to assure progress at the ICAO level in light of steps taken by the ICAO Council in November 2012 (a promise to establish a high level policy group on market-based measures for aviation and explicit references to a global MBM for aviation) (European Commission 2012b; European Commission 2012c). No matter how positively framed the official statement was, the EC’s decision was a sign of the European surrender and ceding to pressures while the opposing parties achieved their goal: suspension of application of the EU ETS on flights into and out of EU airports.

In terms of policy networks, the coalition of the unwilling brings additional dynamics to the issue as it adds an external pressure group while its members are also ICAO Members and have bilateral air service agreements with the EU Member States. These dynamics are even more important because the EU, wanting to regulate aviation emissions, paradoxically precipitated creation of a

previously absent coalition. The coalition's "members" (there was not any formal process of joining the coalition and the only proof that a country would be in the coalition would be their delegates signing one of the coalition's declarations) were concurrently meeting at the ICAO-related venues and events where they would lobby against the EU ETS. All of them were also able to discuss the issues while meeting at ICAO Council meetings³⁸. The collective efforts of the whole coalition orchestrated production of declarations that poignantly sum up the opposition's core issues and they received much more attention than, for example, reservations to the ICAO Resolutions. Meetings of the coalition introduced a sense of urgency and also brokered unprecedented unity given the highly varied membership of the group. The coalition also demonstrates that nation states remain pivotal for governance of climate change (Held *et al.* 2011). Giddens (2008) claims that states should incentivise solutions (acting as enablers) for collective action problems, however here the situation is reversed. The solution chosen by one block, the EU, is contested by another block of countries. The opposition employs a mechanism of out-of-ICAO consultations to underline its mandate to object the EU ETS. It can be considered as creating a new venue or rather a non-venue with high level of openness towards like-minded countries, who were invited to join any time. Paradoxically, this in turns redirects attention away from EU ETS to the global deliberations where a wider participation is required and has to be guaranteed for binding decisions. There are several features that allow the coalition of the unwilling to be classified as a policy community: the structure of the coalition is quite loose, the membership is relatively open (as long as a potential coalitionist is willing to oppose the EU ETS, hence shares the policy beliefs), and finally that the countries' interests are persistent over time (Rhodes 2006). Although the hierarchical dimension of the coalition is difficult to analyse due to the community's reserved character (no official hierarchy, limited press appearances, lack of a face leading the coalition), it seems that the core of the group was constituted by the most powerful

³⁸In the period between 2011 and 2013 the ICAO Council there was a significant overlap between the countries serving a three-year mandate at the Council and the countries engaged in the coalition of the unwilling, among them: Argentina, Brazil, China, India, United Arab Emirates, United States.

members (China, India, Russia, US) and the other members were delivered by the four countries.

From an interpretive policy analysis perspective, the coalition of the unwilling poses several problems. Firstly, being covered by Chatham House Rule³⁹, the coalition did not say much about itself and its members were extremely reserved about the outcomes of the meetings beyond the official declarations thus the “possibilities of multiple interpretations” (Yanow 2000, p.5) seen as prerequisite for interpretive methods are limited. The meaning-making processes of the addressees of the coalition’s messages are also blurred given that the EU did not want to officially comment on the coalition’s steps. It gives however, a hint that the issue was regarded as difficult to deal with, and provided severe retaliatory options. Another argument supporting this view is split opinions on how to deal with the opposition between DG CLIMA and DG MOVE. This poses further questions pertaining to framing the policy issue in question by the key actors taking part in the debate. The EU-branded frame of “the unwilling” is in stark contrast with the coalition’s efforts to direct the discussion on emissions trading for aviation to ICAO. The coalition however, did not manage to label itself more positively and until today it is referred to as “unwilling”. Provided that the frames “direct attention towards some elements while simultaneously diverting attention from other elements” (Yanow 2000, p.11) the EU has managed to portray the opposition as a negative component of the debate, which was reinforced by Hedegaard’s tweet about the lack of constructive proposals coming from the coalition. The coalitionists, to some extent pressured by the aviation industries in their countries, could have actually been satisfied with the EU framing. It clearly conveyed their unwillingness to accept the EU’s aviation emissions regulation plans. As the next section shows, this unwillingness had various faces depending on the opposing parties’ circumstances.

³⁹The opinions of the individual states participating in the coalition are not possible to identify because of the principles accepted, at least at the Washington meeting: “We conducted the meeting under what are often called Chatham House Rules, which is to say people are encouraged to speak freely and candidly because what they say isn’t going to be reported afterwards” (US Department of State 2012a).

7.3 “I don’t think that the US is the most problematic in these negotiations, it is mainly India, Russia, China⁴⁰” BRIC’s opposition and the CDR arguments

In the remainder of this section, it needs to be mentioned that there are no voices from any BRIC-based eNGOs presented here as in the countries in question no organisations dealing with this problem were identified. This has also been confirmed by the European and American eNGO interviewees, who underlined that this absence was an important gap undermining the credibility of the eNGOs in campaigning for the broad inclusion of aviation into the EU ETS (Interviews 22.03.2013 and 14.03.2014). As it was described by one eNGO interviewee “It is literally us and the US, which is a huge gap, and means that we don’t have the same credibility. We are seen, not to be like blasé about it, but we are seen like the White people saying you have to do this. Does this make sense? Because India, China, Brazil are so important now” (Interview 14.03.2014).

The previous section showed the importance of a relatively loose coalition of countries that contributed to the suspension of the application of the EU ETS to extra-EU routes. This section analyses more closely individual states’ efforts and the concrete actions of a smaller sub-group that were involved in preventing application of the scheme to their carriers. Table 6 summarizes the main claims and issues that the four countries signalled.

⁴⁰Interview 1.05.2015.

Table 6: BRICs position towards the EU ETS inclusion of aviation

	Main claims against the EU ETS	Actual interferences with the EU	Main difficulties	Push for the CBDR language	Participation in the coalition's meetings
Brazil	Sovereignty infringement	Brazil –EU air service agreement not signed at the 2011 EU –Brazil summit	General skepticism to integrate trade into post-Kyoto regulations	Yes	Yes
	Lack of CBDR language in the Aviation Directive				
Russia	Sovereignty infringement	Suspension of phasing out of the fees related to Siberian overflights	Climate change denial of some Russian officials	No	Yes
	Pressure from Aeroflot – extra fees		Territorial threats based on the access to flying over Siberia		
			Often changing negotiating position		
India	Sovereignty infringement	None	Unclear who is the appropriate partner for discussions	Yes	Yes
	Lack of CBDR language in the Aviation Directive		Generally stiff position of India in climate-related negotiations		
	Costs the scheme would entail for the Indian airlines				

China	Sovereignty	Suspension of the Airbus contracts	Possibility of cancelling Airbus orders (pressure on individual Member States)	Yes	Yes
	Fees perceived as a barrier for development				

The four countries were identified through the media on one side and secondly by interviewees both in Europe and the US. Respondents were asked to list the most significant actors for the EU ETS file internationally and the BRICs were almost invariably mentioned. One of the airline-related interviewees saw the BRICs as even more outspoken than the US in the EU ETS file:

“to be fair, the US for quite some time was rather quiet on the EU ETS. So when the opposition really started it was more China, Russia, India, Brazil that started what then became the Delhi and Moscow Declaration” (Interview 25.03.2014).

Although Brazil was not too vocal as far as individual actions are concerned, it was a part of the coalition of unwilling (all four signed both Joint Declarations) and interviewees collectively talked about BRIC, hence Brazil is given considerably less space here but it should be seen as committed to the issue, though more on the governmental than airline side (de Paula Domingos 2012).

A common reason for opposition coming from BRIC is the situation of their aviation industries and the industries’ prospects for growth. Although this appears to apply mostly to China and India, the Russian and Brazilian aviation markets are expanding quickly too, with Brazil being the fastest growing in Latin America (Airbus 2013). According to Airbus estimates, aviation is a sector that exemplifies relative convergence theory (2013), which in this case means that in nations whose propensity to fly is lower now (emerging countries), the growth of traffic will be stronger than in developed countries, where flying is an established way of travelling. This dynamic has been already visible at ICAO when developing countries were able to outvote the traditionally leading developed countries group (see: Chapter 5).

Furthermore, BRICs are also seen in general as less proactive towards climate change. Their approach to curbing emissions can be seen as ambivalent. As explained by one of the EC interviewees: “I think the US industry is not as fundamentally opposed to a scheme like this as the Chinese, the Russians and the Brazilians because there you have the common but differentiated responsibilities (CBDR) argument” (Interview 26.03.2014). CBDR has been called a “statement of compromise between the South reflecting concerns about equity on the part of Southern nations and the reluctance of Northern countries to assume total responsibility for addressing the climate problem (Fisher 2012, p.130). CBDR-related arguments are even stronger for China, India and Brazil that are members of G77, a grouping established in 1964 that gathers developing countries and helps them coordinate common positions in United Nations structures. The CBDR principle means for BRICs not only that they should be provided with special consideration for their circumstances but also expect financial and technological assistance as well as leadership from the global North (Harris 2012). This however further translates into BRICs, and especially China, opposing any legally binding emission reduction targets (Schröder 2012, p.103). Also India subscribes very much to this idea (Fisher 2012). In the EU ETS file BRICs simply translated the CBDR principle into their exclusion from the scheme and wanted to move any negotiations on a global measure for aviation to ICAO. Strategically however the move towards ICAO did not have to promise an easy recognition of the CBDR principle. As argued in the literature “the international climate regime works under differentiated premises, through the principle of common but differentiated responsibilities and respective capabilities (CBDRRC), whereas equal treatment is the general rule in the ICAO” (Romera & van Asselt 2015, pp.260–261). If the CBDR were to overwrite the equal treatment principle, it would then happen through the UNFCCC process rather than ICAO. The CBDR seems to become here yet another rhetorical tool used to oppose inclusion. Also the EU had been explaining that given the specificity of the regulated sector, the equal treatment cause should prevail in EU ETS inclusion with provisions for military flights and consideration for *de minimis* principle (exclusion of small emitters). Even if there had been EU stakeholders who wanted to see amendments to the Aviation Directive that aimed at including

CBDR language, they have never been accepted (Romera & van Asselt 2015, p.277).

As far as carriers are concerned, one of the EC interviewees while commenting on the CBDR issue stated: “Chinese carriers, Indian carriers, they feel they should have a right to grow in the future” (Interview 28.04.2014). The ETS is viewed by them as an obstacle to the growth pathway. This is well illustrated by the reservations to the ICAO Resolution A37-17/2 concerning climate change submitted by Argentina, which also contained an appendix, where a declaration by a group of developing countries⁴¹ was attached. The declaration, apart from mentioning at various points the CBDR principle, also sheds light on understandings held by developing countries on emissions reductions through emissions trading:

“So why is it that large developing countries like China, Brazil, India, etc. have problem in agreeing to this declaration in its present form? This is because we do not want to seal the fate of our future generation and deprive them of the economic benefits of aviation solely created by the developed countries. We would like our future generations to reap the benefits of development as enjoyed by certain developed nations, we must find more innovative solutions to the problem of climate change rather than putting a cap on our growth.” (ICAO 2010a)

It has also been claimed that BRIC self-interest would not be strong enough to persuade them to pledge any significant emissions reductions (Tian & Whalley 2010). Only if the financial transfers used as a carrot, or tariffs used as a stick were employed, would they agree to participate (Tian & Whalley 2010). According to estimates, these financial transfers would need to be as high as 3% of the combined GDP of BRICs, which makes this scenario rather improbable (Tian & Whalley 2010, p.63). Moreover, at the 2009 COP15 in Copenhagen Brazil, India and China (Russia was excluded from this evaluation) were seen as a group preventing a meaningful agreement: “they consistently blocked substantive policy proposals and refused to reciprocate to Western concessions with any policy commitments of their own” (Dimitrov 2010, p.796). On a broader canvas, it has been claimed that when it comes to climate governance, even if universal

⁴¹The filed document mentions a group of countries including “China, India, Brazil, Saudi Arabia, Cuba and Libya and others who constitute almost a half of world’s population”(ICAO 2010a).

architecture for tackling climate change would be more efficient, this way of proceeding is not feasible and thus international policy-making ends up producing a system of fragmented responsibilities (Zelli *et al.* 2010; Biermann *et al.* 2010). As the EU ETS case illustrates, BRIC countries were interested in making sure that if one global solution was to be adopted for aviation, their circumstances were taken into consideration. This then meant that opposing the EU ETS and trying to redirect discussions to ICAO were the only ways to try to secure CBDR language absent from the Aviation Directive.

Another common point for Brazil, Russia, India and China was the influence they were able to exert on the EU simply because they constitute important trade partners for EU Member States. The EU states felt threatened by any retaliatory action that the BRICs could have deployed. They were also more anxious about their particular interests than the common EU interest⁴². An industry representative saw special importance of India and China with regards to this part of the issue:

“Of course when you have India and China protesting against the ETS individual Member States consider it very seriously even though they are supposed to curb emissions. This is supposed to be the big goal to reduce emissions, but when I think about jobs and all these things it came first, I guess.” (Interview 17.04.2014)

A similar view was offered by an EC interviewee who was involved closely with the EU ETS file argued that even though the US formally opposed the EU ETS through the EU ETS Prohibition Bill, the mind-set of the opposing BRICs is quite different to the American one:

“At the same time you’ve got states like China, India and Russia, Brazil who are looking to maybe finding alternative ways or not necessarily committed in the same way that Europe and the US and others might be delivering something effective in 2016.” (Interview 28.04.2014)

Furthermore, the narrative concerning impact on individual EU Member States was underlined by a European Parliament interviewee who focused on the implementation phase while arguing that countries like China, India or Russia

⁴²Brazilian government decided in the last moment not to sign air service agreement with the EU during October 2011 EU – Brazil Summit. As some argue, the reason for this was the EU’s request “not to be questioned about domestic measures regarding environmental actions in aviation sector” (de Paula Domingos 2012, p.81).

were able to influence the implementation process, which they viewed as political and felt they could therefore exert pressure on the Member States so bypass EU institutions (Interview 22.04.2014).

However, when one looks at the chronology of events, it appears that the EU ETS Prohibition Act had a larger impact than BRIC actions. Although the decision to suspend the EU ETS cannot be entirely credited to the Americans, a high-ranking EC interviewee summarised the BRIC activities in comparison to the US as follows: “None of them have the intellectual firepower of the United States” (Interview 16.03.2014). The “firepower” could refer to the legal inventiveness or soft power capacities, but was not explained further. But was that really the case? The following sections look more closely at the involvement of India, China and Russia in the EU ETS for aviation and their tactics to oppose the EU ETS.

7.3.1 India

Indian involvement in the EU ETS case seems to be built on more grounds than that of the other three BRICs. New Delhi had objections to the infringement of sovereignty over its territory, lack of CBDR language in the Aviation Directive and the costs the scheme would entail for Indian airlines. India also regarded the scheme as a unilateral trade measure. This section unpacks further some of these issues.

The Indian position in the EU ETS file was strong and visible as soon as the issue attracted the attention of policy-makers in non-EU countries. Although official statements about the EU ETS were not as often seen as in for example United States, they leave little space for misunderstanding the Indian standpoint on the issue. The Civil Aviation Secretary of India, Syed Nasim Ahmad Zaidi underlined: “passengers and Indian carriers may end up paying a few thousand [Rupees] every year, while EU will collect billions of dollars over the coming years” (The Economic Times 2011). Similarly, the Indian Aviation Minister Ajit Singh was against the ETS and announced before the 2013 ICAO Assembly: “We would request the delegates to oppose any unilateral environment measures imposed by a state or group like the EU and work with ICAO to evolve global environment protection on the basis of equity and consensus” (Business

Standard 2012). One of the Commission officials believed that New Delhi was very serious for this file: “the Indians took a strong view that ‘you cannot regulate our flights for whatsoever’” (Interview 16.04.2014). An interviewee from the European Parliament added: “I have always been told that India is a bigger problem because China is negotiating, but India is just saying no, we don’t want to engage at all” (Interview 25.03.2014). Indian airlines were instructed by the Indian aviation authorities not to comply with the EU ETS⁴³ and as a result of this Air India and Jet Airways failed to submit their emissions data to the European Commission (GreenAir Online 2012b). It was the government that decided to be in the front line of the opposition not the airlines themselves. Furthermore, that the first meeting of the coalition of the unwilling was held in New Delhi can also be seen as a sign of India’s importance in building up the opposition.

Before looking into the understandings of the Indian opposition it merits mention that Indians in general did not contest the EU’s leadership in environmental policy. As reported by Jain and Pandey, Indians saw the EU’s environmental leadership as rather positive or at least would recognize its power: “the European Union was considered a normative power primarily because of its role in global climate negotiations and trade talks and described by some ‘elites’ as a major player in terms of agenda setting and regulating the norms of international behaviour” (2010, p.204). Also elsewhere, India would be portrayed as viewing Europe’s leadership in positive terms, however this does not imply simply following the leader (Torney 2014). India itself, for a long time had climate policy that has not been worth the name⁴⁴ and the EU’s activity in the area was seen in India as an inspiration.

Given all this, understanding Indian resistance and then crafting a strategy to accommodate the partner’s needs for persuasive tools to defuse the opposition was a difficult task for the European Commission:

⁴³The text of the original decree instructing the airlines not to comply with the EU ETS is not available but the Indian officials mentioned the document several times. For example, the Indian Minister of Aviation declared in his speech addressing the Parliament in March 2012: “No Indian carrier is submitting them in view of the position of the government. Hence the imposition of carbon tax does not arise” (Toh 2012).

⁴⁴It is claimed that until 2008 when the National Action Plan on Climate Change was published, India did not have any climate policy and only some consideration to climate change was given in policies addressing energy, transport or land-use changes (Fisher 2012).

“It’s really difficult to know what really motivates them I would say, but India, I think it’s also this broader climate negotiations and being a bit of a rebel in a... in general being fearful, anxious about this being a trade measure of some sort but also the precedence that this could set for broader climate negotiations.” (Interview 28.04.2014).

This explanation is in line with the literature that sees Indian consistency and leadership in promoting and safeguarding the CBDR principle (Fisher 2012) that was threatened by the inclusion of airlines into the EU ETS regardless of the level of development of their countries of registration.

Apart from the CBDR emphasis, India employed also the “unilateral measure” language. India began trying to derail EU attempts to include aviation into the scheme on its own at the COP17 in Durban in 2011, where it proposed additional agenda items in the provisional agenda. The proposal concerned “unilateral trade measures” and explicitly targeted the EU ETS inclusion of aviation. As the then submitted document explains:

“the EU scheme, subject to a few limited exceptions, applies to all airlines. The scheme stands in violation of the UNFCCC as it does not respect the principles of CBDR of developed and developing countries and proposes to operate the ETS outside the EU boundaries without multilateral or bilateral consent. Further, EU member states have the discretion to determine how revenues from the auctioning of GHG allowances will be spent.” (UN 2011)

In light of this, India proposed that “the COP should decide and prohibit, in prescriptive language, Parties from engaging in unilateral trade and other measures in the name of climate protection” (UN 2011). The proposal was however not accepted. This did not kill the idea of calling the EU ETS for aviation a unilateral trade measure. The “unilateralism” frame returned in 2012, when the Indian environment minister Jayanthi Natarajan stated:

“I strongly believe that as far as climate change discussions are concerned, this is unacceptable (...) For the environment ministry, for me it is a deal breaker because you simply cannot bring this into the climate change discourse and disguise unilateral trade measures under climate change” (Mukherjee 2012).

As in other countries that opposed the EU ETS, so in India the aviation sector also played its role. Firstly, the aviation industry saw the EU ETS as a burden to the growth of the industry. Given that the demographic forecasts used

to estimate future air traffic will be growing in this area as Delhi, Shanghai and Mumbai will be the most populated cities in the world after Tokyo (Airbus 2013, p.26) the collateral growth in demand for air travel is almost certain. Poor understanding of how the EU ETS works (Interview 28.04.2014) on one side and a fear of a rapid increase in allowance prices caused airlines' to oppose inclusion into the scheme. A second set of arguments relate to the financial situation of the Indian carriers. As one of the European Commission interviewees stated: "the poor economic state of the airlines has a lot to say as this [the EU ETS case] came in an unfortunate time when some of the airlines concerned already were doing very poorly" (Interview 28.04.2014). Another interviewee claimed that for Air India, the EU ETS if not blocked, could have caused further deterioration of their situation:

"The airline industry is not everywhere thriving and if you are just about there and if a little bit happens in addition then, you are just falling below. Air India has also problems, not all Indian airlines, but Air India specifically and some American airlines had problems and these airlines were generally concerned that this could happen because they were struggling on many fronts. (...) That indeed there would be a serious impact on Air India to come in and that would eat away the profits. That is the main argument of the airlines. They don't care so much about the passengers, I think to the extent that the airlines would just pass on the costs and they could then basically have their profits unaffected, that would be fine for them." (Interview 14.04.2014)

However, it was also believed that some of the Indian airlines would think it unlikely that the costs of participation in the EU ETS could be passed entirely onto passengers and therefore the scheme would strongly affect their finances (Interview 14.04.2014). According to the interviewee this information "was circulated for all sorts of strategic reasons" (Interview 14.04.2014).

One more strand emerges from the interviews conducted in the EU: the Indian lack of a coordinated and coherent vision for opposition to the EU ETS. For example, it has been claimed that the Indians have shown "lack of knowledge, lack of understanding of the need for the airline industry and the interest of the airline industry to ultimately embrace this agenda [emissions trading for aviation]" (Interview 28.04.2014). The EU-Indian discussions were also affected by difficulties in identifying appropriate negotiating partners

(Interview 9.04.2014). Apart from that, during the whole process they “felt very upset that this coalition of the unwilling have left them very visible, having told their airlines not to comply, everyone else seemed to have done it anyway and I think at that point the tactics changed” (Interview 16.06.2014). The interviewee believed that:

“India wasn’t prepared to take risks anymore and I think the idea of just having meetings and discussing it and then going away and doing... they weren’t happy, they really wanted something guaranteed at an ICAO level that wouldn’t leave them visible as one of the big blockades and barriers to this happening” (Interview 16.06.2014).

The guarantees mentioned by the interviewee were not provided however. Taking into consideration the poor economic state of Indian airlines, any penalties would be more painful for them than for the Chinese carriers that did not submit their data either. It seems that India was hoping for a quick reaction from the EU side and did not want to see a protracted dispute, hence the very strong language employed from the very beginning and India’s willingness to run the first meeting of the coalition of the unwilling.

7.3.2 China

The importance of China in the EU ETS debate was emphasised both by the EU and US interviewees, and was also very visible in the media. The Chinese aviation sector is expected to enter a path of rapid liberalization, which will fuel future business opportunities by removing limits on air services and thus enabling more passengers and cargo to be transported (Sun & Zhang 2014). Liberalization has already accelerated decisively after China joined the WTO in 2001, though in aviation the process has been slower than in other sectors. These circumstances made possible fees to be rendered to the EU central to the Chinese aviation agenda.

Unexpectedly, China has recently found itself in the limelight of green policy-making interest after it announced its climate pledges together with the US, which were understood as a “historic” step (BBC 2014). The Chinese declared that its carbon emissions will peak in 2030 while the US set a target of reductions at the level of 26-28% compared with 2005 levels to be reached by

2025 (White House 2015). This announcement, albeit quite vague, builds on several Chinese programs such as the national climate change plan launched in 2007, and establishment of two high-level groups that have been working on climate issues both in China and internationally (Lewis 2008). At the same time, China has a strong sense of applying to itself the principle of CBDR, which means that even if the country signed the Kyoto Protocol, as a developing nation, there are no binding targets for the Chinese. Furthermore, China has been very sensitive towards opening some of its markets, preferring protectionism. International climate regulations that the country would be obliged to follow were seen as possibly denting this protectionism. Opposition to the EU ETS could have been conditioned by these circumstances and was also very political rather than anti-environmental.

Together India and China are used to “placing much greater interest on sovereignty and non interference, and thereby limiting the appeal of the European approach to global climate governance” (Torney 2014, p.2). China in general has been viewed as a laggard as far as reduction of emissions is concerned due to its dependence on coal (Lewis 2008). It has also been claimed that in order to change the current trend of growing emissions in China “a substantial shift away from coal or massive investments in capturing the CO₂ emissions from coal-based energy sources” would be required (Lewis 2008, p.158). Although China is taking steps to limit its emissions, similar to the case of the US, the EU ETS touched on the sensitive issue of authority over state territory.

One of the EC interviewees saw the Chinese two-way approach as a governance issue since the country lacks a more structured framework to discuss climate change issues on various levels and to enable communication between them:

“China is establishing its nine emissions trading pilots (...), they take climate change seriously and notably because they are going to suffer worse effects probably than Europe and America from what we are committing ourselves to with current emissions. But this doesn't necessarily carry through to the aviation officials, which brings up the issue of governance.” (Interview 16.04.2014)

Another interviewee also saw the issue as important and believed that in China

there are difficult internal divisions between regions. These tend to hamper enactment of even domestic legislation across the country, not to mention international negotiations in a highly mobile aviation sector (Interview 2.04.2014).

An interviewee based at the European Parliament for more than 10 years at the time of the interview, explained China's strong disapproval for the EU ETS rather on the ground of Chinese lack of experience in international matters:

“Let's put it like this: it's a new democracy, it's very difficult to internally manage themselves. It is even more difficult for them to sort of sign up to something at an international level. They just want to have this sort of intellectual experience, often they are capable of it but they don't have the actual experience of doing it” (Interview 02.04.2014).

Another EC official read the Chinese counteractions towards the EU ETS as more benign than for example those of the United States. China could then be seen only as an avid follower of a larger tendency:

“As far as I can say that from observations, China was more interested in finding a compromise and would have been economically maybe open to just say let's find a solution somehow, whereas for the US it was more real issue of principle. It comes from the history: kick out foreign powers, the EU wants to come here to touch our airlines or our airspace even” (Interview 14.04.2014).

Notwithstanding this, the same interviewee believed that the Chinese objection was strong and the range of possible solutions not too wide:

“So China could have done the same. They could have auctioned emission rights basically for international flights and they would have kept their proceeds. They didn't even entertain that. They basically wanted to object to the whole thing.” (Interview 14.04.2014)

Also, the language employed by the Chinese aviation sector (which almost equals the government's position) in the most intense period of discussions on the EU ETS reflects the rigidity of the Chinese approach. Wei Zhenzhong, the Secretary General of the China Air Transport Association, which has among its members three state-controlled carriers Air China, China Southern Airlines and China Eastern Airlines, explained:

“Chinese airlines are unanimous on this. We won't provide the data. We would not like to see a situation of 'you hold up my planes and I hold yours (...) The government will take at least the same kind of measures, and these anti-sanction moves will be lasting” (Leung and Kotoky 2012).

This quote, compared with the words of the EP interviewee (see above, Interview 25.03.2014) who saw the Chinese as willing to negotiate, exhibits that there have been asymmetries in understanding the Chinese position, which appears to be less than conciliatory.

Apart from this, some argue that China views the EU as a model in policies related to environment and economy (Chan 2010, p.140), which to some extent resembles India's positive attitude towards European policies. Despite this, the EU ETS for aviation received only bad press due to the sovereignty issue. An EC interviewee clearly saw that Chinese politicians reacted to the EU ETS not because of the fees that the airlines (even if state-owned) would have to pay, but because they saw the EU ETS as infringing their sovereignty and they had very strong feelings towards the issue (Interview 26.03.2014).

Chinese involvement with the EU ETS is though more multifaceted. While considering the business prospects of Chinese aviation, any fee imposed on airlines is understood as a barrier for development. As interpreted by an EC official: “When you think that China has 200 airports and I think the United States has 5000, China has an understandable wish to grow and therefore they are hypersensitive in this area” (Interview 16.04.2014). This growth is also taken into consideration by the Europeans and understood as an opportunity for Member States' economies. The EU ETS, albeit small when it comes to costs, created political turmoil that needed to be halted as soon as high profile issues, such as Airbus orders started to emerge. An interviewee representing European aviation sector described the situation as follows:

“You saw the Chinese president, he was in Belgium, he was in France and the contracts that were signed during these visits are huge. It's a huge huge huge amount of money compared to the permits. So imagine the French president saying to the Chinese president 'Oh, your airlines have to pay for the ETS'. We are doing bigger things. So I think that was the limit of the ETS” (Interview 17.04.2014).

The role of “bigger things” became very visible in discussions regarding Chinese orders of Airbus aircraft, which are presented in the next section.

7.3.2.1 “The Airbus story”: heavy weapons against the EU ETS

Analysis of Chinese involvement with the EU ETS would not be complete without taking into consideration the role played by Chinese threats regarding orders for Airbus aircrafts. Although attention has already been given to the industry in the previous chapters, here the focus switches from air carriers to aeroplane manufacturers and completes the analysis from the MLG perspective, by the industry putting under the spotlight. Early on, Chinese airlines threatened that as a reaction to the EU ETS application to their flights to the EU, they would suspend or completely cancel orders of Airbus aircraft. As reported in the media, the first cancellations⁴⁵ happened in June 2011 and represented orders worth around 3,8 billion dollars (Clark 2011; Willson 2011). Later in the year, China was to call off more orders, as a consequence of which Airbus would have lost up to 12 billion dollars worth of purchases (Hepher *et al.* 2012). The interviewees who took part in this study, would dub the issue of cancelled Airbus orders “the Airbus story”. Just as the American EU ETS Prohibition Bill has been the most visible political pronouncement about the EU ETS, the orders cancellation made prominent the role of possible economic retaliation towards the EU Member States. Given that Airbus is based in France with plants in the UK, Germany and Spain, the retaliation would most affect these countries.

The business partnership with China is “to be or not to be” for the aircraft manufacturers. Airbus forecast estimate that by 2032 Chinese domestic air traffic, growing annually by 6,4% (Airbus 2013, p.61), will be the largest in the world (Airbus 2013, p.45). China also plans to build 82 airports between the years 2011-2015 (Airbus 2013, p.32). As a consequence, the airlines will need to increase their fleet to serve the growing demand. The strong involvement of Airbus is then not difficult to understand given that Chinese airlines already use Airbus aircraft and therefore would probably consider further Airbus purchases

⁴⁵There are no official documents that explicitly mention cancellations. Although in the letter from the Airbus’s CEO and others to the prime ministers of France, Germany, the UK and Spain, the authors mention “suspension of orders” (Airbus 2012b) rather than cancellations, in the media and in the interviews, the phrase used would be “cancellation”.

to keep the fleet uniform. As a corollary of Airbus's involvement, several interviewees underlined the active position of the UK, Germany and France in the EU ETS case. For these countries the loss of orders could have translated directly into redundancies at Airbus and Airbus-related plants. This was an issue that was also visible for the Commission, which on one side was negotiating with non-EU countries and on another, was exposed to lobbying from EU Member States. As explained by an EC interviewee:

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

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

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

The British, French, German and Spanish prime ministers were also sent a letter by Airbus's CEO and several European carriers, in which they expressed their concerns over implementation of the EU ETS and mentioned the suspended Airbus orders (Airbus 2012b). Similar correspondence was sent to the Climate Commissioner by the CEO of Airbus and CEO of Virgin Atlantic, where they state that the EU ETS “will create a trade conflict with the world's most powerful economic and political players” and that Airbus and European airlines will be the first to feel the effects of Chinese retaliations (Flottau *et al.* 2011).

The order cancellation shows also that in China it was impossible to draw a line between the aviation industry and the government, which makes it

implausible to separate the roles that each has in exercising pressure on the EU, as explained by a high-ranking EC official:

“It is true that perhaps in some respect contrary to the tradition in the air transport and then of course carriers like the Chinese... you cannot distinguish them either from the government, really. So they have of course, perhaps from more political reasons, been banned from complying, they were instructed not to comply with the ETS by the Chinese government. I think there are different concerns behind that. It’s the broader climate negotiations, which are in the background” (Interview 28.04.2014).

A similar view was offered by another EC interviewee representing a different DG: “On the side of the airlines, as I understand it, the most active one was Airlines for America. If you look at China or India it’s the government” (Interview 26.03.2014). This understanding of the Chinese position may be an oversimplification though that stems from the less visible nature of internal Chinese politics. It is also claimed that the expectations and value patterns that the West has with regards to the Chinese policy-making can be quite limited (Christiansen & Rai 1996, p.2). What the European stakeholders saw were the mere results but they did not have a chance to observe closely the bargaining process on the Chinese side, hence for them it might seem that the government is much more present than in the case of EU policy-making. Making an assumption that in China (and India) the government is the only actor seems logical, however it ignores the complexity of internal politics where other stakeholders are present too.

Although all the negotiations between the Chinese and Airbus as well as the work that the EU Member States were engaging in is confidential, a letter from Airbus CEO Fabrice Bregier to Li Jiaxiang, Chief of the Civil Aviation Administration of China (ranked as minister) dated November 16th 2012 was leaked. The letter was not widely published in the media, but it was obtained by the non-governmental actors engaged in the EU ETS and later published online. The message, sent after the EC announced suspension of the EU ETS for non-EU routes, attributes the success largely to Airbus’s lobbying: “through our joint efforts, we have managed to ensure that Chinese airlines are not unfairly impacted by the scheme as previously planned. I hope we at Airbus have been able to clearly demonstrate our strong support to Chinese aviation” (Airbus

2012a). The answer to this letter, if there was any, was not leaked to the press, however China stopped mentioning the suspension once implementation of the EU ETS for non-EU countries was deferred. In Brussels circles the letter was understood by many as a report sent by Airbus to the Chinese partners stating that the problem pertaining has been solved and discussions on transactions could go back to normal. The industry felt therefore, a strong ownership of the suspension and saw itself as a delegate able to solve the problem for the Chinese government and the country's carriers.

“The Airbus story” demonstrates further the influence of the industry in the case analysed, however the pressure from the Chinese is much different to the American court case against inclusion or the EU ETS Prohibition Act. The relationship between the Chinese government and the aviation sector partially owned by the state exhibits a meso level of governance. It uncovers the interconnected and impossible-to-disaggregate interests of state and industry that instead of challenging the EU as a whole, decided to announce deployment of retaliation clearly affecting only some, but powerful, Member States. By this, the whole process of lobbying and bargaining with the European Commission and the European Parliament was bypassed or even excluded. Furthermore, this situation hints that since some of the power of the EU is exercised via Member States, the pressures which address the EU policies are directed to the Member States as well.

Finally, while China was considering an embargo on Airbus aircrafts, it can be argued that in the long term that would be detrimental for their negotiating position as they would be left with one major supplier, namely Boeing. Some of the interviewees would see such threats simply as a bluff (Interviews 9.04.2014 and 14.03.2014). The situation has been also described more poignantly by an eNGO representative:

“I am sure you know the Airbus story, but the idea that China would decide what airplanes to buy based on whether Europe has ETS. Do we really think that Chinese are that stupid? No way! These are multimillion dollar purchases, the ETS costs nothing. Like please...” (Interview 14.03.2014).

A similar view was provided by an EC interviewee who was closely engaged in the process:

“So I think Airbus lobbied mostly when they felt that third countries would possibly disadvantage them in their deals, which was also a strategic threat only, if so. I don’t think China would ever have had disadvantaged Airbus compared to Boeing for example, when ordering planes. They just used that to frighten Europeans.” (Interview 14.04.2014)

Rivalry between Airbus and Boeing has been an issue in trade relations between the US and the EU many times (Irwin & Pavcnik 2004). In the EU ETS case the Chinese side instead of, for example, limiting access to their airports for European carriers or imposing a new levy, decided to exert its pressure via Airbus orders. By this not only did they affect the EU but also indicated that US’s industry is relevant here. Given that Airbus as a company has been devised as an answer to American leadership in aircraft production, the role of the EU Member States has always been prominent. What is more, as claimed by some, “it is difficult, if not impossible, to isolate the manufacture of large civil aircraft from the role of the state, particularly a strong state that is capable of projecting power successfully outside its borders” (Francis & Pevzner 2006, p.634). In the EU ETS case the intrinsic connection between state and business doubled: the Airbus countries and Airbus as a company, became confronted by Chinese airlines and China. This created another channel for pressuring EU institutions – that time from bottom up by directly threatening to impact Member States.

Making a definite judgement whether the “Airbus story” has been the nail in the coffin of the EU ETS is not possible. However, by starting to threaten a long-cherished, highly-technical enterprise focussed on innovation and contributing to a positive balance of trade, it definitely provided leverage to Chinese actions and contributed hugely to involving EU Member States. The following section exhibits further how another EU ETS opponent, Russia was able to use its special geographical position to influence EU policy-making.

7.3.3 Russia: “The Russians are a challenge”⁴⁶

Each time European interviewees were asked about Russian involvement with the EU ETS their faces would show concern. As stated by one of the interviewees: “the Russians are a challenge” (Interview 2.04.2014). Geographical

⁴⁶Interview 2.04.2014.

proximity to the EU and Russian ambivalence towards climate change issues seem to be the key issues here.

Russia's delegates at UNFCCC negotiations in early 1992 would question anthropogenic climate change and would argue about potential profits that the country could harness if global warming continued (Howarth & Foxall 2012). This position has been changing and in 2004 Russia finally ratified the Kyoto Protocol⁴⁷. In 2009 the country adopted its new policy on climate change; that was called a "drastic change" (Schiermeier 2009, p.496) given that for the first time Russia officially accepted that emissions should be reduced immediately and climate change actually creates dangerous risks. Nevertheless, at climate negotiations Russians are viewed as rather rarely taking the floor with their involvement in the debate low (Dimitrov 2010, p.804). Similar to other countries whose position has been analysed here, even though there has been recognition that they need to take action with regards to climate change it did not translate into supporting the EU ETS for aviation as it was considered a European attempt to extend its sovereignty. Unlike with the Kyoto Protocol, where Russia was bound to harness profits from selling emissions credits (Henry & Sundstrom 2007), the EU ETS for aviation meant costs rather than benefits for Russian carriers. One explanation given by a high-ranking EC official saw Russians more as followers than forerunners of the opposition:

"Russia, I think, didn't have so much of this kind of rejection principle. They don't like policies on climate change so much but they didn't really seriously object to that principle really. They were rather clinging on to the opposition coming from elsewhere."
(Interview 14.04.2014)

This hypothesis is however not entirely persuasive when one considers that the coalition's second meeting took part in Moscow and, moreover, Russia was using economic threats against the EU carriers to influence the Commission's decision on the scope of the scheme. Once the Moscow Joint Declaration of the coalition of the unwilling was published, the Russian flag carrier Aeroflot announced:

"The Russian government is now reviewing a bill prohibiting Russian airlines to participate in emission trading: it means

⁴⁷More details about the politics of the delayed ratification of the Protocol can be found in Henry's and Sundstrom's paper (2007).

considering a retaliatory approach. We are facing a new initiative by the EU that may trigger real 'trade wars' and cause damage to the world airline industry at one of its most critical stages" (Bowker 2012).

This visibly shows that also in Russia, but probably to a lesser extent than in India or China, the airlines and government operated in concert.

For Chinese partners the bargaining chip in the EU ETS debate was the Airbus order. Russia's national carrier Aeroflot (state owns 51% of the carrier's shares) operates a fleet mainly built of Airbus aircraft, but probably did not have as many orders as the Chinese carriers, therefore Russia employed a different strategy. The Russians threatened that they would limit access to flights over Siberia that markedly reduce the length of most flights from Europe to East Asia.

Russia also agreed in 2006 that the aforementioned fees for Siberian overflights would be phased out by the end of 2013 (Buyck 2006), however Russia announced in 2012 that as a response to the EU ETS inclusion of aviation it would suspend implementation of this agreement. The implementation of phasing out was further postponed in 2014 due to EU sanctions related to crisis between Russia and Ukraine over Eastern territories of Ukraine and the annexation of Crimea (Borodina 2014). According to one of the EC interviewees, the Russians never wanted to implement the agreement to keep it as a threat in relation to whatever file they would deal with in EU-Russia discussions. The interviewee believed that Russians felt that linking Siberian overflights with opposition to the EU ETS was a well-fitting strategy.

The annual income that Russia receives from international airlines (mostly European) for Siberian overflights, which are based on the bilateral air service agreements between Russia and third countries (Borodina 2014; Nuutinen 2009), amounts to roughly 320 million euro and a large part of this sum goes to the Russian national carrier Aeroflot as a legacy of Soviet Union rules (Piotrowski 2014). According to Otkritie Capital, in 2013 the carrier received roughly 130 million EUR from that source compared with 170 million euro net profit (Galouchko *et al.* 2014). Other sources quote up to 220 million euro subsidies that Aeroflot receives from that side (Kiselyova & Stolyarov 2014) and European Commission estimates for 2008 declare 420 million dollars paid by the EU carriers for the overflights alone (European Commission 2011a)

Interestingly the Russians, by threatening with Siberia-related sanctions, placed themselves in a similar situation as the Chinese warning that the EU ETS may prevent them from purchasing Airbus aircraft. While China would be limited to one producer only, Russia and its airlines would lose significant income.

However, one of the interviewees acknowledged that if the Siberian airspace was closed, Finnair's strategy to build its position serving Asian destinations offering a shorter flight time than other European airlines (due to Finland's geographical position) would collapse and the carrier would go bankrupt:

“Finnair has a business model where the Asian traffic over Russian airspace is the only thing they can make money with and if Russia is using this not to grant them with overflight rights it was a big drama. I would have been lobbied by the Finnish Deputy Representative saying that if this goes and Finnair goes bankrupt because of this then it's going to be horrible for the elections and anti-EU people etc. It didn't impress our Members in a sense that it's just... We still think at the European level that the EU should stick to its regulation” (Interview 22.04.2014).

The Russian strategy was then also very much focused on influencing Member States rather than discussing the scope of EU ETS's application with the Commission. Although the example cited indicates that Siberian airspace closure to EU airlines would be the most problematic for Finnair, other European airlines who serve destinations in Japan or South Korea, such as carriers from the Lufthansa Group, would also be affected.

The Russian involvement with the EU ETS case was not however only grounded on crude opposition with no space for discussion. Russia expressed its reservations concerning the EU ETS in 2011:

“In view of the absence of an evident need to apply market-based measures prior to 2020 in the context of achieving the “global aspirational goals” on CO₂ emissions reduction, the Russian Federation urges Contracting States to refrain from the unilateral application of market-based measures”(ICAO 2010b).

An EC interviewee saw the Russian contributions to the discussions on a global market-based measure as critical but useful and did not see any Russian ambition to destructively attack the EU ETS. At the same time an EP interviewee believed that in general it is very difficult to negotiate with the Russian side as

their positions are often changing. Perhaps this was less visible in the EU ETS file, but at the climate negotiations they are seen as demanding partners:

“if you look at the UN process on the Climate Convention, I am now told at the very high spheres, the Russian idea often is to make no commitment, to say nothing and then five minutes before the final agreement they create turmoil by coming up with a whole new list of previously unheard of requests, etc. etc. So they are rather difficult negotiating partners” (Interview 2.04.2014).

Another EC interviewee said: “Who can predict what Russia does? We see these days that Russia can be quite unpredictable” (Interview 28.04.2014).

The complexity of these debates has manifold reasons. Probably one of the best explanations of this and Russia’s negative view on the EU ETS was provided by an EC interviewee who identified a combination of issues emerging:

“some degree of ignorance about what it is about, some basically just don’t believe that climate change is happening, there are also people expressing that view. Some are fearful about the economic implications and then the wider political context, just a way of scoring points against the EU. We shouldn’t also neglect the fact that some carriers have older and less efficient fleets than the others. In a context where this is kind of being penalized under the system, those with inefficient fleets they will make a bigger fuss; it may also go for the Americans by the way.” (Interview 28.04.2014).

This heterogeneous assemblage of reasons fitted well the general wide-ranging disagreement for inclusion coming from other countries. Russia’s position internationally and its attachment to strong authority over its territory resulted in the country keenly contributing to opposition to the EU ETS.

7.4 Conclusions

The encounter between the EU ETS and the coalition of the unwilling illustrates a number of key conceptual issues for this research: the nature of EU leadership; the exercise of powers; the centrality of venues and also the importance of nation states in the debate. These will be discussed in the chapter that follows, but it is worth reviewing here the role of discourse and interpretive policy analysis in understanding the conflict.

The outcomes presented in this chapter can be situated together with other studies that claim that the EU has recently been unable to have one voice

on international issues (Conceicao-Heldt & Meunier 2014). This has been especially visible in the Airbus case, where the EU was not able to use leverage to exert influence on non-EU countries (Schimmelfennig & Scholtz 2010). In a similar way, the EU's trade policy seemed to be insufficiently linked with other policies (Jurje & Lavenex 2014).

Furthermore, this chapter advanced the conclusions drawn by Skovgaard (2014) who claims that in a period of economic crisis different frames are used by different actors present in the policy network. The most stark differences between the frames appear between the Member States and the Commission, that would use respectively trade-off (environmental policies damage economic growth) and green growth frames that would see step-up strategies (and including aviation into the EU ETS can be seen as one of these) as an avenue to grow economically. In the context analysed here, actors using economic but also legal-political arguments were more powerful than those supporting the green growth paradigm. Indeed, if one views the EU ETS discussion from that perspective, arguments used by supporters of derogation of the EU ETS for third countries were related to industry-centred thinking.

Although some argue that "economic forces became paramount in shaping public policy" (Wittneben *et al.* 2012, p.1437), the case analysed shows that Russia and China were ready to sacrifice their potential economic benefits as China would be left with Boeing as a sole aircraft supplier and Russia would lose fees for the Siberian overflights. This would happen due to very political reasons: China and Russia wanted to emphasise their disagreement with the principles of inclusion and their sovereignty issues.

The non-EU countries' arguments pertaining to the need to come back to ICAO and its deliberations do not promise timely and robust solutions, which is a similar case for UNFCCC process where 194 states need to agree on reductions and the course of action to achieve them (Peel *et al.* 2012). Nevertheless, ICAO was very present in the arguments employed both by the coalition of the unwilling and the BRICs. For the coalition, ICAO was a guarantee to prolong the process, whilst for India, China, Brazil and other developing countries participating in the coalition, it was an opportunity to vocalize their concerns over safeguarding the CBDR principle. This way of arguing also meant that the

coalition demonstrated unity among several states that would fight for their right to decide how high their aspirations concerning climate change will be.

The view of the EU as a green pioneer and leader against the rest of the world is not entirely fair however. Lack of participation by third countries in discussions on the shape of the EU ETS for aviation as well as inability to embrace the CBDR principles situates the case among debates on participatory and procedural justice. In the EC's understanding (Interviews 16.04.2014, 28.04.2014), inclusion was not extraterritorial, hence participation of non-EU countries was *a priori* limited. This also meant that the European External Action Service was almost absent from the process. In the eyes of non-EU countries, this was read as an obvious exclusion from the process and an exercise of competencies never delegated to the EU.

The interactions analysed between the EU and the non-EU countries also introduce the issue of power. While governance literature would not identify a single locus of power, in the case of the coalition of the unwilling and BRICs involvement, it seems that deliberations on aviation emissions reached a situation in which one can easily go back to the afore mentioned Dahl's paradigm: "A has power over B to the extent that he can get B to do something that B would not otherwise do" (Dahl 1957, pp.202–203). The power innate to a sovereign state was visibly employed here: the coalition of the unwilling used its very best soft power and retaliation threats to influence the EU's position on their carriers' participation in the EU ETS. The strong arguments used were directed at various European levels: the Member States, their carriers, the EU institutions and the European airplane manufacturing sector in order to instigate specific behaviour - suspension of the EU ETS or special provisions (exclusion) for the non-EU bound routes. Although the opposing countries would very much insist on moving the discussions back to ICAO it cannot be seen as a case of "controlling desire" of the counterparts (Lukes 2005) but rather firmly disagreeing with a proposed solution.

As pointed out in Chapter 3, the structural power of the EU has been challenged by strong opposition to the EU ETS for aviation. Chapter 5 illustrated how environmental leadership has been opposed and blocked. Just as the EU was leading efforts to identify ICAO's inability to produce a global solution for

aviation, BRICs were able to reverse this dynamic, re-frame the issue as one of disregard for the CBRD principle and infringement of sovereignty. As argued by Hurrell and Kingsbury (1992a, p.5) in case of climate related legislation the level of ambition is dictated by the party that is the least ambitious. While considering the EU ETS it is difficult even to discuss the third countries' ambitions as their sole commitment was to block the application of the ETS to their carriers and possibly discuss emissions measures for aviation within the ICAO framework, without supplying any detailed provisions. Even though the EU hoped to have a model that would be emulated elsewhere and induce a regulatory domino effect, what happened is the reverse. The third countries started to implement laws forbidding their carriers to participate in the EU's scheme and the domino tiles started to fall in the other direction. BRIC involvement in the case made the domino-falling sound of retaliations.

Analysis of BRIC involvement indicates that opposition to the EU ETS from the US was far better documented in the media and literature but the truly acute sanctions were put forward by China, India and Russia. The EU's attempt to challenge the persistent course of regulation of the aviation industry - chiefly via ICAO - was confronted by retaliation threats and, probably very unexpectedly for the European Commission, with accusations related to disregarding CBRD principles. For the EC, the protests were to some extent surprising as the scheme has been purposefully designed in a manner that excludes any differentiation between the participating airlines to avoid issues regarding unequal treatment clauses in the Chicago Convention. Here one can see that the construction of global environmental governance encounters rather different, fundamental moral principles that significantly challenge its reach. The CBRD position is that such governance can only be extended if it is more differentiated. This however conflicts with the Convention's equal treatment principles.

Furthermore, this chapter has shown that the EU's attempts to include aviation into the EU ETS were seen as political rather than environmental in their nature, which according to the EC and EP interviewees is not entirely true. What seemed initially barely possible to contest or to be found controversial for the EU, established a diplomatic row unprecedented in the environmental realm of the EU.

The dynamics observed between the EU and the BRICs - or even larger the coalition of the unwilling - is very much based on struggling to reach discursive hegemony, a situation “in which actors try to secure support for their definition of reality” (Hajer 2005, p.59). This includes production of concepts and ideas and a coherent, persuasive story-line⁴⁸, creating understandings of the problem, reinterpretation and also “filling the gaps and ambivalences” (Hajer 2005, p.62). Once all these are provided the discursive hegemony vehicle can proceed.

The coalition of the unwilling has been able to produce a counter-EU story line giving the issue an international sense of urgency and at the same time boldly entering the struggle for hegemony. As argued by Hajer, it is story lines, not interests that are able to hold coalitions together (2005, p.65). It has been shown above that the distinctiveness of the individual BRICs and more broadly, a coalition of the unwilling with extremely different constituencies, interests and political structures, were able to gather around a relatively simple story line: “the EU ETS is illegal if applied to non-EU carriers serving non EU-routes and any decisions concerning civil aviation should be made at the ICAO level”. However the possible retaliation coming from Russia, China and India were different in their nature but at the same time they can be seen as strong demonstrations of critical approaches to the EU ETS.

The story-line produced by the European Commission, that the EU was forced to act by ICAO's passivity, could not prevail over arguments of the opposing parties. The well-established and long-rehearsed tradition of dealing with aviation issues at ICAO was only dented by the EU attempts. Strong resistance had a damaging effect on the EU ETS for non-EU aviation – although it did not abolish the programme completely, it has suspended its global application, probably for good.

⁴⁸As argued by Hajer (2005, p.63) “story-lines fulfil an essential role in the clustering of knowledge, the positioning of the actors, and, ultimately, in the creation of coalitions amongst the actors of a given domain”.

8 Discussion

8.1 Introduction

This penultimate chapter builds on the previous empirical chapters and focuses on the theoretical aspects of the project, such as interdependencies in the system of continuous negotiation and making sense of multiple activities, hierarchies, jurisdictions and authorities. As it was explained in Chapter 1, the focus on implementation of the EU ETS can bring more general insights into understanding the phenomenon in a broader sense of power sharing on different levels of decision-making. Furthermore, the chapter brings together the issues signalled before that pertain to international civil aviation regulation. While drawing on the academic debates presented in Chapter 3, this chapter discusses them further in the context of research questions asked in this thesis. It also considers how the theories employed contribute to a better understanding of the processes analysed (policy bargaining, resistance to a policy, formulation of international coalitions, venue shopping). Special attention is therefore given to multi-level governance as the overarching theory binding interpretive policy analysis and policy network analysis. In relation to this, this chapter also investigates challenges to cooperation and mechanisms employed to include or exclude certain stakeholders, which led to power struggles between the stakeholders. In this way, this chapter involves issues such as sovereignty and leadership, especially in the context of transnational environmental governance.

Furthermore, having in mind the analyses provided in the previous chapters, this chapter will answer the questions pertaining to exceptionalism in the treatment of aviation policy and the way the EU and its green leadership unfold in the context of international opposition. Furthermore, the EU/global regulations regarding aviation are considered in the context of the European push to tackle aviation emissions while dealing with a classic collective action problem. The issues that are taken into consideration in this chapter relate closely to the main research questions this thesis asks, but the emphasis is particularly placed on the governance side of the issues analysed.

The remainder of this chapter is organised as follows: Section 8.1 considers the governance issues pertaining to CO₂ emissions regulation on a wider MLG of climate change, also reviewing the EU-US dynamics. Section 8.2 focuses on the EU leadership and leads to a discussion on the importance of venue in climate politics, which is examined in Section 8.3. Section 8.4 engages itself with the tensions in the international context and Section 8.5 gathers discussions on aviation's exceptional treatment. Section 8.6 concludes the discussion.

8.2 Governance issues: policy paradise versus policy stagnation?

This section looks at the governance-related issues that this thesis engages with. While being informed by the empirical chapters, this section critically discusses previously presented literatures. Firstly it focuses on the European context and later proceeds to a multinational dimension of the problem considered.

As some argue (Peters 1994), Brussels is an environmental policy agenda setting paradise and research presented here to a certain extent confirms this thesis. The initial part of the debate on including aviation into the EU ETS was embedded in, at that time, a very green EC. Also, the Council and the EP were still in the pre-economic crisis optimistic state, which meant that the proposal could easily harness acceptance on all three levels. The "paradise" ended, however, at the point when critical interests of business or third countries became threatened by the proposed extension of the EU ETS. What is more, as argued by Callon (2009), carbon markets present a case of markets where participation is much broader than in the case of stabilized markets. Thus they include, to a much larger extent, NGOs, business interests, directly engaged researchers and proactive policy-makers. It has been claimed numerous times that within the EU context some interest groups are able to influence policy-makers more effectively than the others (Bunea 2013; Coen & Richardson 2009; McGrath 2005). When one considers the number of groups ordered according to policy area, enterprise (230) and environment (143) are the largest groupings in the period when the EU was discussing the inclusion of aviation into the EU ETS (Coen 2007, p.337). Consequently, it is surprising that such a big constituency

was able to establish so quickly the EU ETS, given its innovative architecture (Jordan *et al.* 2012, p.56). Having said this, further down the implementation track, the policy encountered issues on various governance levels and led to what Rayner and Jordan (2013) label as policy incoherence or gridlock.

In relation to the above, one can identify the issues that MLG is not able to tackle successfully. Firstly, even though the framework would assume that problems are broken down into smaller issues to make them more manageable and therefore allow bottom-up principles to be promoted (Dirix *et al.* 2013), this may not be applicable to all business sectors. Secondly, with regards to the aviation sector, the “multilevelness” may make splitting the problems into smaller issues convoluted because of the hypermobility of the sector. Although one could argue that the breakdown could be based on more local approaches, hence initiatives stemming from the airports, this rationale was absent. The airports’ actions cannot be performed without airlines serving them, airlines being interested in participating in covering part of the costs related to the CO₂ mitigation on the ground and, finally, passengers willing to use these airports and local authorities supporting them.

The complexity of aeromobility and position of the sector within a larger regulatory context is very present in the analysed case. Firstly, countries bounded by various bi- and multilateral contracts limit airlines’ choices on where and how to fly. Adding any new service usually requires bilateral governmental negotiations followed by negotiations between the aircraft operators and airports. Secondly, as it was shown and is discussed further in the next section, the aviation sector exhibits a special position in influencing policy-makers. It is also characterized by a close coordination of activities through which MLG operates. For example, the US’s aviation sector in Washington is tightly organized in a policy community type of policy network, while the EU, with its relatively open policy issue network, exemplifies the other end of that spectrum. When the two networks came into confrontation, the collective effort of the united strategic interests was able to prevail over more relaxed structures constituted by various stakeholders and epistemic communities. In addition to this context, the absence of a long-term price for allowances made the EU ETS a “lobbyists’ and traders’ dream” (Held *et al.* 2011, p.100). Thus, it enabled the

stakeholders to advocate for solutions they would prefer for their sectors, but given the poorer resources of the pro-ETS coalition, the balance of power was extremely unequal.

The previous chapters examined various definitions and applications of MLG while here the discussion is directed towards situating the case analysed within larger debates. It has been proved (Lavenex 2014) that the EU's policy-making activity that influences third countries should be rather categorized as Type II governance (Hooghe & Marks 2003) in multilevel politics where flexibility and a focus on specific areas prevails over attempts to restructure the whole polity. The tools to achieve this goal differ: liaisons in transgovernmental networks (Slaughter 2004) and private actors who are engaged in lobbying (Lavenex 2014) are involved in the network. At the same time, realizing such changes to specific areas may be more difficult for some regulatory regimes. For example, some point to "the ability of single-industry economic interests to insulate themselves from the influence of large scale democratic forces through the creation of relatively depoliticized subgovernments" (Baumgartner & Jones 1991, p.1045). It is further claimed that once such an arrangement is produced, then introducing any changes would be susceptible to difficulties (Cobb & Elder 1983). On first blush, ICAO might seem to exhibit these qualities, but the featured case seems to be more complex. The aforementioned insulation permeated through the aviation industry, but did not wholly isolate the sector. Conversely, aviation recognized the importance of nation states in the resistance and, by articulating sovereignty issues related to unilateral actions, sought reinforcement of its own ideas in the policy-making circles. Depending on the final outputs of on-going discussions at the ICAO level and among EU policy-makers who deal with the EU ETS for aviation, one will be able to adjudicate if the governance structures in fact enabled accommodation of "diverse interests" as prescribed by the Commission on Global Governance (1995, p.2).

Furthermore, the MLG departs from the idea of overlapping competences (Marks *et al.* 1996, p.167) and this is very visible in the analysed case, too. More importantly, these varying competencies were employed in the discourses by the actors present in the policy network. For example, the American airlines

promoted the idea that only ICAO is an appropriate venue to discuss aviation-related policies. At the same time, the EU argued that it was perfectly competent to regulate flights that are landing or departing from the EU airports. Finally, the EU Member States on one side were committed to upholding EU regulations, but on the other side, they were concerned about the possible retaliations coming from the non-EU countries. Whilst actors were participating in various policy networks, served different constituencies and would engage with supranational entities; the EU ETS debate can be considered much more political than enmeshed in economy or law. The legal suit started by several American airlines against the EU needs to be reviewed thus much more as a political step, a fragment of a strategy re-affirming sovereignty over one's territory, emphasizing clean-cut legislation borders, with interest in market-based solutions for climate change worth appraisal only under a set of closely prescribed circumstances.

The US opposition to the EU ETS exhibits a governance problem in its processual understanding (Pierre & Peters 2000; Held & McGrew 2002) where activities can be orchestrated both formally and informally and the process involves various policy actors such as states, industry or eNGOs. This "governance" is therefore a focus on the emanation of the role of non-state actors and their impact on the policy-making at the international level.

Although the MLG approaches give considerable attention to the subnational levels of the EU, these were strikingly absent in the analysed case. This has been very much related to the specificity of the aviation sector in relation to the subnational levels of government, thus it is not related to the international focus of the conceptual approach employed in this research. The MLG component assures that the regional and local aspects are captured as much as they are present. There was albeit visible presence of sectoral organisations and eNGOs on various levels, yet the local governments, municipalities or regional authorities did not present their views in the debate. To some extent it can be explained by the EU ETS being a high politics issue and thus would remain outside of their interest. As a market-based instrument, it can be also perceived as abstract, acontextual but technically complex. Also, their involvement in the ETS implementation would be very limited, if any. On the other hand, the

possible retaliations in the form of re-routing planes coming to or via Europe would most probably have the largest impact on the lower governance levels via the effects on different airports. Provided that the retaliations did not enter into force, any activity from lower governance levels was unlikely to arise.

More recently within the UNFCCC structures there is recognition that aviation needs to be addressed in a multi-level manner. For example, in 2015 UNFCCC started discussing broadening the scope of CDM projects in a way that aviation-related activities⁴⁹ could be included. UNFCCC recognized the ICAO leadership in the issue of tackling emissions from aviation, though also underlined that the emissions from domestic aviation are a matter pertaining to individual states. Hence, given predicted growth in emissions from non-Annex I countries, reductions of these emissions can be made eligible to be credited under the CDM (UNFCCC 2015).

8.3 Global race for leadership

The previous section on MLG and policy-making identified issues related to access to policy-makers, unequal power resources of the actors engaged in the debate and competition within policy networks and policy communities. This section looks closer at the notion and distribution of leadership in the context of flux. The Section continues the discussions started while answering research questions 2 (Who are the most prominent actors of the debate on inclusion?) and 4 (Why do the EU and non-EU countries differ on the shape of a global aviation emissions policy?). As it has been argued in Chapter 5, the EU was able to unsettle the system and induce regulatory competition at the international level; here this issue is discussed further in a multilateral perspective.

This thesis is focused on various leaderships – the EU leadership, the ICAO’s fading lead with regards to emissions regulation, the leadership of DG

⁴⁹There are three main ideas that are being discussed currently. According to UNFCCC they would be: “installation photovoltaic panels and transmission capacity in order to power aircraft at gates. At-gate aircraft require power to operate electrical systems as well as heating, ventilation, and air conditioning systems of solar, (...) the installation in aircraft of new electronic technology to power aircraft while taxiing” as well as “optimized aircraft maintenance, including jet engine cleaning/washing” (UNFCCC 2015).

CLIMA but also leadership on the opposition side: the US and the BRICs. Although their attempts to direct the policy-making with regards to aviation emissions varied, it merits looking at a broader picture. It has been claimed “that global problems cannot be solved by any one nation-state acting alone, nor by states just fighting their corner in regional block” (Held & Hervey 2011, p.96). The non-EU actors opposing the EU’s climate leadership understood and further discursively reproduced the European endeavours as unilateral and lacking international cooperation. Although the EU’s leadership would be usually focussed on combining bi- and multi-lateral relations (Vasconcelos 2010), the course of strong political leadership was taken and the multilateral approach was limited. This in turn can be viewed in line with further cementing the EU identity around climate issues (L. G. van Schaik 2013, p.127) and also attempting to change “crude power balances into rule-based relationship” (Grevi 2008, p.158), which would have happened if the non-EU countries decided to establish similar schemes and thus enable aviation to be regulated globally.

The EU leadership then needs to be also juxtaposed with the EU-US dispute over the inclusion of transatlantic flights into the EU ETS. When analysing the differences between the EU and the US, it needs to be underlined that the EU and the US assumed very different perspectives on dealing with aviation emissions internationally. As outlined in the previous chapter, the EU focus on the ICAO-brokered solution switched into proposing a model solution in Europe to be emulated on a global scale. This was motivated by the EU with the ICAO’s inaction. The US’s faith in the ICAO solution has been much stronger, though it needs to be underlined that the policy-makers’ beliefs were powerfully affected, reinforced and fuelled by the aviation industry’s effective lobbying on Capitol Hill. On the other hand, this faith can be seen as a strategy for pushing the issue to ICAO where any global agreement on a significant, change-inducing market-based measure for aviation will not be attainable in the near future. Apart from this, the US has historically had a hesitant approach to giving up its decision-making potential to other entities; therefore, the sovereignty argument was easily taken on board by the US Congress. Finally the US, used to its strong position at the ICAO, preferred to resolve the issue at the global level, where it

felt that the interests of its industry may be better fought for and the US's approach to tackling emission issues amplified (see: Section 8.4).

Paradoxically, the EU's leadership by example noted in the literature is related to the EU having a leaderless system of governance and relatively low competences with regards to taxation and energy, which are vital for any climate-oriented policies (Jordan *et al.* 2012). The "leaderless" referred to here means that the pro-climate initiatives are stemming from various levels: climate proactive Member States,⁵⁰ determined Commissioners or eNGOs as well as local initiatives, hence the thesis of Jordan and colleagues might be coined as "multi-level-leadership" instead of "leaderless". This understanding of the leadership is integral to its application to the EU, which offers fertile ground for policy initiatives. The EU has thus been striving to be seen from outside as a consolidated actor and would often underline its actorness (Schreurs & Tiberghien 2007; Charlotte Bretherton & Vogler 2006). All these lead to what can be understood as an attempt by the EU "to embed its internal working structures into the broader sites of global governance" which in turn is acclaimed to play "a pivotal role in promoting EU rules around the world" (Lavenex 2014, p.886). It seems naïve however to believe that this simple exercise would sustain meaningful leadership.

What is then the relationship between the EU leadership and the Member States legitimization of that leadership? How does it play out externally? It is the EU who sees itself as a leader? In the analysed context it is very visible that the retaliatory threats were not targeting the EU institutions that much but rather individual Member States that, by agreeing to implement the EU policies, mandate such risks. This legitimization is based on the assumption that the EU authority goes only as far as the Member States decide to cede their powers (Niemann & Bretherton 2013). The policies are then not externally created and imposed but rather are endogenous in the system (Golub 1996). In the same way, the system of feedbacks from the Member States works once a policy has been implemented and requires modifications. With regards to the EU

⁵⁰For example Scandinavian countries would take leadership in environmental regulations that was going well above the level required by the EU by taking unilateral measures (Porter *et al.* 2000, pp.35–44). Similar leadership in environmental and climate policy-making is ascribed to Germany (Andresen & Agrawala 2002; Schreurs 2008).

environmental policy, the objectives of a given policy may change significantly in the implementation process (Knill & Tosun 2011). In the analysed case this change can also be taken into consideration, though at a whole different level. If the EU was taking as an objective the reduction of CO₂ emissions from international aviation, then the suspended implementation process did not provide for achieving policy goals. However, if the underlying objective was to instigate ICAO's actions towards tackling the issue at a global level, then the protracted implementation could be viewed as a positive modification and this is how it was branded by DG CLIMA. To some extent the Commission has harnessed the opportunity to re-frame its goals when the ICAO has sped up the process of consulting the Contracting States with regards to a potential global market-based mechanism. The DG CLIMA has been justly and constantly underlining that it takes all the credit for generating action at ICAO, although the Commission had to withdraw from the idea of broad inclusion of aviation into its scheme (see: Section 5.4).

For the whole EU ETS, decentralization was a significant feature. The Member States were able to decide themselves, for example, how the cap on emissions would be distributed among the partaking entities (Kruger *et al.* 2007). For the aviation case, decentralization was based on the Member States being responsible for gathering data from the airlines registered with their aviation authorities and also, potentially, imposing fines for non-compliance. This arrangement became externally visible for the first time when the US airlines decided to file a case in Britain where most of them are registered. The Member States exposed to the risk caused by the EU policy would also very visibly accentuate their interests with regards to aircraft manufacturing.

Such decentralization did not lead to any proliferation of leadership among the Member States. Rather, it fuelled a decentralized opposition that spilled over from the EU institutions to the Member States. It may indicate that they did not feel the ownership of the EU ETS and saw the battle on inclusion as lost from the very beginning and, hence, did not want to engage their resources in fighting the opposition. Furthermore, even though the EC leadership seemed stable and persistent over time, the circumstances in the US were further discouraging any national involvement. At the same time when the EU had been

implementing its ambitious EU ETS aviation plans, the 112th Congress (2011-2012) can be seen as the least environmentally friendly when it comes to regulations adopted. As quoted by Sussman and Daynes “the House averaged more than one anti-environmental act for every day the House was in session in 2011” (2013, p.54). Though, if one considers the EU ETS file as political rather than environmental, the classification of the EU ETS Prohibition Act as a bill that is exclusively a consequence of Americans following a certain anti-environment path is inaccurate.

Finally, a compelling thesis is proposed by Hertogen (2012, p.296) using Berlin’s (1969) concept of liberty, which believes that

“EU could claim *freedom to* regulate international aviation emissions and *freedom from* the negative effects of climate change triggered by the inaction of other states as well as from the negative effect of lost competitiveness. On the other hand, the EU’s opponents could invoke *freedom to* regulate international aviation and *freedom from* the EU’s legislation.”
(italics in original)

This way of reasoning shows very clearly that, in the analysed case, the leaderships are incompatible and condemned to culminate in a conflict originating from competitiveness, power relations and differing visions of how to tackle climate change. Furthermore, in a situation where there is no agreed global framework, it appears that conflict over the above-mentioned freedoms is unavoidable. In the context of lack of involvement of non-EU countries in mitigating CO₂ emissions, some authors conclude that the EU should be prepared for such a situation and consider introducing border tax adjustments to address the passiveness of international partners (Dirix *et al.* 2013).

Following the consideration of power provided in the earlier chapters (See: Section 3.4.2 and 5.3), there is merit in briefly discussing the material gathered in the empirical chapters also in this section. The case of the US opposition to the EU ETS indicates that within the US context, the actors struggled to prove whose understanding, interpretation and representation of the ETS should prevail. To some extent that has been visible also with other non-EU countries. As explained by Flyvbjerg, "Power determines what counts as knowledge, what kind of interpretation attains authority as the dominant interpretation. Power procures the knowledge which supports its purposes"

(1998, p.226). As it became visible, the more powerful actors were able to impose their interpretations (in Yanow's or Flyvbjerg's language) or narrative (as framed by Hajer and his followers) and succeeded in the anti-ETS campaign. This success to a great extent was facilitated by representing the inclusion of EU-US routes into the ETS as an activity which was illegal, harmful and breaching sovereignty. Hence opposing the ETS was a question of rationality, rather than a tough political decision. What is more, the lobbying efforts also made the Congress an appropriate venue for the discourse offered: the language used by the sponsors and supporters of the Bill was broadly derived from the industry opposition. As Flyvbjerg would explain, the rationality of one actor has been taken over by another, as he says "at least officially" (1998, p.102). Given that the representatives of the US administration (White House, Department of State, FAA) refused to give interviews, there is also the "unofficial" part involved. One of the reasons for this may be the process of rationalization that had to be employed to present the opposition as the rationality and not rationalization (Flyvbjerg 1998, p.98). Alternatively, positioning the ETS as a sovereignty issue constituted a powerful rationality, such that whether the mechanism works as an environmental policy instrument became irrelevant. This however could have happened only out of public sight as it would undermine the narrative based on opposing the threats to sovereignty. This means that the opposition to the ETS was reinforced by ensuring that the explanation focuses only on the public face of argument.

8.4 A venue or a non-venue?

This thesis analyses various venues of policy-making, their importance for the examined case and also competition that they enter between each other. This section discusses firstly the importance of venues in the US debate on inclusion. In the latter part it investigates the venue as a locus for decision-making and takes into consideration novel venue shifts towards a mobile and semi-formal venue.

As explained, the case also offers insights into how the venue shopping process (Baumgartner & Jones 1993) operates in today's US policy-making. The confrontation of the EU ETS with challenges was taking place in various venues and, as in classical venue shopping, it was a situation where "different arguments

find greater acceptance among different groups – framing differs by venue” (2007, p.483). The strategy works in a way that “changes in image are used purposefully, in an effort to attract the attention of the members of a particular venue” (Baumgartner & Jones 1993, p.36). For the EU ETS case, the issues related to sovereignty interest Congress much more than breaching the Chicago Convention, which Congress would delegate to the FAA. It can be speculated if the aviation industry would have gone further in the venue shopping activities if Congress decided not to adopt the EU ETS Prohibition Bill and, for example, would have tried to mobilize venues like ATAG or IATA, where their policy goals were welcome.

This venue shopping also then translates into different opportunities for the policy actors or whole policy communities. The reach of networks and representation of issues facilitate venue shopping and fine-tuning of the messages conveyed by the actors engaged. For example, the language of the claim submitted to the CJEU (not public though) must have been dissimilar to the submissions that A4A made to the House of Representatives or to the Senate. Aviation’s strategy illustrates that different arguments are employed at different venues and target different audiences, while the objective remains stable over time: immobilizing application of the EU ETS to non-EU flights. An alternative approach to analysing the issue would engage with the theory that the policy institutions would prefer incrementalism to policy change (Lindblom 1959). Applied here, this would mean that the EU ETS was an attempt to challenge the status quo of ICAO being the exclusive aviation regulation forum (or rather ICAO not addressing the emissions problem effectively) and the US policy-makers were persuaded to object to the change.

While Bulkeley (2005, p.891) and Rosenau (1997) advocate for “spheres of authority” in the sense of providing space where climate governance can be shaped, the presented research requires a discussion about the materiality of venue itself. As previously claimed, existing political assemblies are seen as inadequate to tackle the issue of global warming (Blok 2013) and a certain degree of creativity is required in order to conceive suitable answers to the issues arising (Callon 2009). Furthermore, international bureaucracies are viewed as “rife with ‘bugs’ in their operating systems and burdened with

suspicion about their degree of accountability” (Kamarck 2007, p.100). Although transgovernmental networks should be able to stand for “fora for mutual regulatory approximation” (Lavenex 2014, p.893), in the context of a hypermobile sector on one side and climate politics on the other, these rules seem not to be applicable. Instead of leading to approximation, the fora can be used as venues for aspirational policy export that is much more unidirectional than inducing approximation. Aviation regulation is based on consensus agreed at ICAO level and firstly, requires abundant time to be elaborated and secondly, often is introduced as a direct result of an actual event (a plane crash being a *cause célèbre* here) rather than legislative learning processes.

Stripple and Pattberg claim that what is currently happening in the sphere of global climate governance can be viewed as “gradual institutionalization of a transnational public sphere in world politics where norms and rules are devised and implemented independently from the intergovernmental negotiation process” (2010, p.138). This means that there is no one exclusive location of agency in an interconnected system; thus governments, intergovernmental organisations, NGOs/eNGOs and business actors emerge in various ways to mix their resources. The venue per se is not needed. Stakeholders coming from various venues are able to convene outside of established frameworks and institutions. The institutional framework of ICAO has proved to be ineffective. However, as it was justly stated by Vogler (2001), the cooperation between various actors who utilize diverse authority spaces creates a tension: how to manage the environment in a reality of sovereign states and the context of the tragedy of the commons (Hardin 1968)?

The case presented in this thesis contributes to this debate in a new way. Although one sees the interaction between the aforementioned actors, the role of non-state entities splits into two distinct avenues: business challenging the policy using both economic and sovereignty arguments and the eNGOs trying to support the EU’s endeavours on what can be called “a global arena of climate governance” (Stripple & Pattberg 2010, p.142). Although both avenues are aspiring to exert pressure on the decision-makers operating at the state and inter-state levels, visibly the resources of business actors are ample and more pronounced. This further reflects the dynamics at the UNFCCC negotiations

where although the eNGOs together with Business and Industry NGOs (BINGOs) and Research and Independent Non-Governmental Organisations (RINGOs) are recognized, their input is limited (Bäckstrand 2013). While in the original explanation of the tragedy of the commons for the EU ETS Hardin (1968) talks about the cattle, the EU ETS example features skies populated by aircrafts operated by airlines unwilling to participate in the EU scheme and reluctant to elaborate an ICAO-based system.

Although some argue that actors engaged in policy process would attempt to get involved in venue shopping (Baumgartner & Jones 1993), the results presented indicate that this may not be the case in the future. As the empirical material shows, multiple international actors were informally meeting to discuss arrangements for international aviation emissions and although ICAO was present in the debate, it appeared as a venue that could enable further deliberations, rather than offer tangible results. Furthermore, similar to the case of many membership-based organisations, ICAO entails only as much authority as it is given by the contracting parties. In light of this, some argue that the regulatory architecture as it is now should be challenged by “a global regulator with ‘teeth’” (Grote *et al.* 2014, p.223) and thus creating a new, more powerful venue ruled by a different regime. Given however the states’ reluctance to relinquish control of aviation policy, achieving this goal does not seem attainable. The EU ETS debate has not been a shock strong enough to hasten development of innovative approaches to governance or creating a new regime. The realist view on this would very much follow Hurrell and Kingsbury’s thinking: “anarchy and conflict are the rule, order and co-operation the exception” (1992b, p.5).

The heated debate on the EU ETS for aviation has highlighted the consensus in seeing ICAO as a main forum for debating aviation, but not the real venue in policy-making terms. It remained important due to its well-established position but for the ETS debate ICAO played a secondary role. The real venue became a cycle of mobile, partially *impromptu* meetings that steered the coalitions of the unwilling actions. This also means that the real debate, and later on, the action, shifted to less formal venues with a more limited membership. The formula of meetings remained open to joining by other parties interested in opposition; thus, the coalition can be seen as a semi-formal, not-material venue.

This is in line with what Baumgartner and Jones (1991, p.1048) claimed regarding policy processes: “where the rhetoric begins to change, venue changes become more likely. Where venue changes occur, rhetorical changes are facilitated”. The change of rhetoric of the EU happened while trying to galvanize the international system towards regulation of aviation emissions. It caused a wave of opposition, but also moved the rhetoric to discussing the creation of market-based measures for aviation. The EU consciously decided against an incremental approach to aviation emissions issues by including intra-EU routes into its scheme. This political belief that triggered inclusion, conceptualized as broadly as possible, has been supplemented by frustration with ICAO’s inability to progress the aviation emissions agenda and thus aimed at bypassing the ICAO’s consensus-based decision-making.

It has been argued that with regards to climate change issues the EU would strongly support multilateralism over directing international partners unilaterally (Vasconcelos 2010). Furthermore, the European Commission sees multilateralism as a “defining principle of its external policy” (European Commission 2003). In the realm of aviation, multilateralism virtually equates to ICAO with its broad membership, democratic process that includes all the UN principles, and ICAO is generally perceived as the universal body for dealing with civil aviation issues. The problems pertaining to ICAO’s inability to act on a global market-based measure for aviation led firstly to a parallel EU process of creating a regional mechanism that with time became entirely disconnected from the ICAO process. This implied that the EU multilateralism unexpectedly entered a bilateral trajectory.

8.5 Attempts to regulate aviation: exceptionally exceptional

In this final section, attention is given to socio-political aspects of aviation while trying to understand why achieving the EU’s leadership was more difficult in this sector than in others. This section indicates how extending the EU ETS to aviation might be considered a tool that does not tackle the more fundamental drivers and tensions relating to regulation of aviation emissions, but offers only an additional layer to the already existing regulations. While inclusion of aviation into the EU ETS has been considered as having smallest possible impact on the

ticket prices, and thereby consistent with certain conceptions of efficiency, there were options that would likely ensure larger CO₂ savings but would be more expensive for the end users. Even if efficient for other sectors, for aviation, the EU ETS tended to divert attention from core issues that the sector should have been dealing with regards to emissions control. Accordingly, the following section focuses on five main issues: access to air transport, aeromobility in the EU, behavioural aspects of transport choices, technological features and finally regulatory circumstances of aviation.

8.5.1 Access to flying

The conducted interviews and policy documents analysed do not, with small exemptions, talk about fair access to air transport while it is estimated that only 5% of the world's population has ever boarded a plane (Assadourian 2006). Given that aviation is responsible for 2-3% of greenhouse gas emissions globally this issue pertains closely to social inequality. The access or fairness logic has been either an absent or silent rationality in the Commission's motivations concerning inclusion of aviation into the EU ETS. Only the eNGOs would mention this rationale, however only as a side-lined factor (Interview 14.03.2014, 16.06.2014).

Aviation clearly serves more privileged and powerful social classes who are able to afford flying and "space-rich and time-poor" passengers of private jets and business aviation (Budd 2014). In the literature analysing mobility there is a conviction that the "infrastructures are designed first with the agendas of the few in view before the social considerations of the rest are addressed" (Birtchnell & Caletrío 2014, p.3). This translates also into difficulty in imposing new climate-related levies that would transfer some of the profits towards climate adaptation. So far, the tourism industry, which involves significant aviation, has taken some of its climate responsibilities and become involved with adaptation activities (Scott & Becken 2010; Peeters *et al.* 2006). It has been proved though that the impacts of aviation mitigation strategies have no impact on demand in the tourism sector (Gössling *et al.* 2012). Also in the European context, the tour operators are exempt from any environmental or climate levies apart from these

already included in the airfare (for example various noise-related fees). There has not been any work done within EC on a measure that would address tourism-induced emission from travel.

8.5.2 The EU mobilities

An important cornerstone of the EU as a project of integration of the European countries was to provide EU citizens with freedom of movement between the Member States. On a broader picture, one can argue that the EU at its outset was an institution that favoured competitiveness and deregulation while airlines used to operate in an anti-competitive environment *par excellence*. The Treaty of Rome excluded aviation from the policies regulated by the European Economic Community (predecessor of today's EU) and only with further EU deregulation did aviation become included in the prevailing trend of opening markets. Though, only around 1997 when the third package of changes proposed by the Commission was implemented did the regulatory framework in Europe start to resemble very much the one pertaining to the US (Button & Stough 2000c, p.142).

In general, the EU strongly fosters social and geographical mobility, which in the case of aviation, among others, translates into subsidies paid by national or regional governments to low-cost carriers (Graham & Shaw 2008). This leads to inconsistencies as the low-cost carriers are able to financially benefit from the EU attempts to increase mobility but at the same time they do not cover the costs of negative environmental externalities. The EU mobility paradigm has however challenged the sustainability paradigm: "the whole air transport deregulation process was aimed at granting EU citizens the right to air mobility, lowering the cost of air transport and extending it to a wider share of the population" (Pilling 2005). As rightly claimed, the European Commission is "encouraging continued high levels of growth in aviation, whilst simultaneously asserting that they are committed to a policy of substantially reducing carbon emissions" (Tyndall Centre 2005). In light of this, the EU ETS could be viewed as an answer to the issues raised, however, bypassing the fundamental problem of ever-increasing air travel in the EU and thus growing emissions.

Mobility is understood as a fundamental need for human beings (Hoyle & Knowles 1998) and is also centrally important “to economic development at national and regional scales because of its input to increased tourism/leisure consumption” (Graham & Shaw 2008). The attempts to make aviation accountable for its environmental externalities can be easily branded as making aeromobility more expensive and as a result of that narrowing access to it further. This access is understood differently in the policy communities analysed. The BRIC countries would underline very much the CBDR arguments and importance of aeromobility for their development while in the northern hemisphere, flying is more and more often considered a part of lifestyle (Shove 2003) and tourism is associated with positive emotions and is seen as desirable: for example, the claim that “virtually all tourism broadens the mind” (Oxford Economic Forecasting 2006, p. 30).

Thus, growth and sustainability were seen as irreconcilable already in the 1990s (Graham & Guyer 1999). On the other hand, some argue that creating larger demand for air travel does not need to be in conflict with sustainability principles as this “might conceivably lead to more efficient use of aircraft and airports” (Goetz & Graham 2004, p.273). Nevertheless, if the prices of carbon allowances were substantial enough to change behaviours of passengers or induce innovation in aviation, the EU ETS could then be said to marry the contradicting paradigms and internalize the costs of externalities. If the allowances are cheap than the emissions are not really included in the price of a ticket, which consequently is seen as a market failure (Bowen & Rydge 2011, p.72).

As a corollary of the special attention given to the need to enhance mobility the aircraft manufacturers can also enjoy special positioning in the policymaking realm in the EU (see also: Section 2.4.4). Such highly innovative sectors are provided with various tax incentives to further sustain the development of new technologies (Arul 2014). The high-tech aspect automatically makes the whole aviation business cherished by innovation-seeking governments. Although the EU ETS does not affect the aircraft manufacturers directly, there is a strong link between the two. The EU ETS is based on emissions performance and this in turn is a product of engine

efficiency, weight of the aircraft and to some extent operational practices (Hileman *et al.* 2013). A more fundamental intersection is based on the competitiveness between the manufacturers and hence providing them with best policy treatment that is available under international competition regulations. The EU ETS case animated Airbus's policy involvement and the climate benefits had to be outweighed by the economic ones. In the interaction between the manufacturers and governments/EC the emissions trading was treated as an obstacle that needed to be eliminated due to potential harm towards the industry. At the same time the well-established relations between Airbus and Airbus countries have been likely to affect the policy-making at the national and European levels. The industry's bargaining power has been very much based on the export orientation of the sector and its high-tech character. Even if the number of people employed in the industry is not as high as in labour intensive sectors, the value of transactions is extremely high, which makes the policy-makers more prone to accept aircraft manufacturers' policy views. Already in the 1960s Schattschneider (1988, p.4) claimed that political "conflicts are frequently won or lost by the success that the participants have in getting the audience involved in the fight or in excluding it as the case may be". The EU ETS case greatly confirms this thesis by exhibiting how much the aviation sector, especially the manufacturers and airlines, was able to close ranks with each other.

8.5.3 Who really rules aviation?

One final argument concerning the difficulty of expanding EU climate leadership relates to often-mentioned architecture of the international regulatory frameworks pertaining to aviation. As explained in Chapter 5, the American aviation sector enjoys policymakers' special treatment. To a large extent, it is a sector that is being regulated by individuals who themselves have been, or still are, close to the aviation business. On one side it is a corollary of a high level of technological knowledge needed to regulate aviation. Secondly, there is a certain aviation career trajectory that often leads ex-aviation employers towards aviation-specific regulatory bodies. This further enables reiteration of the discourse produced by the airlines that claim that their

business is operating on margins of profitability and any additional cost would cause bankruptcies. Additionally, several European governments have significant shares of European carriers, thus, it is not in their interest to weaken their position in a highly competitive sector.

Policy-making for civil aviation so far has been one of the most international regulatory regimes but still is very deeply connected to the nation states that have the authority over their space and are free to regulate it. This framework then to a large extent relates to the issues pertaining to sovereignty and power relations between states even if placed in a more networked governing structures (Rosenau 1999; Held & McGrew 2002). This can lead to national interest-based decision-making, which takes into account the importance of common action poorly if at all. Nevertheless, the EU ETS conflict has dented business as usual at ICAO and has accelerated the pace of discussions between the nation states on a global market-based measure for aviation.

8.6 Concluding remark

This penultimate chapter has discussed in further detail the theoretical contributions provided in this thesis and signalled broader discussions where these are located.

It has shown that the MLG framework may not be always able to fully capture and unpack theoretically policy events. Here, areomobility creates a host of issues to consider. These include potential effects on local economies, the way the sector is ruled globally and technical complexity of the sector itself.

The empirical material gathered throughout the thesis and the empirical material employed indicated that competing leaderships may clash in conflicts over the a vision and understanding of how to construct and convey an effective policy. The EU ETS conflict emanated, among the others, from clashing visions of leadership.

The discussion above has also shown that the problems around the EU ETS, including the issue of leadership, require rethinking what the venue of policy- and decision- making is and how material it must be. The discussion supports the thesis of independent implementations of rules that may happen

aside from the intergovernmental process and outside of conventional venues, such as ICAO for the analysed case.

Finally, the discussion has juxtaposed previously discussed theories on sectoral exceptionalism with EU attempts to tackle aviation regulation, particularly in the EU context. It has shown the conflict between making aeromobility available for larger numbers of citizens with making it accountable for the environmental harm produced. It has also indicated that identifying the stakeholders responsible for regulating aviation needs to be a very careful process.

Building on this discussion and the material presented in the previous chapters, the next part will conclude by gathering answers to the research questions.

9 Conclusions

9.1 Introduction

There is a broad consensus concerning the projected growth of aviation emissions in coming years. At the same time, the correlation between GHG emissions and the speed of anthropogenic climate change is not a matter of scientific inquiry any more. The aviation sector's expansion and actions taken to combat climate change are then difficult, if not impossible, to marry.

This thesis has sought to contribute to the broad academic and policy debate on the EU ETS. It embraced both policy formulation and the less explored angle of opposition to the scheme. It also addressed questions pertaining to the EU's position in the multi-level governance of climate, the EU's ambitions and the EU Member States' approach to these leadership plans. Not only has the thesis shed light on the intrinsically international issue of CO₂ aviation emissions mitigation efforts by the EU policymakers, but also contributed to the debate concerning the role of non-state actors in shaping climate policies targeting aviation. It went deeper than to merely describe the process of including aviation into the EU ETS and analysed thoroughly the stakeholders' understandings and reactions to the EU's green leadership.

The aim of this final chapter is to summarise the answers to the research questions and to set down concisely the main contributions to learning made by this thesis. Given that each of the empirical chapters was finished with separate conclusions, this chapter focuses exclusively on a concise review of the answers. The remainder of the chapter is structured as follows: firstly, Section 9.2 succinctly synthesises the answers to the research questions reiterated below. While this thesis does not aspire to be read as a policy paper, Section 9.3 offers policy recommendations. Following this, Section 9.4 outlines the direction of further study in the area and at the same time, demonstrates the limitations of this thesis.

9.2 Policy change: effects, actors and venues

Research question 1: What were the effects of the EU's attempt to include aviation in the ETS?

The analysis presented in this thesis indicates that unilateral measures (or at least perceived as unilateral) are able to affect the global system only to a limited extent. Furthermore, a much more participatory approach, in a setting of blurred boundaries between the international, national and subnational, could yield better results. The change observed in the aviation CO₂ policy, indeed achieved the desired results at the European level where airlines were complying with the scheme, however, it did not affect the global system in an immediate and direct way. The EU ETS inclusion of aviation has been conceived by the EU as a role model to be emulated by other regions. In this manner the inclusion was supposed to instigate action outside of the EU and at the same time outside of the ICAO process. The ICAO debate on a global market-based measure for aviation was considered by the EU as ineffective and full of procrastination. What exactly were the results of the attempted inclusion of aviation?

One of the prominent results has been a change of the locus of policy-making. There has been a visible move towards the aviation industry while the role of nation states remained strong. This has been particularly visible at the EU ETS implementation stages when the aviation industry lobbied their governments to get involved more actively in opposition. Therefore, the inclusion has activated new discourses (sovereignty, unfair competition, unilateral regulation) that transpired through various policy networks both in the EU and in the third countries. In this way the thesis has advanced research on policy change (Sabatier 1988; Helm 2010; Pralle 2003) by showing how sectoral networks are able to affect decision-making procedures. Consequently, it has also developed further the understanding of how policy networks operate (Borzel 1998; Swyngedouw 2004; Klijn 1996; Ingold 2011).

One of the underlying rationales for including aviation into the EU ETS has been the EU's determination to curb sectoral exceptionalism (see: Section 2.4.4 and Section 8.5). On one side, the Commission envisaged the inclusion as a

natural extension of the scheme, a result of the EU climate policy acting across economy sectors. On the other side, the EU ETS was indeed aiming at limiting aviation's privileges. However, the latter goal was rather a collateral effect of broader policy thinking. The effects of the inclusion in this realm are rather disappointing. The climate endeavours have not changed any tax rules for the sector, neither affected business as usual. Nonetheless, the inclusion of aviation into the EU ETS can be considered as having a deeper meaning: it has hugely impacted the discourse concerning aviation emissions abatement. In this way, the thesis has offered new insights into research on meaning making activities performed by policy-makers (Wagenaar 2011). It has also highlighted how greatly has aviation been neglected by the climate change governance architecture (Romera & van Asselt 2015). By showing its international partners how the emissions policy for aviation could be, the EU provided a relevant emissions trading experiment that even if it failed internationally, made a change in thinking about what can be possible and in this way affected wider governance of the industry. This is now evidenced for example by China considering including aviation into its emissions trading system. Furthermore, it is believed that ICAO has started more concrete work on a global market-based system through its working groups.

Research question 2: Who are the most prominent actors of the debate on inclusion?

In this thesis considerable attention is given to the actors present in the EU ETS debate. The results indicate that the importance attached to particular actors differed across the geographical locations where data were collected (the EU and the US), but also across the variety of stakeholders interviewed. Broadly, one can conclude that for the EU ETS case prominent position was attributed to the nation states as they were perceived as particularly strong in the debate together with the European Commission as an overarching policy-maker.

As Chapter 5 explained, several EU states were actively exerting pressure on the EU institutions to achieve their policy goals. Similarly, as far as BRICs are concerned, the opposition was sourced from the nation states defending their

sovereignty or trying to protect the CBDR principles. While the literature has indicated that BRICs may understand their climate obligations differently than the developed states (Tian & Whalley 2010), this research has proved that they are committed to safeguarding their special position and thus not necessarily following the green leaders.

The analysis of the US involvement clearly and unambiguously indicates however that the state's action has been almost exclusively fuelled by the aviation sectoral organisations involved in lobbying the Congress. In this way this research is instrumental for understanding the lobbying activities in the US (McGrath 2005; Thomas & Hrebenar 2009). Additionally, by being a study focused on one sector it has further developed the studies on aviation regulation (Sgouridis et al. 2011; Macintosh & Downie 2008; Havel & Sanchez 2011a). The dynamics between the airlines and their associations (especially those of global reach) versus the EU have shown that the pervasive discourse of regulatory and governance complexity of global civil aviation is able to block any other solution than one brokered by ICAO. At the same time, the European sectoral organisations and aircraft operators remained less vocal with regards to the scheme. The least importance was ascribed to the eNGOs that although present in the debate, were usually unable to attain their policy goals.

Finally, the IPA and PNA frameworks applied in the thesis highlighted the importance of individuals in the debate (see: Section 5.5). This extra layer further reinforced the theoretical claims related to understandings of a policy and meaning-making activities in which the stakeholders were involved (Marsh 1998; Wagenaar 2011; Schwartz-Shea & Yanow 2012; Yanow 2006).

Research question 3: Why were particular venues of policy processes regarding aviation emissions preferred?

The issue of venues has been interwoven in the whole thesis. The thesis has explained the specificity of the venues where the policies pertaining to the EU ETS were made (EC, US Congress, ICAO). The answer to this research question is two-fold. Firstly, at the level of official statements, ICAO seemed to be the most appealing venue for both the policy-makers and the industry. This was

mostly motivated by ICAO being a guarantee of a global measure agreed unequivocally. The EU has however clearly moved the discussion out of ICAO by announcing the inclusion of aviation into the EU ETS. At the same time the EC did not become a venue *par excellence* for aviation emissions policy, but rather an *ad hoc* remedy for the ICAO's stalemate.

Secondly, while a variety of non-EU countries advocated for giving primacy to ICAO, they created their own non-material venue: the coalition of the unwilling (see: Section 7.2). The coalition's loose organisational structure as well as a certain level of institutional ambiguity concerning countries' legitimacy to regulate international aviation emissions did not prevent it from becoming a stronghold of resistance towards the EU ETS. While not being able to issue any official documents (it was not a legal body by any means) it turned to retaliatory threats.

While responding to the question pertaining to the venues, the thesis has analysed how the policy problems are resolved within organisations, with the EC featuring as a case (see: Section 5.5). It has shown how the EC was not always able to find a common ground in the ETS debate and thus its bargaining position weakened.

From the US aviation perspective, the Congress has been preferred as it provided an easy access for lobbying and also a leverage point for interactions at ICAO level (see: Section 6.4). The sector has also been well-prepared to lobby the House and the Senate, as the EU ETS has been just one of many issues that aviation representatives seek to address at the Capitol Hill. Although the eNGOs also chose the Congress as a venue appropriate for the EU ETS debate (though with the goals starkly different than those of the industry in mind), their endeavours did not yield expected results.

Finally, analysis of the venue preferences has confirmed the theoretical assumptions regarding the process of venue shopping (Pralle 2003; Baumgartner & Jones 2012). Regardless of the venue preferences of the stakeholders, there would be different narratives employed. The framings of the EU ETS, or where the accents within a given framing were placed, would be tailored according to the venue. By these modifications of policy image, members of a particular policy venue were affected to be more susceptible to persuasion.

For example, the EU Member States underlined risks for their aviation industries when discussing the EU ETS with the Commission. Similarly, the US aviation sector developed the unilateralism/sovereignty narrative and the EC, defending its mechanism highlighted the inaction of ICAO rather than its own quest for leadership.

Given the ICAO's importance for the sectoral regulation, it merits attention when concluding the discussion on venues. ICAO structures had to realise that they had to cave in to the pressures coming from more climate-oriented states while still being aware of its exclusive position with regards to a globally binding market-based measure for aviation. At the same time, the EU ETS case has affirmed the existence of a powerful path-dependency of ICAO: instead of facilitating greening aviation through emissions policy change, it has been putting a drag on any ambitious environmental plans that would entail costs for the airlines.

By providing insights into the ICAO process and the competition between ICAO and the EU, confirming a wider perspective of Oberthür (2003) and Lindenthal (2014), the thesis has demonstrated that a global organisation based on states cannot always serve as the best possible venue for collective action problem discussion. The environmentally recalcitrant policy community around ICAO for the first time had to face a series of active commitments aiming at triggering international action. It has been implied also that although the "instigation" phase for a new policy direction can happen through a fairly small number of countries, an agreement that would bind aircraft operators globally still needs to undergo a lengthy process of working groups, workshops and decision-making via ICAO.

9.3 The EU and third countries

Questions 4 and 5 investigated the broader context of the EU ETS addressing issues pertaining to international regulations and networks of policy actors. They were aiming at understanding the circumstances of the inclusion of aviation into the EU ETS beyond the EU borders.

Research question 4: Why do EU and non-EU countries differ on the shape of a global aviation emissions policy?

The exploration of the differences of the shape of global aviation emissions policy has led to several conclusions relevant both for theory and policy.

First of all, the differences pertain to the construction of interests (Baldwin 2008; Bunea 2013) of the EU and the non-EU countries. As it has been demonstrated (see: Section 5.4), for the EU, the EU ETS for aviation had a more consequence-driven character. It was supposed to further expand the scheme and also, to some extent, project the EU's climate leadership.

Moreover, the countries' differ because of their internal circumstances. Chapter 7 featured the BRIC involvement and showed various shades of the resistance towards the inclusion. The resistance ranged from poor financial situation of national airlines (India, and to some extent Russia), and sovereignty issues (all four countries) to safeguarding CBDR principles (Brazil, Russia, China) and protecting special position the countries enjoy thanks to the existing bilateral agreements (Brazil, Russia).

The discussion about the EU's climate leadership (see: Chapter 5) showed further reasons for the differences and thus advanced the previously made claims regarding the EU's green leadership's perception by the non-EU countries (Jain & Pandey 2010; Grevi 2008; Howarth & Foxall 2012; Chan 2010). The thesis has also confirmed that the EU was able to use climate change action as a building block of the European identity (van Schaik 2013), however it has shown as well that the third countries did not necessarily exemplify the same level of ambition. The third countries do not have to agree with this ambitiousness if action is required as a consequence of EU's determination.

As shown above, one of the fundamental differences concerned the venue of decision-making. This has hugely impacted the policy choices the stakeholders would prefer. Whether a market based mechanism was supposed to be an ICAO-brokered global scheme or rather a patchwork solution based on individual states action was strictly related to the venue of policy-making chosen. This has evidently affected the proceedings on the shape of a potential mechanism.

Although a perfect, or close to perfect, solution would entail a global ICAO scheme, the EU came to a conclusion that action needs to be taken regardless of ICAO's work. The EU Member States stood then in the frontline of aviation-addressing climate action, while the non-EU states have been pushing for an ICAO solution offering different narratives to explain the policy problem (Bevir 2003). As explained in the thesis, this could be considered as a collateral of the traditionally strong US position at ICAO. The ability of the US to persuade its partners to keep unity in this case also can be viewed as contributing to deepening the differences. Also, the non-EU aviation sector has been much more vocal on the issue and effectively lobbied their respective governments. This led to a situation where the non EU-states were using airline arguments while the EU countries kept reiterating the EC's discourse.

Furthermore, the focus of the debate on emissions trading for international aviation as well as emissions policy for the sector in general will be founded by the ICAO-contracting states on sovereignty and CBDR principle, which broadens research done by Romera and van Asselt (2015). This also means that the discussions on a global measure are deemed to be developed at a global venue such as ICAO or, less likely, within UNFCCC negotiation process. Consequently, the thesis has also contributed to understanding better ICAO as a venue of policy-making (Motaal 2012; Abeyratne 2001; Mackenzie 2010).

Research question 5: How are the policy differences between the US and the EU being resolved at the international level?

Through the analysis provided in this thesis it has been established that the EU ETS has become much more than just a regional scheme and can serve as a platform that allows examination of the dynamics between EU and non-EU countries with regards to global emissions policy. It also helped highlighting the different approaches to emissions trading for aviation in the EU and the US. Firstly the thesis has produced original evidence of strong underlying interests present in the debate. It was proved that regulating international aviation is still

a very national enterprise and only achieving a critical mass of diverse voices can be a viable way forwards.

The findings demonstrate also that the EU-US discussions have been strongly shaped by the aviation industries in respective regions. This translated into resolving policy differences by interactions at various venues and intensive lobbying by the industry. The differences themselves have not been reconciled however, which in terms of climate change related policies has been identified as a relevant issue earlier (Schreurs *et al.* 2009a). The US remained positioned against any regulatory initiatives of the EU that Americans considered unilateral and extraterritorial. The results that this thesis offered with regards to the EU-US dynamics further confirm conclusions of broader discussions that “the EU is wielding soft power in order to shape global sustainability norms, having won itself the mantra of global environmental leader due in large part to Washington’s retreat” (Schreurs *et al.* 2009b, p.255). Also, the interviewees indicated that the US being confident of its position at ICAO felt more comfortable with a market-based measure to be discussed and, if that was the mindset, eventually agreed there.

The wider implications of this study imply that the transatlantic relations may be strongly affected by policy events that initially seem of rather smaller importance. It has proved that effective lobbying by powerful sectors is able to mobilize strong resistance to a given policy that is to be applied to American companies regardless of their place of operation. The US’s strong position in international forums has been also confirmed. A further implication is that the US tends to respond quickly and is also able to involve international partners in its actions.

Finally, it needs to be underlined, that the issue of aviation in the EU ETS is still rather an unresolved issue for EU-US relations. Although, the EU ETS application to non-EU flights has been suspended, it does not mean that it has been abolished. Concurrently, the EU ETS Prohibition Act can be activated in the US any time the US Secretary of Transportation decides to do so. However, with the Transatlantic Trade and Investment Partnership (TTIP), a free trade agreement between the EU and the US, being close to conclusion, it does not

seem viable that the EU-US relations would be threatened by the return of EU ETS-related retaliation possibilities.

9.4 Limitations and further study

There are two main areas that merit discussion with regards to the limitations of this study. Firstly, it is the trade-off between the focus on the depth and the breadth of the research design. The decision to position the research towards the breadth end of these spectrums has been affected by several factors: large geographical scope of the issue analysed, importance of situating the EU ETS debate in the ICAO context as well as capturing the interactions between states, aviation sector, civil society and EU institutions. An alternative approach would assume having enough resources to, in the first step, thoroughly analyse the EU ETS inclusion of aviation in the EU context, while being aware of the external influences. The second phase would involve the international context of nation states, aviation sector and ICAO to juxtapose the two realities. By employing such design both breadth and depth could be married and produce a more comprehensive picture of the inclusion of aviation into the EU ETS. The researcher, being cognizant of time and financial constraints, had to limit the level of ambitiousness and focus on the depth of the debate in the EU, limiting the international context outside the US to the role of considerably expanded background, which however still remains the backdrop of the EU discussion. Nevertheless, the research has been able to elucidate key decisions and dynamics, even if comprehensiveness remained unachievable.

The second significant limitation of this study was access to interviewees. Given the broad geographical scope of the considered issue it has not been possible to gather first-hand accounts of all major opponents of the scheme. Similarly, some of the approached potential interviewees declined requests. In these cases, their views had to be substituted by policy documents and media materials as well as narratives provided by the interviewees reached. This specific issue signals a wider methodological problem of accurately constructing the dynamics of multi-level and multi-venue debates featured by rapidly changing representatives and ever-increasing number of actors providing different framings. While trying to address the problem of changing personnel,

the researcher was able to reach out to the staff who changed positions, however this has been successful three times out of six attempts. The multi-venue problem was rectified at the research design stage when the decision to conduct studies both in the US and the EU was taken. While being aware of various loci of decision-making, the interviewees very often underlined that Washington and Brussels were the main places to look for interviewees. The different framings arising during the data collection relate also to the perspectives the interviewees were taking and the point the EU ETS debate has been on. While it could be argued that waiting several years until the case becomes less burning or urgent could enable a more balanced set of responses, it could lead to losing access to actors important in the debate. This thesis has provided insights into the process to a broader extent than the literature available by bringing into the picture not only actors from different backgrounds but also by looking at the specific case from a multi-angle, multi-national perspective.

Another limitation that should be considered relates to the application of IPA to a case study that spans on four continents. The interpretivists would believe that applying IPA to a large-scale study rather than a local and featuring a limited number of stakeholders goes against the principles of the methodological toolkit of the approach. Although this could be a valid contradiction, this study by employing a composite theoretical model draws from more than IPA only.

Finally, the theoretical framework built on three different theories caused some limitations to the study. Firstly, it problematised classical theory testing endeavours. This research did not test how MLG itself can address the issues related to climate policy, especially in the EU context, but rather sought to address a policy problem of resistance to sectoral inclusion into the EU ETS. Although it is an important disadvantage, the aspiration of this thesis was mostly pertaining to its policy relevance rather than prove the MLG's applications and versatility. Analogically, this research was not able to test the presumptions of IPA and PNA. The model created allowed however capturing both the dynamics of the organisations investigated while keeping the analysis of a broader governance picture still present. Secondly, it is difficult to replicate the theoretical framework and apply it to a different case given how particular the

context of the research was. This includes the constellation of stakeholders present and the interactions between them, the strong international backdrop and also the focus on the processes happening within the EU ETS.

The empirical research conducted for this thesis has signalled several research avenues that merit further investigation. First of all, given the EU's aspiration to consider international shipping as another sector that could potentially be included into the EU ETS, it is vital to explore, among similar stakeholders as this thesis involved, their approach to that issue in order to provide policymakers with evidence (Psaraftis 2012; Miola *et al.* 2011; Hermeling *et al.* 2015). Furthermore, the shipping sector shares some of the characteristics of aviation (mobility, international regulatory regime, the International Maritime Organisation (IMO) can be considered counterpart of ICAO) and thus the framework applied here could harness strong results. Potential research areas could span from acceptance of the sector to become regulated under EU ETS or via a global scheme, through comparative studies between aviation and maritime regulatory regimes for curbing CO₂ emissions to analysis of involvement of IMO versus ICAO in the process of emissions-targeting policies. Drawing on analogies between the two sectors, further research could also explore and theoretically test specific governance arrangements that would assure best policy solutions.

From the theoretical point of view, any similar research should very much focus on a broad variety of stakeholders in order to provide sufficient space for understanding their underlying interests. Additionally, systematic policy networks analysis ought to be applied in order to better understand the context of the policy-making exercise. The use of MLG framework for maritime sector might however be problematic for the reason that delineating the local level for harbour – ship relationship is even more difficult than in the case of aircraft – airport. The level of ambitiousness for researching maritime sector is also higher as the sector is regulated in a much looser way than aviation, with vessels being registered in often politically unstable countries where regulation and law enforcement is rather poor. This in turn obstructs access to data as well as potentially puts the researcher into dangerous contexts.

The interviews conducted at the EU level, illuminated a surprisingly significant role of the interactions between Directorate Generals for the policy

process. The issues seem to be poorly recognised by the literature, however, it is likely that charting such relations poses fundamental access issues and therefore is less popular among EU scholars. Nevertheless, it merits further enquiry to provide better understanding of this other factor shaping the EU policymaking. The potential research questions with regards to the role of these intricacies could involve the importance of powerful individuals within the EC (What is their role? How do they affect the processes? What is the role of their policy interpretations?). Equally compelling set of issues could be offered by investigating how pressure groups (industry, NGOs, other organisations) are affecting DGs in order to yield expected results.

The case analysed has exhibited also that the US Congress is likely to listen closely to the American industry rather than look at potential environmental benefits of a policy supported by other states. It is crucial to look at this relationship in light of aforementioned TTIP in order to understand better the lobbying power of certain sectors in the US. Although there are various studies that analyse this issue, they do not investigate the problem in the context of EU and US coming ever closer to each other through a new trade treaty.

Furthermore, in 2015, a growing number of non-EU airlines that previously have been defaulting started to comply with the EU ETS by reporting and surrendered their 2013-2014 permits from intra-EEA flights to the EC (GreenAir Online 2015). This change, also warrants further research in order to establish the reasons and underlying interests of such behaviour in the light of still absent global market-based measure for aviation. Even more importantly, China is planning to include domestic aviation in its own emissions trading system (Zhang *et al.* 2014). Given the size of the market, this may be a substantial step towards a global scheme for aviation, possibly based on linking with the EU ETS. What would be the architecture of these links? Who would play a key decision-maker role in the process? Would linking the EU ETS with the Chinese ETS inspire other states to join? What would be the main obstacles for creation of such links?

The list of potential research topics related to the EU ETS in general and the EU ETS and aviation in particular could continue as the topic is politically

salient and still under-researched, partly due to rapidly developing schemes and endless reforms and improvements to the existing ones.

10 References

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11 Appendices

11.1 Appendix A: Master Interview Schedule – EU

A. Introduction

- 1) Self-introduction - short description of the project, funder if asked
- 2) Thanking for the participation in the interview
- 3) Consensus for recording (anonymity, secure storage of all data)

B. Interviewee's background

- 1) What is your mission in this organization?
- 2) How have you been involved with the issue of EU ETS and aviation?
- 3) What ideas do you have with regards to curbing emissions from aviation?

C. Policy

- 1) What were the main issues you have encountered with regards to the EU ETS?
- 2) How do you think the idea of including aviation into the EU ETS started in the EU?
- 3) Were there any moments when you were particularly happy with the process of inclusion going on in Brussels?
- 4) When were you particularly anxious?
- 5) What in your view was the role of experts in the process of drafting and implementing the EU ETS for aviation?
- 6) How were the EU / non-EU airlines' views included in the process of drafting the proposal?
- 7) What was the role of member states / regions?

D. Opposition to the EU ETS

- 1) Why do you think the non-EU airlines were protesting that vocally against the EU ETS?
- 2) What was your reaction here in DG Climate to the process of forming of the coalition of unwilling?
- 3) Who were the main actors who played an important role in forming the actions surrounding the countermeasures against the EU ETS?
- 4) Was there any similar process (to the formation of the coalition of unwilling) happening within the EU?
- 5) If you think about the most influential players on the issue, who comes to your mind? How would you rate importance of actors?
- 6) How would you describe the approach to the EU ETS that the European airlines have been promoting here in Brussels?
- 7) How would you describe the approach to the EU ETS that the non-European airlines have been promoting here in Brussels?
- 8) Could you explain how in your view did the lobbying process look like at the European Commission? Elsewhere?

E. Larger regulatory landscape

- 1) What in your view was the role of ICAO in the EU ETS and aviation debate?
- 2) Do you think that the EU involvement makes the US work closer with the ICAO on a global solution for CO2 emissions from aviation?
- 3) Do you see the inclusion of aviation as a part of a larger regulation strategy of the EU?
- 4) In what way was the EU ETS case different to other policy issues if you look at the relations between the aviation industry and the EU?
- 5) What would be your preferred approach to reducing CO2 emissions related to international aviation?
 - a. Do you have any particular policies / instruments in mind?
 - b. What is your level of ambition in this field?
 - c. Where would you see the venues to discuss your approach?
- 6) Does the EU ETS make a global deal for aviation more likely to be realized?

F. Finish

- 1) Is there anything else you think I might be interested in?
- 2) Are there any interview partners you would like to recommend?

Additional questions:

1. To what extent was the Commission trying to persuade the non-EU countries to the inclusion of aviation? What was the role of the forums such as ICAO and IATA in this?
2. Do you think that the verdict of the Court of Justice of the EU has influenced the dynamics of the situation?
3. To what extent has the Commission taken into consideration the claims submitted by the airlines / NGOs?

11.2 Appendix B: Master Interview Schedule – US

A. Introduction

- 1) Self-introduction - short description of the project, funder if asked
- 2) Thanking for the participation in the interview
- 3) Consensus for recording (anonymity, secure storage of all data)

B. Interviewee's background

- 1) What is your mission in the Committee/Subcommittee/organization
- 2) "How have you been involved with the issue of EU ETS and aviation?"
- 3) What ideas do you have with regards to curbing emissions form aviation?

C. Policy

- 1) What where the main issues you have encountered with regards to the EU ETS?
- 2) How do you think this issue got the attention of the Congress?
- 3) When were you particularly happy with the process going on in Washington?
- 4) When were you particularly anxious?

D. Coalitions

- 1) How do you think the idea to prohibit participation of the US airlines in the scheme came to life?
- 2) Who were the main actors who played an important role in forming the actions surrounding the US protest against the EU ETS?
- 3) How would you rate importance of actors for this policy change
 - a. Name possible actors
 - b. What is the role of IATA / ICAO

E. Change

- 1) Do you think that the EU ETS Prohibition Act constitutes a change in approach to aviation pollution problem in the US?
 - a. If yes: what are the driving forces of that change?
 - b. Was the change EU-induced?
- 2) What do you think is the significance of the EU ETS Prohibition Act?
 - a. Were people happy with its effects
 - b. Is it seen as a way to influence the EU policy / international negotiations / American public policy / American politics
- 3) Do you think that the EU involvement makes the US work closer with the ICAO on a global solution for CO2 emissions from aviation?
- 4) What would be your preferred approach to reducing CO2 emissions related to international aviation?
 - a. Do you have any particular policies / instruments in mind?
 - b. What is your level of ambition in this field?
 - c. Where would you see the venues to discuss your approach?

F. Finish

- 1) Is there anything else you think I might be interested in?
- 2) Are there any interview partners you would like to recommend?

Additional question:

Would you be able to imagine how the future of the aviation pollution policy if there were no steps taken by the EU?