



UNIVERSITY OF GOTHENBURG

MASTER THESIS IN
EUROPEAN STUDIES

Losing cabin pressure

A study on the forces behind the proposal to derogate
intercontinental flights from Directive 2003/87/EC

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Abstract

In 2008, with support from all institutions, the EU decided to include aviation into its Emissions Trading System (ETS) in order to mitigate greenhouse emissions from the sector. Initially, this decision received criticism, both internally and internationally, demonstrating the controversies surrounding it. Subsequently, in November 2012 the Commission presented a proposal to temporarily derogate intercontinental flights from the original decision. While the official explanation was that it wished to facilitate a global solution at the International Civil Aviation Organisation (ICAO), the specific circumstances around the derogation proposal are unclear. Since aviation is a global industry, multiple actors and interest constellations, both internally and internationally, have participated. A key factor in this discussion, and overall within environmental policy, is therefore the influence and impact by specific actors within the policy process. This master thesis examines why the proposal was presented, by looking closer at what actors that have been present and essential during the process leading up to the derogation proposal. A qualitative method was applied where a theoretical approach, including principles of influence, power and setting the agenda, has been established to answer how the proposal was made possible. In order to further explain the process, new institutionalism has provided additional perspectives, to explain why the proposal was presented. The study has found that both internal and external pressure led the EU to present the derogation proposal.

Keywords: Aviation, Environmental policy, Power, Influence, Agenda Setting, Institutions, Actors, Emissions Trading System (ETS), European Union (EU)

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Abbreviations

European Parliament	EP
European Union	EU
Emissions Trading System	ETS
European Court of Justice	ECJ
International Civil Aviation Organisation	ICAO
Member of the European Parliament	MEP
United Nations	UN
Value Added Tax	VAT

1 Introduction

Putting issues on the agenda and exercising power over a political process occurs frequently in the political sphere. Environmental regulation is not different and has been part of European Union (EU) legislation since the 1970s, where its primary intention was harmonising the common market.¹ As environmental policy primarily deals with integration and harmonisation, multiple factors will shape it. Essential factors are then environment and economic conditions, international political developments and commitments, major changes of EU polity but also interests and orientation of certain actors.²

Environmental policy is then relevant as individual self-interest is considered to undermine the collective interest in environmental protection. Consequently, processes related to environmental policy are largely affected by the exercise of power, where decisions are made within a context where groups have access or influence on this particular process.³ Institutional theories are relevant in this aspect, which emphasise that institutions can be viewed as a collection of rules and practices, which in turn define behaviour of specific groups and actors.⁴ Subsequently they determine what premises interaction between institutions and actors will be built upon, eventually shaping environmental policy and governance.

An example that illustrates the many difficulties and challenges for environmental policy is aviation. In 2005 the Commission provided ideas on how to reduce the climate change impact of aviation. This was shortly followed by announcing its intentions to include the sector into an EU environmental regime.⁵ Emission trading was deemed the most suitable measure, where the EU already had an established scheme via its Emissions Trading System (ETS), which works on the 'cap and trade' principle. This means that a limited amount of greenhouse gas is allowed to be emitted. Within the cap, companies then receive and buy emission allowances with one another.⁶ The formal decision to include aviation into the ETS system was made via Directive 2008/101/EC, officially coming into effect January 2012.⁷ While this

¹ Knill, Christoph & Liefferink, Duncan, (2007). *Environmental politics in the European Union: policy-making, implementation and patterns of multi-level governance*. Manchester: Manchester University Press, p. 216

² Von Homeyer, Ingmar (2009) "The Evolution of EU Environmental Governance" in Scott, Joanne (Ed.) (2009) *Environmental protection: European law and governance* (pp. 1-34) Oxford: Oxford University Press

³ Connelly, James, Smith, Graham, Benson, David & Saunders, Clare (2012) *Politics and the environment: from theory to practice*. 3rd ed. London: Routledge, p. 165

⁴ March, James G. & Olsen, Johan P. (1998) "The Institutional Dynamics of International Political Orders" *International Organization*, Vol. 52, No. 4, p. 948

⁵ COM(2006)818, *Proposal for a Directive of the European Parliament and of the Council 2008/101/EC: Amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community*

⁶ European Commission, Climate Action (2013) *The EU Emission Trading System (EU ETS)* Retrieved: 2013-05-21

⁷ Directive 2008/101/EC Directive of the European Parliament and of the Council 2008/101/EC, *Amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community*

decision had strong support, internal and external opposition voiced their discontent, due to the decision to include third country airlines on a non-discriminatory basis.⁸

In November 2012 the Commission presented a proposal to temporarily derogate intercontinental flights from the ETS system for a year, official explanation being that it wishes to facilitate progress in the global forum International Civil Aviation Organisation (ICAO). The scheme will still be applicable to all flights within and between all Member States and has no solution been presented after a year, the EU will include intercontinental flights in the ETS again.⁹ The decision was finalised on April 24th 2013, officially granting intercontinental flights to be derogated from the ETS.¹⁰

As the analysis in this thesis will show, the derogation proposal was the outcome of both internal and external pressure. Subsequently the issue has caught the attention of many political actors, both within the EU and globally, making the specific circumstances around the derogation proposal somewhat unclear. Therefore, other relevant factors which have been essential and may explain why the derogation proposal was presented are of interest.

1.1 Purpose of study

The purpose of this study will be to explore and examine the reasons behind the proposal to temporarily derogate intercontinental flights from the EU ETS system. The question at focus is therefore; why was the derogation of intercontinental flights from the ETS system proposed? It is therefore not the ETS system or the proposal itself, but the forces behind it and how it was made possible that will be at focus. The time period to be examined will therefore be 2008-2012. By examining and exploring the circumstances and process leading up to the derogation proposal, the study will also analyse the wider phenomenon of the policy process within the EU. From what specific perspectives and approaches the purpose will be answered, will be elaborated and determined in the following chapters.

⁸ European Parliament Report A7-0060/2013 (2013) *Report on the proposal for a decision of the European Parliament and of the Council derogating temporarily from Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community*, Rapporteur: Peter Liese, p. 18

⁹ COM (2012) 697, *Proposal for a Decision of the European Parliament and of the Council: Derogating temporarily from Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community*

¹⁰ Decision No 377/2013/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 24 April 2013 *derogating temporarily from Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community*

2 Aviation and climate change

The scientific community is quite clear that trends of greenhouse gas emissions need to be managed which is unlikely to happen if a particular sector is allowed to grow. Aviation is thus significant due to comparably expensive options for reducing emissions in the sector, growth of air travel, plus its sociocultural and economic importance.¹¹ However, aviation has historically been somewhat unregulated, where international agreements have restricted potential measures to accommodate the dilemma.

When international civil aviation arose after World War I it primarily became a concern for national authorities, due to national pride, economic and military purposes. In 1944 the Chicago Convention was signed which introduced an international regulatory framework for aviation where governments remained central actors. In practice this meant that aviation was to be based upon bilateral agreements. In addition, it was also responsible in setting up the ICAO.¹² When eventually climate change became a global issue, the Kyoto Protocol decided that reduction of greenhouse emissions from aviation were to be made via ICAO. Various options have then been studied, but no conclusion nor have any adopted measures been presented.¹³ During this time, it was clear that the EU wished to include aviation in a stricter environmental domain, but was unable due to international agreements and certain actors within this process. In this context, slow progress was attributed to the ICAO.¹⁴ However, this changed when ICAO endorsed open emissions trading, which would eventually be the foundation of emissions trading for aviation, which the EU could use as a point of reference with international partners and promote similar systems worldwide.¹⁵ After this, the process of including aviation into its ETS system followed, leading to the official decision in 2008.

2.1 Prior research and contributions

Researchers consent that aviation has had an increasing impact on climate change. Individual airplanes may emit less but due to the growth of the sector emissions increase. According to Sgouridis et al.¹⁶ this has led to increased pressure, both public and political, on the industry to conform to the agenda of mitigating climate change and environmental degradation. In addition, Capocitti et al.¹⁷ emphasise that the industry needs to discard its traditional business

¹¹ Gössling, Stefan & Upham, Paul (2009) "Introduction: Aviation and Climate Change in Context" in Gössling, Stefan & Upham, Paul (Ed.) (2009) *Climate change and aviation: issues, challenges and solutions* (pp. 1-23) London: Earthscan, p. 13

¹² Nilsson, Jan Henrik (2009) "Low-cost aviation" in Gössling, Stefan & Upham, Paul (Ed.) (2009) *Climate change and aviation: issues, challenges and solutions* (pp. 113-129) London: Earthscan, p. 114-115

¹³ Haites, Erik (2009) 'Linking emissions trading schemes for international aviation and shipping emissions', *Climate Policy*, 9:4, p. 419

¹⁴ Buhr, Katarina, (2008) 'Bringing Aviation into the EU Emissions Trading Scheme: Institutional Entrepreneurship at Windows of Opportunity', *Doctoral Thesis No 140/Företagsekonomiska institutionen*, Uppsala Universitet, Uppsala, Sweden, ISSN: 1103-8454, p. 117-118

¹⁵ COM(2006)818, p. 3

¹⁶ Sgouridis, Sgouris, Bonnefoy, Philippe A. & Hansman, John R. (2011) "Air transportation in a carbon constrained world: Long-term dynamics of policies and strategies for mitigating the carbon footprint of commercial aviation" *Transportation Research, Part A* 45: 1077-1091

¹⁷ Capocitti, Sam, Khare, Anshuman & Mildenerger, Udo, (2010) "Aviation Industry - Mitigating Climate Change Impacts through Technology and Policy", *Journal of Technology Management & Innovation*, Volume 5, Issue 2: pp. 66-75

model, recommending it to involve governments and establish ground rules. Other issues remain, making it difficult to impose measures, due to the international character of aviation. Despite this, the impacts of aviation on the climate remain and cannot according to researchers be discarded. Sgouridis et al. emphasise that measures need to be introduced which are based on technological and operational movements, use of biofuels, demand shift and carbon pricing to achieve environmental sustainability.¹⁸ The first alternatives are more technical, thus may be difficult to consider from a policy or regulatory perspective. The latter alternatives are therefore of interest since they fall within the scope of EU policy.

Many scholars draw attention to the favourable treatment of the aviation sector. For example, Keen & Strand¹⁹ have evaluated the current situation of aviation from a fiscal perspective, focusing on barely existing fuel and ticket taxes. Attention is directed towards measures like value added tax (VAT) and similar charges. These are controversial since bilateral agreements exempt international aviation from taxation. Current rules and policies allow domestic application, but rates are absent or kept low. While it does not have an environmental focus it remains an important aspect of the discussion. Jonas Åkerman²⁰ provides another insight on the issue of VAT and similar charges on international aviation, which is included into a wider discussion on transport. He considers this key issue as compared to road transportation this constitutes a significant distortion and action is therefore required, where exemptions on both VAT and tax on greenhouse gases for international aviation need to be terminated.

The area of prime interest has therefore become the potential role of market conditions. David T. Duval²¹ concludes that including aviation in an emission reduction scheme will be controversial, largely contributed by interest constellations who are driven by commercial and ideological interests. Other scholars have discussed explicitly whether regulatory, market-based or voluntary options would be good options. This has been discussed by Daley & Preston²², viewing it from a global perspective, where they consider the EU to be an international leader on the area. This is mainly due to the inclusion of aviation into the EU ETS. However, this is not sufficient, as a future arrangement needs to combine all three types of policy options.

Focusing on the ETS system, Erik Haites²³ has included shipping in the discussion, since both sectors are similar and were previously not included in a climate regime. Emphasis is put on the growing impact of both sectors upon the climate, where the discussion by Haites touches

¹⁸ Sgouridis et al. (2011)

¹⁹ Keen, Michael & Strand, Jon (2007) 'Indirect Taxes on International Aviation' *Fiscal Studies* Vol. 28 No. 1 pp. 1–41

²⁰ Åkerman, Jonas (2011) *Transport systems meeting climate targets - A backcasting approach including international aviation* (Doctoral Thesis). Stockholm: Royal Institute of Technology

²¹ Duval, David T. (2009) "Aeropolitics and Economics of Aviation Emissions Mitigation" in Gössling, Stefan & Upham, Paul (Ed.) (2009) *Climate change and aviation: issues, challenges and solutions* (pp. 179-192) London: Earthscan

²² Daley & Preston, (2009) Daley Ben & Preston, Holly (2009) "Aviation and Climate Change: Assessment of Policy Options" in Gössling, Stefan & Upham, Paul (Ed.) (2009) *Climate change and aviation: issues, challenges and solutions* (pp. 347-372) London: Earthscan

²³ Haites (2009), pp. 415-430

upon what emission trading scheme would be best suitable. No explicit conclusion is reached but it does provide an overview of options that are available. Nevertheless, there is friction concerning the path to reducing emissions from the aviation sector and that research mostly focuses on emission trading, further discussed below. The question that arises is what overall obstacles exist at EU level? This is an aspect always present, thus important to consider, since institutions and policy areas in the EU are placed before such challenges.

As stated, the topic mainly highlighted when viewing the EU is the ETS. It is fair to say that focus has been diverse, but an overall theme is to examine the potential consequences for the industry, plus contributions to an EU climate regime. Annela Anger²⁴ discusses the various reasons for including aviation, highlighting it is due to an expected expansion and growth of the industry. This development will eventually lead to an increase of overall emissions, providing a motive for inclusion into the ETS system. Whether this will affect the EU economy remains to be seen. Furthermore, since it remains a small share of the total GDP, the ETS system will most likely have small effects on the industry.

Regarding the international character of the sector, Chase Foster²⁵ has examined the conflict between US and EU interests. One of the main conclusions was that the US focuses on the issue of sovereignty while the EU put emphasis on legitimacy. An important point was that there was late opposition by the US, mainly due to failure of lobbying efforts by Americans towards the EU, who then turned to the US government. Initially they received good response by the Bush administration, but uncertainties arose when Obama was elected. More recent efforts eventually paid off and the industry gained support. The turning points in this process were the defeat of cap-and-trade, plus Republican majority in Congress in 2010.

Another angle of viewing this issue has also been provided by Katarina Buhr²⁶, who in her dissertation examined the case for including aviation into the ETS system. This was done via an institutional perspective, with focus on the development and not so much on possible measures. Firstly, it discusses how emission trading became the main alternative, as other relevant economic instruments were up for discussion, but were discarded. Secondly, the overview provided attention to various stakeholders, including their perception of and contribution to the debate and political process. A conclusion that is emphasised is that the EU was not pleased with national efforts, which undermined the intentions of the EU. Therefore, by taking the step to include aviation into the ETS the EU claimed international leadership. This is an extensive contribution on the issue of aviation and the EU, differing compared to prior contributions due to its many details.

In general previous research mainly focuses on policy options with economic incentives. Other measures and instruments are not discarded, but tend to be of secondary interest. Not

²⁴ Anger, Annela, (2010) "Including aviation in the European emissions trading scheme: Impacts on the industry, CO2 emissions and macroeconomic activity in the EU" *Journal of Air Transport Management* 16: 100–105

²⁵ Foster, Chase (2012) *American Policy Development: Mitigating the U.S. Response to the EU ETS Aviation Directive* (Master thesis in Public Policy) Cambridge: Harvard Kennedy School of Government

²⁶ Buhr, (2008)

surprisingly, since economic aspects remain controversial and attract attention. Overall scholars conclude that arguments for introducing policy measures are strong, despite many advocating the opposite. This indicates that the sector should contribute more towards a climate regime, but this is never a given, illustrating the somewhat favourable position of aviation in the context of regulation and fiscal issues. For example, would taxation be possible in the future, it will likely be kept at low rates, ensuring competitiveness and protect national carriers. International agreements are also considered obstacles, but frequently questioned whether these have outlived their usefulness.

2.1.1 Summary and reflection

As presented, the main focus falls on instruments such as taxation or emission trading. It is also evident that the EU has encountered complications and controversies when introducing environmental regulatory measures upon the aviation sector. Likewise, when introducing such measures, this has been done slowly and criticised. The inclusion of aviation into the EU ETS system and derogation proposal adds to this perception and illustrates this further.

Another factor present is the impact of various actors and interests constellations, but this is seldom elaborated. Therefore, when examining why the derogation proposal was presented, actors present in the process and their influence on the process can provide a valuable perspective. This would not only focus on internal actors within the EU, but also external actors which may enable a discussion on the EU as a global actor and perception on EU policy later in the study. However, first the issue needs to be placed in a wider context. Since the ETS deals with mitigating emissions and environmental degradation, EU environmental policy and governance will be discussed, thus provide a context in which aviation can be examined.

2.2 Environmental policy and governance

As presented and discussed in previous research, the subject of examination will be aviation and environmental policy. The following section aims to describe environmental policy and governance in the EU, providing a context this may be examined. The purpose of this will be to describe environmental policy and governance in the EU, but also what factors shape and affect it, as these ultimately shape the process of policies concerning aviation.

When studying issues related to EU environmental governance and policy, it must be emphasised that it is an ever changing process. This is no different when it comes to the issue of policy instruments. Research concludes that there has been an overall shift as flexible measures are preferred. From a global perspective, Jordan et al.²⁷ describe the process as a change from environmental government towards governance, due to its elements of deregulation. The applications of voluntary agreements, environmental taxes and eco-labels have then become more popular, indicating how regulators think about policy and governance

²⁷ Jordan, Andrew, Wurzel, Rüdiger K.W. & Zito, Anthony R. (2003) "Comparative Conclusions - 'New' Environmental Policy Instruments: An Evolution or a Revolution in Environmental Policy?" *Environmental Politics*, 12:1, 201-224

regimes of today. According to Holzinger et al.²⁸ the EU displays the same tendencies, seen through the transition in governance of environmental policy, where application of economic instruments and context oriented governance has increased. However, it should be noted that actual introduction at EU level remains fairly low, despite that such measures and introduction at member state level are promoted. A major reason attributed to this is that tax matters are sensitive, often relating to the issue of national sovereignty.

Another aspect relates to a wider debate regarding regulatory competition within environmental policy standards, suggesting that the EU exemplifies the phenomenon ‘race to the bottom’. Some researchers claim that this is a misleading notion, arguing that what actually happens on EU level is a ‘race to the top’.²⁹ Knill & Liefferink contradict this and state that implementation deficit and gap is evident in EU environmental policy, while admitting that legislative output appears to be impressive. This is ascribed to the policy-making process, where diverse national interests and preferences result in open and vague provisions. Also, as EU requirements generally are attempting to be integrated into national structures, this easily leads to minimalistic and ineffective implementation.³⁰ This may also be conceived as problem with institutional change which scholars refer to as institutional resistance to adapt.³¹ Knill & Liefferink therefore emphasise that EU environmental policy, both making and implementing, is a quite complex process. The patterns that can be found are the steady broadening of issues, plus continuing adjustment of policy instruments and regulatory approaches. The multi-level character of EU governance is also a major factor contributing to the development of policies.

Despite the various difficulties and flaws of EU environmental policy, many still consider the EU being an international leader. Within this context, the EU has had great effects on the international agenda. However, its direct influence has been less visible, which may be contributed to opposition of other coalitions internationally. In order to achieve more direct leadership, the EU has to make policy coherence a priority.³² This includes coherence between Member States and other actors in the EU, which would allow the EU to present a unified message, especially in international negotiations. Another important point emphasised is that the EU needs to adapt to a changing world, where emerging powers, power axes and ‘club governance’ have larger impacts. Examples of this are US-China relations on climate change and the G20 that work outside of the traditional United Nations (UN) system.³³

²⁸ Holzinger, Katharina, Knill, Christoph & Schäfer, Ansgar (2006) “Rhetoric or Reality? ‘New Governance’ in EU Environmental Policy” *European Law Journal*, Vol. 12, Issue 3, pp. 403–420

²⁹ Holzinger, Katharina & Sommerer, Thomas (2011) “‘Race to the Bottom’ or ‘Race to Brussels’? Environmental Competition in Europe” *JCMS* Vol. 49, No. 2, pp. 315–339

³⁰ Knill & Liefferink, (2007), p. 218-219

³¹ Knill & Liefferink, (2007), p. 173-176

³² Vogler, John & Stephan, Hannes R. (2007) *The European Union in global environmental governance: Leadership in the making?* *Int Environ Agreements* 7:389–413

³³ Delreux, Tom (2013) “The EU as an actor in global environmental politics” in Jordan, Andrew & Adelle, Camilla (Ed.) (2013) *Environmental policy in the EU: actors, institutions and processes* (pp. 287-305) 3rd Ed. Milton Park, Abingdon, Oxon: Routledge, p. 299-302

What premises are then essential for EU environmental governance? According to Ingmar von Homeyer there have been four different regimes of EU environmental governance, which represent various and specific stages of European integration and environmental governance. Factors that shape, characterise and outline each regime are environment and economic conditions, international political developments and commitments, major changes of EU polity and finally, interests and orientation of certain actors.³⁴ Environmental and economic trends clearly effects how EU environmental governance is shaped. International developments and commitments have had a major impact, example being the Kyoto Protocol. Major changes of EU polity have mainly shaped governance patterns via treaty changes and enlargement. Interest and ideological orientation of actors derives from the fact that certain actors have been able to set the pace. Actors then include the whole spectrum, from Member states and the EC, plus business interests and environmental NGOs.³⁵ Changes occur and derive from multiple explanations and causes, where von Homeyer concludes that it is not just characterised by change but also by continuity.³⁶ Nevertheless, how decisions regarding measures and policy instruments are reached at EU level for mitigating climate change and combat environmental degradation depend on these multiple factors.

2.2.1 Summary and reflection

Overall, when discussing environmental policy it is evident that there are similarities with the previous outline on aviation and climate change. For example, the central feature of the mentioned factors is how they shape and affect the overall process. Regarding policy measures for mitigating climate change and environmental degradation for aviation, all these factors are present. As highlighted prior, the perspective of actors is of primary interest when viewing aviation, subsequently will be the primary factor when examining why the derogation proposal was presented. Other factors are not discarded and will be indirectly present as they are the outcome of individual and collective action by actors. Furthermore, they will be present and indirectly discussed when presenting the results and analysis. They will also be discussed in detail at the end of the study when the findings are put into a wider context, related to research and perceptions on EU environmental policy and governance. The next section will therefore provide and discuss research on how actors exercise power, influence and set the agenda in a political process.

2.3 Setting the agenda- how to exercise power and influence

Environmental policy and governance are not unfamiliar to the principles of power and influence. Research emphasises that individual self-interest undermines the collective interest in environmental protection. Consequently, the policy process of environmental policy is affected by the exercise of power. This is mainly due to decision-making taking place within a context where some groups have access or influence on decision-making.³⁷

³⁴ Von Homeyer, Ingmar (2009) "The Evolution of EU Environmental Governance" in Scott, Joanne (Ed.) (2009) *Environmental protection: European law and governance* (pp. 1-34) Oxford: Oxford University Press

³⁵ Von Homeyer (2009), p. 4-5

³⁶ Von Homeyer (2009), p. 25-26

³⁷ Connelly & Smith, (2012), p. 165

From a broad perspective, Robert Dahl emphasised that to understand a political system can be to describe its characteristics. What needs to be explained is the magnitude of the power that an actor has over another, how this is distributed within the system, the scope and domain of control that different actor's exercise or are subject to.³⁸ Explanatory characteristics for power are then resources, skill, motivations and costs.³⁹ The central aspects when viewing EU policy can be these characteristics, since they describe how an actor exercises power and influence over another. Another dimension can also consist of making sure that things are not made or deferred indefinitely.⁴⁰ Consequently, actors and interests can exercise influence and power for intentionally delaying environmental harmonisation and integration. Bachrach & Baratz refer to this as 'non-decision making'.⁴¹ These perspectives are relevant but somewhat abstract. How do actors then exercise power and place issues on the EU agenda and influence the legislative and policy process? The upcoming discussion will highlight concepts which have been central while looking at the EU.

Viewing the general debate regarding these briefly mentioned issues, the discourse does focus on similar aspects and factors. Factors which are essential when determining the influence of an interest group are political institutions, issue characteristics and strategies. Interest groups have been successful in some cases, but also ineffective in others.⁴² According to an additional perspective, different organised interests are equally able to influence and shape EU policy, ensuring that success is not pre-determined by how powerful an interest group is.⁴³ Scholars have also focused on the possibility of influencing EU climate policy. It is concluded that the main difference between various interests originate from possession of financial means and how they approach officials and the EU. Consequently, environmental groups tend to lobby less whilst focusing on single policy decisions. Business interests are able to lobby in a more general way. This is strongly related to the issue of budget constraints.⁴⁴

An area related to influence and power is the ability to set the agenda, referring to how actors within a political sphere shape what is discussed and at what level it should be conducted. How do actors then place issues on the EU agenda, subsequently influence the legislative and policy process? Sebastiaan Princen provides a framework demonstrating how actors turn ideas and preferences into action. According to Princen, the challenges of gaining attention and building credibility are crucial. These challenges will correlate with two key factors they are able to work through, namely venues and frames. The challenges correlate with the factors of venue and frame, creating the following strategies in Figure 1.

³⁸ Dahl, Robert (1968) "Power" in Haugaard, Mark (Ed.) (2006) *Power: a reader* (pp. 8-25) 2nd Ed. Manchester: Manchester University Press, p. 11

³⁹ Dahl (1968), p. 13-15

⁴⁰ Connelly & Smith, (2012), p. 160

⁴¹ Bachrach, Peter & Morton S. Baratz, (1963) "Decisions and Nondecisions: An Analytical Framework" *The American Political Science Review*, Vol. 57, No. 3, pp. 632-642

⁴² Dür, Andreas, (2008), 'Interest Groups in the European Union: How Powerful Are They?', *West European Politics*, 31:6, pp. 1212-1230

⁴³ Klüver, Heike, (2012) 'Biasing Politics? Interest Group Participation in EU Policy-Making', *West European Politics*, 35:5, 1114-1133

⁴⁴ Gullberg, Anne T. (2008) "Rational lobbying and EU climate policy" *Int Environ Agreements* 8, pp. 161-178

Figure 1 Challenges and strategies

Challenge	Factors	Venue	Frame
Gaining attention		Mobilizing supporters	Arousing interest
Building credibility		Capacity building	Claiming authority

Source: Princen (2011)

The venue factor refers to what forum or institutional setting actors seek to raise awareness or influence in their favour. The frame factor refers to how actors outline and frame an issue, in order to gain support. By combining these, Princen have formulated four different strategies available to set the agenda, where it is possible to affect politicians and policy processes.⁴⁵ Mobilizing supporters refers getting people within the proper institutional setting to support a position, thus gaining attention of the issue and shaping participation through institutional venues. Arousing interest refers to how a preference is framed to gain attention most optimal. In short, the strategies within gaining attention therefore focus on how an actor is able to raise awareness and support for the issue. Capacity building refers to advocating that a specific or multiple institutions are entitled to act upon a relevant issue. Claiming authority then deals with displaying that its preference is legitimate and is in accordance with legislation and policy. Building credibility then broadly deals with whether the EU has legitimacy on the area or not.⁴⁶ According to Princen, an actor seeking to set the agenda and influence policy-makers will go through these strategies to gain access to relevant institutions, where performing these successfully will grant actors and interest constellations influence over the EU agenda.

2.3.1 Summary and reflection

While the strategies can be discussed further, principles of gaining attention and building credibility are universal challenges that actors are placed before. Therefore, their basic principles provide a framework for viewing how actors within the political arena have been able to set the agenda, thus influenced the policy process. The strategies can therefore provide a framework for examining how the derogation proposal regarding intercontinental flights and the ETS was made possible by the different forces and actors involved.

However, while this descriptive element may provide valuable information concerning the circumstances of the proposal, it does not include why specific actors made certain choices plus the level of influence an actor has had. It will therefore be valuable to include why specific actors made certain choices and what these are based upon. With this in mind, how is it possible to measure the level of influence particular actors and interests have had on a specific policy process? As EU policies are diverse and complex issues, they attract much attention and input from stakeholders like institutions, individual actors and countries. A theoretical approach to include can be one that focuses on the interplay between actors and institutions, highlighting preferences and logic of actions by actors, namely institutional theory. Scholars such as Knill & Liefferink plus Mark A. Pollack point toward contributions

⁴⁵ Princen, Sebastiaan (2011) "Agenda-setting strategies in EU policy processes" *Journal of European Public Policy*, 18:7, pp. 927-943

⁴⁶ Princen, (2011)

made by institutional theories in gaining further understanding of EU integration and harmonization. The next section will therefore present and discuss perspectives of new institutionalism that will help to further understand the derogation proposal, relating to aviation, EU environmental governance and policy, plus influence and setting the agenda.

2.4 Institutional theory - preferences and logic of action

New institutionalism did not originate from studies concerning the EU, but reflected a gradual and diverse reintroduction of institutions into theories.⁴⁷ It emphasise the role of institutions and institutionalisation to understand human behaviour and action, within organisations, society or social order.⁴⁸ The most important element of an institution is that it is a structural feature of society or politics, which can be formal or informal, for example a legal framework or a network of interacting organisations or shared norms. An institution therefore transcends individuals, involving groups of individuals in patterned interaction, which are based on specific relations among actors.⁴⁹ According to institutional theories, institutions are therefore the central component for political life, which explain but also require explanation.⁵⁰ March & Olsen further emphasise that institutions can be viewed as a collection of rules and practices, which in turn define behaviour of specific groups and actors.⁵¹ It can therefore be argued that an institution does not have to be a political organ or organisation. It would then be possible to define governance regimes and policies as institutions as they represent a collection of rules and practices. Another central aspect about is that it is comfortable explaining continuity rather than changes. According to Lecours, this is mainly due to the logic of their approach, focusing on reproduction rather than transformation.⁵²

Consequently, the application of institutional theories when studying European integration has increased.⁵³ Institutions are essential to any political process, where environmental governance and policies are no different and can provide a perspective explaining a political process via examining institutions and actors. However, there are many interpretations, so while all perspectives deserve attention and carry valuable insights to political life, two approaches will be at focus; rational choice and sociological institutionalism.

2.4.1 Rational choice institutionalism

This perspective arose from the theory of rational choice theory, relying on the three basic elements of methodological individualism, utility maximisation and the existence of institutional restrictions on individual choice.⁵⁴ The central aspect is that individuals are

⁴⁷ Pollack, Mark A. (2009) "The New Institutionalisms and European Integration" in Wiener, Antje & Diez, Thomas (Ed.) (2009) *European integration theory*, (pp. 125-143) 2nd Ed. Oxford: Oxford Univ. Press, p. 125

⁴⁸ March & Olsen, (1998), p. 948

⁴⁹ Peters, Guy B. (2005), *Institutional theory in political science: the "new institutionalism"*. 2nd Ed., p. 18

⁵⁰ Peters, (2005), p. 164

⁵¹ March & Olsen, (1998), p. 948

⁵² Lecours, , André (Ed.) (2005) *New institutionalism: theory and analysis* Toronto: University of Toronto Press, p.11

⁵³ Pollack, (2009), p. 141

⁵⁴ Pollack, Mark A. (2006) "Rational choice and EU politics" in Jørgensen, Knud Erik, Pollack, Mark A. & Rosamond, Ben (Ed.), *Handbook of European Union politics* (pp. 31-55) SAGE, London, p. 32

essential actors in a political process, and these act rationally towards personal utility.⁵⁵ Like all schools of institutionalism, this perspective is debated and contains internal variation.

Hall & Taylor emphasise four features specific for rational choice institutionalism. Firstly, relevant actors have fixed preferences, thus behave instrumentally to maximise the attainment of preferences. Secondly, politics is a series of collective action dilemma where actors seek to fulfil their preferences as they will likely produce a suboptimal outcome. Thirdly, it emphasises the role of strategic interaction in the determination of political outcomes, as behaviour is driven by a strategic calculus which in turn will be affected by expectations about how others are likely to behave as well. Lastly, it seeks to explain how institutions originate by looking at the benefits it provides to relevant actors.⁵⁶

Related to this perspective is the ‘logic of expected consequences’, connected to the basic principle of rational choice, namely that actors make decision with the intention to achieve best possible outcome as opponents will do likewise.⁵⁷ A central argument of rational choice approaches is then utility maximisation which remains the primary motivation of individuals. Individuals realise this can be achieved effectively through institutional action. Theories applying rational choice conceptualize institutions as collections of rules and incentives establishing conditions for bounded rationality, where interdependent political actors can function.⁵⁸ Shortly, rational choice institutionalism view institutions as frameworks of rules, which shape and stipulate the behaviour of actors involved in any process.

2.4.2 Sociological institutionalism

Sociological institutionalism defines institutions more broadly to include informal norms and conventions. It argues that such institutions constitute actors, shaping the way in which actors view the world. New institutionalism has clear roots in sociological conceptions of institutions, which can be traced back to Weber, who put emphasis on institutions and how they shape development of society.⁵⁹ Jenson & Merand in particular, emphasis the return of a sociological approach, which they consider studies on the EU would benefit from. Three aspects are particularly emphasised; attention to actors, analysis of power and epistemology.⁶⁰

Sociological institutionalism assumes people act according to ‘logic of appropriateness’. The general idea is that actors take cues from institutional environments while constructing their preferences and select appropriate behaviour.⁶¹ March & Olsen provide a perspective, emphasising that this tradition simply states that action is rule based. Actions are expected to follow certain rules associated to specific institutions. In this sense it involves invoking an

⁵⁵ Peters, (2005), p. 50

⁵⁶ Hall, Peter A. & Taylor, Rosemary C. R. (1996) “Political Science and the Three New Institutionalisms” *Political Studies*, XLIV, pp. 944-945

⁵⁷ March & Olsen, (1998), p. 949

⁵⁸ Peters, (2005), p. 48

⁵⁹ Peters, (2005), p. 108

⁶⁰ Jenson & Merand, Jenson, Jane & Mérand, Frédéric (2010) ‘Sociology, institutionalism and the European Union’, *Comparative European Politics* Vol. 8, 1, p. 86

⁶¹ Pollack, (2009), p. 126-127

identity closely related to that institution.⁶² Sociological institutionalism therefore put emphasis on norms and values, which determine action. Institutions do therefore not simply affect strategic calculations, but also identity and preferences this might include.

Proponents also put emphasis on highly interactive and mutually constitutive character of the relationship between institutions and individual action. Therefore, it may be stated that action becomes a question of interpretation. Subsequently, when faced with a situation, the individual must firstly recognise the situation but also find a way to respond to it.⁶³ The basic assumption rests on the notion that individuals work and chooses course of action with available templates established by the institution. Compared to a rational choice perspective, another fundamental difference is the origin of an institution and how they change. Rational choice rests on the notion that institutions arise and change because of benefits they may provide, whereas a sociological perspective argues that change occurs because it enhances social legitimacy of the organisation and its participants.⁶⁴

2.4.3 Summary and reflection

The institutional perspectives demonstrate it is possible to detect preferences and logic of action of actors. It is therefore valuable to include both these perspectives, since they can answer how and why the proposal occurred. The choice of both rational choice and sociological institutionalism is based on the fact that they represent two perspectives of institutional behaviour. They therefore serve a greater purpose, namely to determine what prerequisites and circumstances dictate the policy process within the EU, exemplified with the case provided. Specifically viewing what they offer is focus on the interplay between institutions, highly relevant in this case. Also they can detect preferences of actors and interests and give insights to the institutional setting, where it is possible to detect what basis actions stems from. A possible way to detect differences in this context may be seen by if an actor emphasise interplay or conflict between institutions. The 'logic of action' therefore becomes essential as it enables categorisation of actors. The two perspectives that have been discussed can be summarised that fixed preferences and logic of expected consequences indicates rational choice institutionalism. Endogenous preferences and logic of appropriateness is then an indication of sociological institutionalism.

While, institutional theory can further help to understand why the proposal to derogate intercontinental flights from Directive 2003/87/EC was presented, there is criticism towards this perspective. Namely that it will never fully grasp an issue like climate change and processes concerning it. Jordan and O'Riordan have discussed this in an article where cultural theory is included into the wide discourse of institutional theory.⁶⁵ To complement the institutional perspective, the previous perspective regarding strategies to set the agenda will be included, providing a framework to understand how the derogation proposal was made

⁶² March & Olsen, (1998), p. 951

⁶³ Hall & Taylor, (1996), p. 948

⁶⁴ Hall & Taylor, (1996), p. 949

⁶⁵ Jordan Andrew & O'Riordan, Timothy (1999) "Institutions, climate change and cultural theory: towards a common analytical framework" *Global Environmental Change* 9, pp. 81-93

possible. Basically, what need to be taken into account are the preferences of the relevant actors within the debate, while also considering how they have tried or achieved their preferences. In the following chapter on methodological approaches, a more detailed discussion on how and why an actor can influence the policy process will be presented, plus how it will formally be applied when examining the derogation proposal and the EU.

3 Methodological approaches

In the following section, the methodological approach for this study will be discussed. It first will provide and discuss a framework to examine the process, which relates to the challenges related to influence and setting the agenda. This includes institutional theory as well. This will be followed by a discussion regarding method and material.

3.1 Strategy – Preference – Logic of action

New institutionalism does include the interplay between actors and institutions within a political process. However, how preferences and ‘logic of action’ are applied is another matter. Including this may then provide an additional dimension when examining a policy and political processes. The challenges and strategies outlined by Princen will aim to do this by providing a framework for examining how actors have been able to set the agenda, thus shape and influence the process. They will therefore become analytical tools within this study. Details during the relevant time frame can then be categorized and the process leading up to the derogation proposal may be viewed through each strategy and from the perspective of relevant actors. How actors have applied the strategies will be put into context of institutional theory, explaining behaviour and action taken by actors in the institutional setting. Below, each challenge and strategy presented earlier will be explained further.

Gaining attention

Mobilizing supporters: The strategy of mobilizing supporters will view how actors have achieved support and how it has been done practically, in short gained attention. Considering the relevant factor being venue, the primary intention is to detect what different levels of institutions actors have addressed to mobilize support, plus been most receptive to their position. This will differ, as actors have mobilized support with varied results.

Arousing interest: The strategy of arousing interest will view how actors have framed the issue and its arguments, with the intention to gain attention from policy makers. It will be important to consider what arguments that have been more relevant and successful compared to others. Princen suggests two ways this can be achieved by either relating the issue to identity, norms and values. Or gradually build support step by step, like highlighting technical aspects.⁶⁶

Gaining attention within institutional theory

Concerning what logic of action have been applicable will depend on what premise support and attention have been sought and gained. This will be evident through how an actor target institutions and organisations for support. For example, is the underlying reason for seeking or receiving support based on institutional connections and cooperation, this would suggest sociological institutionalism. Have this been done to achieve optimal support and outcome where institutions have been discarded or instrumentally chosen because of benefits it provide, this would be in line with rational choice institutionalism. In the context of arousing

⁶⁶ Princen, (2011), p. 933-935

interest the same principle will apply. Logic of action will then vary depending on how they frame their preferences. For example, have the actor framed it on basis of achieving partisanship or advocating appropriate solutions acceptable to all, this would indicate sociological institutionalism. Or, have the actor framed its preference indicating rationality where the main aim is to ensure own gain, this should relate to rational choice.

Building credibility

Capacity building: This strategy will view how actors build sufficient organisational capacity for a venue to deal with an issue. This can take place within or outside of EU institutions, indicating two preferences, either advocating the EU or not. Considering the challenge is building credibility, it will be important to view what actors have done to advocate for either position, both formal and informal. Examples can be referencing to bilateral agreements, legislation, treaties or legal cases.

Claiming authority: This strategy will view how an actor has framed why the issue should be within EU competence or not. In short, building credibility for EU competence or otherwise. Princen suggests that this may be done via linking an issue to existing EU policy.⁶⁷ However, due to the nature of aviation, a wider approach will be considered, including international policies, laws and norms. Two approaches are then possible, either claiming that maintaining intercontinental flights in the ETS are according to EU policy or in violation with international policies, laws or norms.

Building credibility within institutional theory

Like gaining attention, logic of action will depend on the premises and in what manner building credibility has been done. This will be evident through how actors have advocated for their preferences and how venues and institutions are utilised in the process. For example, is a venue advocated or deemed better on basis of partisanship and appropriate behaviour, capacity building has been done according to sociological institutionalism. Is a venue advocated or deemed fit through rationality and focus falls on utility maximisation, capacity building falls within rational choice institutionalism. Concerning claiming authority, the logic of action will depend how an actor link and frame the issue to an existing policy. Is framing based on ensuring an optimal outcome, utility maximisation and rationality, it is connected to rational choice institutionalism. If an actor links the issue according to norms and values, claiming authority has occurred according to the principles of sociological institutionalism.

3.1.1 Summary and reflection

In summary, the challenges and strategies intend to view how preferences and ‘logic of action’ have been operationalised. The study will therefore first examine the various challenges actors have been faced with to set the agenda and influence the policy process. Regarding preferences, the difference should be visible between actors as they have either maintained or changed their reason for involvement, basically if they have been fixed or endogenous. This will be discussed within the context of both challenges and correlate with

⁶⁷ Princen, (2011), p. 936-938

the logic of action. Actors will therefore be possible to categorise into logic of expected consequences (rational choice) or logic of appropriateness (sociological) depending on what basis they have operationalised their preferences.

Considering this, the challenges and strategies will serve as analytical tools, where gaining attention and building credibility can facilitate actors both defending and opposing the EU legislation. Logic of action and preferences will explain why actors within the process made the choices they made. In the following sections, the method of the study will be discussed and presented. This will be followed by a discussion of the material which the results and analysis will be built upon.

3.2 Method

The methodological approach for this study is somewhat similar to a case study. This allows researchers to retain holistic and meaningful characteristics of events, which may vary from individual life cycles and international relations.⁶⁸ However, it is important to note that a possible vulnerability of doing a case study could be that one example may not represent a wider phenomenon.⁶⁹ However, while the choice of aviation focus on a single sector, it does provide multiple perspectives from which it may be viewed. These include environmental policy and governance, but also the factor of actor influence and power. Likewise, while environmental issues are generally perceived as transnational, this is a clear example where the EU has taken action and perhaps to some extent challenged other countries with its legislation. Therefore the subject of EU as a global actor is also present.

Since this study will examine the causes for a single derogation proposal, a suitable analytic technique will be something close to process tracing which within the context of case study would refer to some sort of explanation building.⁷⁰ This approach will enable to view the specific process and determine crucial events that have been important for the development of the derogation proposal. Examples of this may be official meetings, summits, or bilateral agreements, among many. The main purpose will then be to analyse trajectories and change, which will ultimately fail if the observed case is not adequately described.⁷¹ A fundamental aspect is therefore description, which has been emphasised earlier in the context of the analytical framework. Therefore, outlining and describing the process will be essential, which the challenges and strategies provided by Princen intend to do. In addition, while presenting the results collected from interviews and other relevant material, the questions below have been formulated on basis of the strategies to simplify and enable examining the process in two stages;

- How have actors applied the strategies to influence the policy process?
- What preferences and logic of action have the strategies been based on?

⁶⁸ Yin, Robert K. (2009) *Case study research: design and methods*. 4. ed. London: SAGE, p. 4

⁶⁹ Yin, (2009), p. 61

⁷⁰ Yin, (2009), p. 141

⁷¹ Collier, David (2011) "Understanding Process Tracing", *Political Science and Politics* 44, No 4, p. 823

The first question relates to the strategies, intending to describe how the proposal was made possible. The second question aims to explain the behaviour of each actor by relating their actions with the institutional perspectives.

Furthermore, to avoid complications and bring an additional structure when presenting results, the relevant actors will be categorized into three main groups. Each group will then be discussed individually in the context of each challenge and the related strategies. The categorization is based on and relates to previous research, but also the findings of the study. The first group is the aviation industry, which is ascribed an essential role and deserve special attention. The second group is non-EU countries, referring to countries outside of the EU at the international arena. Since the international character of aviation is evident, plus that many countries not member of the EU have been important, their impact on the EU will be given special attention. The third group will be EU institutions, such as the Commission, Council and EP. This group should not require any explanation and is outlined last considering this is the group which have decided to propose a derogation of intercontinental flights. It may therefore be viewed as the last outpost of the process at focus.

However, it should be highlighted that the Council contain Member States and they will be discussed in the context of this group. The argument can therefore be made that they should be analysed separately. They are included into this group because they foremost represent an institution within the EU, but also themselves. Their interaction with other EU institutions can therefore provide additional insights into the dynamics of the policy process.

3.3 Material

To gain a full perspective and insight into the current and past prerequisites of aviation, interviews with relevant people and stakeholders have been conducted. The benefits of using interviews as data are positive as it yields quantity of data quickly and is a primary source of data. The interview subjects have been selected via their position and knowledge about the debate concerning aviation, therefore may be considered elite interviews. This has many advantages as valuable information can be gained from these participants mainly due to the position and insight they have to the case. Likewise, they can also provide history on organizations or developments on specific policy fields.⁷² In this study it is primarily the information about the process leading up to the derogation proposal that have been of interest.

This does not just include actors and interest constellation that have gained or lost in the process, but also experts and legislators who have partaken and followed the process. People of main interest have thus been officials within the Commission, Member States, representatives from the overall industry, environmental groups, but also experts on the topic. Including representatives from the whole spectrum of the debate and process will ensure that all opinions and views of the spectrum are included in the analysis, thus ensuring ambitious objectivity and reliability. However, it is important to remember that all these people

⁷² Marshall, Catherine & Rossman, Gretchen B. (2011) *Designing qualitative research* 5. ed. Los Angeles: Sage, p. 155

represent organizations with their own agenda and opinions, which have to be taken into consideration. Their perception may thus not fully reflect the actual process leading up to the derogation proposal, which leaves a responsibility on the researcher to carefully review the information provided and not draw conclusions based on single statements.

While conducting the interviews, it was also made clear that many of the interviewees did not want to be referenced. The reason was mainly that most of them emphasised that their views would not fully reflect the organisation or institution they represent, since formal statements which may contradict the informal information provided through the interviews already exist. Since anonymity must be granted if requested, the study will respect this. If not, it was made clear that some interviews would not have been made possible. What is interesting to consider why this is so? Is it possible that people consider that their organisation have made bad choices or given wrong support? This further highlights the sensitivity of the matter. Interestingly the interview subjects who made this request either represent the side which were in favor of the derogation or employed by official EU institutions. With this in mind, the decision was made to not mention anyone by name and subsequently all interviews have been referenced just including their respective organisation. Though, I do wish to emphasise that while anonymity was requested by some, all interviews have been very accommodating and provided valuable information for the study, both formal and informal.

Considering the length of the interviews it should be emphasised that these have varied. It became evident during the first interviews conducted that it was difficult to do longer interviews with some, mainly due to the schedule. However, considering their expertise this risk was something worth taking and to be expected. Therefore, the positive of valuable information outweighed the negative aspect of a few shorter interviews.

To supplement the interviews, additional material have also been gathered through other sources which either have been produced in everyday events or constructed specifically for the topic at hand.⁷³ This includes official documents, strategies, directives and international agreements among many. These are both primary and secondary sources of data, which enable triangulation of the material. The study can then construct validity as multiple sources and other relevant material from the relevant process are used and included into the analysis.⁷⁴ Considering sampling strategy for documents like strategies, position papers and international agreements, these have also been collected in accordance to information provided by the interviews, as to cross reference and correlate data that has been gathered.

⁷³ Marshall & Rossman, (2011), p. 160

⁷⁴ Yin, (2009), p. 40-41

4 From decision to derogation

Before presenting the result retrieved from interviews and additional material, it should be highlighted again that the aim is to examine why the proposal to derogate international aviation from the ETS system was presented. This proposal suggests that EU has gone from consensus on the decision of including aviation into its ETS system, towards derogating international aviation in the ETS system. This will be done via exploring preferences of actors and how these preferences have been operationalised.

Firstly, the challenge of gaining attention will aim to display what institutions and organisations actors have addressed and how this has been done. Secondly, the challenge of building credibility will aim to display how actors have advocated why the EU lack organisational capacity or why the issue should not be within its scope. The institutional perspectives will help explain preferences and logic of action of actors within the process leading up towards the derogation proposal. Also, many aspects can be considered ‘cross-strategic’, as they have been valid within both gaining attention and building credibility. Venue and frame are therefore often intertwined.

The results will therefore explain how and why the derogation proposal was made possible. To present the results and events in a structured manner, actors will be categorized in three groups, to simplify and avoid potential confusion. These will be the aviation industry, EU institutions and non-EU countries. The aviation industry will contain the perspective of both airlines and airplane manufacturer. EU institutions will refer to the Council, the Commission and the EP. Subsequently this includes specific member states of the EU, being part of the Council. Lastly, the category of non-EU countries will refer to countries outside of the EU, providing an indication of the debate and arguments on the international arena, which will be evident and more closely presented in the following sections.

Before presenting the results, a small overview of the disposition will be provided. Firstly, how the different groups of actors have worked through the different strategies will be outlined. This will be done in a descriptive manner. Afterwards, this will be followed by a discussion which will relate the information found to the institutional perspective. What will be presented for each group of actors is what has been primarily important for them. It should also be emphasised, to avoid any confusion, that this study do not make any claims whether the proposal was correct or not, as its intention is to examine the process leading up to it and the actors involved.

4.1 Challenge of gaining attention - mobilizing supporters and arousing interest

4.1.1 Aviation industry

As stated prior, the influence of industrial actors within this sector has been historically significant. When determining how and through what venue they have been able to mobilize support for their position during this process, this became evident as they have targeted Member States, making the Council a crucial part of this process. In this context, the influence of airlines has been crucial. During an interview, a Member of the European Parliament (MEP) emphasised that the Commissioner for Climate Action, Connie Heedegard, was put under immense pressure;

... I think most important was the Council, the member states, and that's also less transparent so that makes it difficult. (...) But it seemed that within the Council mainly the member states with big...big airline companies...so UK British airways, the Netherlands KLM, France Air France and Germany Lufthansa, those four apparently were really also pressuring...eh...putting pressure on Heedegard...⁷⁵

Subsequently, Member States appear to have been a key factor for airlines as they mobilized support through this venue for derogating intercontinental flights. A particular reason behind this was emphasised in most interviews, namely historical heritage and close connections to national administrations. Considering that governments were owners of the airlines prior, it has been highlighted that connections between politicians, official departments and airlines are still present. An official within DG Climate Action exemplified this, referring back to prior employments in governmental departments in the UK;

...when I worked in the UK my colleagues would have pictures of concords on the wall and aircraft hanging from the ceiling and everyone likes flying...⁷⁶

Emphasis is then that a culture exists within national departments, where the objective has become to protect national airlines and industry against any kind of measures which may have negative impacts. Additional interviews provide similar insight, giving indication that due to close connections the industry primarily targeted the Member States for support. Including the other side of the industry, a representative from a major airplane manufacturer highlighted that they also had sought the support from the Member States. The reason for how they succeeded in doing so, much like the airlines, is close connections with national governments, illustrated via the following statement;

...the governments are direct shareholders in our company, so of course we have very close links to our governments...eh...some of the flagship carriers as well, there is some government involvement, government, part government ownership, so there are obviously relations...⁷⁷

⁷⁵ Interview 1

⁷⁶ Interview 3

⁷⁷ Interview 5

In addition to this a representative at an NGO situated in Brussels, with long experience in both governmental affairs and travel industry shed further light on this particular aspect. The point that was emphasised was not just that the aviation industry managed to mobilize support from national governments, but that this sector has gained somewhat of a unique position compared to other sectors;

...industry is industry right, they'll play very tough and they have played very tough in every sector, but aviation is slightly different because historically they were national carriers, and therefore they have these historic, strong historical links with ministries of transport, and they've been winding them around their fingers for the past fifty years and why stop now...⁷⁸

In short, according to the information provided from interviews with good insights into the process, it would appear that due to the close historical links between industry and governments, the aviation industry has had great influence over the decision-makers. Therefore it is clear that various industrial actors have been able to mobilize support from this key institution within the EU, consequently been able to influence the policy process. Other institutions have also been targeted, but the industry, both airlines and manufacturer, have recognized that they primarily would gain support from national governments. This does of course not mean that other institutions have been discarded, but rather appear to have been of secondary interest as they have recognized that they would achieve optimal support by putting more focus on a single institution.

When framing their position when advocating for excluding aviation from the ETS system, the industrial actors have emphasised the fact that it is a global sector. Maintaining aviation in the system may therefore generate risks of creating distortions in an otherwise competitive market. Likewise, a consequence of this may be that non-EU countries with airlines might impose additional taxes and charges, starting a trade war.⁷⁹ This scenario is frequently outlined, both from industry and policy-makers. Another argument connected to this is that they already have high costs, where additional financial burdens are considered penalties;

...I mean, again if you talk to IATA or Eur...eh...association of European airlines and others you'll get this direct from the horse's mouth...but the argument they already pay for infrastructure (...)...the argument that they already pay their costs...⁸⁰

Subsequently, the argument brought forward by the industry has been in accordance with the official statement behind derogation proposal, namely that rather than introducing a regional measure in the EU a global measure via ICAO should be sought, thus enabling equal treatment between all airlines and regions.⁸¹ Rather than seeking a European solution, airlines seek a global solution and agreement. This will not affect competition and have no negative effects on European airlines. This argument is also closely connected to the previous one regarding competition.

⁷⁸ Interview 9

⁷⁹ Interview 10

⁸⁰ Interview 3

⁸¹ IATA Briefing (2013) *IATA views on the structural reform of the European carbon market*

From the manufacturer side of the industry a different position arose. The representative emphasised that they originally supported the inclusion of aviation into the ETS system, as this would benefit their business as airlines would seek new technology which they would be able to provide. However, due to the inflicted situation globally, a massive order to China was potentially going to be cancelled primarily due to this legislation. Meeting with officials from a national ministry, the following was made clear;

*...indicated to us behind closed doors that they would not get government, the government ok to sign off a number of our orders, 45 A330s...eh...because of this piece of legislation...*⁸²

The manufacturer therefore aroused interest through the argument that potential revenues and jobs could be lost due to the legislation. The industry thus brought forth two heavy points when gaining attention for their position, namely the prospect of trade war and loss of manufacturing jobs in Europe. With the example of China and to further illustrate the significance of this, Reuters reported of this exact event and circumstances on May 12th 2013, after been given an overview of the events taking place.⁸³

In addition, another aspect of arousing interest focused on technical improvements, which has been argued to be better than emissions trading. From this perspective, the argument is made that they are penalised when they should rather be subsidised for their efforts to make additional improvements.⁸⁴ Considering the economic situation in Europe and worldwide, arguments related to a theme like this will surely attract much attention and support. The more technical arguments provided was surely also essential, but nevertheless not the most effective argument. Therefore it becomes evident that the industry, both airlines and manufacturing, managed mobilize support for their preferences by primarily targeting Member States with economical arguments. This eventually led Member States to mobilize support for derogating international aviation at EU level.

4.1.2 Non-EU countries

Much like industrial actors, non-EU countries have also been very critical and opposed the inclusion of aviation in 2012. This becomes clear when viewing the summary from an ICAO summit in November 2011 where it is evident that the international community is critical and maintain reservations towards the EU decision to include intercontinental flights in the ETS system.⁸⁵ Subsequently, in interviews with representatives from both airplane manufacturers and environmental NGOs, it becomes evident that international pressure has been essential to the developments from 2008 to present. Countries that then have been highlighted as most important are China and the US.⁸⁶ Concerning the US, the Commission official emphasised that opposition can even be traced back years before the original legislation;

⁸² Interview 5

⁸³ Reuters (2013) *Airbus to China: We support you, please buy our jets*. Retrieved 2013-05-13

⁸⁴ Interview 4

⁸⁵ ICAO Meeting (2011) *Minutes of ICAO Meeting*

⁸⁶ Interview 5,6 & 9

*...we also have a situation where President Bush and the US for 8 years said that Europe can't regulate American airlines flying within Europe ...non-European airlines are flying 40 000 times a year within Europe...*⁸⁷

While conducting the interviews, it became clear that the US has been more visible and vocal than other countries in its criticism. An example illustrating this is that the US has successfully mobilized support internationally by bringing key nations together. This group is recognised and nicknamed the 'coalition of the unwilling', which contains countries such as Brazil, South Korea, Russia and China among many.⁸⁸ The US has thus been important in the context of mobilizing support for opposing the inclusion of aviation into the EU ETS. Furthermore, it may be said that the US has not directly mobilized support for its position within the EU, but rather put and established pressure on the EU by mobilizing support at the global venue.

Though, this apparently happened at a fairly late stage in the process, as the Obama Administration did not provide a formal disapproval until 2011. Chase Foster has managed to provide an explanation to this, which was that the subject was given little attention in 2009 and 2010 due to the financial crisis and economic recession, not making it a top priority. Plus, there was a fear that action would compromise the introduction of a cap-and-trade legislation within the US. This apparently provided signals to European policy-makers that Obama had a different position on the ETS than the Bush Administration. However, as cap-and-trade failed and domestic pressure increased, this changed. A large factor was also the historical connection between the American industry and legislators.⁸⁹ This last aspect was emphasised by a NGO representative;

*...the American government is a puppet of the American airlines, in terms of aviation policy it is really just incredible how...whatever government you have in there, democrat, republican (...) they see it as something they can get together and kind of, you know, viciously oppose the EU on...*⁹⁰

Therefore, when the US formally became more involved, mobilizing support internationally happened quickly. Also, industry displays their importance further, as it managed to mobilize support from additional countries outside of the EU as well.

Regarding how non-EU countries have aroused interest on the issue, the main argument provided in the debate has been that EU legislation violates national sovereignty and international laws. The US has in this context been most vocal, where many politicians have voiced their discontent.⁹¹ As the US has been rhetorically clear, this has also led to legislation

⁸⁷ Interview 3

⁸⁸ Interview 5

⁸⁹ Foster (2012), p. 14-16

⁹⁰ Interview 8

⁹¹ Transport and Infrastructure Committee, Chairman John L. Mica (2011) Press releases: *Committee, Federal officials, Aviation & Labor Groups united in opposition to EU plan to tax U.S. Air Carriers under Emissions Trading Scheme* Retrieved 2013-05-02

being introduced, basically forbidding American airlines complying with the EU ETS.⁹² This is an illustration of action that has aroused interest and this specific legislation will be presented in more detail in the following sections. Other countries globally has emphasised the same point, which the manufacturer representative encountered first hand;

*...so countries such as China said you know this is an impeachment of our sovereignty you can't charge for emissions over our airspace...*⁹³

In addition to China, India has also been present within the debate.⁹⁴ Like the US and China, the same framing has been evident, where focus is put on the violation of international law and agreements. A global solution and agreement is therefore to be required, to overcome this. Subsequently, the main argument against the ETS system provided by non-EU countries to arouse interest has been the issue of national sovereignty and that EU has no legitimacy internationally.

4.1.3 EU institutions

Looking at the process within EU institutions, the Council became essential after being especially targeted by industrial actors. To provide some clarity to how the Member States mobilized support, it will be valuable to determine when they changed their preference on issue. This is somewhat difficult to specifically determine, taking the fact into account that the Member States provided strong support for the original legislation in 2008. This must therefore have happened sometime between 2008 and 2012. In this context, there is evidence that show that multiple Member States in November 2011 during the 194th session at ICAO still maintained and openly defended their position to include intercontinental flights in the ETS.⁹⁵ The preferences within EU institutions did most likely change during 2012 then, where Member States appear to have been first due to pressure from industrial actors. How did the Member States then mobilize support from other relevant EU institutions?

As with all legislation and decisions on EU level, the Council require support from other institutions in order to change policies and move the process forward. To illustrate this, the manufacturer representative provided an example, pointing out that they approached all relevant institutions in the EU, plus kept close contact with the US and China to understand their concerns. In the end, the Member states became the most essential support and target for their concern. Since Germany, France, the UK and Spain have strong interests in the company, the Commission was eventually approached by these countries, voicing their concerns.⁹⁶ This is also illustrated by the comments provided by the MEP, when speaking of Commissioner Connie Heedegard;

⁹² Govtrack.us (2012) *European Union Emissions Trading Scheme Prohibition Act 2011* Retrieved 2013-05-14

⁹³ Interview 5

⁹⁴ IETA Briefing (2012) *EU ETS & Aviation*

⁹⁵ ICAO Meeting (2011) *Minutes of ICAO Meeting*

⁹⁶ Interview 5

*...I do think that she was pushed to it by those important member states, mainly of course UK, France, Germany, those three are becoming very nervous that becomes very difficult to maintain.*⁹⁷

Before this occurred, there is evidence suggesting that difference within the Commission arose throughout the process, where many DGs came to support the position of the Member States at an early stage.⁹⁸ According to the official within DG Climate Action, attempts to defend it were made, but pressure amounted and they were unable to maintain it. A partial explanation for this was made during the interview, indicating that other DGs have somewhat larger muscles when conflicting interests collide;

*...institutionally I mean DG Clima is tiny compared to other DGs, we have a limited amount of time and capacity to take on different fights and discussions internally...*⁹⁹

Adding to this, a representative from a NGO with close connections across Brussels provided more insight on this matter, indicating other tendencies within the Commission somewhat similar to those in national administrations;

*...some of these people in DG Move think they are there to defend the industry, and so they're defending it....*¹⁰⁰

Officials within other relevant DGs therefore seem to follow the argumentation of the industry, and the Member States. The Commission, being the initial driver of the legislation exemplified through the communication in 2005¹⁰¹, therefore eventually changed their position. The Member States therefore mobilized support from the Commission through institutional pressure, which eventually would lead to the derogation proposal. Viewing the report presented on the proposal in the EP, support appears to have been mobilized there as well, since the report suggests that the EPs should accommodate the proposal.¹⁰² According to the NGO representative, this was to be expected;

*It's the most right wing parliament they've ever had probably or certainly in many years...*¹⁰³

How did EU institutions then frame the issue? A national representative working on issues of transport and aviation stationed in Brussels, emphasised that consensus arose through the process that a solution globally would be preferred and that the EU wished to facilitate this. This opinion was according to him shared among all the Member States.¹⁰⁴ This is identical to the official reason behind the derogation proposal provided by the Commission;

⁹⁷ Interview 1

⁹⁸ Interview 9

⁹⁹ Interview 3

¹⁰⁰ Interview 9

¹⁰¹ COM(2005)459

¹⁰² European Parliament Report, p. 23

¹⁰³ Interview 9

¹⁰⁴ Interview 7

*This proposal thus demonstrates the EU's strong political commitment to facilitate and drive forward the successful conclusion of these ICAO processes.*¹⁰⁵

This was also included in the report presented to the EP which also emphasised that compared to other energy consuming sectors, aviation have advantages and solutions should be sought. However, this should be done via ICAO and the report recommends that MEPs should support the proposal.¹⁰⁶ Regarding the EP, it should be emphasised that no justice to the various spectra of the debate can be done shortly. However, it can for example be highlighted that the MEP from the Greens wished to emphasise that no industrial sector should be subject to special treatment and that at the moment aviation does not pay for their environmental footprint, arguing for stricter environmental policy to be placed upon the aviation sector.¹⁰⁷ Opposite this, a British official from the Conservative group put forward the argument that current regulation is a penalty. The ETS is not an incentive but rather a punishment, emphasising that airlines have provided people with the ability to travel worldwide and made vast contributions on the area of innovations.¹⁰⁸ In addition, high profile representatives from the EP have also raised concerns in international forums, openly criticising the ETS system while emphasising the prospect of trade war and lack of European cooperation.¹⁰⁹

While the formal explanation behind the derogation has been essential, the informal explanation of international trade war plus potential loss of revenue and jobs in Europe were surely equally important. The information provided in this context shows that the main aspects underlying this are competitiveness and economic growth, which indicate that components of a bigger issue have been given attention.

4.1.4 Reflections and remarks - gaining attention and institutional theory

After examining the first challenge, what can be said about the preferences of the actors? It is evident that there have been both fixed and endogenous preferences. Looking at non-EU countries it is clear that this group has had fixed preferences, where the strongest evidence has been on their critique against the EU and ETS. The aviation industry is however somewhat divided, because they can be sub-divided into two, where the airlines have fixed preferences but the manufacturer has been somewhat endogenous. However, this was mainly due to circumstances as their preference is likely to remain ensuring most optimal position for its company. Concerning the group EU institutions, this group has clear endogenous preferences considering that they did eventually introduce the proposal, subsequently going through a process of change.

In the context of gaining attention, what logic of action have actors relied on when faced with this challenge? From the perspective of the aviation industry, the primary driver and preference has been so ensure an optimal outcome for itself where it has mainly sought

¹⁰⁵ COM(2012)697, p. 2

¹⁰⁶ European Parliament Report (2013)

¹⁰⁷ Interview 1

¹⁰⁸ Interview 4

¹⁰⁹ Aviation Business (2011) *Europe needs to step back from 'disastrous' ETS stance*. Retrieved 2013-05-01

support from the Member States, which have been chosen instrumentally. Arousing interest has emphasised and mainly highlighted arguments relating to utility maximisation. Also, the potential negative outcomes the legislation may bring suggest that they perceive it to be winners and losers within the process. Much like the industry, the preferences of non-EU countries have also been fixed, leading them to instrumentally mobilize support globally and put external pressure on the EU. When arousing interest, they emphasise the ETS disturbs what may be referred to as a kind of international equilibrium which include international relations and agreements. Subsequently they put responsibility on the EU and their inability for partisanship.

When viewing the EU institutions it is clear that first all institutions defended the legislation and display close interplay. However, when internal and external pressure arose this changed. The main premises for Member States have for example been historical heritage and current connections with the industry, followed by the Commission changing its preference due to pressure from the Member States. Adding the aspect of external pressure from non-EU countries, both institutions therefore appear to have gone through what may be described as a process of institutional learning, where it eventually decided to conform to other actors globally. When eventually their position changed via the introduction of the derogation proposal, the main reason was ascribed to that the EU wished to facilitate a global solution and advocating partisanship. It may therefore be said that they have acted according to logic of appropriateness, where other institutions than those officially of the EU have had a major impact and been able to influence to a great extent.

When examining how actors have gained attention for their position, it becomes clear that those originally opposing Directive 2008/101/EC gained support for their position by instrumentally and consistently targeting specific actors for support, arousing interest by undermining the EU. In a sense it may be possible to view this process as a small group of discontent actors, who began advocating alone for their preference until it eventually included key institutions and stakeholders. The preferences of the industrial actors are quite clear, namely to ensure the optimal situation for their own companies. This position has been fixed throughout the process, plus the logic of action when gaining attention which has focused on utility maximisation. This should therefore be considered to be in line with the perspective of rational choice institutionalism. The logic of action by the Member States is somewhat more diffuse. From a perspective, it does appear that the primary concern has been to reduce potential economic impacts, thus focused on utility maximisation. However, from another perspective it may be argued that their concern is finding the most optimal solution, like a global solution at ICAO level, relating to partisanship and acting appropriately within an international institutional setting.

4.2 Challenge of building credibility - capacity building and claiming authority

4.2.1 Aviation industry

Concerning how the industry has built credibility for their position, it can be stated that they are somewhat restricted in what they are able to directly do. It is evident that they have been vocal on the matter and that their position has been that EU does not have organisational capacity, but rather ICAO. Therefore, concerning the strategy of capacity building, focus is put on that the issue should be allocated to and decided at ICAO level. The arguments brought forward by the industry therefore have the intention to question the credibility of the EU, while at the same time build credibility for their own position.

An example of how they have been able to question the organisational capacity of the EU in a formal manner for including aviation in its ETS system, can be illustrated when American and Canadian airlines contested the measures transposing in Directive 2008/101/EC in the UK during 2009. It may therefore be said that the industry chose to build credibility through a national venue via its legal system. The claim consisted of that Directive 2008/101 infringes on customary international law and Open Skies Agreements. The court eventually brought the issue to the European Court of Justice (ECJ). Eventually the verdict ended up in favour of the EU, where the ECJ concluded in 2011 that the EU had acted within its capacity.¹¹⁰ While the contestation also may have served to arouse attention to some extent, its intention was to question the organisational capacity of the EU. Therefore this case may illustrate that the airlines consider that the EU does not have organisational capacity and is not the correct venue to deal with the issue.

Concerning how the industry has framed the issue, these are closely related to those mentioned prior when discussing gaining attention. The arguments that the legislation may create distortion in a competitive market, plus being in contradiction with international law and agreements do somewhat coincide. This may be related to an existing policy, where the industry does suggest that policies concerning competition and the free market should overrule that of climate and environmental policy.

4.2.2 Non-EU countries

As presented prior, non-EU countries have mobilized support against the ETS. Subsequently, they question EU organisational capacity, not necessarily because they consider it should be at ICAO level, but rather because they consider it has no legitimacy and it is a violation of their sovereignty. As a consequence countries have passed anti EU legislation, which demonstrate that capacity building has been done through the venue at national level, illustrating how non-EU countries question credibility of EU legislation. An example of this can be seen from the US, where a bill was even named the 'European Union Emissions Trading Scheme Prohibition Act 2011'. This bill passed through the House November 13th and was signed by the President on November 27th 2012.¹¹¹ In doing so, they have made it

¹¹⁰ Court of Justice of the European Union (ECJ) Case C-366/10, Press Release No 130/11

¹¹¹ Govtrack.us (2012) *European Union Emissions Trading Scheme Prohibition Act 2011* Retrieved 2013-05-14

illegal for American airlines to comply with EU legislation. Subsequently, the venue chosen to build credibility became the legislative system and governments themselves.

Capacity building has also been conducted on the international arena, where a formal venue can be exemplified through ICAO summits, where countries across the world openly criticise the ETS.¹¹² In addition, open statements are and have been produced, either direct or indirect criticising the EU. An example of this can be found in a joint statement produced by Brazil, South Africa, India and China during the 14th BASIC Ministerial meeting in February 2013;

*In the context of international civil aviation negotiations in ICAO, they rejected the unilateral approach of EU under the EU-ETS and reiterated the importance of adhering to multilateralism.*¹¹³

The importance of the international community and pressure during the process of the ETS is also indicated by the national representative, stressing the potential difficulties that arise when the EU decides and establishes measures;

*...many other factors have to be taken into account when you look at aviation...eh...just take ETS where you have to take into account the position of China, India or Brazil...*¹¹⁴

Furthermore, the EP report on the derogation proposal highlights the following aspect;

*Some of the resistance may be motivated through the assumption that EU legislation is not as important as member states legislation.*¹¹⁵

Capacity building from non-EU countries has therefore been done via venues at both national and international forums. This has evidently had an impact, considering the importance it has been given by Member States and the EP.

Concerning how the issue has been framed by non-EU countries, claiming authority was done by stating the fact that the EU is not able to regulate flights outside of EU airspace. Such measures are then illegal acts and violate sovereignty of the effected countries. The main argument provided in this context is that EU legislation has no legality globally without agreement. The airplane manufacturer encountered this argument witnessing Chinese opposition, which was that the ETS posed an impeachment on Chinese sovereignty and airspace. According to the representative, Chinese officials stated the following, when providing their position on the matter;

*...this is an impeachment of our sovereignty you can't charge for emissions over our airspace...eh...without our prior agreement...*¹¹⁶

¹¹² ICAO Meeting (2011) *Minutes of ICAO Meeting*

¹¹³ BASIC Joint Statement (2013) *Joint Statement issued at the Conclusion of the 14th BASIC Ministerial Meeting on Climate Change Chennai, India 16 Feb 2013*, p. 3

¹¹⁴ Interview 7

¹¹⁵ European Parliament Report, p. 19

¹¹⁶ Interview 5

Non-EU countries therefore emphasize the idea it is violation of their sovereignty, where the EU cannot put charges on airlines from their countries. This is also mainly due to that aviation is a global sector, which cannot be regulated regionally. Subsequently, the EU lacks legitimacy to regulate it. Another way claiming authority has been done to refer to international agreements, such as the Chicago Convention and the Kyoto Protocol. The purpose being that EU legislation breaches these agreements, but also that there exists prior agreements and consensus concerning how measures should be regulated.

Therefore, rather than linking the issue to EU policy, aviation is outlined as a global issue and should be linked to bilateral and global agreements. In short, the main focus of non-EU countries in the context of claiming authority has then been put on the arguments of national sovereignty and that the EU lacks legitimacy internationally. Non-EU countries therefore question EU organisational capacity because they consider it to be within the organisational capacity of ICAO, but also because it is not legitimate and violates national sovereignty. The purpose may then have been to link the issue to if it may be considered to be in conflict with other norms, specifically those of international law and bilateral agreements. This argument is not a recent one either, but was also advocated by the American and Canadian airlines in 2009 during the case in the UK and ECJ trials.

4.2.3 EU institutions

Again, from the perspective of building credibility the main conflict within the factor of venue, the debate concerns whether competence should be held by the EU or ICAO. The strategy of capacity building is then a matter of what institutional setting is best suited. Considering Directive 2008/101/EC, it is evident that EU considered itself to possess proper organisational capacity. The fact that the directive passed with consensus from all relevant institutions, plus the ECJ verdict, puts emphasis on this further. A sub-question that arises then is when did the Member States change their preference on the issue?

Evidence of capacity building by Member States can be found during the ICAO meeting in November 2011, where representatives from Member States defended the ETS and current legislation.¹¹⁷ This happened in the context when other countries openly criticised the EU. Therefore, there is evidence that suggest that the Member States at least up to the official start of the inclusion in January 2012 were still in favour of maintaining aviation within the ETS. However, there are indications that this changed sometime right after the ICAO meeting. During a speech early in 2012, a high official named Jos Delbeke of the Commission opened for potential derogations or exemptions to facilitate global solutions.¹¹⁸ This suggests that the possibility for derogation had been discussed prior, indicating that a discontent had been recognised and most likely discussed within the relevant institutions. This notion is further strengthened by a policy officer at an NGO, which followed the development;

¹¹⁷ ICAO Meeting (2011) *Minutes of ICAO Meeting*

¹¹⁸ Jos Delbeke Speech February 2012

*Well I mean the governments were the driving force behind the ETS, so they were very strongly in favour of it, and up until the derogation they were very strongly in favour of, well not only then, the whole of the 27, maybe with the exception of Poland, were sticking strongly together...eh...but they were getting tired, and they were getting weaker, and we knew at some stage they would crack...they have now cracked...*¹¹⁹

Again, it is emphasised that the Member States were the driving force behind the original legislation. When eventually they changed their position, the primary focus would then shift towards a global agreement. Another reason for why this may have happened may be attributed to actors who previously had advocated for measures to be established at ICAO level. This has focused on whether EU legislation has legitimacy internationally. This point has been addressed through the rapporteur in the EP, who highlights that a reason for why the proposal has been introduced was that EU legislation is not perceived important as legislation within Member States.¹²⁰ Viewing the report presented in the EP further, provided by rapporteur Peter Liese rapporteur, the opinion is given that the EP should approve, where the main argument is the prospect for a global solution through ICAO, which is clearly outlined;

*Third countries opposing the European scheme always said that they want a global solution under ICAO.*¹²¹

Concerning how EU institutions originally framed the issue and claimed authority, focus has been put on the fact that EU can be considered obliged and enabled to act because it already has an established policy, where emission trading is an agreed measure. It was therefore possible to link the issue of aviation to a current policy, making it practical as well. Even if the EU has barely legality to act on an issue but falls under an area which it does, then the EU is entitled to act upon it. Furthermore, a large reason why aviation was included into its ETS system was also because of slow progress in ICAO. Overall, it may be viewed that the EU initially considered itself eligible, already having an established ETS system plus an ambitious climate policy. Including aviation into its ETS system would then subsequently be in accordance with current EU policy. When they eventually changed their position and proposed the derogation, it is clear that building credibility has been done on the same principles like non-EU countries, namely to advocate global measures.

4.2.4 Reflections and remarks - building credibility and institutional theory

Looking at the issue of preferences further, the challenge of building capacity building provides additional insights. While the role of the industry has been shortly presented within this chapter, it again establishes the image of having fixed preferences and continued to work on that premise to achieve them. This can be seen from non-EU countries as well, who were somewhat passive at first but have maintained their preferences. Concerning the EU institutions, since the derogation proposal was introduced it they have gone from building credibility of maintaining the aviation in the original form to change position.

¹¹⁹ Interview 9

¹²⁰ European Parliament Report, p. 19

¹²¹ European Parliament Report, p. 20

Regarding logic of action, different approaches can be found by different actors. For example, the reason for the industry to advocate that EU lacks organisational capacity, plus their attempt to go through the legal system, shows that they have tried to achieve their preferences by instrumentally target specific venues for credibility. The UK, and eventually ECJ, trial had the intention to question EU organisational capacity on aviation, but also questioned the legitimacy of the EU globally.

Concerning non-EU countries, it may be said that since many of them have joined together and advocated cooperation and partisanship by advocating global forums and measures, they thus indicate logic of appropriateness. This is mostly due to that when building credibility within the international arena, they have emphasised that the EU should act in accordance with the international community, agreements and laws. This would be possible to relate to the issue of norms and values. However, at the same time they have been individually critically, emphasising the element of sovereignty. Since this even led some to introduce legislation to contest the EU and consequently question the legitimacy of EU legislation it might be argued that they have instrumentally worked and built credibility through their available venues to achieve their preferences. This would put them within rational choice and logic of expected consequences as they utilise every possible approach to fulfil their preferences.

Viewing logic of action from the perspective of the EU institutions, there are two positions that have be taken into account. Since the decision to include aviation into the ETS had great support from all EU institutions 2008 the derogation proposal in 2012 constitute a change in policy. Subsequently, the preference of the EU has changed, foremost illustrated through the Commission and Council. Officially, the preference of the EU is now to facilitate a global solution, building credibility for ICAO as the suitable venue. The official explanation therefore suggests that the EU has gone through what sociological institutionalism may view a learning process, where it may be considered to have chosen appropriate behaviour according to institutional pressure.

5 Discussion and conclusions

5.1 Purpose of study

How can the process leading up to the proposal derogating intercontinental flights be characterized? From a time perspective it may be said that at first years the original decision with the ETS caused controversy, but nothing had any major impact nor caused for any changes. The industry, represented by airlines, was the consistent voice against the ETS, but despite their efforts this had little impact at first. The legal case against Directive 2008/101/EC with an unfavourable verdict in 2011 illustrates this. At the same time the manufacturer emphasised they initially supported the legislation, which again display they fragmentation on the issue. However, the manufacturer changed their position when orders outside of the EU risked being cancelled and urged the EU, primarily the Member States, to comply with the request posed by non-EU countries. This seems to have got the attention of first the Member States and eventually other relevant EU institutions.

From an international perspective, non-EU countries had also received low response from the EU after the original legislation. An explanation to this may be that the US was not highly involved and passive at first. However, when they eventually and officially became involved in 2011, the international debate became high stake and officials within the EU and Member States became nervous of the possible consequences. An illustration of this is the bill forbidding American airlines complying with the ETS, which was signed by President Obama a week after the proposal. Considering that it had to pass the legislative system of the US, officials within the EU were most likely aware of this. While the US has been the most outspoken actor within the group of non-EU countries, many others have joined in criticising the EU, such as China, Brazil and India among many. This inevitably increased pressure thus had an impact on the process leading up to the derogation proposal.

From the perspective of the EU institutions, the Member States became the initial institution from which the industry gained support from. Considering the governments that were addressed, this became a major force difficult for the Commission to resist. It is therefore unlikely that the Commission would resist even if it could have, due to the collective power of the Member States that were represented. Alongside the Member States, the EP also stands out where many politicians became vocal from both spectra, which fuelled the debate and probably led the Commission to recognise the gravity of the situation. Eventually the Commission conformed to those advocating derogation of intercontinental flights which was not without controversies either as as different DGs have preferences of their own. Eventually, this led to the derogation proposal to be presented in November 2012.

What were the main drivers that may explain why the derogation proposal was presented? Firstly, the economic factor was essential which emphasised that extra charges upon the industry will damage competitiveness and creating distortion of the market. The effects will then lead to loss of jobs and revenue in Europe. In addition, the fear of retaliation and trade war with for example the US and China are included into this as well. Secondly, the factor of

environmental protection and what institutional level it should lie. Actors have then emphasised that mitigating emissions is required, but the venue should be ICAO, mainly because aviation is considered a global industry and cannot be regulated regionally. Thirdly, the international relations factor where non-EU countries emphasised that the ETS impeaches on their territory and sovereignty. Subsequently the EU is not considered or entitled to impose charges on their industry as it is not viewed as a legitimate state.

According to the institutional perspectives, the aviation industry and non-EU countries can be said to have had fixed preferences and acted according to logic of expected consequences to instrumentally achieve their preferences. Deviations exist, but their interaction with other institutions shows that they mainly focused on ensuring their own preferences. While it cannot be said for sure, specific actors were targeted because they would inevitably provide a favourable outcome. The pressure by the non-EU countries illustrated by the US may also be seen as a standoff between two economic blocks on the international arena, where one would eventually be forced to give in. In this sense it is more likely that non-EU countries opposing the EU would gain support as they carry more credibility than the EU globally.

Meanwhile, the EU institutions may be said to have had unstable preferences since they changed their original position. This suggests that they acted according to logic of appropriateness as they may have changed their preferences to accommodate others within the process. A deviation might be the Member States, who followed a form of rationality during the situation with the manufacturer and China, to prevent revenue and job loss in Europe. This would fall under rational choice institutionalism as they frame it of either gaining or losing financially, leading to utility maximisation. However, due to the historical and present connections, plus the official explanation provided by both the Commission and Member States, there is evidence of partisanship and interaction with other relevant actors. Those advocating the official explanation, emphasising global agreements and solutions, are thus close to norms and values which indicates logic of appropriateness.

In sum, why was the derogation of intercontinental flights from the ETS then proposed? Firstly, internal pressure both within Member States and the EU facilitated the derogation proposal. Secondly, external pressure from non-EU countries became crucial, where the EU was put in the spotlight and eventually could not withstand the pressure. These two factors were essential for the derogation. In addition, the industrial actors may be seen as the point of departure for both where relevant institutions have followed, like a domino effect, one by one. In this context, it is clear that the industry, within and outside Europe, have had high level of influence on legislators due to close connections with governments.

5.2 Previous research and perspectives

How does this particular case relate to previous research and literature? Overall similar patterns can be found, where the many difficulties described when establishing measures for aviation has been present. Likewise, the findings do also suggest that aviation is a sector that is treated somewhat favourable compared to other energy consuming sectors, as it is allocated much importance especially to Member States and other non-EU countries globally.

Therefore, considering the international character of aviation, many actors have been present and influential, like emphasised by previous literature. This is much like Foster highlighted when examining the US position, which initially were passive and remained so. However, when they eventually engaged the process things happened quickly, making the US perhaps the most important actor, both directly and indirectly, from non-EU countries. Other non-EU countries were also crucial, where China had a direct impact, plus many others who openly criticised the EU internationally. The notion of aviation as a global industry is thus evident due to these multiple actors.

From an internal perspective the findings of Buhr may also be included, who described that the initial inclusion of aviation in the ETS was due to that EU reclaimed leadership from the Member States because of slow progress which undermined EU intentions. Since the result in this study shows that Member States were crucial for the derogation proposal, it would be possible to argue that the Member States have again reclaimed the leadership from the EU. How might power then be distributed within the EU and among the institutions? Since the Member States evidently became the main drivers initially when pressure eventually amounted, the findings suggest that Member States still dictate what happens within the EU. Perhaps this also demonstrates an inability or resistance to institutionally adapt of the Member States, as suggested by research on EU environmental governance? Further related to the institutional perspectives, continuity is perhaps then easier to explain because institutions repeat the same pattern of choices and action. Change will then not happen easily, subsequently requiring a more complicated explanation. Relating to a wider discourse of European Studies, it can be argued that integration within the EU is presently driven by Member States, indicating intergovernmental tendencies. During the time of the original decision this would then have been closer to neofunctionalism since the driving force was the Commission, when considering what institutions possess power over the policy and integration process.

From the broader perspective of environmental policy and governance, it is clear that the case of aviation follows and includes the factors for how environmental regimes are shaped and formed. It is therefore evident that these have affected the process leading up to the derogation proposal. Firstly, economic conditions have and remain a central aspect in how actors have positioned themselves. This is clear when looking at industrial actors where the economic aspect is a major driving force for how they position themselves and the choices they made. Environmental conditions and trends have also affected the process, which inevitably have led to consensus regarding flexible measures, emissions trading and voluntary agreements illustrate this. Few contest methods of mitigating emissions via these approaches, where the issue is rather put on what institutional setting should be responsible. International commitments have also been extremely present and became a significant factor, illustrated by references to forums like the ICAO and additional bilateral agreements. Like the national representative emphasised, this is an essential factor to consider when policies form in the EU. This is further exemplified by non-EU countries opposing and criticising the ETS due to sovereignty and EU institutions wished to facilitate a global solution. Even the industry utilised this factor via the case against the EU. Concerning major changes in EU polity, no apparent example beside the derogation proposal itself have been highlighted, indicating it has

been somewhat absent or at least of less importance. While all examples can be discussed further, they are present and the case of aviation does demonstrate their significance.

Lastly, viewing the factor of interest and ideological orientation of specific actors, this has clearly been an essential factor. This may of course also be because it has been the major variable within the study. Nevertheless, it is clear that key actors have positioned themselves according to the prerequisites of the other relevant factors. Since this was also an essential factor from the perspective of aviation, it is clear that this factor had a major impact and enabled the derogation proposal. Subsequently, the factors determining environmental governance within the EU provided by von Homeyer are very relevant, especially for this study. The perspectives of influence, power and setting the agenda, has then also been essential as it is evident that certain actors have exercised power and successfully influenced relevant institutions in order to achieve their preferences. These tendencies can be seen throughout the whole process, which also is in line with environmental research, suggesting that individual self-interest undermines the collective interest of environmental protection.

5.3 EU as a global actor and international leadership

Due to the international character of aviation as presented both in previous research and the findings, a topic that arises is then how EU is perceived globally. For example, does it possess legitimacy and the potential to become an international leader on environmental policy and climate change? Like research on aviation suggest, the EU is considered a leader on the area due to the inclusion of the aviation into the ETS, where environmental policy and governance provide the same perception. However, the issue is not whether the EU possesses the intentions, but rather if it has legitimacy and credibility in a global context. Does the EU desire leadership in environmental issues then must not other countries globally recognize it as a legitimate actor? Subsequently it should be essential for the EU to establish credibility in international forums. An attempt to overcome the obstacle of legitimacy and lack of credibility was perhaps done via the ECJ verdict, concluding that the EU was within its capacity. There were therefore no formal obstacles to maintain international aviation in the ETS, but with the derogation proposal it may be perceived that the EU questioned its own credibility.

Another question of credibility is that of transparency within the Council. Like the Reuters article somewhat illustrates in short, the Member States are crucial when decisions are made, but also able to be influenced. While lobbying is nothing unique for aviation and has existed for a long time in both the EU and Member States, this raises the controversial question whether it is politicians who decide what EU policies shall contain or interests set aside from the public? With this in mind, will the EU possess legitimacy, internally and internationally, if such behaviour persists? Considering that people in Europe elect politicians to govern, not special interests, this seems like a valid question to pose.

However, when viewing the EU in an international context, it is an issue of power relations where for example the US has been able to exercise power over the EU policy process. How is then power distributed between these two in an international context? Considering the US,

both politically and economically, would the EU have been able to maintain international aviation within its ETS? The answer to this is most likely no, as what seems to have happened is that countries like the US and China have successfully exercised what might be referred to as ‘soft power’. Perhaps this is evidence of new coalitions internationally concerning climate change as mentioned in the context of EU leadership within environmental policy? Since the EU does not possess the characteristics of a unified state, resisting pressure becomes difficult. Relating to some arguments provided against the ETS, emphasising that EU legislation has no legitimacy internationally, illustrates this. Subsequently, a reason for why non-EU countries are able to exercise power over the EU is related to the fact that it is not perceived as a legitimate actor within the international arena. Also, would the derogation proposal not have been presented, it is difficult to say what exactly would have happened. Would the EU persisted it might have found itself in a situation where trade and other economical sanctions might have damaged diplomatic relations with other economic blocks. Or would it perhaps compromise a potential ICAO solution? There is no an answer to this, but nevertheless an important factor to highlight as the derogation proposal was presented on these premises.

And what if a global measure is not presented? Will the EU reinstate intercontinental flights in the ETS or will it fall under pressure again? Since there evidently was pressure behind closed doors which may have made official reconsider during this process, there is not much suggesting that something else would happen in a similar situation. What does this then say about the status of environmental policy within the EU? Are for example economic policies and trade relations more relevant and essential than environmental? This is probably the case as the results plus previous research indicate that EU legislation is affected by diverse national interests, which eventually result in vague provisions. After all, the EU initially started as a project with the aim to harmonise and integrate the common market, where environmental issues are not the primary concern, but rather their effects on the market and whether they create distortion on competitiveness.

5.4 Further research

Continuing on the research provided in this thesis, research on similar sectors to aviation can be conducted. Shipping is an example where there are possibilities of conducting a comparative study within the context of policy, to further detect how EU policies are outlined to suit international legislation would be interesting. In addition, another possible approach can be to examine and explore the interaction between EU officials and representatives from other global forums or countries. Likewise, studies on the perception and legitimacy of EU legislation within an international context can be conducted, where examining global sectors like aviation and shipping may provide distinct examples as they are truly transnational. This would provide further insight to whether the EU is considered a credible organisation.

Due to the central role of certain Member States within this case, another possible focus can be to view the role of smaller Member States, where the dynamics of the Council can be further examined. Also, because of the limitations of this thesis, there were also multiple perspectives that had to be excluded from the theoretical framework and discussion. Continuing research can then include theories that focus on integration within the EU, such as

intergovernmentalism and neofunctionalism. In addition, a multi-level governance perspective, including for example the ICAO, EU and Member States, can display another interesting structure of global politics and the EU as a global actor.

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