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Article:

Burns, C. orcid.org/0000-0001-9944-0417 and Tobin, P. (2020) *Crisis, climate change and comitology : policy dismantling via the backdoor?* *JCMS: Journal of Common Market Studies*, 58 (3). pp. 527-544. ISSN 0021-9886

<https://doi.org/10.1111/jcms.12996>

This is the peer reviewed version of the following article: Burns, C., and Tobin, P. (2019) *Crisis, Climate Change and Comitology: Policy Dismantling via the Backdoor?*. *JCMS: Journal of Common Market Studies*, which has been published in final form at <https://doi.org/10.1111/jcms.12996>. This article may be used for non-commercial purposes in accordance with Wiley Terms and Conditions for Use of Self-Archived Versions.

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Crisis, Climate Change and Comitology: Policy Dismantling via the Backdoor?

Abstract

The European Union (EU) is reputed to be a climate pioneer. However, the EU has been beset by crises, with potentially negative consequences for climate ambition. Analysis and coding of EU climate legislation between 1998 and 2015 reveal that while the rate of climate policy creation has increased since the onset of the crisis, the ambition of these policies has waned. Technical policy instruments (comitology) at the EU level – ‘Delegated and Implementing Acts’ (DIA) – are analysed alongside legislation adopted under the ‘Ordinary Legislative Procedure’ (OLP). If applied as indicated in the treaties, technical DIA measures should not influence policy ambition, but in fact during the crisis era, DIA measures were used more frequently, and used in three out of the four cases of policy weakening, suggesting that minor dismantling of climate policy is taking place at EU level, but via the backdoor.

Keywords: Climate change, comitology, policy dismantling, EU, crisis.

Introduction

During the mid-1990s and most of the 2000s, the European Union (EU) enjoyed a relatively unchallenged reputation as a global leader on climate change (Kilian and Elgström, 2010; Parker and Karlsson, 2010). However, the onset of the financial crisis coincided with the EU’s leadership faltering on the international stage (Bäckstrand and Elgström, 2013) and with a backlash against EU climate policy from poorer EU states still dependent on carbon intensive energy and industries (Skjærseth, 2018). Moreover, the EU has been beset by a ‘conglomerate of crises’ (Falkner, 2016) encompassing not only the 2007/2008 Global Financial Crisis (Burns & Tobin, 2016) but also rising Euroscepticism, the Syrian refugee crisis, and Crimean

annexation. A mixed picture emerges from the literature as to whether this turbulent context has influenced European environmental policy. Some authors suggest environmental policy has been dismantled (Gravey and Jordan, 2016; Steinebach and Knill, 2017); for Knill et al. (2018), the Commission has maintained a rhetorical commitment to environmental policy leadership, whilst seeking to minimise environmental regulations. Others have suggested policy dismantling has occurred but note the crisis is only one contributory factor amongst a range of others (Burns et al., 2019a).

We seek to contribute to these debates and to provide greater clarity about if and how the EU's climate ambition has shifted during this turbulent era by analysing change in climate policy ambition over 18 years (1st January 1998-31st December, 2015). We do not assume a direct causal relationship between the crisis era and policy outputs, but do assume that this wider political and policy context may have shaped the appetite for ambitious climate legislation. To test policy strength and depth over time, we develop and apply a novel approach for evaluating policy ambition, namely our Environmental Policy Intensity (EPI) typology (see also Burns et al., 2019b). In a significant departure from extant approaches, we also explicitly analyse legislation adopted via the Ordinary Legislative Procedure (OLP) and the associated 'Delegated and Implementing Acts' (DIA)¹, which are primarily used to legislate on technical issues and to give effect to OLP legislative commitments. The use of DIA has significantly increased since 2000, especially for established policy sectors such as the environment

¹ We acknowledge that the terminology 'OLP' and 'DIA' are a slightly awkward pairing. In the public policy literature – which often focuses on national, rather than supranational policy-making – the existing terminology would consider OLP legislation to be 'primary legislation', while DIA would be 'secondary legislation'. However, this terminology is problematic in the EU case, where 'primary legislation' relates to the EU's Treaties, while 'secondary legislation' refers to all regulations, directives and decisions. Writing on this issue, Daniel Guéguen (2014: 4) argues that it is "preferable to speak of "secondary legislation" when talking about delegated and implementing acts." We use the terms 'OLP' and 'DIA', with the understanding that readers familiar with the public policy literature will consider these synonymous with the standard 'primary' and 'secondary' terminology that is widely used in the field. Because DIA is expressly designed to be an umbrella term that includes comitology, we also use DIA to refer to policies agreed *prior to* the Lisbon Treaty via comitology/DIA.

(European Parliament, 2016, pp.28-30). For example, in 2017, across all policy areas, there were 267 committees, which held 616 meetings, and issued 1906 opinions and 1687 Implementing Acts (European Commission, 2018); yet, only 44 pieces of legislation were adopted via OLP. The shift to technical policy instruments has been accompanied by an explicit effort to reduce EU policy outputs ‘through doing less but doing it better’ (Gravey and Jordan 2016). The growth of this technical policy-making area is politically important as it shifts power from the co-legislators to the Commission, and to an arena that is notoriously lacking in transparency and subject to limited accountability. Its usage also suggests that democratic norms may be sacrificed in the pursuit of technical efficiency.

The increase in the use of DIA instruments has been accompanied by calls from the European Parliament for increased transparency and scrutiny, to ensure that the Commission is not stepping beyond its powers or smuggling in substantive policy change via technical measures (Christiansen and Dobbels, 2013). Indeed, if the Commission were to suspect that legislation via the OLP may not be agreed due to heightened sensitivity to economic concerns (Slominski, 2016), or alternatively, wished to dismantle policy but feared the veto power of the co-legislators (the Council, and European Parliament [EP]), one way in which to achieve its policy objectives would be via the back-door route of DIA. For example, Pollex and Lenschow (2019) find through a fine-grained analysis of two environmental policies that these implementing measures have been used to adjust settings in ways that represent policy weakening. By supplementing that study with a wider analysis of policy we complement work on the use of implementing measures in the EU (Christiansen and Dobbels, 2013; Kaeding and Hardacre, 2013), the burgeoning literature on policy dismantling (Bauer and Knill, 2012; Jordan et al., 2013; Pollex and Lenschow 2019), as well as that on EU climate policy (Bäckstrand and Elgström, 2013; Kilian and Elgström, 2010; Parker and Karlsson, 2010).

Below, we review the existing literature and derive two hypotheses. We then outline our methodology before presenting our data, analysis and conclusion. The analysis shows that since the onset of the conglomerate of crises, although the rate of climate policy creation has increased from an annual perspective, the policies' contents have become less ambitious. We also find that policies that passed through the OLP had a higher average EPI score than those via DIA. Only four instances of reduced policy ambition are found, but all were since the start of the crisis, of which three were produced via DIA. The increased use of DIA during this 18 year period provides new empirical evidence for debates surrounding the democratic accountability of EU policy-making (Brandsma, 2016; Georgiev, 2013; Rhinard, 2002). As such, this article makes an important methodological contribution by applying its new typology to DIA measures, and generates new empirical findings on EU climate policy-making, and the extent to which comitology has been used for backdoor dismantling in the crisis era.

Literature Review

A conglomerate of crises

Since the entry into force of the Single European Act in 1987, the environmental *acquis* has grown steadily, either in response to recently-identified threats, or as a means of increasing the ambition of existing policies (Steinebach and Knill, 2016). However, since the late 2000s, the EU has faced a conglomerate of crises (Falkner, 2016), most notably the economic and Eurozone crises (Gravey, 2014), the migration and refugee crisis (Byman and Speakman, 2016), and an on-going legitimacy crisis, exemplified by the ongoing Brexit negotiations (Farstad et al., 2018). This crisis period followed the EU's 2004 enlargement, which saw the EU accession of states that were less well-positioned to develop ambitious environmental policy, and which sought, successfully in some cases, to reduce the ambition of environmental

legislation (Skjærseth, 2018). The costs of environmental policy have become more politicised, as some Member States have sought to block new legislation (Skjærseth, 2018; Skovgaard, 2014), and the economic crisis has been used to justify the pursuit of less ambitious, and crucially, less expensive policy (Burns et al., 2019b). The combined effects of these factors appear to have ‘cooled’ environmental policy ambition in the EU (Skovgaard, 2014; Kassim et al., 2017; Burns et al., 2019a). We analyse the implications of these changes for climate policy.

Policy dismantling

One response when seeking to cut spending is to reduce the quantity and ambition of policy outputs, i.e. to engage in policy dismantling (Bauer et al., 2012; Jordan et al., 2013). Analyses of policy retrenchment or termination within states are well-established (Hanf, 1989; Pierson, 1994), but their application at the EU level is relatively novel, because of the challenges associated with retrenchment at that level, such as the complexity of the legislative system, and the presence of numerous veto players (Steinebach and Knill, 2016). Yet, as Gravey and Jordan (2016) note, there has been an emerging agenda since the early 2000s to streamline EU legislation via the Better Regulation process, recently incarnated as the Regulatory Fitness and Performance (REFIT) Platform. REFIT focuses upon ensuring the cost-effectiveness and efficiency of policy, and emphasises reducing regulatory burdens, possibly by removing existing legislation (European Commission, 2015).

Emerging approaches for analysing EU dismantling have focused upon measuring policy change by counting the quantity of new legislative outputs (‘policy density’) and the content of these outputs (‘policy intensity’; see Bauer and Knill, 2012; Burns et al., 2019a; Gravey and Jordan, 2016; Jordan et al., 2013; Steinebach and Knill, 2016). Capturing changes in policy density is straightforward. Defining and measuring policy intensity, however, is more complex.

Jordan et al. (2005) note that by changing the instruments involved, policies may remain substantively the same in their objectives despite appearing to be deregulated. Bauer and Knill (2012) expand the conceptualization of policy intensity further, by including the ‘scope’ of the policy intervention. Here, the scope generally changes in line with the number of target groups addressed by a certain policy; for example, we may examine changes in the number of factories emitting pollutants addressed by a particular environmental bill (Bauer and Knill, 2012, p.34). Policy intensity is therefore a useful companion to analyses of policy density, as it provides additional and rich data that can be used to determine broader legislative trends. By using both policy density and intensity together, we can determine whether a decline in the number of policies has occurred, alongside a parallel increase in the ambition of those policies, or *vice versa*.

Existing work on EU environmental policy dismantling develops and applies these approaches in different ways. Gravey and Jordan (2016) focus upon environmental policies that have been the subject of deliberate dismantling strategies, and rank the density, scope and settings of legislative instruments over time. They apply their approach specifically to environmental policy, and consider the ways in which legislation evolves over time by reviewing amendments to successor policies. Unsurprisingly, given their focus on policies targeted for dismantling, Gravey and Jordan (2016) find some limited evidence of such behaviour, alongside instances of policy expansion and stasis. Steinebach and Knill (2016) also analyse scope and settings as part of their review of shifting policy density in air and water legislation. They find that the EU exhibited a long-term trend of policy expansion until 2010, followed by four years of limited policy activity (also see Kassim et al., 2017). Pollex and Lenschow (2019) analyse two policies – on eco-design and eco-labelling – and find evidence of settings being weakened via technical implementing measures.

Gravey and Moore (2019) find that the policy intensity of three EU sub-sectors – environment-industry, climate and energy, and air quality – have all increased since the economic crisis. Relatedly, whilst engaging with the broader question of whether the crises have affected EU climate and energy policy, Slominski (2016) uses a historical institutionalist narrative-based approach that reviews the evolution of energy and climate policy over time. He argues that the EU’s climate and energy policy continued to grow, although this finding is supported by a relatively limited range of data. Slominski does, however, suggest the economic context was increasingly mobilised discursively as a reason not to expand climate and energy ambition. Skjærseth (2018) highlights Poland as the least ambitious EU Member State on climate change, identifying the state as playing a key role in weakening climate and energy policy at the EU level, particularly on the 2030 climate and energy framework.

Consequently, there is emerging literature on the relationship between the context of crisis and EU environmental policy, employing various analytical approaches and drawing slightly different conclusions. We contribute to this work in multiple ways. First, we analyse climate and energy policy adopted between 1998 and 2015, but in a departure from Slominski’s approach, we analyse policy intensity and density, in order to test his claim that there has been no substantive shift in this policy area’s ambition. Moreover, we use a different method for capturing intensity from that used by others (Gravey and Jordan 2016; Steinebach and Knill 2016; Pollex and Lenschow 2019), by focussing specifically on environmental ambition and including consideration of scope and settings within a wider environmental paradigm. Finally, we analyse whether there is a difference in density and intensity across OLP and DIA legislation.

OLP and DIA legislation

The OLP is the EU's main legislative procedure, and affords the EP the role of co-legislator with the Council. There is an assumption in the EU environmental policy literature that the EP is generally the most pro-environment EU institution (Judge, 1992; Burns, 2013; Burns et al., 2012), notwithstanding recent studies suggesting that this behaviour has waned over time (Burns et al., 2013). Typically, therefore, we would expect policies adopted via OLP to be ambitious, on the grounds that the EP will usually try to strengthen policy.

In addition, the EU, like all legislative systems, has a set of procedures to delegate responsibility for the implementation of policy to a bureaucracy (the Commission) in order to minimise costs and enhance policy-making efficiency (Majone, 2001). Put simply, the Commission is empowered by the co-legislators to adopt amendments to legislative acts in order to update them and/or make technical adjustments. Committees composed of national representatives and/or experts review these implementing acts, hence the derivation of 'comitology'. Depending upon the Treaty article and the nature of the measures, different voting rules are used within the committees; for some, the Commission has more independence than in others (Kaeding and Hardacre, 2013).

There have been consistent calls for reform of this system, notably from the EP on the grounds that the comitology process offered limited opportunity for meaningful scrutiny or scope to veto proposals (Christiansen and Dobbels, 2013). Specifically, the EP was concerned that the Commission and Council could amend legislation significantly without proper legislative oversight, and therefore the EP was keen to exercise such scrutiny, especially in those areas where the EP had acted as a co-legislator under the OLP (Kaeding and Hardacre, 2013).

Since the adoption of the Lisbon Treaty, there have been two approaches for adopting implementing measures, one based upon delegated powers (Article 290, Treaty on the Functioning of the European Union [TFEU]) and one based upon implementing powers (Article 291 TFEU). The delegated option, which reserves a veto right for MEPs, tends to be preferred by the EP, while implementing acts, which are subject to negotiation in a comitology committee composed of national representatives from each state, tend to be preferred by the Council (Karsten, 2018). Legislation adopted prior to the entry into force of Lisbon is now subject to these new provisions, except for those policies subject to the regulatory procedure with scrutiny (RPS), which was used between 2006 and 2009.²

Whilst a new system has been introduced by the Lisbon Treaty, these processes do not apply across the board but rather are being rolled out as the primary legislation is updated, because agreement between the Council and EP on how the new DIA system would work was only operationalised in 2011 (European Commission, undated). Consequently, the implementing measures we analyse here were adopted under the old comitology system, using the regulatory procedure (Council of the European Union, 1999) or, from 2006, the RPS (Council of the European Union, 2006). The RPS affords more power to the Parliament: under the RPS, the Commission drafts a measure that is submitted to a comitology committee of national representatives for its consideration. If the committee issues a positive opinion, the measure is forwarded to the Council and Parliament, and if neither objects, the Commission can adopt the measure. However, if the EP (by an absolute majority) or Council (by qualified majority) oppose the measure on the grounds either that it exceeds the implementing powers provided for in the basic instrument, or that the draft is not compatible with the aim or the content of the

² The RPS continues to apply for implementing measures for legislation that has not yet been updated to apply the new approach.

basic instrument or does not respect the principles of subsidiarity or proportionality, then the Commission needs to resubmit the measure to the committee or to present a legislative proposal (Council of the European Union 2006; Kaeding and Hardacre, 2013). The EP and Council can only object on the grounds listed above, and can only oppose the whole measure (Kaeding and Hardacre, 2013).

If the committee issues a negative opinion, the measure first goes to Council, which has the opportunity to oppose the measure (on the same grounds listed above), following which the Commission can then modify and resubmit to Council. Alternatively, the Council can adopt the measure but then must forward to the EP for its opinion, or, the Council can take no action for three months after which the Commission can forward the measure to the EP, which can agree the measure, take no action or oppose the measure subject to the three criteria outlined above (Council of the European Union, 2006; Kaeding and Hardacre, 2013, pp.385-6). In short, the RPS empowered the Council and Parliament to veto some elements of implementing measures but under limited conditions.

The above discussion of the DIA system illustrates that there have been on-going concerns that these measures are insufficiently transparent and fail to allow for robust monitoring (Christiansen and Dobbels, 2013; Kaeding and Hardacre, 2013). Moreover, as noted above, there is a suggestion that attempts to dismantle environmental policy have taken place via these mechanisms (Pollex and Lenschow 2019). It seems likely that if the crisis era has resulted in cooling of EU climate policy ambition, then DIA measures provide a route via which policy can be dismantled or weakened behind closed doors. For example, if the Commission suspects that legislation may be blocked by the co-legislators it may choose to use implementing measures to circumvent the OLP decision-making route.

We seek to answer the following questions:-

- Has EU climate policy ambition changed over time, especially during the crisis era?
- Is the comitology system being used as a back door for dismantling?

To do so, we test two hypotheses. In line with the general finding from the literature that environmental policy ambition has declined post-2009, we hypothesise that:

H1) EU climate policy intensity and density have both declined since the onset of the crisis era.

Turning to DIA processes, given that these measures are used for technical updates to legislation, we assume that they should not increase or decrease existing levels of ambition significantly (for limitations on the Commission's powers to 'supplement' a legislative act, see European Court of Justice, 2016). However, the EP's on-going insistence on being given the right to scrutinise DIA measures, and Pollex and Lenschow's (2019) findings that implementing measures have been used to dismantle policy, suggest that DIA measures may be used to alter policies beyond what is envisaged in the treaties. To test the uncertain status of these technical instruments we are guided by the technical rationale underpinning these measures and hypothesise that:

H2) Measures adopted as DIA do not significantly affect the overall ambition of existing legislation.

Methods

To test our hypotheses we analysed the EU's climate legislation³, as identified by the European Commission (2016), up until the 31st December 2015. We deliberately end our period of

³ Due to the complexity of climate change, every area of policy-making could contain 'climate policies'; indeed, Rietig (2019) finds that during 2008-2014, the Commission increasingly integrated climate change into other policy areas. As such, the European Commission's (2016) list of climate policies was the most appropriate means of collating our dataset. However, the source is not exhaustive; for example, it omits the Energy Efficiency Directive (2012/27/EU).

investigation with the full year of 2015, such that the latest changes to the DIA system (first proposed during 2016) do not affect our analysis. Our database features twenty Regulations, Directives, and Decisions that were agreed through the OLP, and thirty-seven DIA measures (of which one is a post-Lisbon implementing measure).

Measuring the *density* of the policy change involved simply counting the individual measures identified by the Commission (2016), and assorting these into either pre-crisis or crisis era, and as OLP or DIA measures. In order to analyse the *intensity* of the policies, we employed a five-fold EPI typology for classifying the intensity of EU climate legislation, building upon, but distinct from, the work of Burns and Carter (2010). This typology ranges from strong environmental policy intensity (allocated a score of 5) through to negative policy intensity (1), as outlined in Table 1 (see also Burns et al., 2019b). Thus, the EPI typology is a manifestation of policy intensity, which, alongside policy density, collectively reflect the overall level of environmental policy-making ambition. The EPI approach allows us to include scope and settings, as this typology includes consideration of the breadth and content of the policy.

Table 1: Typology of Environmental Policy Intensity (EPI).

Type of Environmental Policy Intensity	Numerical Score	Evidence
Strong policy intensity	5	Includes ambitious targets/limits/standards, with clear and specific deadlines if appropriate. Involves credible monitoring, with provisions for

		resources and training if necessary.
Moderate policy intensity	4	Targets are included that are an advance upon the status quo but are less ambitious than strong policy intensity. Deadlines may be included, but with long timeframes or derogations. Limited monitoring and resources if relevant.
Weak policy intensity	3	Rhetorical commitment to advancing status quo but limited evidence of resourcing implementation of policy goals or deadlines.
Neutral	2	No discernible impact – maintains status quo – typically editorial and neutral amendments.
Negative policy intensity	1	Weakens status quo by, for example, reducing/weakening targets, extending deadlines, exempting certain actors from legislation.

To allocate the scores stated in Table 1 above, each piece of legislation has been coded, and in cases of uncertainty, the lower category was chosen to avoid grade inflation. Coding took place in March and April 2016, meaning that subsequent relevant political developments and research findings published since then were unknown to the coder. We tracked the guiding objectives about each of the fifty-seven policies, and also drew from contextual grey literature, media reporting and legislative documents. We endeavoured, where possible, to ensure that the rankings reflected the state of knowledge at the time the proposals were made, to ensure that the ambition was contextually located. For example, as scientific knowledge progresses, what may have appeared ambitious in 1998 no longer appeared so in 2015. We list all of the measures in the Appendix, highlighting the form of policy instrument, such as market-based mechanisms, or the encouragement of certain forms of technologies. From here, we use the signature date to divide the cases into ‘pre-crisis’ and ‘crisis era’ categories (defined below). In the Analysis section, we explore in detail examples of policies that appear to exhibit policy dismantling.

Determining a date for the onset of the crisis era is challenging, not least because multiple crises have occurred in recent years. We select the start of the economic crisis as the most useful means of defining the start of the crisis period. Following the September 2008 collapse of Lehman Brothers, the full scale of the European debt crisis started to emerge in 2009. Moreover, the legislative timeframes for adoption of legislation in the EU tend to be tied to the terms of office of the EP and the Commission, meaning that from a legislative perspective, the crisis was unlikely to have much discernible impact prior to summer 2009. Consequently, we analyse density on an annual basis, and also break the intensity analysis into two time periods – before and after the 31st May 2009⁴, which we refer to hereon as the ‘pre-crisis period’ and the ‘crisis era’, respectively, with the latter concluding on the 31st December 2015.

⁴ The European election took place 04-07/06/2009.

Acknowledging that no single date could be identified as the precise ‘start’ of the crisis era, we reflect throughout our analysis on how our findings vary when different start dates for the crisis are employed.

Results

Policy density

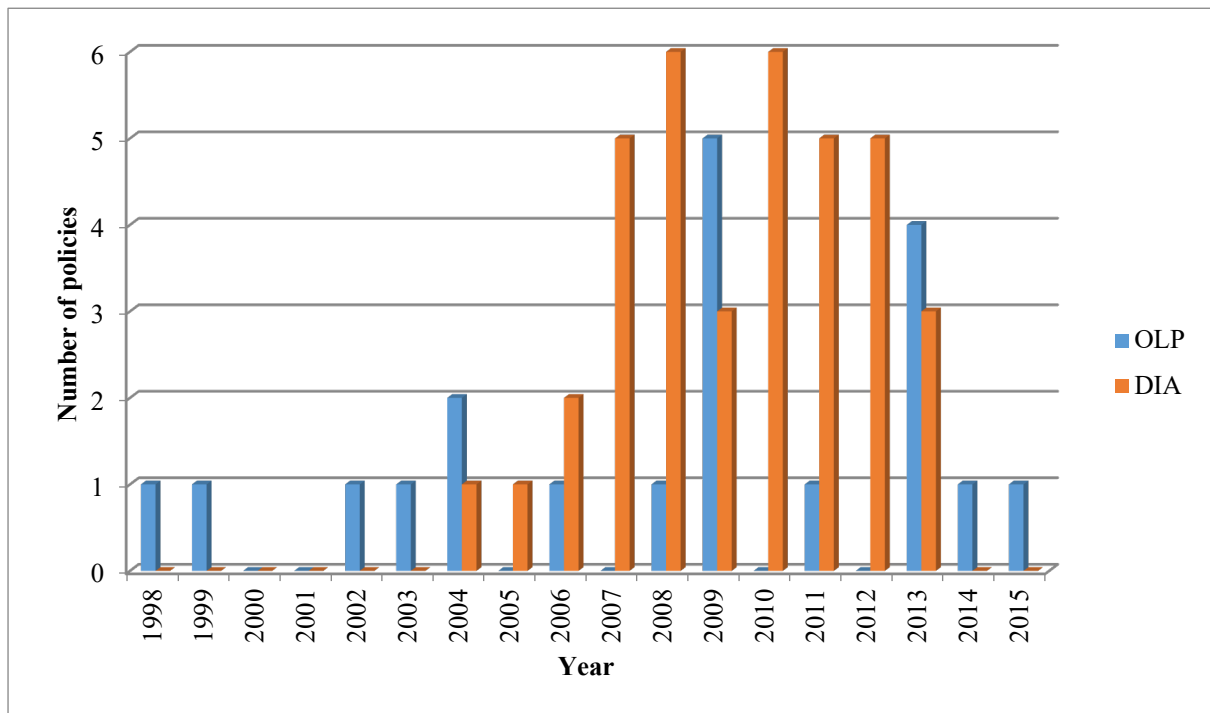
Twenty-eight pieces of climate legislation were signed between 1st January 1998 and the 31st May 2009, and twenty-nine were signed between the 1st June 2009 and 31st December 2015, showing an almost even split between the pre-crisis period and the crisis era. The pre-crisis period in our study was 11 years and five months long, while the crisis era was only six years and seven months long; from a policy density perspective, the rate of policy adoption increased from 2.45 policies per year during the pre-crisis era, to 4.41. However, despite this finding, the years 2014 and 2015 only saw the agreement of one policy each, demonstrating a slowing of policy creation as the crisis era progressed. Interestingly, if we timed the onset of the crisis from the earliest possible date (even though any impact could not be felt on EU policy-making straightaway) – the 31st August 2007, when BNP Paribas ceased trading in three hedge funds – the rate of policy adoption per year in the crisis era would have been even higher, rising from 1.24 per year pre-crisis, to 5.40 during the crisis era, as the sixteen policies created between 31st August 2007 and the 1st June 2009 would be considered ‘crisis era’. Thus, taking the earliest date possible for the start of the crisis only serves to strengthen our finding that policy density has increased during the crisis era period.

The high-activity period of policy-making between 2007 and 2009 is largely explained by the adoption of the Climate Change Package in 2008 to prepare for the 2009 Copenhagen

Conference of the Parties (COP). Although Burns et al. (2013) suggest that the crisis had a chilling effect upon the negotiation of this package, these legislative proposals arose from a meeting of the European Council in March 2007 (Council of the European Union, 2007), prior to the start of the crisis. It therefore seems appropriate to include the additional sixteen policies identified in the paragraph above within the pre-crisis period, supporting our choice of the 31st May 2009 as the cut off between the pre-crisis and crisis eras. Importantly, ten of these sixteen policies were DIA, showing the benefit of analysing policy type and policy intensity, as well as density.

Returning to the full data-set, we see there are thirty-seven pieces of DIA legislation, compared to twenty OLP (Figure 1). Of the DIA measures, fifteen were adopted prior to the 2009 elections and twenty-two afterwards. Thirteen of the OLP measures were adopted pre-crisis and only seven subsequently. As such, the usage of DIA per year has increased since the start of the crisis era, while the usage of OLP measures has remained steady. This finding is unsurprising: the greater the number of OLP measures, the more DIA measures will be needed to amend and update them, as the two are linked; DIA measures give effect to OLP commitments.

Figure 1: EU climate policies adopted via OLP and DIA 1998-2015, demonstrating policy density.



Policy intensity

Turning to the policy intensity of the legislation, we divide the fifty-seven pieces of legislation into five EPI categories. As shown in Figure 2, the only examples we found of negative policy intensity ('1') occurred during the crisis era, during which time there was a trend of less ambitious legislation being created. To determine the average ambition of each policy before and after the crisis had begun, we take the mean scores of all policies in each period, as shown in Table 2.

Figure 2: Pre-crisis and crisis era EPI, demonstrating policy intensity.

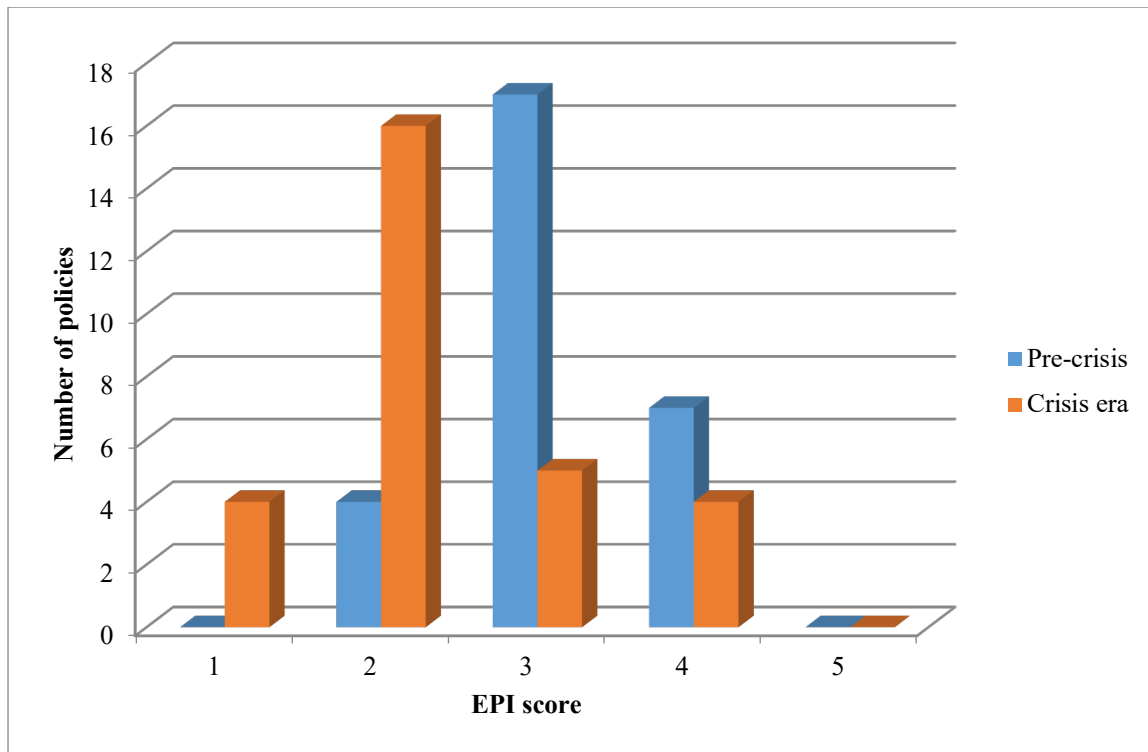


Table 2: Mean EPI scores for OLP and DIA policies combined.

Policies assessed	Mean EPI score
Twenty-eight pre-crisis climate policies	3.11
Twenty-nine crisis-era climate policies	2.31

Tables 3 (OLP) and 4 (DIA) show these data broken down by policy type. For the OLP policies, we also analysed the ambition of the policy proposals first created by the Commission, and the ambition of the final agreement that was signed after being scrutinised and shaped by the Council, and EP. The findings show higher mean scores across both OLP and DIA in pre-crisis legislation. They also show several instances of OLP legislation being strengthened between the Commission proposal and final agreement, but also some weakening (five policies were allocated higher scores, compared to three that received lower scores). Moreover, the average

EPI score increased between the proposal and the final agreement during the pre-crisis era, but decreased during this process in the crisis era.

Table 3: Mean EPI scores for OLP policies.

Policies assessed	Mean EPI score
<i>All twenty policy proposals (1998-2015)</i>	3.25
<i>All twenty final agreements (1998-2015)</i>	3.35
Thirteen pre-crisis policy proposals	3.31
Thirteen pre-crisis final agreements	3.54
Seven crisis-era policy proposals	3.14
Seven crisis-era final agreements	3.00

Table 4: Mean EPI scores for DIA measures.

Policies assessed	Mean EPI score
<i>All thirty-seven DIA measures (1998-2015)</i>	2.35
Fifteen pre-crisis final agreements	2.73
Twenty-two crisis-era final agreements	2.09

Finally, in addition to the above analyses, we also tracked changes in the EPI scores of policies that sought to address the same policy problem. However, determining whether comitology has been used to dismantle policy since the crisis began proved challenging. In the dataset created by the European Commission (2016), the fifty-seven policies are divided into seven groups, according to the target sector of each policy. These groups are: GHG Monitoring and

Reporting; the Effort Sharing Decision; Carbon Capture and Storage; Transport and Fuels; Forests and Agriculture; Fluorinated Gases; and the EU Emissions Trading System (ETS). Ideally, we would ascertain change during the crisis period for each of these policy groups. However, three of the groups contained only either one or two policies, while two of the groups contained fewer than eight policies each. As a result, it would be impossible using these five groups to obtain meaningful results from a comparison of EPI scores before and after the crisis had begun. Of the remaining two groups, the group relating to fluorinated gases contained eleven policies but all of these were before the crisis had begun. The remaining group pertains to the EU ETS, containing twenty-seven pieces of legislation. Table 5 states the average scores for EU ETS policies created before and after the crisis had begun, and we see again that more policies were made during the crisis era, but these policies received a lower average EPI score, compared to the pre-crisis era.

Table 5: Mean EPI scores for EU ETS policies.

ETS policy type	Pre-crisis		Crisis era		Total number of policies
	Number of policies	Mean EPI	Number of policies	Mean EPI	
OLP	4	3.75	4	2.75	8
DIA	3	3	16	2.19	19

Analysis

H1) EU climate policy intensity and density have both declined since the onset of the crisis era

We cannot confirm our first hypothesis, as policy density appears to have increased in terms of the average number of policies per year, but intensity has decreased. Prior to the start of the crisis era, the EU had been identified as a global climate pioneer (Kilian and Elgström, 2010). Yet, none of the fifty-seven climate change policies produced by the EU before or after the start of the crisis era received a maximum EPI score of 5. A hypothetical example of a policy that would have received a score of 5 relates to the creation of the ETS: while the creation of the ETS represents the kind of innovative, ambitious and well-resourced policy that would have been expected to be graded as a ‘5’, the Directive (2003/87/EC) that created the ETS allowed 95% of allowances to be distributed free of charge. These free permits undermined the capacity of the System to achieve emissions reductions by devaluing the price of allowances, hence we allocated the Directive a score of ‘4’.

At the other end of the EPI typology, four policies received scores of 1, thus weakening the *status quo*. All four of these cases were signed after the economic crisis had begun, and only one was adopted via OLP (the last in the following list). The first policy (2009/450/EC) that weakened existing policy intensity was the definition of ‘aviation’ within the ETS, and contained an extensive list of forms of aviation that were not to be included in the ETS, such as military, fire-fighting, humanitarian and scientific research aviation, thus reducing the amount of aviation emissions covered by the ETS. This weakening is consistent with diminutions in ambition observed in other cases (Burns *et al.*, 2012, 2013). The second case, 2010/778/EU, transferred five million additional free allowances to Denmark, after the state argued successfully that its baseline was disproportionately higher than other ETS states (for discussions around permit allocation, see Caney, 2009; Verde *et al.*, 2019). The third case

(2011/278/EU) harmonised the allocation of free allowances across states that are party to the ETS. This example is a contentious case, as it may be argued that such a policy standardises and thus limits exploitation of the free allowance system by states. However, we felt that the policy was sufficiently extensive in its free allocation of allowances that it represented weakening. Finally, the 2013 Decision (377/2013/EU) created via OLP to delay the inclusion of aviation from outside the EU within the ETS, was also identified as lowering the average EPI score.

H2) Measures adopted as DIA do not significantly affect the overall ambition of existing legislation

We found evidence against our second hypothesis. Comitology provisions are designed to allow for technical policy adjustments, and most DIA policies are created to provide functional requirements needed to enact a policy objective. An example of a DIA climate policy is Commission Regulation 308/2008, on the format of the notification of training and certification programmes for stationary refrigeration, air conditioning and heat pump equipment. Such a policy is coded 2, as it offers no new substantive policy information; it simply outlines the required format for paperwork. Indeed, we would expect all DIA measures to be graded as '2'. However, we actually found that DIA measures altered the perceived existing levels of ambition. While the mean pre-crisis score for DIA was 2.73, the mean score for policies after the 31st May 2009 was 2.09, demonstrating that comitology policies were less ambitious on average during the crisis era. Moreover, as noted above, whilst there were only four examples of attempts to weaken policy, three were implemented via comitology. Thus, while it is of little surprise that DIA policies have lower intensity scores than OLP legislation, it is important to note that: this type of legislation is being used more frequently; such policies were less ambitious following the start of the crisis than before it; and this legislative procedure has the

capacity to lower – but also raise – overall policy intensity in absolute terms, despite their apparently technical *raison d'être*.

Combining our analyses

Focusing on OLP, we see that amongst the twenty OLP policies, the mean EPI score for final agreements was higher than those for proposals. Regarding those that passed through the OLP, for all twenty cases, the mean EPI score for the proposals was 3.25, while the mean score for the final piece of legislation was 3.35. This finding supports previous work that argues that the OLP – particularly the EP – strengthens environmental legislation (Burns and Carter, 2010; Burns et al., 2013), and thus suggests that the EP and Council strengthened Commission proposals, albeit marginally. Importantly, though, while policies' EPI scores increased between the proposal stage and final agreement during the pre-crisis era, they decreased via this process during the crisis era. This finding supports earlier research showing that the EP can strengthen policy (Burns, 2013; Burns et al., 2012) although its environmental ambition appears to have waned more recently (Burns et al., 2013). The Commission appears to have become less ambitious since the crisis began too; the first OLP proposal to be given a score below 3 was in 2012. The mean pre-crisis score for OLP proposals was 3.31, but this score dipped to 3.14 for crisis era proposals, while final agreements dropped to a greater degree, from 3.54 pre-crisis to 3.00, suggesting again that the EU's climate policy ambition did not continue to rise during the period, as required considering the urgency of the phenomenon, but rather, diminished.

Finally, we highlight an explicit reference made to the impact of crisis on climate ambition in one policy. Regulation 525/2013, which sought to improve monitoring by including maritime emissions, land use change, and a new means of annual reporting, highlighted the potential impact of these new measures in light of the economic crisis. Section 13 of the Regulation

states that “[i]n order to ensure the effectiveness of the arrangements for monitoring and reporting greenhouse gas emissions, it is necessary to avoid further adding to the financial and administrative burden already being borne by the Member States.” This sentence demonstrates the view that the ambition of additional climate legislation should be tempered to avoid becoming burdensome, thus highlighting explicitly the importance of economic concerns for EU climate policy-making during the crisis era.

Our identification of differences between OLP and DIA legislation underlines the benefit of analysing these policies separately. The increasing use of DIAs partly reflects the fact that the EU has a well-established and mature body of primary legislation that needs to be regularly updated. However, a consequence of the growth in the use of DIAs is that thousands of committee meetings are taking place and politically sensitive decisions are being made behind closed doors (Türk, 2015). Although the role of the EP in policy-making has increased over time, throughout the period under investigation, the DIA system was dominated by the Commission and Member State representatives. Furthermore, Türk (2015) finds that the relationship between the Member States and their national representatives is disconnected, due to the individual committee members’ status as policy experts rather than government figures. This detachment raises further questions over the democratic accountability of this growing legislative arena. Moreover, despite recent efforts to simplify the DIA system, it remains a complex, if not arcane, system of policy-making (Brandsma, 2016; Georgiev, 2013) that hinders the transparency of decisions being made on sometimes politicised, contested, and often partisan, policy areas, of which climate change continues to be a clear example (Tobin, 2017). Finally, the simultaneous increase in policy density and slight diminution in policy intensity since the economic crisis began underscores the rationale for employing both measures to understand changes to policy ambition. As such, our findings complement the

existing literature by systematically reviewing the content of each policy and coding them, ensuring that claims made about relative climate ambition in a context of crisis are robust.

Conclusion

Climate change is a permanent item on the political agenda, but like most policies, it is subject to peaks and troughs in the level of commitment and attention it receives from policy-makers. Extinction Rebellion protests, Friday school strikes and the green surge in the 2019 European Parliament elections all suggest that climate change is assuming renewed prominence and salience on the policy agenda. However, the opposition to an EU commitment to becoming net zero by 2050 from (often poorer) states underlines how divisive this issue continues to be, not least over concerns of cost. The fate of climate policy during an era characterised by the worst global economic crisis since the 1930s, the Eurozone financial crisis, an unprecedented migration crisis, and a resurgent Russia, tells us something about what we can expect for environmental policy in contested times.

Our analysis reveals that climate ambition waned slightly at the EU level during the crisis era, but the annual rate of policy creation increased. There are some qualitative indications that the crisis context contributed to a chilling effect upon EU climate ambition. There has been a trend towards using DIA rather than OLP, as expected, and significantly, DIA measures were found to alter existing ambition levels; three of the four instances of climate policy dismantling were made via comitology, all during the crisis era. This finding is important, as previous analyses have concentrated largely upon OLP legislation alone (Burns et al., 2012; 2013; Gravey and Jordan, 2016; Steinebach and Knill, 2016), or analysed a small sample (Pollex and Lenschow, 2019). Yet, it is clear that DIA tools are increasingly used to give effect to OLP policy goals

and should become a routine part of legislative analysis in EU studies. However, it is also important not to overstate the significance of these findings. The Commission's adoption of a suite of OLP legislation to give effect to its climate ambitions was always likely to generate follow up DIA provisions. The instances of dismantling are limited and are not enough to reflect a concerted effort to dismantle policy via the comitology back door. However, they do suggest that the EP needs to play its watchdog role effectively in the coming months and years as further new comitology provisions and reforms are rolled out. Indeed, as the new Lisbon decision-making procedures become embedded, there is scope to analyse whether a difference emerges between the use of delegated and implementing acts. Our analysis suggests that the scope to dismantle policy via the backdoor may be more likely via implementing acts where the EP has less power, than through delegated acts, and we invite future analysis to address this question.

As the appetite for new, high-profile EU policy has diminished following the start of the crisis era, it seems likely that comitology will become an increasingly important policy forum. The trends we identify here capture this general legislative shift away from OLP. There are consequently several ways in which this research agenda can be pursued and developed. First, while our analysis suggests that policy ambition has plateaued, it would be helpful to map the discursive construction of climate policy, in addition to policy changes, in order to better comprehend the motivations behind changes in policy ambition, and, if possible, the reasons for the increased use of DIA measures. Second, having identified patterns within EU climate policy within a specific period, there is scope to update the analysis to include the post-Paris era. For example, recent wrangling over the use of DIA in negotiations on the Renewable Energy Directive II and Land Use, Land Use Change and Forestry indicate that the question of how and where climate policy is regulated (OLP/DIA) will remain subject to political

contestation and may become more politicised as the EP exercises its powers under DIA. It would be interesting to determine if the patterns of behaviour captured here have occurred in other areas of EU environmental policy beyond climate change, and also policy more broadly beyond the environment, and/or outside the EU. Indeed, the EPI typology can be applied to any environmental policy area, and with some minor adjustments, to other policy areas, such as consumer protection legislation. In doing so, we can understand more accurately whether the patterns of policy change we have uncovered are common or are specific to climate policy, and if the latter, explain why this policy area is an unusual case. It would also be useful to ascertain whether these changes in policy ambition are felt at the member state level, especially regarding policy alterations via technical channels. This latter point is particularly important; this article has identified that a complex legislative process has been increasingly employed during recent years to shape climate policy legislation, and, in places, weaken it. Moreover, this complexity may increase over time through ‘policy accumulation’, which may incentivise selective implementation (see Adam et al., 2019). Finally, therefore, more research is needed to explore the use of technical legislative instruments in the development of particularly politically sensitive policy areas, such as climate change, at both the EU level and at the Member State level. Hence, this article not only delivers interesting findings in its own right, but also provides an important departure point for a significant and burgeoning research agenda on the implications of the growing use of DIA legislative developments at the EU level.

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