



Evaluating EU Decision-Making Processes

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A Case Study on the 'Renewable Energy in Transport Target' and the 'Sustainability Criteria for Biofuel Production' in the Context of the EU's Climate and Energy Package

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LIST OF ABBREVIATIONS

CAP	Common Agricultural Policy
Coreper	Comité des représentants permanents (Committee of Permanent Representatives)
DG	Directorate-General
DG AGRI	Directorate-General for Agriculture and Rural Development
DG ENV	Directorate-General for the Environment
DG TREN	Directorate-General for Energy and Transport
ENVI Committee	Committee on the Environment, Public Health and Food Safety
EP	European Parliament
EREF	European Renewable Energy Federation
EU	European Union
GHG	Greenhouse gases
ILO	International Labour Organization
ITRE Committee	Committee on Industry, Research and Energy
JEC-Consortium	Consortium of the Joint Research Center (JRC), the European Council for Automotive R&D (EUCAR) and the organization CONCAWE (Conservation of Clean Air and Water in Europe)
MEP	Member of the European Parliament
NGO	Non-governmental organization
RES	Renewable Energy Sources
WTO	World Trade Organization

ABSTRACT

The co-decision procedure is today the most common legislative *modus operandi* on EU level. The individual weight of the three main institutions involved – the Commission, the European Parliament (EP), and the Council – is however subject to diverse discussions in the research community. This study adds an additional piece to this puzzle by analyzing the negotiations on two central parts of the revised Renewables Directive, the renewable energy in transport target and the sustainability criteria for biofuels. The analysis is build on 16 semi-structured interviews with key actors in the policy process as well as on all publicly available institutional documents on the issues at stake. The derived information are then embedded into a framework which aims at studying the driving forces of decision-making processes on EU level by examining the three “I’s”, institutions, ideas, and interests for each actor respectively. Against this background, the study’s three main research questions are approached: (1) Determining the influence of formal and informal processes on the negotiations and the policy outcome; (2) identifying the underlying motivations of the different institutions and how they shaped the respective interests; and (3) examining which actor carried the most weight in the final agreement and for what reasons. The analysis reveals that informal processes, such as coalition-building or organizational leadership, had more influence on the negotiations and the final outcome than the formal foundations. Moreover, the institutions’ basic standpoints considerably shaped their interests. Thus, while the Commission and the Council were primarily guided by economic considerations, the EP was mainly concerned about the regulation’s impact on social and environmental sustainability. In the end, the Council had the most influence on the final policy agreement, especially due to the decision of the French Presidency to pass the Directive unanimous on the level of heads of state.

1 INTRODUCTION

In June 2009, the European citizens were again called to the polls to vote for their representatives on EU level. In the run-up to the elections of the European Parliament (EP)¹, the question was once again raised how much power this institution actually has and whether it is “worth it” to go to the polling station. The voter turnout of less than 50 per cent during the last EP-election in 2004 demonstrates that most citizens of the European Union (EU)² would obviously answer this question with “No, it is not worth it” (Murray, 2004/2005). One out of probably a number of reasons for this assessment is the widespread belief that the EP possesses only limited power in EU policy processes and that it rather represents a “dump” for gray, unpopular or scandal-marked national politicians. However, Members of the European Parliament (MEPs) continuously emphasize that the EP has gained a lot of power over the last two decades and hence represents today a strong actor in European politics.

This (self-)assessment is backed by numerous scientific studies (see for instance Farrell and Héritier, 2003; Corbett, 2000, 2001; Shackleton, 2000, 2001; Häge and Kaeding, 2007). Nevertheless, one should note that the research community is to a large extent discordant about the actual division of power between the three central actors of the EU’s legislative process, namely the EP, the Commission, and the Council.³ One central problem in determining the inter-institutional power balance lies in the discernment that it is not only reflected by *formal* rules but increasingly also by *informal* behaviors and conventions (Thomson et al., 2006).

The aim of this paper is to contribute to the above outlined discussion by analyzing a decision-making process on EU-level. More specifically, I will approach this challenge by scrutinizing three main research questions. *First*, I strive to dissect the actual influence of formal and informal factors in the policy process under examination. Formal factors are for instance represented by competences stipulated in the EU treaties while informal dynamics constitute unofficial contacts between the institutional actors, the exercise of influence from external players (e.g. lobby organizations) and the like. *Second*, I will evaluate what kind of underlying motivations within the institutions lead to a concrete positioning in the course of the decision-making process. Hence, the reason for an EU institution to adopt a particular standpoint during the negotiations can for instance be guided by economic or rather environmental considerations. I will question how these underlying motivations develop and how they can explain particular standpoints during the debate. The results of this analysis will enable me to, *thirdly*, detect which institution had the most influence on the final policy outcome, i.e. the legislation under examination, and what reasons led to this result in the end.

Such an examination is for a number of reasons of high scientific relevancy. In this connection, Warleigh (2002: 7) points out that EU institutions represent “the arena in which politics happens”. Thus, it is of high importance to grasp the driving forces and rules determining the performance of the EP, the Council, and the Commission respectively. A particular problem in this context is the rising informal character of these driving forces since it renders the policy process increasingly intransparent and difficult to understand. This circumstance is especially disturbing against the background of rising political power on EU level. For instance, around 40 per cent of the laws passed by the German *Bundestag* were initiated on EU level between 2002 and 2005, rising to even 80 per cent when it comes to environmental legislation (Kottra, 2009). Furthermore, the European Union is today the most sophisticated and advanced political body that developed out of regional integration and thus, potentially acts as a role model for other cross-national collaborations (Warleigh, 2002). Therefore, understanding the driving forces of the EU decision-making process and its strengths and weaknesses

1 In the following ‘European Parliament’, ‘EP’ and ‘Parliament’ are used interchangeably.

2 In the following, ‘European Union’, ‘EU’, ‘Community’ and ‘Europe’ are used interchangeably.

3 A somewhat deeper outline of previous research on this topic will be presented in section 2.3.

is important also beyond European borders. Finally, it has been highlighted by several studies that there still exist a considerable amount of disagreement among researchers about the factors determining the outcome of co-decision procedures, the legislative procedure under examination in this paper (as will be further outlined in section 2.2) (Farrell and Héritier, 2003).

I strive to make a contribution to answering this yet unsolved question by analyzing a specific decision-making process within the negotiations for the so-called *Climate and Energy Package*. This package comprises several legislations to tackle climate change as well as to enhance energy security and sustainability in Europe. One of its core elements is the revised Renewables Directive whose content was negotiated primarily between January and December 2008. All three central institutional policy makers on EU level, the EP, the Council, and the Commission, participated in these negotiations. In order to accomplish a sound and thorough analysis within the given time and place limitations, I restrict myself to those parts of the Directive dealing with biofuels, namely the *10 per cent renewable energy in transport target* and the *sustainability criteria for the production of biofuels*. The reasons for having chosen this case study are threefold. First, the consequences of biofuels have been harshly debated over the last months, particularly with reference to their potentially negative effects on food prices and food availability as well as on the environment (e.g. through deforestation for new cultivation sites) (see for instance Koh and Ghazoul, 2008; Searchinger et al., 2008a; Srinivasan, 2008). Thus, it appears of particular interest to examine the positions of the EU institutions concerning biofuels in the course of the policy process and how these standpoints were shaped. Second, the Directive under examination represents a policy in the area “Environment” which is heavily regulated on EU level. Thus, the case study covers a rather typical domain. This also holds true for the third central reason why this specific case was chosen which is its legislative procedure. The co-decision procedure (see section 2.2) is the contemporary most widely used *modus operandi* in EU legislation. Hence, the case study not only covers a rather interesting and intensely discussed topic but represents also a rather representative policy process on Community level.

In order to receive respective information necessary for carrying out my analysis, I conducted 16 semi-structured interviews with policy makers as well as with representatives from industrial lobby groups and environmental non-governmental organizations (NGOs) (list see Table 1 in the Annex). Furthermore, I studied all documents related to the decision-making process from the EP, the Council, and the Commission available to the public.

However, at this point certain limitations of my analysis shall also be highlighted. First, the reader should be aware of the limited number of interviews this study was built on. Increasing the number of interviewees would have decreased the influential power of each single respondent. Furthermore, semi-structured interviews can only gather information which entail a subjective component, stemming from all parties involved. This is particularly problematic since each interviewee pursues a specific interest when answering the questions. Beyond, the obtained conclusions presented in chapter 5 should not be generalized for all decision-making processes on EU level, as case studies can only indicate a tendency. In this connection, one should further note that the below analysis solely focuses on two parts of a Directive which in turn was part of an entire legislative package. This implies that not all “horse trading” between the involved actors has been considered.

This paper proceeds as follows. The subsequent section introduces the reader to the institutional set-up of the EU as well as to the legislative procedure under examination. It strives to provide the necessary background information needed to follow the case study. The successive part outlines the framework used for approaching the questions as presented above. This methodological tool detects the institutional as well as the ideational factors shaping the policy process as well as the interests of all actors involved (Zito, 2000). By applying this framework, chapter four analyses the case-specific decision-making process on the 10 per cent renewable energy in transport target and the sustainability criteria for the production of biofuels. The paper ends with a short summary and my conclusion, highlighting the core findings and prospects for further research.

2 INSTITUTIONAL BACKGROUND

Peterson and Shackleton (2006: 1) point out that “understanding politics always begins with understanding institutions, not least in the EU”. By following this advice, the subsequent chapter will provide a short overview on the competences and characteristics of the main EU institutions, namely the Commission, the Council, and the EP. Further, the EU’s most prominent *modus operandi* for negotiating and passing laws, the co-decision procedure, will be elucidated. However, the successive overview does not claim to be exhaustive but rather aims at providing the reader with profound background knowledge with respect to the following case study. If the reader strives to gain a more detailed overview on European policy-making and the role of the EU institutions, he may be referred to the substantial works of Warleigh (2002), Peterson and Shackleton (2006) or Thomson et al. (2006).

2.1 The EU institutions

Roughly speaking, the Council and the European Parliament together represent the legislative of the EU, the Commission the executive, and the European Court of Justice the judiciary (Shackleton and Raunio, 2003: 183). The latter, however, is not of interest for the subsequent examination.

The EU is often referred to as a political system *sui generis*, implying its uniqueness as there exists no comparable political body on whatever level with similar features. In this regard, the Community can neither be regarded as a ‘state’ nor as an ‘international institution’ as it combines supranational as well as intergovernmental characteristics (Hix, 1999). These partly opposing characteristics are particularly visible within the **Council of the EU**, the Community’s main decision-making authority in which the member states influence the policy process (Sherrington, 2002). Thus, though it formally serves the EU’s interest as one of its institutions, national concerns still play a major role in the internal negotiations. However, the influencing power of individual member states is practically restricted by the need to find a common position and hence, to speak with “one voice” in decision-making processes (Warleigh, 2002).

The Council can meet in about 20 different formations depending on the policy area, for instance as the Environmental Council comprising all 27 *Environmental Ministers* (Sherrington, 2002). These ministers vote either with simple majority, qualified majority or unanimity, which is again subject to the policy area under discussion and the respective rules stipulated in the treaties (Hayes-Renshaw, 2006). The voting power of each member state depends on “a rough principle of population size” (Sherrington, 2002: 27). Generally speaking, policy areas which require unanimity decreased significantly in the course of the last decades. However, since a serious political crisis in 1966, known today as ‘Luxemburg Compromise’, the Council always strives to achieve a compromise in order to satisfy the interests of each government as much as possible (Hix, 1999). In order to actually start negotiations on a new legislation, the Council is dependent on a respective proposal brought forward by the Commission (Sherrington, 2002). This draft is then discussed internally, with especially national positions being formulated and defended. On this basis, “coalitions are formed and compromises advanced” (Hayes-Renshaw, 2006: 67). These coalitions within the Council are mostly case-specific and not characterized by long-term loyalties (Hayes-Renshaw, 2006).

However, the stage of finding compromises and forming coalitions is typically not subject to the ministers in the Council meetings, but instead is discussed on subordinated levels. Referring to this, over 85 per cent of all discussion topics are dealt with and settled in the *Comité des représentants permanents* (Coreper) or within Working Groups (Hayes-Renshaw, 2006). Hence, these bodies produce *de facto* agreements which are then *de jure* passed within the Council (Lewis, 2006). Concerning the composition of these committees, Coreper comprises the ambassadors or their deputies from each EU member state. Therefore, Lewis (2006: 274) describes Coreper as “the ideal institutional site to examine national interests”. He continues by portraying the Committee as “the needle’s eye through which the legislative output of the Council flows”. The Working Groups, on the other hand, are composed of junior staff of the member states’ Permanent Representations to the EU and officials from

the national capitals. They are largely concerned with the preliminary work for Coreper by mainly dealing with technical details of Commission proposals. In case a policy solution or a compromise could not be reached on Working Group level, the issue is handed over to Coreper (Fouilleux et al., 2005). A representative from the Commission is both present in Working Group meetings and during debates of Coreper. Another actor within the Council playing a role in negotiations is the institution's General Secretariat. It comprises experts in the different policy areas and provides administrative support (Sherrington, 2002).

The Council is headed by the Presidency, a post which rotates every six months among the member states (Hayes-Renshaw, 2006). Over the past 50 years, the importance of the Presidency as being a decisive shaping factor in the policy process increased continuously. Today, the Presidency particularly acts as a broker between the actors during respective negotiations while at the same time often trying to push the process in a specific direction (Sherrington, 2002).

The Council should however not be confused with the *European Council* which represents a forum for the heads of state to discuss general policy directions or negotiate Treaty amendments. Thus, it represents an intergovernmental medium in which rather basic decisions on the future orientation and priority setting are debated (Sherrington, 2002). Though this is obviously a very important task, the European Council is, according to Article 5 of the Treaty of the EU, not an institution of the Community.

The **European Parliament** with its 736 members is the only EU body that is directly elected by the European citizens (Burns, 2002). Since its foundation in 1951, the EP's formal competences and responsibilities increased by a degree that is unmatched by any other Community institution (Shackleton, 2006). In practice, this implied a loss of power of the other two institutions, the Council and the Commission, in favor of the EP (Burns, 2002). While in its early years the Parliament was just consulted in legislative procedures and expressed its legally unbinding opinion, it is today, together with the Council, the main legislator in most EU policy areas (Shackleton, 2006).

The practical policy work of the EP is largely accomplished in about 20 policy-specialized Committees, such as the Environment (ENVI) Committee (Shackleton, 2006). The Committees are composed of Members of the European Parliament (MEPs) from different parties who prepare the EP's standpoints on legislative procedures (Burns, 2002). For each legislative proposal, the respective Committee appoints a *rapporteur* who is responsible for EP-internal work on the draft. Thus, this person especially negotiates a common position on the proposal within the Committee and subsequently presents the amendments to the Plenary (Shackleton, 2006).

The **Commission** is the EU's main administrative body while at the same time having major political competences and power. Thus, it is often referred to as the most *sui generis* institution on EU level, since it is very difficult to compare the Commission to any other existent administrative body (Peterson, 2006). The institution's organization is divided into different *Directorates-General* (DGs), each representing particular policy areas, such as for instance DG TREN (Directorate-General for Transport and Energy). These DGs have, among others, the responsibility of preparing legislative proposals which are then debated and passed by other institutions, e.g. jointly by the Council and the EP in the co-decision procedure (see next section) (Cini, 2002).

The initial plan of the Community's 'founding fathers' in the 1950s was to endow the Commission with enough power to emerge as an "European Government" in the next decades (Warleigh, 2002). However, in the aftermath of the 1966 Council-crisis, the Commission was deprived the right of drafting new legislations on its own. From now on, it had to consult the Council before proposing new policies. This was a major turning point in the institution's history and though the Commission still plays a very important role in contemporary EU politics, it never reached the same level of influence again as in the early 1960s (Cini, 2002).

As already indicated above, the Commission's most important key function and source of power consists of its right to propose new legislations and thus, to shape the Community's political agenda (Warleigh, 2002). In this context, the Commission is often referred to as the 'engine of integration'

(Peterson, 2006: 83). However, the institution's agenda-setting power decreased in the course of EU history for the benefit of the EP, the Council, and the European Council (Rasmussen, 2007). Especially since the introduction of the co-decision procedure and the consequential increase of the Parliament's power in legislation, two other central responsibilities of the Commission came increasingly into focus: First, the institution's role as a manager of EU policies (regarding implementation, verification etc.) and second, its rather informal role of being a broker in legislative procedures, particularly between the EP and the Council (Peterson, 2006). While still following an own agenda, the Commission serves in this function often as a neutral mediator to support realistic and policy-oriented agreements (Cini, 2002). Thus, the institution maintains formal and informal contacts to both MEPs and Council members and is present during the meetings where the content of a law is discussed (e.g. on EP Committee or Council Working Group level) (Thomson and Hosli, 2006a).

Regarding the intra-institutional policy process it remains important to point out that the Commission typically consults external stakeholders before drafting a proposal, such as for instance environmental NGOs or industry lobby groups. This is one reason why the Commission staff is usually well informed and possesses considerable knowledge about opinions regarding a legislative proposal, the situation on the ground or potential consequences. Furthermore, the Commission's staff is known for its high level of technical and general in-depths knowledge regarding the details of legislative proposals prepared by them. These two facts represent central tools of influence for the Commission during the inter-institutional negotiations. Beyond, the Commission is often more coherent in its position and speaks with "one voice" in comparison to the EP or especially the Council. However, before the actual presentation of a legislative proposal, different positions within the Commission are a daily occurrence (Thomson and Hosli, 2006a).

2.2 The co-decision procedure

The above outline already indicates that decision-making processes, and simultaneously the balance of power between the institutions, changed a lot in the course of EU history. The following section strives to provide the reader with additional information on these processes by initially highlighting some of the central factors that shape the actual policy process. Subsequently, the co-decision procedure will be illustrated as it represents not only the standard legislative modus operandi on EU level, but also applies to the case study discussed in the following chapter.

In general, the decision-making process on EU level is, to a large extent, characterized by shifting intra- and cross-institutional alliances, where long-term coalitions can only rarely be observed. First and foremost, every actor, on whatever level, strives to push through its own interests, even though one should note that stable opinions of the institutions during a legislative procedure are an exception rather than the rule (Thomson et al., 2004). Today, actors on EU level change their position in approximately 50 per cent of all decision-making processes. Generally, the EP modifies its position in roughly 76 per cent of all cases while the Commission, in contrast, is far below the expressed average threshold (Arregui, 2008). In this connection, Arregui (2008) highlights the importance of analyzing case-specific dynamics as they are crucial for understanding the evolvement of a policy outcome.

Policy processes and their outcomes on EU level are typically shaped by five influencing factors. First, as a general rule, one can record that the more extreme the initial position of an actor is, the more likely a change in opinion throughout the policy process. Second, a change of an actor's standpoints in the co-decision procedure is more probable if the voting rule requires a qualified majority in the Council and not unanimity (see explanation below) (Arregui, 2008). Third, the whole sphere of informal politics, such as coalitions within or between institutions, represent a very decisive factor in EU decision-making. Thomson et al. (2006) even argue that informal factors are today more important for the actual policy outcome than the formal rules and procedures. Fourth, and at the same time representing an example of an informal factor, personal leadership and the ability to act as an 'innovator' is important during legislative procedures (Warleigh, 2002). In actual policy making, it is often the EP rapporteur who takes over this role and hence acts as a "legislative entrepreneur" (Benedetto,

2005: 67). Fifth, the (again informal) influence of interest and lobby groups increased significantly in recent years. These actors can affect the positions of individual players on EU level to a huge extent and sometimes even act as brokers between them (Warleigh, 2002).

The subsequent overview outlines the most prominent legislative procedure of contemporary EU policy making which also applies to the case study under examination in this paper. The so-called co-decision procedure was introduced in the Maastricht Treaty which entered into force on November 01, 1993. It stipulates an equal division of legislative power between the EP and the Council (Napel and Widgrén, 2006). Depending on the policy area, the Council passes legislations either with unanimity or with qualified majority while the latter voting rule prevails (Thomson and Hosli, 2006a). Today, more than 70 per cent of all EU legislations are passed by this procedure (Napel and Widgrén, 2006). According to Shackleton and Raunio (2003: 171), the introduction of the co-decision procedure represented a “major turning point in the institutional history of the European Union”. They particularly justify this assessment by highlighting that both the interdependency of the EP and the Council as well as the respective formal and informal contacts increased considerably (Shackleton and Raunio, 2003).

The co-decision procedure comprises three possible reading stages. In the first place, the Commission passes a legislative proposal to the EP and the Council, they each amend the proposal according to their demands and try to find a compromise (first reading agreement). In case no compromise could be reached, the proposal goes back to the institutions and internal negotiations start again. If a compromise on a common position between the two institutions can be established at this point of the process, a second reading agreement is reached (EU, 2002: Art. 251). In case this is not feasible, a so-called *Conciliation Committee* is appointed, comprising representatives from each institution, including the Commission, bringing typically up to 100 people together (Shackleton and Raunio, 2003). If this Committee is able to develop a common position, the legislation is passed in third reading. If not, the legislative act “shall be deemed not to have been adopted” (EU, 2002: Art. 251).

Inside the EP, the Commission proposal is debated within the respective Committee, with the rapporteur being the central person in charge of finding the Committee’s joint position and presenting it to the whole Plenary (Benedetto, 2005). Furthermore, the rapporteur is involved in permanent informal negotiations with representatives from the Council and the Commission to exchange information and points of view, and therewith to sense possible compromises. In this connection, Benedetto (2005) points out that rapporteurs are the most powerful individuals within the EP to influence the policy outcome. This underlines the importance of the rapporteur’s leadership qualities to reach consensus between the different political views within the Committee (Benedetto, 2005).

Since 1995, so-called *Trialogues* are a normal, though informal, step in the negotiation process within the co-decision procedure. In practice, around 25-30 representatives from the EP, the Council, and the Commission participate in such Trialogues in order to establish a common position. Members are, among others, always the EP rapporteur and the chair person of the respective Committee (Shackleton and Raunio, 2003). Today, most inter-institutional negotiations take place in these informal meetings while the Conciliation Committees are “reserved” for issues where it is impossible to agree on a common position (Cini, 2002). Trialogues were especially introduced as a response to the Council’s demand to reach a common position preferably via first reading agreement. The central reason for this claim was the institution’s lack of resources for long-lasting legislative procedures (Shackleton and Raunio, 2003).

On the other hand, critics stress that Trialogues have some serious shortcomings. In this connection, Shackleton and Raunio (2003: 178) point to the reduced transparency of the policy process since Trialogues are not only informal but also not public. When it comes to the more specific consequences for the institutions, the EP might actually have a considerable disadvantage in case the Trialogues start before the position of the respective Committee was voted on in the Plenary. If this is the case, the EP practically enters the inter-institutional negotiations without a position backed by the whole Parliament which in turn particularly reduces its weight in comparison to the Council (Fouilleux et

al., 2005). Therefore, it is not surprising that the Council usually pushes more towards early agreements accomplished within Trialogues while the EP strives to retain formal negotiation procedures and favors second reading agreements (Shackleton and Raunio, 2003).

However, the EP also has another more general disadvantage within the whole legislative procedure under co-decision compared to the member states. This detriment is caused by the fact that EP Committee meetings are open to the general public, with a representative from the Council always following the negotiations while Council meetings are not held publicly. As a result, the Council has a considerable information advantage regarding the positions prevailing in the EP. Nonetheless, in case the EP rapporteur has good informal connections to the Council and the Commission, he might compensate this drawback significantly (Earnshaw and Judge, 1997).

2.3 Previous research

The following section presents different contemporary research positions on the drivers shaping EU policy processes and the influence of the different institutions. Referring to this, though the above section would at first sight suggest that the Council has a clear advantage against the EP in the co-decision procedure, previous research comes to quite different conclusions concerning the institutional balance of power.

Tsebelis and Garrett (2000), for instance, emphasize that the co-decision procedure favors none of the two actors and that both have the same preconditions to exercise the same amount of influence. A considerable number of research though (see for instance Steunenberg and Dimitrova, 1999; Napel and Widgrén, 2006 or Thomson and Hosli, 2006b) contradicts this notion by pinpointing the dominating role of the Council within the co-decision procedure. They refer, *inter alia*, to the possibility of the Council Presidency to make a “take-it-or-leave-it” proposal to the EP (Steunenberg and Dimitrova, 1999). Many of the scientists holding this position use game theoretical models to predict the outcome of legislative procedures under co-decision (e.g. Crombez, 1997, 2000; Moser, 1996; Tsebelis, 1994; Tsebelis and Garrett, 2000). Yet, in doing so, they largely ignore the informal factors shaping the power relations between the involved actors. However, a study by Thomson and Hosli (2006b), considering both formal and informal factors, also ascertains that the Council is the most powerful institution in the policy process. They suggest that the actual weight of the Commission and the EP in the negotiation is only equal to 2-3 large member states each. On the EP side, that is, according to Thomson and Hosli’s (2006b) findings, particularly due to the lack of technical expertise.

Nevertheless, this opinion is countervailed by another considerable body of research, pointing at the superior role of the EP within the co-decision procedure (see for instance Farrell and Héritier, 2003; Corbett, 2000, 2001; Shackleton, 2000, 2001; Häge and Kaeding, 2007). The scientists holding this standpoint particularly highlight the comparably better position of the Parliament to exercise power through informal channels, especially during the Trialogues. Thus, both Häge and Kaeding (2007) as well as Farrell and Héritier (2005) stress that the central advantages of the EP lie in its insensitivity to, first, delay the law-making process and, secondly, to bring legislative proposals down if the Parliamentarians are not satisfied with the content.

As a general finding, most of the above studies (with those using game theory being prominent exceptions) highlight the difficulty of generalizing negotiation outcomes between the EP and the Council as they do not follow a fixed route but are rather diverse. One should note at this point that the influence of the Commission is typically not under examination in such research studies since this institution has no formal voting power in the co-decision procedure.

3 METHODOLOGY

After having introduced the institutional background for the analysis, the following chapter strives to provide an overview of the main methods for data acquisition forming the empirical basis of this study. Furthermore, the overarching methodological framework deployed will be introduced.

3.1 Data acquisition

Two main methodologies for acquiring the data building the basis for the following analysis have been employed. In a first step, I obtained information on the decision-making process regarding the final composition of the sustainability criteria for biofuels as well as the renewable energy in transport target primarily via analyzing and comparing the different position papers and legislative proposals of the main actors involved, i.e. the EP, the Council, and the Commission. In the different databases from the respective institutions, I accessed all publicly available documents dealing with the issues at stake that were published in the course of the negotiations. This resulted in a comprehensive overview of the diverse positions and the formal nature of the policy process. However, one should note that this method comes along with certain limitations, particularly since the informal dynamics within and between the institutions are not reflected.

Against this background, I chose semi-structured interviews as the second main method for data sampling, especially to receive additional information on the informal nature of the policy process. The interviews were primarily conducted in Brussels between October 13 and October 17, 2008 with 14 key policy makers from the above mentioned EU institutions as well as with representatives from interest groups and NGOs (see Table 1 in the Annex).⁴ I chose the policy makers particularly on the basis of their affiliation to the respective administrative units dealing with the issues under examination (e.g. specific DG or EP Committee). Furthermore, external actors were selected according to their organization's involvement in the policy process.

Semi-structured interviews were deemed as the most suitable interview form in this case, particularly due to their key characteristic of possessing a clear structure while at the same time leaving enough flexibility for open questions and further enquiries (Gillham, 2005). Thus, I was able to gain inside knowledge of the actor's strategies, their ideas and underlying interests regarding the respective parts of the proposed Renewables Directive. However, I am also aware of the disadvantages of this research method, such as the possible subjective interpretation of the received data and the need for interpretation (Gillham, 2005). Thus, I tried to limit these potential shortcomings by, *inter alia*, substantiating the obtained information by asking diverse actors on the same issue or double-checking the data by analyzing additional sources (e.g. position papers). Furthermore, in accordance with Gillham (2005), I posed the questions in a rather neutral manner in order not to directly or indirectly influence the interviewee. In this connection, the questions for the interviewees were also rather similar, with just minimal variations according to their individual institutional background.

3.2 The framework of the three "I's"

Having obtained the data needed by applying the above mentioned methodological tools, the analysis itself will then be conducted by embedding the information into an overarching framework developed by Zito (2000). This framework aims particularly at explaining and retracing EU policy-making processes on a case-specific basis. Thus, "the framework (...) looks at how *institutions*, *ideas* and *interests* (the three „I's") specifically shape the conditions under which EU actors formulate policy" (Zito, 2000: 20; emphasis added by author). The following sub-sections will primarily present the three

4 Please find the specific lists of questions for the different interviewees in the (separate) Appendix to this study.

„I’s” in more detail, putting forward definitions as well as highlighting their relevance in EU decision-making processes.⁵

3.2.1 Institutions

By referring to Pierson (1993: 606 et seq.), Zito describes ‘institutions’ as consisting both of *formal* foundations as well as of *informal* factors, such as norms and values, that determine decision-making processes within an organization. In the case of the European Union, the formal basis of an institution is especially laid down firstly in the EU Treaties, with a focus on its competences and responsibilities, and secondly in the individual Rules of Procedures (RoP), dealing with organizational structures and operations. In this regard, particularly the formal rights stipulated in the Treaties serve as educated “points of reference” for the behavior of an institution in the policy process (Zito, 2000: 11). These rights are the most important formal factors determining an institution’s power and influence in the decision-making process (Moravcsik, 1993). Furthermore, they very much shape “how political actors define their roles, interests, and relations of power to other groups” (Zito, 2000: 21).

Nevertheless, the operations of and within an institution can only be fully assessed when informal factors are also taken into account. In the following analysis, such informal factors shall be understood as all procedures and habits influencing the performance of the involved institutions and their individual actors in the policy process that are not written down. Thus, for instance the formation of intra- or inter-institutional coalitions, the influence of external organizations (e.g. lobby groups) or negotiations within Trialogues are conceived as informal factors. Besides this rather apparent definition, Warleigh (2002) points to more abstract informal procedures within an institution that potentially affect the decision-making process. According to his argumentation, the performance of an institution is significantly shaped by the ideas and interests of the individuals working within the organization. On the other hand, the institutional setup, including the working environment and the formal rules and procedures, in turn also influences the norms and values of the people working there. Hence, Warleigh (2002: 4) stresses that “institutions both shape and reflect the thinking and behaviour of those who work and live within them”. These “embodied” ideas and values also determine the position of one institution towards a general point of view or a specific interest of another institution with which it interacts. Therefore one should note at this point that Zito’s three “I’s” are highly interlinked and influence each other considerably. Though these linkages will become apparent at various parts in the course of the following analysis, it shall be clearly stated that it lies beyond the scope of this paper to explicitly study these interdependencies.

According to Zito (2000), EU institutions have six central formal and informal possibilities at their disposal to influence the decision-making process. First, they might “exercise a veto or form a coalition to block an initiative” (Zito, 2000: 24). Second, actors can formulate their position and try to set it on the agenda. In this regard, the Commission has a considerable impact on the process since it is responsible for drafting the legislative proposals. In addition, the Council Presidency has a central role in the agenda-setting while also the leverage of the EP, particularly in the co-decision procedure, should not be underestimated. Beyond, external actors are a further decisive factor as they aim at influencing the institutions’ standpoints in various ways in order to place their own issues on the agenda. Third, due to the complexity and the lengths of legislative procedures on Community level, it is of pivotal importance to not only set but also to *maintain* one’s agenda over time. Fourth, institutions should make use of their prestige as well as their resources. In this context, Zito (2000:

5 One should note at this point that the original framework as presented by Zito (2000) contains not only the analysis of the main institutional factors, ideas and interests, but further examines bargaining modes applied by the main institutions. Due to place and time restrictions this second, independent part will not be taken into considerations at this point. The author though wants to highlight that the analysis of the second part of Zito’s framework would constitute an interesting starting point for further analyzing the topics at stake.

25), by referring to Judge (1993), highlights the central role of “organizational leadership, technical expertise and manpower”. Fifth, institutional actors might try to affect the motives and operations of other institutions. Concerning this point, Zito (2000: 25) refers to “principal agent analysis” outlined by Egan (1995) and Pierson (1996). This analytical tool assumes that a “principal seeks to constrain the decisional latitude of the agent, through incentives or sanctions, in order to protect the principal’s interests” (Zito, 2000: 25). Sixth, a Community institution can form coalitions with external actors and institutions. This rather informal way of influencing the policy process became increasingly common and relevant concerning the actual policy outcome in recent years (Zito, 2000). As the case study in the subsequent chapter will show, the different institutions use these formal and informal influencing possibilities in diverse ways, and some are better than others in getting their agenda through.

Building on the above outline, it goes without saying that the three “I’s” cannot be dealt with separately but that they are highly interconnected. After all, besides the formal basis of an EU institution, it is still to a large extent the people working in these organizations that have the ideas and make the choices (Weaver and Rockman, 1993: 446 et seq.). The following sub-sections, dealing with ‘ideas’ and ‘interests’, will further substantiate this argument.

3.2.2 Ideas

The second factor that shapes the policy process on EU level can be seen in the basic points of view of the different institutions regarding specific topics, known as ‘ideas’ in Zito’s framework. These ideas serve as a road map that decisively determines the interests of the people working in an institution and thus, the standpoint of the institution itself in the decision-making process (Goldstein, 1993: 12 et seq.). Hence, ideas become part of an institution, affect and shape the policy process, and are a crucial parameter in the formation of political coalitions (Garrett and Weingast, 1993: 186).

There are numerous factors that might affect the ideas of actors and institutions in the decision-making process. In this context, research has shown that scientific knowledge can be a central influencing variable in the shaping of ideas, applicable particularly in complex policy problems which incorporate a high level of (scientific) uncertainty (Goldstein, 1993). However, in turn it is not self-acting that only because solid scientific knowledge is available and actors are aware of it, this knowledge is automatically considered in policy design and formulation. Such an assumption would highly underestimate the power and importance of bargaining in politics, which is often governed by non-scientific motivated interests of the involved actors (Haas, 1990: 397 et seq.). The following case study will reveal that the three institutions deal differently with the available scientific knowledge, and especially with scientific uncertainty.

Furthermore, external pressure in whatever form, ranging from examples such as natural hazards over increased media coverage, might influence the actors’ point of view regarding a specific topic (Zito, 2000). Beyond, ideas do not only shape institutional interests, but these interests can in fact constrain the consideration of particular ideas. Thus, by referring to Majone (1989), Zito (2000: 27) describes interests as the “lenses for actors’ choices” of ideas.

To sum up, ideas represent the basis for an institution’s interests, as they shape the actor’s viewpoints on particular issues. However, interests might also affect which ideas are in the end put into consideration. The following part strives to shed further light on this complex interdependency by defining ‘interests’ and presenting their role in the decision-making process.

3.2.3 Interests

The above descriptions of institutions and ideas revealed that both of these factors entail a wide range of interests. According to Zito (2000: 28 et seq.), “[i]nterests’ are the short-term and long-term goals and priorities that lead decision-makers to choose one option over others, in order to benefit their

own position within the political arena.” Thus, specific interests determine the target-definition, the prioritization of policy issues, and the coalition formation within or between the key actors of the EU decision-making process (Adler, 1987: 10 et seq.).

One should not at this point that both *internal* and *external* factors play a decisive role in shaping the interests put forward by the different actors (Zito, 2000). A prominent example of an internal driver affecting institutional interests would be ‘national interests’ in the Council. Such national motivations might also affect the interests of specific groups or persons within other Community institutions, for instance the Commission or the EP, although this is formally permitted by EU law (Zito, 2000: 30). A typical example for external factors influencing institutional interests on EU level are NGOs, lobby or any other kind of interest groups, trying to affect the decision-making process (Peters, 1992).

Interests are also the basic element that gives rise to the formation of coalitions on EU level. Such coalition might collaborate on a long-term basis, but it is also quite typical that specific actors form alliances in a case-specific *ad hoc* style. An example that is rather common in today’s EU politics is the “unification” of economic interest groups with the business oriented DGs in the Commission (e.g. DG Enterprise and Industry) against other sub-units of the same or another institution (e.g. DG Environment or the EP’s Environment Committee) (Huelshoff and Pfeiffer, 1991).

To conclude, the interests of an institution are to a great extent the outcome of the actor’s ideas and its institutional status. Therefore, they represent the most crucial driving-forces that shape EU policy-making processes and hence will be dealt with intensively in the following case study.

4 CASE STUDY

The subsequent case study strives to analyze a decision-making process on EU level by applying the above presented methodological framework. Since the negotiations under examination follow the co-decision procedure, the main ideas, interests and institutional factors shaping the performance of the Commission, the European Parliament, and the Council will be scrutinized.

More specifically, I will take a closer look at the so-called Climate and Energy Package, which comprises different legislations aiming at tackling climate change and enhancing energy security. One of those new laws is the revised Renewables Directive containing, among others, a renewable energy in transport target and sustainability criteria for the production of biofuels. The renewable energy in transport target strives to increase the amount of renewable energies, such as hydrogen, electricity from renewable energy sources (so-called ‘renewable electricity’) or especially biofuels, in overall transport fuels to 10 per cent by 2020. The sustainability criteria, on the other hand, shall ensure sustainable modes of biofuel production, for instance by prohibiting the cultivation of energy crops⁶ for such fuels on land which is currently covered by forest or where endangered species live (COM, 2008b: Art. 17). Furthermore, the criteria come forward with specific minimum greenhouse gas (GHG) saving requirements that biofuel production pathways have to stick to compared to conventional transport fuels. The following analysis will solely refer to those two key parts of the Directive as they touch upon relatively new policy areas, especially when it comes to the sustainability criteria. Also, the discussions surrounding these issues were particularly vivid. Beyond, place and time restrictions would not allow a thorough examination of the whole regulation.

The subsequent analysis will determine the main ideas, interests and institutional factors influencing the decision-making process regarding the topics under examination within the three key institutions involved. However, for the sake of a better overview, the regulations concerning the GHG emission saving rate will be dealt with in separate sub-sections, though they are formally part of the

6 *Energy crops* are crops which are suitable and hence used for biofuel production.

sustainability scheme. The concluding part analyses the major ideas, interests, and institutions which prevailed and hence dominated the final Directive.

4.1 European Commission

Within the European Commission, the main work on the renewable energy in transport target and the sustainability criteria as part of the overall Renewables Directive started in mid-June 2007. By that time, the official consultation process on the Directive was over and the positions of many external actors, including NGOs and lobby groups, were on the table (COM, 2008b). In the following months, three main Directorates-General (DGs) worked on the legislative proposal's final version, namely the DGs for Agriculture and Rural Development (DG AGRI), Environment (DG ENV), and the dossier's leading DG for Energy and Transport (DG TREN) (*Deurwaarder*⁷, 2008).

However, in the course of the intra-institutional negotiations in the Commission on how to regulate biofuels in the legislative proposal, two basic dissenting opinions evolved, a development which is not uncommon given the early stage of the policy process (*Pous*, 2008; *Singer*, 2008; *Thies*, 2008). While DG TREN and DG AGRI were clearly in favor of biofuels, and thus supported a rather big share of them in the overall transport target, DG ENV was more hesitating and advocated a rather cautious approach towards biofuels due to their impact uncertainties (*Gaupmann*, 2008; *Thies*, 2008). Though these critical voices from DG ENV did not soften throughout the whole negotiations, the position of DG AGRI and DG TREN had more influence on the final legislative draft (*Harms*, 2008; *Thies*, 2008; *Pous*, 2008). One factor that decisively facilitated this outcome was the resolute lobbying of Paul Hodson, the deputy head of the 'Regulatory Policy & Promotion of Renewable Energy Unit' of DG TREN. He very much shaped the opinion-forming process within the Commission by pushing for the 10 per cent target and a preferably central role of biofuels (*Pous*, 2008).

Finally, on January 23, 2008, the European Commission presented its proposal for a new Renewables Directive, also comprising the regulations for the renewable energy in transport target and the sustainability criteria of biofuels. Though this draft represented the official position of the Commission in the whole negotiation process, the internal discussions on different issues of the Directive continued. According to Ewout Deurwaarder, policy officer in DG TREN, this is a "quite abnormal" process. In the course of these debates, a number of follow-up meetings with representatives from lobby and industry groups as well as NGOs took place, with a focus particularly on the different approaches to calculate GHG emission savings of biofuels compared to conventional transport fuels (*Deurwaarder*, 2008). This unusual tide of events within the Commission can to a significant degree be attributed to especially two circumstances. First, the issue of biofuels and food security attained very much public attention in the aftermath of the Commission's presentation of the proposal which made the issue one of the "hot topics" of the political debate in 2008. Second, particularly the parts of the Directive covering the sustainable production of biofuels and the methodology to determine the GHG emissions saving potential of biofuels touched upon new matters with comparably little scientific expertise (*Fouquet*, 2008).

In the following outline, the central positions of the Commission regarding the renewable energy in transport target and the sustainability criteria for the production of biofuels will be presented.⁸

4.1.1 Renewable energy in transport target

The decision of the European Council from March 2007 can be regarded as the basis for the Commission's proposal for a revised Renewables Directive. In the conclusion to the summit, the European heads of state pointed out that they demand a "10 per cent binding minimum target to be achieved by all Member States for the share of biofuels in overall EU transport petrol and diesel consumption

7 All interview-sources in this paper are in *italics*. An overview of the interviews can be found in the Annex.

8 Most information is derived from the Commission's initial proposal from January 2008 (COM, 2008b).

by 2020, to be introduced in a cost-efficient way” (Council, 2007: 6). However, they introduced particularly two preconditions for the binding character of the overall target: The production of biofuels needs to be sustainable and second-generation biofuels⁹ must be commercially available (Council, 2007).

In the actual proposal, the Commission puts forward criteria to comply with the first demand while pointing out that there is no time to wait for the implementation of a binding target until second-generation biofuels are commercially available. The Commission particularly justifies this move with the necessity to safeguard investor certainty. However, it is very probable that this slight non-compliance with the European Council’s demands represents one central reason why the Commission did not restrict the 10 per cent target solely to biofuels but opened it also to other kinds of renewables (COM, 2008b). On the other hand, the draft does not mention what kind of energy sources could, besides biofuels, count towards the target. In addition, Recital 10 of the document uses the term “biofuel target” what makes the proposal in parts literally inconsistent and blurs its validity. This ambiguity was especially expressed by external voices on the draft. Green NGOs, for instance, blamed the Commission of having introduced a pure biofuel target. On the other hand, many industrial lobby organizations, like for instance the European Biomass Industry Association, pointed out that the target was already at this early stage of the policy process open for other kinds of renewables in transport as well. They accused environmental NGOs of having exaggerated the proposal’s focus on biofuels (Manning, 2008).

With respect to the design of the 10 per cent target, the Commission did not implement any further specifications, either regarding the composition of the target (e.g. fixed share of second generation biofuels) or strictly defined temporal subtargets (e.g. 4 per cent biofuels by 2017). In the following debates between the institution, this was a central concern of the EP (see sub-section 4.2.1). However, the Commission particularly strives to support specific forms of second generation biofuels, namely “biofuels produced from wastes, residues, non-food cellulosic material, and ligno-cellulosic material”, by considering their contribution to be “twice that made by other biofuels” (COM, 2008b: Art. 18 (4)).

Another crucial topic of the following inter-institutional debate was whether the 10 per cent target should be reviewed at any time between the coming into effect of the Directive and 2020. Such a *review clause* would put the legally binding character of the target into question since it would then depend on specific requirements, as for instance the commercial availability of second generation biofuels.¹⁰ Instead of such detailed and strict obligations, the Commission rather wanted to give room for proposing “corrective action” in case shortcomings get evident in the monitoring and reporting procedure (COM, 2008b: Art. 20). The main reason why the Commission was against a review clause was its concern that investment security could be jeopardized and hence, it did not come forward with a respective article in the first proposal and remained an opponent of a review clause throughout the whole negotiations (Deurwaarder, 2008). However, as will be discussed in sub-section 4.4.1, the Commission and the Council had to give in to the pressure of the EP later in the process to introduce

9 Today, there exist three different “generations” of biofuels. According to the Food and Agricultural Organization (FAO) of the United Nations, *first generation* biofuels “refer to biofuels made from sugar, starch, vegetable oil, or animal fats using conventional technology”. Second generation biofuels “are made from lignocellulosic biomass feedstock [e.g. trees] using advanced technical processes”, what also incorporates different forms of waste (FAO, 2007). Third generation biofuels are derived from algae and are thus very often referred to as “Algae fuels”. Compared to first generation biofuels, the following generations have the advantages that they do not (directly) compete with food-crops and that they generally have a higher energy conversion (FAO, 2007; Hartman, 2008). However, they still largely remain in the experimental stage and are not commercially available yet (Koh and Ghazoul, 2008).

10 A more in-depth analysis of the review clause will follow in the respective parts of the EP and the Council chapters (4.2.1).

a review clause. At the same time, this did not stop the Commission from warning about the possible negative side-effects of such a regulation. Even in mid-October 2008, a point in time in which both the EP and the Council had already embraced the review clause, the skeptical voices from the Commission were still widely heard, warning *inter alia* against a potential non-compliance with the overall 20 per cent renewable energy in 2020 target¹¹ (Deurwaarder, 2008).

To conclude, the Commission wanted to tie the achievement of the 10 per cent target to as less restrictions as possible. Member states should, according to the Commission, be given the maximum amount of freedom in meeting the target.

4.1.2 Sustainability criteria

The proposed sustainability criteria of the Commission are restricted to environmental obligations only, leaving aside binding social criteria. When it comes to the reasoning why the Commission introduces environmental but no social sustainability criteria, the institution points to the technical and administrative infeasibility of associating specific social effects to biofuel production. Furthermore, it states that the inclusion of binding social criteria would also be problematic because of potential violations of international law, particularly World Trade Organization (WTO) regulations. Hence, the Commission decided to make social criteria a non-binding part of the reporting and monitoring system (COM, 2008a).

Food insecurity and reduced availability of foodstuff is, according to some scientists, a potential consequence of increased biofuel production. However, since this issue also touches upon *social* sustainability, the Commission decided not to introduce any respective binding criteria or rules in the proposed Directive. The institution justifies this decision by pointing out that it would be impossible to associate food security with individual consignments of biofuels (COM, 2008a). Furthermore, the Commission states that enhanced biofuel production could not only have negative but also positive consequences on food security. Cereal prices for instance would not increase more than 3-6 per cent compared to 2006 levels as a result of Europe's increased biofuel demand. Thus, the Commission estimates the impact of EU biofuel policy on food security and availability as "likely to be very small" (COM, 2008a: 130 et. seq.). In addition, Europe's top administrative body assumes that particularly small scale farmers in developing countries would actually benefit from slightly rising food prices as they would gain more profit. Beyond, the institution points out that there would be enough land available for an environmentally sustainable production of biofuels without considerable impacts on the food industry even in case of a 14 per cent share of biofuels in all transport fuels in the EU (COM, 2006b).

When it comes to the environmental sustainability criteria, they shall, according to the Commission, only be valid for biofuels and bioliquids and not for all types of biomass used in energy production. As sub-section 4.2.2 will show, this was a key concern of the Parliament. However, Article 15(7) of the proposal points out that the Commission shall develop respective criteria until December 31, 2010 (COM, 2008b). This already hints at the long-term goal of the Commission, which is to develop sustainability criteria for all kinds of biomass, including those used in the food sector. Yet, the institution favors a gradual development in this respect and the implementation of well-structured schemes (Muth, 2008).

Article 15 of the Commission's proposal deals particularly with the environmental sustainability criteria for biofuels and bioliquids. According to the stipulated rules, biofuels shall not be obtained from raw material which was cultivated on "land with recognized high biodiversity value", i.e. forests "undisturbed by significant human activity", natural protection areas (exception: cultivation does not interfere with primary purpose), and "highly biodiverse grasslands". Regarding the latter point, the

11 The 10% renewable energy in transport target represents one mean in the revised Renewables Directive to achieve an overall share of 20% renewable energy in overall energy consumption by 2020.

Commission will “establish the criteria and geographic ranges to determine which grassland shall be covered” *ex post* (COM, 2008b: Art. 15(3)). In addition, Article 15(4) states that biofuels shall not be produced from raw material which was cultivated either on wetlands (including pristine peatland) or on continuously forested areas. Beyond, EU member states additionally have to comply with specific regulations of the Common Agricultural Policy (CAP) dealing with good agricultural practices and environmentally friendly modes of production (COM, 2008b: Art. 15(5)). In its Assessment Report, the Commission further points out that the inclusion of other binding environmental criteria, such as specific regulations for water or soil protection, is not possible yet since reliable data cannot be obtained (2008a: 137).

Regarding the geographical validity of the sustainability criteria, the Commission strives to make them binding for all producers whose biofuels and/or raw materials for biofuel production are used within the EU. Thus, also external producers who want to export their goods to Europe would generally have to comply with the scheme. In this connection, the Commission sees some comparative advantages for producers in third countries compared to their European counterparts. Hence, particularly producers in tropical environments would achieve higher production values per hectare while at the same time avoiding more GHG emissions than European producers. Beyond, the institution also points to the general economic and environmental benefits for developing countries by increasing their biofuel production capacities (COM, 2006a).

On the other hand, the Commission also detects some possible negative side-effects of such an increase, for instance environmental stress (e.g. negative effects on water availability or soil fertility) or social concerns (e.g. dislocation of communities). Hence, it sees the clear need for further research in these areas to promote positive benefits and counteract negative side-effects of enhanced biofuel production, especially in developing countries (COM, 2006a). In its Impact Assessment, which represents a key basis for the proposal, the Commission expects 2 per cent of the overall 10 per cent renewables in transport target to be met by biofuel imports from third countries right from the start with considerable room for increasing shares in the future (COM, 2008a: 151). However, this import-oriented approach is not welcomed by every actor on the field, while particularly the European biomass lobby expresses their concerns. For instance Dr. Dörte Fouquet, Director of the European Renewable Energy Federation (EREF), describes this strategy as the “policy of empty boats”, inspired by the European colonial past of obtaining resources from annexed regions outside Europe without remitting an adequate reward (Fouquet, 2008).

The just mentioned concern of the Commission regarding further negative effects of biofuel production, which are not covered by the proposed sustainability criteria, also gets obvious when closer examining the stipulated monitoring and reporting obligations. Hence, national governments shall issue regular reports for the Commission, *inter alia* focusing on the “estimated impact of biofuel production on biodiversity, water resources, water quality and soil quality” (COM, 2008b: Art. 19). Beyond, the institution clearly stresses that scrutinizing potential effects of increased biofuel production on food prices and indirect land use changes are crucial parts of its monitoring system (COM, 2008b: Art. 20(1)).

To summarize, the Commission only introduces strict and binding criteria where a clear connection can be drawn between cause (biofuels) and effect (e.g. loss of biodiversity). Regarding issues where this is not the case, especially regarding potential negative social consequences of biofuel production, the institution acknowledges the possible existence of a link but refers to the limited scientific expertise to substantiate and to measure this interrelation.

4.1.3 GHG emission savings

The GHG emission saving potential of biofuels compared to conventional transport fuels is a central part of the sustainability criteria. The Commission proposes a minimum saving rate of 35 per cent until 2020. However, the 35 per cent-threshold would only be binding from the start for those installations which came into operation in January 2008 or later. All facilities that were already working

at the beginning of 2008 would have to reach the 35 per cent emission savings only from April 01, 2013 onwards (so-called ‘grandfathering-clause’) (COM, 2008b, Art. 15 (2)). Besides these time-issues, the 35 per cent saving requirement was the Commission’s official position until the end of the negotiations. However, the internal opinion within DG TREN in the course of the intra-institutional discussions turned more towards the belief that saving rates of 50 per cent by 2015 would be possible (Janczak, 2008). The actual method to calculate the emissions of biofuels is described in Annex VII of the Commission’s proposal. The equation comprises eight different variables, such as the emissions from processing biofuels or those from their transport and distribution (COM, 2008b).

During the design phase of the draft Directive, the Commission planned to largely base the methodology for calculating emission savings on the *Well-to-Wheel* study, conducted by the so-called JEC-Consortium. This consortium was composed of the Commission’s Joint Research Center (JRC), the European Council for Automotive R&D (EUCAR) and the organization CONCAWE (Conservation of Clean Air and Water in Europe). The latter two are hybrid lobby and research institutions of the car and the oil industry respectively. Referring to this, particularly representatives from the biofuel and the agricultural lobby raised doubts on the neutrality of these actors when it comes to the development of a regulatory basis addressing biofuels (Gaupmann, 2008; Dejonckheere, 2008).

Thus, also interest groups from the just mentioned sectors, like for instance Copa-Cogeca or the European Bioethanol Fuel Association, increasingly started to influence the intra-institutional decision-forming process on how to calculate the GHG emission savings of biofuels in the run-up of the Commission’s proposal (Gaupmann, 2008). One of the most controversial discussion topics in that phase was the question on how to consider by-products in the production chain of biofuels. Depending on the future use of these by-products, the GHG emission saving performance of biofuels varies significantly. Two main calculation methods have been proposed by different actors. While the majority of the biofuel and agricultural lobby favored the so-called *allocation method* (also known as mass balance method), the JEC-Consortium stood up for the *substitution method*.¹²

At first, the Commission wanted to include the substitution method into the proposal. However, after the termination of the public consultation process on the sustainability criteria in June 2007, the institution encountered more headwinds on its initial decision, particularly from the biofuel and agricultural sectors. In reaction to this, the Commission brought together representatives from these branches with those of the JEC-Consortium in order to verify the different arguments and thus have a better decision-basis. This initiative was an important step in the Commission’s reorientation in favor of the allocation method. One of the most central reasons for this decision was the institution’s growing belief that the substitution method is largely based on highly hypothetical speculations of what matter gets replaced by a biofuel’s co-product (Deurwaarder, 2008). However, the Commission made clear in the proposed Directive that the methodological question is still not finally solved since it further recommends the substitution method for policy analysis purposes (COM, 2008b). Furthermore, Article 20 of the final draft clearly states that the methodology for calculating GHG emission savings of biofuels shall be reviewed with particular focus on both approaches.

Another important issue in this context is the setting of particular GHG emission saving values for biofuels or bioliquids depending on the energy crop they are produced of. Referring to this, the

12 The *substitution method* strives to find out for what purpose the by-product is used and what it replaces, for instance for what kind of animal-feed, rape-meal would be a substitute. Developing this example further, one would have to guess what kind of animal-feed would be replaced by rape-meal and whether this substitution would have positive or negative GHG emission effects (Deurwaarder, 2008). In the *allocation method*, GHG emissions that have occurred in the upstream process of agricultural production are divided between the energy content of the fuel (e.g. biodiesel from rape seed) and its co-product (e.g. electricity through the burning of the co-products in power stations). This approach is independent on how the co-product is used and thus no lifecycle data is needed, what both simplifies the calculation and eliminates the possibility of errors and uncertainties (COM, 2008a).

Commission established three different approaches, default values, actual values, and disaggregated default values. The main difference between the first two is that default values represent a sort of average GHG emission saving value for different biofuel production pathways, whereas actual values demand an individual calculation of the savings for each production facility. Disaggregated default values on the other hand, represent a combination of the first two methods (COM, 2008b). The Commission generally prefers the use of default values, particularly due to the comparatively low administrative costs, while defining certain exceptions where the other two values may be used (COM, 2008a; COM, 2008b).

Direct and indirect land use changes as a result of increased biofuel production were another crucial discussion topic concerning the calculation of GHG emission savings of biofuels in the aftermath of the proposal presentation. *Direct* land use changes would for instance occur if the cultivation of a plot of land changes from food crops to energy crops, possibly resulting in decreased food availability or increasing prices. However, the situation is more complex and the consequences much less visible when it comes to *indirect* land use changes. These would occur if for instance a direct effect, such as reduced food crop cultivation due to increased energy crops growing in a region X, would be compensated by deforesting certain areas in region Y to cultivate the needed food crops there instead (Searchinger et al., 2008b). As it is difficult to detect and verify especially indirect land use changes, the Commission refrains from setting up a penalty-mechanism. The UK brought such an instrument in the discussion by proposing the introduction of a so-called “risk-adder” in the calculation of GHG emission savings to account for indirect land use changes (will be discussed in sub-section 4.3.3) (COM, 2008a; Deurwaarder, 2008).

The above examination illustrates that the development of a methodology for the calculation of GHG savings of biofuels was a quite difficult task for the Commission with many external actors influencing the process. On the other hand, one has to put into consideration that, in the words of a key biofuel lobbyist, developing such a methodology represents nearly a new science (Fouquet, 2008). Due to the complexity of the topic and the ongoing research concerning many of the above outlined issues, the Commission clearly points out that the methodology might be “adapted to technical and scientific progress” (COM, 2008: Art 17 (5)).

4.1.4 The three “I’s” – European Commission

In the following section, the main ideas, interests, and intra-institutional factors that shaped the Commission’s decision-making process will be highlighted. The basis for this analysis, which will be conducted according to the framework presented in section 3.2, are the information outlined in the above review.

When it comes to intra-institutional factors shaping the policy-making process, two “camps” opposed each other at the beginning of the negotiations. On the one hand, DG TREN and AGRI lobbied for a preferably big share of biofuels, the latter also in support of European farmers’ interests, while DG ENV had a more cautious position, especially due to scientific uncertainties regarding the actual consequences of increased biofuel production. However, in the end, the more liberal and trade-oriented ideas of the two former DGs gained momentum, *inter alia* due to the fact that DG TREN was the dossier’s leading Directorate-General and as a result of the intense intra-institutional lobbying of Paul Hodson.

A rather unusual circumstance during the Commission’s internal policy process were the ongoing discussions after the presentation of the proposal, particularly regarding the calculation of GHG emission savings of biofuels. This implies a high level of uncertainty concerning the own position, what is rather unusual in the Commission and may have weakened the institution’s weight in the inter-institutional decision-making process. Underlying reasons for the partly inconsistent positions of the Commission were especially still existing scientific uncertainties accompanied by a high research activity (e.g. regarding indirect land use changes) and increased media attention regarding the possible negative consequences of biofuels, particularly on food security.

Regarding the ideational basis of the Commission's positions, the legislative proposal implies a clear turn away from a biofuel policy primarily serving the European farmers' interests, towards the more rational and economical approach of securing energy supply for Europe. This new strategy is, among others, demonstrated by the particular mentioning of imports from third countries as a central mean to achieve the target. When it comes to the actual impacts of biofuels, the Commission holds the official opinion that the rules stipulated in the proposal assure that the positive environmental, social, and economical consequences of increased biofuel production clearly outweigh potential negative effects, such as impacts on food security. More generally speaking, the Commission's reasoning was very much motivated by economic considerations, both in the proposed Directive and the accompanying Impact Assessment. This tendency was particularly a result of the two liberal and economic oriented DGs who, to a large extent, managed and shaped the internal decision-forming process.

Another important driver and shaping factor of the Commission's ideas and resulting interests were technical considerations and science in general. For instance, although the institution acknowledges that indirect land use changes as a result of increased biofuel production might take place, no binding provisions were introduced in this respect. The Commission justified this interest by stressing that it would be impossible to trace indirect land use changes at the location X back to the cultivation of raw materials for biofuel production in the region Y, thus saying that no explicit provisions are introduced since a verification of compliance is impossible in practice. The Commission uses the same basic argument for its justification of not having introduced any binding provisions against possible negative social impacts, such as rising food prices. This demonstrates also a sort of "safety thinking" on the Commission's side, since it really strives not to include any provisions that are, in their point of view, not verifiable. This attitude is accompanied by a very structured proceeding, meaning that provisions are gradually developed and improved. For instance, the Commission strives to introduce environmental sustainability criteria for biofuels first and wants to extend these criteria gradually to other forms of biomass.

On the other hand, the institution introduced certain regulations while at the same time pointing out that there exists the clear need for further research on these issues. For instance, the methodology to calculate GHG emission savings of biofuels might be "adapted to technical and scientific progress" (COM, 2008b: Art 17 (5)). Though this general openness towards new scientific findings might be regarded as positive, it also has the negative implication of the Commission being aware of potential risks without addressing them properly. For instance, the Commission did not introduce regulations for water and soil protection in the sustainability criteria even though it is convinced that more biofuel production could potentially have negative impacts on these factors. The institution motivates this decision with missing reliable data (COM, 2008a). Beyond, the Commission admits that increased biofuel demand could result in indirect land use changes but does not want to introduce any penalties as these consequences are too difficult to retrace. Hence, certain parts of the proposal are built on a scientifically not very resilient fundament. Nevertheless, the Commission's overall scientific expertise is still considerably higher than of the two other key actors, as the following sections will demonstrate.

Besides scientific expertise, there were also other external factors influencing the Commission's basic ideas on the issues at stake, particularly the preconditions formulated by the Spring European Council 2007. However, the Commission demonstrated its agenda-setting power by introducing a binding renewable energy in transport target, although one of the defined premises (second generation biofuels must be commercially available) was not fulfilled, yet. In addition, the interests of the car and oil industry (the JEC-Consortium) significantly affected the development of a methodology to calculate GHG emission savings from biofuels within the Commission. On the other hand, their influence was somehow softened by opposing positions of the biofuel and agricultural lobby, which induced the Commission to reorient itself in favor of the allocation method. Thus, it can be concluded that external interests had a considerable impact on the Commission, though obviously much scientific knowledge and expertise was needed to affect the institution's points of view.

4.2 European Parliament

In the following section, the institutional setting and the development of the Parliamentarian's main interests on the renewable energy in transport target and the sustainability criteria will be highlighted. The last section of this analysis will again outline the most fundamental interests and institutional preconditions as well as identify the underlying ideas of the MEPs.

Before the presentation of the draft in January 2008, the European Parliament did not strive to influence the parts of the Commission's proposal dealing with the renewable energy in transport target and the sustainability criteria. Though this is in principal the normal *modus operandi* – the EP and the Council formally enter the stage after the publishing of the first proposal – it became increasingly part of the informal procedure between the EP and the Commission that MEPs affect the “direction” of a legislation already in the drafting period via informal channels. Nevertheless, this first potential mean of exercising influence was not used by the Parliamentarians, though a key Committee in the Parliament already worked on sustainability criteria for biofuels in connection with another proposal¹³ (Muth, 2008). This shows that the EP was, on this initial stage, relatively uninterested in the topics at stake.

After the presentation of the Commission's proposal, the European Parliament's Committee on Industry, Research and Energy (ITRE) was assigned the job of developing the EP's position on the revised Renewables Directive. However, right at the beginning of the intra-institutional decision-forming process, the ITRE Committee and the Committee on the Environment, Public Health and Food Safety (ENVI) decided to cooperate in accordance with Rule 47 of the Parliament's Rules of Procedure, known as ‘Enhanced Cooperation between Committees’. This is a quite common step in case the content of a legislative proposal touches the competences of two or more Committees (EP, 2008a). Thus, the ENVI Committee was supposed to develop the EP's position on the sustainability criteria for biofuels, due to its expertise in the topic, while the ITRE Committee was held responsible for all other parts of the draft. The rapporteurs in charge in the two bodies were Claude Turmes, member of *The Greens / European Free Alliance* fraction, in the ITRE Committee and Anders Wijkman, member of the *European People's Party and European Democrats* fraction, in the ENVI Committee (Muth, 2008; Persson, 2008). Rumors were spreading that Turmes, who is known for his skeptical attitude towards biofuels, has pushed for the “outsourcing” of the sustainability criteria to the ENVI Committee since he thought its members would come up with stricter criteria than ITRE would have developed (Gaupmann, 2008).

However, for a number of reasons, the enhanced cooperation between the two Committees did not work out in the actual intra-institutional policy process. First of all, the collaboration was not backed by all ITRE members right from the start since they regarded the sustainability criteria for biofuels as an energy topic and thus, as falling within ITRE's sphere of competence (Muth, 2008; Persson, 2008). Particularly ITRE members from conservative parties, for instance the German MEP Werner Langen from the Christian Democrats, did not want to leave the topic to the ENVI Committee (Thies, 2008). Beyond, the public attention and dimension of the issue, especially in regard to the “fuel vs.

13 The Committee on the Environment, Public Health and Food Safety (ENVI) already worked on developing sustainability criteria for biofuel production for the amended version of the Fuel Quality Directive (EurActiv.com, 2008a). Originally, a separate sustainability scheme for biofuels as part of the Fuel Quality Directive should have been passed in the EP two days before the Commission proposal for a revised Renewables Directive was released in January 2008. However, since particularly the Commission worried about having two separate sets of criteria in force, representatives from the Commission persuaded the Parliamentarians to postpone the voting in the Plenary in order to harmonize the two schemes. Hence, the voting on the whole Fuel Quality Directive was postponed and the Council and the EP agreed on harmonizing the two schemes. As this point was never contested by the Council, the EP or the Commission, this issue will not be part of this analysis (Persson, 2008).

food” discussion, increased considerably in the course of 2008, what also influenced the pursuit of ITRE to regain its leverage on the sustainability criteria’s final design. This ambition has also to be assessed against the background of the upcoming EP elections in June 2009 what is, according to the Estonian MEP Andres Tarand, one of the central reasons why ITRE members were so engaged in the topic (*Tarand, 2008*). Finally, just the boosted public attention made many members of the Committee aware of the topic’s actual relevance and importance for future policies and hence, aroused their interest (*Muth, 2008*).

This last finding is very much associated with the general problem of MEPs of not having enough time to really deal with certain topics in detail, while at the same time having the political responsibility to decide upon these issues. According to EP-internal information, not more than a dozen of people in the Parliament, meaning MEPs including their assistants, really dealt with the sustainability criteria in-depth due to the complexity of the topic (*Muth, 2008*). Referring to this, Andres Tarand, who is also member of the ITRE Committee, points out that EU Parliamentarians mostly do not have the time to read complex and detailed scientific studies but rather try to get compressed information. Thus, MEPs would be “relatively easy to influence” (*Tarand, 2008*).

This fact was surely one of the main reasons why environmental NGOs, such as Friends of the Earth or Greenpeace, had by far the biggest impact on the position-forming process within the EP regarding the topics under examination in this study compared to their influence on the Commission and the Council (*Fouquet, 2008; Persson, 2008*). In this context, Frauke Thies, who is EU Policy Campaigner at Greenpeace and in charge of Renewable Energy, points out that MEPs are more directly accessible than other actors, as less administrative levels are involved. Although particular Socialist and Green MEPs were more open to hear NGOs views, the degree of possible influence depended by far more on the positions of the specific MEP than on party membership (*Thies, 2008*). Referring to this, even actors within the EP characterize the lobbying within their institution as unbalanced in favor of green groups, directly criticizing the biofuel lobby as “too weak in that process” and without being able to communicate the benefits of biofuels (*Muth, 2008*). However, one has to admit that the public news coverage on biofuels very much supported green NGOs in bringing across their points of view and acted to the disadvantage of the biofuel interest groups (*Gaupmann, 2008; Muth, 2008*).

Regarding the inter-institutional decision-making, Claude Turmes initially planned a second-reading agreement, with the first-reading held before the EP’s 2008 summer break. A strong position of the Parliament in the final negotiations, representing the standpoint of the whole Plenary, would have been the consequence. However, due to the failed cooperation between the ITRE and the ENVI Committees, a common position could not be developed early enough and thus, a second-reading agreement was, also caused by the pressure from the French Council Presidency, not feasible anymore (see section 4.4 for more details). Typically, the EP votes on a common position in the Plenary even before a first reading agreement takes place. However, in this case the EP entered the final Trialogue negotiations without a resilient position backed by the whole Parliament due to extreme time-constraints. This circumstance clearly weakened the bargaining position of the MEPs compared to their counterparts from the Council and the Commission. The final version of the Directive was passed in the Plenary on January 17, 2008 via first-reading agreement (EP, 2008h).

The following analysis will retrace the decision-forming process within the Parliament regarding the central parts of the renewable energy in transport target and the sustainability criteria of biofuels.

4.2.1 Renewable energy in transport target

The question of how to design the 10 per cent target was one of the most intensely discussed topics within ITRE regarding the Commission proposal on the revised Renewables Directive. In fact, besides issues like the numerical value or the share of specific renewables, it was even argued whether there should be a target or not. The driver of these considerations was especially the negative press coverage concerning biofuels, particularly their harshly disputed impact on global food prices and availability (*Gaupmann, 2008; Muth, 2008*).

Consequently, Claude Turmes decided to entirely abolish the renewables in transport target in his first *Draft Report* on the Commission's proposal from May 13, 2008. The ITRE Committee's rapporteur justified this step by referring to the preconditions for introducing such a target formulated by the European Council during its Spring Meeting 2007. There, the European heads of state had demanded that the sustainability of biofuel production must be assured and second generation biofuels must be commercially available (EP, 2008b). Assuming that the bulk of the target would be met by biofuels, Turmes addressed particularly the issue of sustainability in stating that recent political and scientific evidence has demonstrated that "a binding target on fuels for the transport sector coming from biomass of 10 per cent cannot be achieved in a sustainable way" (EP, 2008b: 7). Furthermore, the Green Parliamentarian points out that not only the environmental costs of the Community's new policy towards all kinds of renewable energy sources (RES) need to be taken into account, but also potential social consequences, for instance as a result of increased use of biomass for energy production (EP, 2008b). In respecting the enhanced cooperation agreement between the ITRE and the ENVI Committees, Turmes excludes the parts of the proposal dealing with the sustainability criteria from his report (see next sub-section).

In the following weeks, the Commission proposal was intensely debated by the two Committees in charge, particularly within ITRE, and the document was modified by around 1000 amendments between June 18 and July 02, 2008. These changes indicate that Turmes' rigorous position from his first report of totally abolishing the 10 per cent target was clearly not backed by the majority of the ITRE members. Due to this majority situation, Turmes was forced to accept the introduction of a renewable energy in transport target, while remaining one of the most skeptical voices on biofuels throughout the whole policy process. The rapporteur's repositioning towards accepting the inclusion of the target was generally supported by his party colleagues of *The Greens / European Free Alliance*. Nevertheless, some of them, like for instance the German Parliamentarian Rebecca Harms, still expressed their concerns towards biofuels (Harms, 2008).

However, the ITRE members' amendments from June/July 2008 on the role of biofuels in the renewables in transport target and its overall design reveal that the Parliamentarians within the Committee were still far away from a common position on this issue. Generally, most MEPs expressed their support of being literally more consistent in the Directive, calling the target *renewable energy in transport target* or *target for renewable energy in transport* and thus, particularly incorporating also other kinds of RES, such as hydrogen or renewable electricity (EP, 2008c: Amendments 134, 161, 152). Beyond, further amendments demanded a modification concerning the magnitude of the target, some just pointing out that the 10 per cent value should be reduced, while others proposed particular new numerical values, like 7 per cent or 5 per cent (EP, 2008c: 15 et. seq.). There were also modifications calling for a two-step approach, for instance introducing a 4 per cent interim target by 2015 and leaving the determination of a final target subject to a Commission report. One of the most prominent justifications of this two-step approach in conjunction with a review of the second step is that the determination of this final value should depend on the availability of second generation biofuels (EP, 2008d: Amendment 397). Referring to this, some Parliamentarians demanded the introduction of tougher monitoring standards compared to those suggested by the Commission, or even regular reviews of the target due to uncertainties regarding social and environmental impacts of biofuels (EP, 2008d: Amendments 396, 404). To sum up, the initial statements from the Committees' side concerning the renewables in transport target were rather diverse while overall a clear tendency towards a more cautious approach regarding biofuels and an explicit opening to other renewable energy sources became evident.

After the summer break, the final position on the Commission proposal on the revised Renewables Directive was presented by the primary responsible ITRE Committee on September 26, 2008, pointing out that the ENVI Committee was associated according to Rule 47 of the Rules of Procedure.

As expected, the final report of the Committees very much emphasized the fact that the target should comprise also other kinds of RES besides biofuels and should hence be called *Renewable Sources in*

Road Transport Target (EP, 2008g: Art. 3). This new term depicts a significant change of the Commission proposal since it excludes any other modes of transportation except by road (e.g. electric rail transport) to count towards the overall target. Thus, the “burden” for the road transport sector to skip to renewable sources of energy would be even higher (Muth, 2009). Concerning the actual achievement of the target, the Committee introduced, besides the 10 per cent threshold in 2020, a minimum 5 per cent sub-target to be met by 2015. Furthermore, the final report states that 20 per cent of the 2015-target must be met by specific sources of energy, such as renewable electricity, hydrogen or specific second generation fuels derived from biomass.¹⁴ According to the will of the Parliamentarians, this sub-target should increase to 40 per cent by 2020 (EP, 2008g: Art. 3). All these targets were supposed to be binding and non-compliance addressed by imposing “proportionate and dissuasive penalties” on the member states (EP, 2008g: Art. 3(3a)). In consideration of the difficulty to reach the sub-targets, the report introduces a number of incentive schemes to support the energy sources embraced by them, especially for renewable electricity (EP, 2008g: Art. 18(3a)). However, the double counting of second-generation biofuels as a mean to support advanced fuels derived from biomass, as put forward by the Commission, was abandoned by the Parliamentarians (EP, 2008g: Art. 18(4)). To compensate for this loss, increased financial incentives and special support schemes for such biofuels shall be implemented on member state level (EP, 2008g: Art. 18(4a)). After all, the report also introduces a review clause to the 10 per cent target by 2014, focusing especially on “food security and biodiversity as well as the commercial availability of transport fuels from lignocellulosic biomass and/or algae, biogas and the use of electricity or hydrogen from renewable sources” (EP, 2008g: Art. 3(3)). Thus, the validity of the 2020-target would depend on this report.

To conclude, the MEPs significantly extended and sharpened the Commission’s regulations on the 10 per cent target, particularly when it comes to biofuels. The subsequent sub-section will analyze, whether this trend also continuous regarding the sustainability criteria.

4.2.2 Sustainability criteria

When it comes to the Parliament’s opinion on the sustainability criteria for the production of biofuels, the ITRE and the ENVI Committee were supposed to work together via enhanced cooperation. While it was agreed that ENVI should amend all parts of the Commission proposal dealing with the sustainability scheme, ITRE should have modified the other sections of the draft. However, due to the reasons outlined in the introductory part to this section, this formally introduced mode of cooperation never really worked in practice as it was supposed to.

In Turmes’ initial report from May 13, 2008, in which he also abandoned the 10 per cent target, the ITRE rapporteur did not touch upon the parts of the Commission proposal dealing with the sustainability criteria and thus, accepted the enhanced cooperation agreement. On the other hand, one could also argue that he made the sustainability criteria quasi redundant by totally excluding biofuels from the draft. But it was only a few weeks later when Turmes had to accept the lacking support within ITRE to totally abolish the renewables in transport target.

In the following amendments of the ITRE and the ENVI Committees from June/July 2008, it became apparent that the contentwise sharing of competences between the two bodies did not work any longer. Particularly ITRE members started to modify parts of the Commission proposal dealing with the sustainability criteria.

Thus, also Turmes himself amended the scheme by stating that the scope of the sustainability criteria should be expanded to the whole biomass sector and not just covering biofuels (EP, 2008d: Amendment 262). This request is very much in line with the claim of Anders Wijkman and Dorette Corbey from the ENVI Committee of introducing “Environmental and social sustainability criteria for energy

14 These specific forms of second generation biofuels comprise for instance fuels made of waste, residues or ligno-cellulosic biomass.

from biomass". This title already points to the demand of many Parliamentarians to also incorporate social issues in the sustainability scheme (EP, 2008e: Amendment 782).

Amendments addressing this social dimension demanded for instance the compliance of biofuel producers with national and international labor legislation, particularly referring to the corresponding Conventions of the International Labour Organization (ILO) (see for instance EP, 2008c: Amendment 257). Another extension of the original proposal focused on the "land rights of local communities and indigenous people", especially aiming at securing the interests of smallholder farmers outside the EU (EP, 2008e: Amendment 842). Beyond, a number of amendments deal with the issue of food security. These rearranged or added provisions claim for example that land, which is currently used for food and feed production, "should not be converted for the production of transport fuels" (EP, 2008d: Amendment 269). Others, also addressing the linkages between increased biofuel production and land use changes, point out that the EU should promote measures to prevent such consequences by *inter alia* compensating farmers for avoided deforestation (see for instance EP, 2008d: Amendment 279).

Beyond, the parts of the Commission proposal dealing with the environmental dimension of sustainable biofuel production were changed by numerous amendments of the Parliamentarians. Thus, Turmes for instance demanded a considerable limitation of the types of biofuels that count towards the target, such as fuels derived from raw materials grown on degraded land (EP, 2008d: Amendment 269). Other extensions introduced detailed rules that prohibit biofuel production to have any negative consequences on soil or water quality or availability of the latter (EP, 2008e: Amendment 838). Furthermore, many modifications asked for the ratification of specific international treaties by the countries of origin as a precondition to let their biofuels or imported raw materials count towards the overall target, such as the Kyoto Protocol or the Convention on Biological Diversity (see for instance EP, 2008e: Amendment 849). All these described extensions of the environmental sustainability were, at least analogously, included into the Committees' final report.

To sum up, in their initial amendments to the Commission proposal, the MEPs demanded particularly various extensions of the environmental sustainability criteria, as for instance the specific and binding introduction of a social component to the scheme, and its extension to all kinds of biomass for energy production.

In the Committees' final position from September 2008, the Parliamentarians eventually decided to incorporate also binding social criteria in the sustainability scheme (EP, 2008g: Amendment 59). Furthermore, the sustainability criteria should not only be valid for biofuels but for all kinds of biomass used for energy production. This does, however, not apply to the parts of the Directive dealing with the calculation of GHG emission savings (EP, 2008g: Amendment 62).

Particularly regarding the opening of the sustainability criteria to all kinds of biomass for energy production, the MEPs were confronted with harsh critique from several sides, especially from the Commission, the Council, and from biomass lobby organizations. They all accused the Parliamentarians of just having replaced the word "biofuels" with "biomass" in the criteria, without having developed specific and suitable regulations for all sorts of biomass (Manning, 2008; Janczak, 2008; Deurwaarder, 2008). Referring to this, Adam Janczak, the Polish energy attaché in Brussels, blames the MEPs of being unrealistic and of having adopted a rather biased and ideological perspective, particularly as a result of "green lobbying" (Janczak, 2008).

Coming back to the content of the final report, the Parliamentarians very much tightened the regulations concerning areas where biofuel cultivation is allowed and substantially expanded the list of negative ecological consequences that have to be prevented. Thus, the cultivation of raw materials for biofuel production shall be for instance prohibited in areas where endangered or threatened species can be found as well as in savannah and on scrubland (EP, 2008g: Amendments 151, 152). Regarding the mentioning of negative side effects that have to be prevented when growing energy crops, the Committees' final report constitutes a considerable extension compared to the Commission proposal. It constitutes *inter alia* that countries which export either raw material for biofuel production or the fuels themselves to the EU must comply with certain international agreements, such as the Kyoto Pro-

toocol or the Convention on Biological Diversity. In case countries have not ratified the listed treaties, the national authorities or economic operators may provide evidence that compliance with the regulations is assured (EP, 2008g: Amendment 151). This last amendment of the final Committee report received a lot of critical feedback, particularly from the European Commission. Ewout Deurwaarder, a policy officer in DG TREN, summarized the concerns of the Commission in pointing out that it is neither the task of a particular company to show that it complies with international treaties, nor would it probably know how to provide the necessary information. This should only be the responsibility of the state (*Deurwaarder, 2008*).

However, the same rules should, according to the MEPs, also apply to international treaties mentioned in the report in respect of social sustainability, such as ILO Conventions. For instance, the use of raw materials for biofuel production which were taken from land where forced and/or child labor took place would be prohibited (EP, 2008g: Amendment 151). Another far-reaching extension of the Commission proposal is the particular claim that no raw material used for energy production shall be cultivated on land where forced eviction occurred for the purpose of biomass cultivation. Beyond, producers must be able to demonstrate their right to use the land (EP, 2008g: Amendment 153). When it comes to the issue of food security, the report points out that “[t]he use of land for the production of biofuels shall not be allowed to compete with the use of land for the production of foods” (EP, 2008g: Amendment 150). In this respect, the MEPs are much more concrete when it comes to respective report and monitoring obligations by pointing out that “the impact of EU biofuel policy” on food security and all kinds of land use changes has to be observed permanently, with particular attention to developing countries (EP, 2008g: Amendment 176).

To conclude, the final report by the involved MEPs not only strengthened the environmental sustainability criteria significantly and incorporated far-reaching social provisions, it also applies to all kinds of biomass for energy production. However, the Council and the Commission assessed many modifications of the Parliamentarians as unrealistic. Beyond, many actors from the European biomass and agriculture lobby, for instance the European Bioethanol Fuel Association, classify the proposed environmental and social sustainability criteria as too strict and impossible to verify (*Dejonckheere, 2008*). Furthermore, the concern has been raised that introducing such detailed social criteria also for third countries would not comply with WTO law (*Gaupmann, 2008*).

4.2.3 GHG emission savings

As a formal part of the sustainability criteria, also the provisions of the Commission proposal dealing with the required GHG emission savings of biofuels should have been covered by the ENVI Committee. However, as already indicated above, this sharing of responsibilities did not work in the actual intra-institutional policy process and hence it was mainly the ITRE Committee which took over.

In the first amendment phase in June/July 2008, the Parliamentarians had everything but a common position on the designated magnitude of the required GHG emission savings of biofuels. Numerous modifications were proposed on that issue, some calling for a two step approach, e.g. 35 per cent at the beginning, increasing to 50 per cent in 2015, some even for three steps, e.g. 35 per cent right from the start, rising to 50 per cent in 2012 and to 60 per cent from 2017 onwards (EP, 2008e: Amendments 792, 793). Other MEPs again demanded just one single value, proposing for instance an emission saving rate of 50 per cent (EP, 2008e: Amendment 795). Also Claude Turmes preferred the introduction of one single threshold of 60 per cent, while at the same time rearranging the “grandfathering clause” of the Commission. The proposed rule of the Commission envisages that all facilities processing energy crops for biofuel production that were already in operation before January 2008 have to fulfill the savings only by April 01, 2013. The ITRE rapporteur demanded that this date should be preponed to January 01, 2010 (EP, 2008e: Amendment 796). Another proposal from the first amendment phase claimed that all direct and indirect effects of biofuels should be considered when calculating the GHG savings (EP, 2008d: Amendment 266). Regarding the question of how GHG emission savings of biofuels should be calculated, one modification proposed the use of actual values for internal EU

production and the appliance of the listed default values for production in third countries (EP, 2008d: Amendment 292).

In summary, the MEPs had significantly different positions regarding the desired GHG emission threshold in the first internal discussion phase, while generally tending to favor a higher value than the 35 per cent value put forward by the Commission.

In the final report of the Parliamentarians from September 2008, the above presented disagreement concerning the required GHG emission savings of biofuels was solved by introducing a two-step approach. Thus, biofuels should save at least 45 per cent of GHG emissions compared to conventional transport fuels right from the start, rising to 60 per cent from January 01, 2015 onwards (EP, 2008g: Amendment 149). Beyond, the Commission was supposed to develop a methodology on how to calculate the compliance of all biomass used for energy production with the GHG emission saving requirements until 2009 (EP, 2008g: Amendment 160). The so-called grandfathering-clause of the Commission remained unchanged by the MEPs, implying that facilities which already operated before January 2008 would just have to meet the 45 per cent saving rate by April 01, 2013 (EP, 2008g: Amendment 149). Hence, particularly the European biofuel industry, which is believed to have a tougher challenge in meeting the requirements than many biofuel producers in third countries, would get more time for necessary investments and production modifications (Muth, 2008). However, several European biofuel lobby groups hold the opinion that these altered thresholds would still considerably weaken the competitiveness of the intra-Community's biofuel sector (Manning, 2008). Referring to this, another key actor from a Brussels-based lobby organization stated that the modification of the minimum saving requirements implies the somehow strange situation that MEPs consciously act against the fundamental interests of European biofuel producers.¹⁵

Another central concern of the Parliamentarians was how to deal with indirect land use changes as a consequence of increased biofuel production in the Directive and how to consider them in the calculation of GHG emission savings. In addressing this challenge, the final report introduced an additional variable, e_{iluc} , in the calculation methodology which stands for the "annualised emissions from carbon stock changes caused by indirect land use change" (EP, 2008g: Amendment 196). Hence, the Parliamentarians wanted to incorporate those GHG emissions in the overall calculation scheme which arise as a result of indirect land use changes due to increased biofuel cultivation. However, the MEPs did not point out how e_{iluc} should be calculated and hence required the Commission to develop a respective methodology until December 31, 2011 (EP, 2008g: Amendment 199). In case the Commission would not be able to reach this temporal goal, the Parliamentarian's final report stipulates the introduction of a general penalty, a so-called *risk-adder*, of 40g CO₂eq/MJ for all biofuel production pathways, irrelevant if indirect land use changes caused by the individual production process actually took place or not. However, the MEPs exclude any biofuel production pathway from this regulation which does not "use (...) arable, pasture or permanent crop land" and hence has shown to have no indirect land-use impacts (EP, 2008g: Amendment 199).

The introduction of the risk-adder as a potential penalty-mechanism turned out to be one of the major sources of criticism the EP had to face. Thus, the lobbyist Dr. Gloria Gaupmann from the European Bioethanol Fuel Association points out that the increased minimum GHG emission saving requirements in conjunction with the risk-adder would practically eliminate the possibility for any production process of first generation biofuels to comply with the sustainability criteria. This would hold true both for producers inside and outside the EU (Gaupmann, 2008). On the other hand, many green organizations, such as the European Environmental Bureau, still assess the actions of the MEPs concerning this matter as "half-heartedly" since they basically just declare that there is an issue without developing a clear methodology how to address the problem by themselves (Pous, 2008).

15 This is a statement from one of the interviewees listed in the Annex who, however, wants to stay anonymous regarding this point.

A further important point concerning the calculation of GHG savings is the question whether actual, default or disaggregated default values should be used to describe the GHG saving potential of biofuels. Referring to this, the MEPs' final report generally demanded the use of actual values and not, like put forward by the Commission, the preferential use of default values. Furthermore, the Parliamentarian's asked the Commission to review all default values by 2010 and every two years thereafter to make sure that they "reflect regional and climatological conditions" (EP, 2008g: Amendment 165). In contrast, the Commission wanted to issue the first report by the end of 2012 and review just specific parts of the calculation method of GHG emission saving values and adapt them to "technical and scientific progress" (COM, 2008b: Art. 17(4, 5)).

When it comes to the issue of co-products and how they should be put into consideration, the MEPs favor the substitution method and not, as proposed by the Commission, the allocation method (EP, 2008g: Amendment 205). Thus, the Parliamentarian's campaigned for the administratively much more costly and time-consuming option which is, one the other hand, presumably more accurate than the allocation method.

To conclude, the Parliamentarians maintain their critical attitude towards the Commission proposal also regarding the required GHG emission savings of biofuels. They considerably raised the minimum savings thresholds and introduced a second-step in 2015. Beyond, a risk-adder shall be introduced in case the Commission is not able to develop a methodology on how to incorporate indirect land use changes in the equation until the end of 2011. With these rather extreme positions, the MEPs especially attracted the resentments of the European agricultural and biofuel lobby.

4.2.4 The Three "I's" – European Parliament

By incorporating the central findings of the above examination in Zito's three "I's" framework, the following sub-section will provide an overview about the most vital ideational and intra-institutional factors as well as interests shaping the internal decision-making process of the EP.

Regarding institutional factors shaping the decision-making process within the EP, the failed collaboration between the ITRE and the ENVI Committee was certainly a crucial parameter. The two bodies wanted to share responsibilities through *enhanced cooperation*, ENVI focusing on the sustainability criteria and ITRE dealing with all other parts of the Commission proposal. However, in the course of the negotiations it became increasingly clear that the ITRE members did not want to "loose" the sustainability criteria to ENVI. Besides the fact that the sharing of responsibilities was from the outset not without controversy within ITRE, also the soaring public attention regarding biofuels was a decisive variable which explains the attitude of the Committee's members. This internal disagreement was the main reason why the EP could not vote on a common position within the Plenary before entering the Trialogue negotiations in autumn 2008. This circumstance considerably weakened the bargaining position of the Parliament compared to the Commission and especially the Council.

This development very comprehensively exemplifies the significance of informal factors, particularly in the form of individual interests, within the policy process. Thus, the development of the EP's position on the Commission proposal should have taken place in the two formally responsible Committees for the respective topics. However, the case-study shows that this official division of power actually resulted in a power struggle between the two institutions, which in the end weakened the power of the entire EP in the final decision-making stage (as will be discussed in section 4.4). One crucial factor that affected the breakdown of the formal institutional division of competences was the raising public interest regarding biofuels. As a reaction to this development, many ITRE members reassessed their interest in the topic and wanted to bring the topics at stake back to their own jurisdiction.

When it comes to personalities shaping the internal negotiations within the EP on the renewables in transport target and the sustainability criteria, surely the role of the rapporteurs, Turmes and Wijkman, has to be highlighted. Particularly Turmes, who has a quite critical position towards biofuels and very much lobbied for this position within the EP, influenced the process as no other actor. Concerning the

issues at stake, it was also him who produced most amendments and managed to incorporate a significant number of them, though in parts slightly changed, into the final report of the Committees.

Another important variable that certainly affected the intra-institutional policy process was the not very widespread expert knowledge on the above described issues within the Committees. According to EP-internal information, only about a dozen of the actors, meaning Parliamentarians and their assistants, possessed respective in-depth expertise. Thus, generally speaking, MEPs were easier to influence for external players than other institutional actors on EU level. This represents one factor that made NGOs and lobby representatives concentrate their activities on the EP. In the end, “green” voices had a significantly bigger influence on the internal decision-forming process than interest groups from the biofuel or agricultural lobby which very much struggled to bring their message across. At the same time, it were particularly representatives from these organizations who repeatedly criticized the Committees’ positions as being uninformed and not applicable in practice.

This one-sided external influence significantly shaped the ideas and interests within the two Committees. Thus, social and environmental sustainability of biofuel production was the primary focus and not, as on the Commission’s side, economic considerations. In this context, especially Turmes, but also many other Parliamentarians, were worried about the potentially negative consequences of increased biofuel production, such as rising food prices or deforestation as a result of direct and indirect land use changes. Against this background, Turmes initially wanted to totally abolish biofuels from the Directive, a stance that was not supported by the majority of the ITRE members. Thus, the Committee’s rapporteur had to accept the majority situation but did not limit his engagement in the decision-making process. He successfully advocated for much stricter regulations on the renewables in transport target and the sustainability criteria compared to the Commission’s standpoint.

Furthermore, the EP was highly interested in implementing not only environmental but also social sustainability criteria. While the Commission also saw the need for taking social matters into account but felt obliged to not include specific criteria which are not measurable, the EP did not let this shortcoming count. Hence, even though the Committee members could not answer the question of how to measure and verify social criteria in practice, they deemed them important enough to include them into their report anyway. However, this approach was also a source for substantial critique, particularly from representatives of environmental lobby groups, who partly condemned the Parliament’s attempts to strengthen the sustainability criteria and create comprehensive feedback and control mechanisms as pure “greenwash” (Pous, 2009). On the other hand, also some MEPs, for instance the German ITRE member Rebecca Harms, viewed huge parts of the sustainability criteria, especially concerning social standards, just as “feel good criteria” for Europeans who do not want to search for real long-term solutions. In this connection, the rapporteur of the ENVI Committee on the dossier, Anders Wijkman, points out that even with very tough obligations, it cannot be assured completely that every actor sticks to the rules and that every violation of them will be prevented. However, he states that the EU at least “does something” (Wijkman, 2008). Summing up, it can be said that there is an ideational basis within the EP that stresses the importance of social factors. On the other hand, the exact phrasing of these ideas in actual interests in the Committees’ final report casts doubts on the practical feasibility of the latter.

Another fundamental factor that shaped the position within the EP was scientific knowledge. For instance, Turmes pointed out that recent research came to the conclusion that biofuels cannot be produced sustainable at all, e.g. due to indirect land use changes. However, the Parliamentarians asked the Commission to develop a methodology that accounts for such changes (e_{iluc}) in their final report, but the EP was not able to develop a respective methodology with their own resources. Another external factor that influenced the policy process within the engaged Committees was the critical media coverage on biofuels in the course of 2008. Both factors make clear how important external influence was for the formulation of the Parliamentarians’ interests in this particular case. It further highlights that it is part of the EP’s belief system, i.e. an idea, to listen to outsiders and let them influence the own decision to a much higher degree than the other institutions would admit it.

Regarding the interests of the Parliamentarians in the internal decision-making process, the above analysis reveals that during the first amendment phase in June/July 2008, the positions of the MEPs were rather diverse. However, the general trend clearly headed towards stricter regulations than developed by the Commission. Assessing these initial positions against the standpoints formulated in the September report, the final opinions mostly represent classical compromises. At the same time, many of the MEPs final points of view were rather “extreme”, such as the claims to extend the sustainability criteria’s area of application to all types of biomass for energy production or to introduce binding social sustainability criteria. Other central demands by the EP were to introduce specific sub-targets to the overall 10 per cent target and to make their achievement binding, penalizing non-compliance. Beyond, the final report stipulated an extensive review of the target by 2014, implying the “danger” of changing or abolishing the EU’s biofuel policy after this review until 2020. Furthermore, the Parliamentarians wanted to significantly increase the required GHG emission savings and to implement provisions to counteract indirect land use changes (E_{iluc} , risk-adder).

In conclusion one can therefore say that the Parliament showed a stricter position towards most discussion points in comparison to the Commission.

4.3 Council of the EU

When it comes to policy-making processes on EU-level, it is usually the biggest challenge for external observers to understand and identify the dynamics and positions within the Council. Section 2.2 already outlined that negotiations within this institution are still closed to the public. Therefore, policy documents from the Council are either not available or their informative value is drastically reduced, i.e. individual positions are only partly published and in many cases, member state names are blackened from the original documents. Beyond, member state representatives are quite hesitant to reveal information about the intra-institutional decision-making process. They also do not know all the motives of their counterparts in the Council by themselves, as national strategies and calculations are still an important element of internal negotiations (Janczak, 2008). The following section strives to overcome this challenge by particularly using information derived from interviews with policy makers in the centre of the negotiations. However, due to the described difficulties, the subsequent analysis will not be able to shed light in every corner of the intra-Council’s negotiation process.¹⁶

According to Adam Janczak, the energy attaché of the Polish Permanent Representation to the EU, the discussions within the Council concerning the renewable energy in transport target and the sustainability criteria were characterized by three main blocks. The first block comprised countries with very ambitious ecological policy goals and respective demands for a future European biofuel policy, such as Denmark, Germany, or Sweden. The second country group was formed by states with (relatively) high natural potential for energy crops cultivation and thus, biofuel production, like for instance Poland, Austria, and Spain. Several representatives of this block, particularly Spain, lobbied against increasing the 35 per cent GHG emission saving requirement for biofuels of the Commission proposal (Janczak, 2008). In this respect, also the French interest in supporting their agricultural sector played a decisive role in the internal negotiations (Pous, 2009). The third group consisted of countries which did not have a clear national biofuel policy up to the negotiation period and where a significant biofuel industry did not exist. This block was for the most part rather cautious in the negotiations and comprised mainly the new member states. Janczak additionally pointed out that he could identify four main factors that were decisive for the national interests and thus, the positioning in the policy

16 The discussion regarding the renewable energy in transport target and the sustainability criteria for biofuels initially took place in the *Environment Council* and the *Transport, Telecommunications and Energy Council* (TTE). However, as this fact did not imply different negotiation environments or positions, the following analysis will always speak of the “Council position”, thus not making a distinction concerning the body’s composition.

process: the importance of the biofuel industry; the significance of environmental considerations; the emphasis on the cost-efficiency argument (and hence promoting liberal import and production regulations); and, to a limited extent, the significance that the individual country assigned to sound social and environmental criteria for biofuel production in third countries.

Regarding the individual influence of the member states and their relevance in the internal negotiation process of the Council, the most decisive forces were France, Germany, Spain, Poland, and the UK. Concerning the parts dealing with biofuels and the sustainability criteria, Germany and Spain had particular weight in the Council meetings since both countries have significant national biofuel industries and thus not only the necessary expert knowledge but also considerable interest in the topic (Fouquet, 2008). The UK played the maybe most ambiguous role in the whole policy-making process, trying to tighten the regulations of the Renewables Directive wherever possible and thus making most targets, including those in the biofuel sector, very difficult to achieve. On the other hand, critics highlight that especially in the early stages of the negotiations, the British have made proposals to weaken the Renewables Directive, and may have sought for tighter sustainability standards for biofuels to loosen not only the 10 per cent target for the transport-sector, but also the 20 per cent renewables target (Thies, 2008). The obvious reason for the UK's performance is based on the fact that its individual share to meet the overall 20 per cent target is the highest of all EU member states (EP, 2008h).

The most important discussion forum within the Council regarding the renewables in transport target and the sustainability criteria was an *ad hoc* Working Group, established by the Slovene Presidency in February 2008. The Presidency decided to separate these issues from the rest of the proposed Directive and mandated the group particularly with the formulation of coherent sustainability criteria (EP, 2008f). This step does not represent business as usual and was especially due to the complexity of the topic (Deurwaarder, 2008). However, the members of the *ad hoc* Working Group were not the environment or energy attachés, which have usually the biggest expertise in such topics, but the assistants to the Deputy Permanent Representatives (members of the so-called MERTENS-group) (BMWFJ, n.d.) As these parts of the Directive are very technical and the members of this group would not have the necessary knowledge to deal with it, this is probably one of the reasons why no common position regarding the methodology for calculating GHG emissions savings could be found in the scheduled time frame (Persson, 2008). This was the case although the Working Group was additionally resourced with a representative from the Commission who should especially give advice regarding the technical perspective (Deurwaarder, 2008). Another factor was probably the underestimation of the topic's complexity by the Slovene Presidency, combined with increasing scientific evidence pointing towards potential negative side-effects of biofuels coming up in the course of 2008. Thus, in April 2008, the Presidency stated that the promotion of biofuels might lead to greater problems than was anticipated in the beginning, including more CO₂ emission, deforestation, and a loss of biodiversity (GCO, 2008).

Against this background, the presentation of the *ad hoc* Working Group on the Council's position regarding the sustainability criteria could not take place on May 07, 2008, as scheduled. Although the Working Group was able to make some progress on technical issues, three main points were not solved yet by the time the French Presidency took over: the level and starting date of the second step for the minimum GHG emission saving requirements, the validity of the sustainability criteria for biofuel producers outside the EU, and the design of the methodology to calculate the GHG emission potential of biofuels (EP, 2008f). Thus, the Presidency encouraged the body to continue its work (Council, 2008g) but decided to rearrange its structure by setting up different Working Groups for each open question, this time at Coreper-level (Janczak, 2008; Manning, 2008; Persson, 2008). During the first months of the French Presidency, these units met up to three times per week and an extremely lively exchange of different ideas and proposals circulated between the Working Groups, the Presidency, and the national governments (Fouquet, 2008). By September 09, 2008, all issues were solved and the final position of the French Presidency and the Council regarding the Renewables Directive was published (Council, 2008i).

In the following, the position of the Council regarding those points of the Directive under examination in this study will be presented in more detail.

4.3.1 Renewable energy in transport target

The 10 per cent target was one of the less debated issues of the Commission proposal in the Council. Already during the first months of the negotiations, the Slovene Presidency pointed out that it regards the target not solely as a biofuel but rather as a renewable energy in transport target, including for instance also hydrogen and renewable electricity (Council, 2008c; *Janczak*, 2008). However, in the course of the policy process, a few national governments turned skeptical towards the share of biofuels in the overall target, probably motivated by the “fuel vs. food” discussion. For instance, the Netherlands stated in July 2008 that the 10 per cent target would not be “set in stone” and that it needs to be assured that the production of biofuels is sustainable according to the guidelines of the European Council (Council, 2008f).

In the end, the 10 per cent target remained part of the Council’s final position. Regarding fixed quotas for specific renewables in the 10 per cent target or binding interim targets, the majority of member states rejected the introduction of such steps. They preferred a binding 10 per cent target in 2020 without any penalties in case of non-compliance and without any further sub-targets (Council, 2008c).

In respect of the introduction of a review clause for the 10 per cent target, which is called *rendezvous clause* in Council terminology, the positions of the actors within the institution were far less streamlined. The question was not only if such a clause should be incorporated or not, but also the parts of the Directive to be covered and possible legal repercussions were intensely debated. The opponents of a far-reaching review clause especially pointed out that by introducing such a regulation, the necessary investments for reaching the overall 2020 target would be missing in the first years. On the other hand, the advocates highlighted the condition formulated by the European Spring Council in 2007, saying that the production of biofuels needs to be sustainable. Countries like Germany and Spain lobbied against a too strong review clause, while other member states, particularly the Netherlands, and the UK, argued in favor of a strong and profound rendezvous clause (*Manning*, 2008). In its final position, the Council stipulated a review clause in 2014 the latest, aiming at reviewing the second step of the GHG emission savings requirements (more on the agreed two-step approach see sub-section 4.4.1) (Council, 2008h). Thus, this position of the Council represents a far more cautious approach than the review clause demanded by the EP Committees, putting the whole biofuel policy of the EU into question.

To conclude, there was only very little disagreement within the Council concerning the 10 per cent target. Only the scope and the legal strengths of the review clause were subject to thorough discussions.

4.3.2 Sustainability criteria

While the opinions between the member states were, to a greater or lesser extent, comparable regarding the 10 per cent target, more discussions took place about the exact design of the sustainability criteria. In February 2008, the Council framed the basic conditions for the member states’ position concerning the sustainability criteria. While generally pointing out that they would support ambitious criteria, Council members formulated certain limitations: the competitiveness of the European industry should not be diminished by the compliance with the criteria; trade barriers shall not be built up since biofuel imports are necessary to achieve the target, and cost-effectiveness must be assured. Furthermore, some delegations demanded that the sustainability criteria should immediately apply “to all forms of biomass” (Council, 2008a).

However, the latter claim did not represent the majority within the Council and thus, the latest note of the Presidency to Coreper from September 09, 2008, did not expand the sustainability criteria to the whole biomass sector. An extension to other biomass application shall though be reviewed by the Commission in 2010 (Council, 2008i). Referring to this, particularly Germany was pushing to move

this review to an earlier date and hence to include sustainability criteria for “the entire field of bio-energy” as soon as possible (Council, 2008d: 3). Furthermore, the Presidency’s note stipulated additionally that sustainability should be understood embracing both environmental and social matters (Council, 2008i).

The first detailed overview of the Council’s position concerning the environmental sustainability criteria was published on May 05, 2008 as a note from the General Secretariat to Coreper. The document presented particularly certain concretions of the Commission’s formulation to serve the interests of several member states. For instance, some northern member states asked for changing the definition of “sustainable forests”, as the Commission’s formulation would totally exclude their timber to be used as raw material for biofuel production. A large step towards tightening the environmental requirements for biofuels was made in the General Secretariat’s note by stressing that countries of biofuel origin should have “ratified and effectively implemented” four specific environmental treaties, *inter alia*, the Convention on Biological Diversity and the Kyoto Protocol. However, some EU member states regarded these obligations still as too low, as they would not improve the competitive situation of the EU’s domestic biofuel industry compared to producers in third countries (Council, 2008b).

In the Council’s final position, released four months later, the compulsory ratification of these treaties was however not included any longer. However, other suggestions from the May-document made it in the ultimate position. Thus, the definition of “undisturbed forests” was adapted in accordance with the claim of some northern member states, including Sweden, so that their forest plantations would now stick to the criteria (Persson, 2008). Furthermore, the itemization of areas where raw materials for biofuel production should not be produced was extended by areas which are crucial “for the protection of rare, threatened or endangered ecosystems or species” (Council, 2008i: Art. 15(3b)). The Commission was expected to prepare a list of respective geographical areas (Council, 2008h). Beyond, Recital 39 states that energy crops should also not be obtained from land that can be characterized as “highly biodiverse savannahs, steppes and prairies” (Council, 2008i: Recital 39). The Council further substantially broadened the Commission’s monitoring and reporting obligations regarding environmental sustainability. Hence, the Commission shall particularly review the availability of advanced biofuels (e.g. made from waste or ligno-cellulosic material) and the impacts of the EU’s biofuel policy on indirect land use changes “in relation to all production pathways” (Council, 2008i: Art. 20(5)). Moreover, the Commission is supposed to introduce binding requirements concerning air, soil or water protection (Council, 2008i: Art. 16).

To conclude, the Council entered the final negotiations with the position to only slightly change and extend the “core” environmental sustainability criteria compared to the Commission proposal. However, the reporting and monitoring obligations were considerably extended.

The debates surrounding the social sustainability criteria were rather reluctant. During the intra-institutional debates before the Presidency’s September-note, most member states expressed their general willingness to include a social domain in the sustainability criteria. However, some countries, particularly the Netherlands and the UK, insisted that all regulations must be compatible with WTO regulations (Council, 2008e). In this respect, a number of member states were particularly worried about making specific ILO regulations concerning worker rights compulsory (Pous, 2008).

These reservations influenced the final suggestion of the Presidency to a great extent, who hence decided to make none of the social criteria binding in the first place. Instead it was fixed to review them every second year, starting from 2012. In these reviews, the impact of the EU’s biofuel policy on the social sustainability within the Community as well as in third countries shall be evaluated, focusing particularly on the effects of increased biofuel production on the availability of foodstuffs at affordable prices and the respect of land use rights. Furthermore, these studies shall state whether biofuel producing countries have ratified and implemented specific ILO Conventions (e.g. Convention concerning Forced or Compulsory Labour) or not. On the basis of these reports, the Commission has subsequently the right to “propose corrective action, in particular if evidence shows that biofuel

production has a significant impact on food prices” (Council, 2008i: Art. 15(5a)). As these obligations touch upon monitoring and reporting obligations, the Council extends Article 20 of the Commission proposal, which deals with these regulations, respectively. At this point, the Presidency’s note also clearly points out that potential displacements as a result of increased biofuel cultivation shall be considered (Council, 2008b).

To summarize, the Council members obviously worry about potential negative effects of increased biofuel production on the social sustainability, especially in production countries. However, in the end they just decided to extend the monitoring and reporting requirements on these issues, not least due to concerns that binding obligations might violate WTO regulations.

Another very intensely debated issue regarding the sustainability criteria in the Council was concerned with whether or not third countries would actually benefit more from the scheme, both directly and indirectly, than EU member states. In this connection, the Polish government, for instance, claimed it would be “alarmed” by the fact that biofuel imports are considered as “an important mean” to reach the 10 per cent target by many actors. Moreover, third country producers would have a *direct* advantage compared to their European counterparts as they would not have to stick to regulations of the EU’s Common Agricultural Policy (CAP). Thus, Poland argued that external producers should also be obliged to adhere to CAP regulations. Overall, the goal should be to meet the enhanced demand of biomass and biofuels within the Community by increasing the domestic potential (Council, 2008d). Beyond, also the Italian and the Belgian representatives in the Council took a comparable view by stressing the relative disadvantages for European biofuel producers (Council, 2008f).

Furthermore, already in May 2008 the concern emerged in the Council that practically ineffective monitoring systems on the sustainability criteria would *indirectly* benefit producers from third countries. Thus, more advanced monitoring schemes would be required (Council, 2008b). However, these critical voices could only partly influence the Council’s overall final position from September 2008. Hence, the Directive literally “will encourage increased production of biofuels and other bioliquids worldwide” (Council, 2008i: Recital 40). Following the Commission’s proposal, the Council document abstained from making CAP-related regulations also binding for producers from third countries. On the other hand, as pointed out above, the member states significantly upgraded the monitoring and reporting obligations concerning the sustainability criteria. Furthermore, the Council asked to considerably strengthen the report responsibilities on all aspects of the criteria for producers outside the Community. In addition, these external producers shall also supply information on soil, water and air protection as well as on the restoration of degraded land (Council, 2008h). Hence, the Council aimed at providing a common level playing field for producers within and outside Europe by particularly strengthening the monitoring and reporting requirements.

To sum up, the Council slightly extended the environmental sustainability criteria and added a social component. However, the newly designed social regulations are legally quite porous since they just require regular monitoring and reporting obligations and have no binding character. On the other hand, one has to acknowledge that the Presidency managed not to follow the hardliners within the Council which demanded that the increased biofuel consumption within the EU should only be met by domestic production. Though the Council-internal discussions regarding the sustainability criteria were already much more severe than those surrounding the actual target, the debates on the GHG emission savings were even more intense, as the following sub-section will show.

4.3.3 GHG emission savings

The determination of the required GHG emission saving rate compared to conventional transport fuels and its calculation method was one of the liveliest discussed topics within the Council. Certainly, economic interests were a pivotal driving force in this respect as many member states saw their national biofuel industry at stake. Countries like Poland or Spain already worried about the 35 per cent savings rate proposed by the Commission and got even more anxious concerning the EP proposal which advocated for 45 per cent savings from the beginning, rising to at least 60 per cent from Janu-

ary 01, 2015 onwards. However, the opinions on how much GHG emission reductions the European biofuel producer could actually cope with were rather different. On the one hand, agricultural lobby groups argued that the rates put forward by the EP would be impossible to fulfill for European producers (*Dejonckheere, 2008*). On the other hand, green NGOs and even some industry-oriented organizations doubt the scientific basis of these claims by, *inter alia*, referring both to the grandfathering clause which would be in favor of the European industry and the very high GHG savings already reached by new installations. In this connection, Dr. Dörte Fouquet, Director of the European Renewable Energy Federation (EREF), points out that there was probably an economic calculus in that discussion. She is confident that the European biofuel industry could, or at least will soon, be able to respond to stricter GHG saving rates as promoted by the Commission (*Fouquet, 2008*).

Against this complex background, the discussions within the Council on the topic turned out to be quite challenging and difficult. On May 05, 2008, the General Secretariat published a note to Coreper promoting a two-step approach regarding the required minimum GHG emission saving rate, starting with 35 per cent in the beginning and increasing this rate to 50 per cent by January 01, 2015. Already by that time it became obvious that the member states' positions concerning this point were rather diverse (Council, 2008b). Three weeks later, on May 26, 2008, the Presidency confirmed these targets and a vivid exchange of positions and arguments between the member states began (Council, 2008c). In general, all delegations were in favor of a two-step approach regarding the GHG savings, and some delegations, like for instance Italy, even supported the Presidency's proposal right from the start (Council, 2008f). However, several countries supported both other figures, ranging between 35 per cent and 60 per cent, and rearranged dates (Council, 2008e; Council, 2008f). Of course, such internal negotiations among member state representatives sometimes demand a renunciation of the own position, due to pressure from other delegations. Thus, Poland which did not want a second step at all had to reconfigure its standpoint towards promoting such a shift just in 2018. The Polish delegation shared this point of view with the French representatives (*Janczak, 2008*). Poland pointed out that this position was motivated by the concern that higher GHG saving rates or an earlier coming-into-effect of the second threshold would decrease the competitiveness of the European biofuel industry and would lead to sharply increased imports in that sector (Council, 2008d). Another position represented by many delegations was the proposal to make the figure of the second step subject to a review. This view was for instance held by Belgium or Hungary, pointing out that more information is needed to set a specific number for the second step (Council, 2008d; Council, 2008f). On August 29, 2008 the Presidency announced a compromise, envisaging 35 per cent of required GHG savings from the beginning, rising to at least 50 per cent by 2017. However, the second step should be subject to review in 2014. The Presidency pointed out that 2017 was set "as a medium point" while the most prominent positions on the floor were in favor of 2015, 2018 and 2020 (Council, 2008h: 2).

Another topic that attracted increasing attention in the course of the discussions surrounding biofuels focused on food security and land use changes, particularly those of an indirect kind. On May 5, 2008, in a note from the General Secretariat to Coreper, a bonus for cultivating biomass for biofuel use on degraded land was introduced in the methodology part for the GHG emission saving calculation (Council, 2008b). This regulation, which was supposedly brought into the discussion by the German delegation, is aimed at promoting the use of land which is unsuitable for agricultural production, such as salinated land (*Pous, 2008*). The idea behind it is to decrease the pressure on land capable of food production for the purpose of producing raw material for biofuels. However, member states could not agree on a value for this bonus, one proposal demanded an additional benefit of 70g/CO₂eq/MJ biofuel, another only 29g/CO₂eq/MJ (Council, 2008b: Annex VII, Part C). Especially the British delegation considered indirect land use changes a very serious problem and was, together with the Netherlands, heading the "front" within the Council pushing for strict criteria to counteract these negative side-effects (*Persson, 2008; Janczak, 2008*). A very decisive opinion forming factor in that regard was the issuing of "The Gallagher Review of the indirect effects of biofuels production" by the Renewable Fuels Agency, a British Governmental organization, in July 2008. The report concludes

that land use changes represent the biggest threat of increased biofuel production, possibly leading to a loss of biodiversity, rising GHG emissions, and mounting food prices hitting particularly the poorest (RFA, 2009).

In the following negotiation process, most delegations put very much emphasis on their position that biofuel production may not compete with the production of foodstuff (Council, 2008f). The final position of the Presidency cautiously follows these statements. Thus, a bonus of 29 gCO₂eq/MJ biofuel is introduced for the production of raw materials for biofuels on degraded land (Council, 2008h: Annex VII, Part C). Furthermore, the Presidency's proposal suggests that the Commission's regular reports shall particularly focus on "indirect land use changes in relation to all production pathways" (Council, 2008h: Art. 20(5e)). For these reports, all relevant sources should be taken into consideration, including the FAO hunger map (Council, 2008h: Recital 40a).

Regarding the calculation of the GHG emission savings, the Council was more hesitant to change regulations compared to the EP's ITRE and ENVI Committees. However, though the Presidency's final proposal is generally closer to the Commission's initial draft, the member states adopted certain positions that were more comparable to the ones from the EP Committees. These tendencies within the Council got already apparent in the earlier stages of the negotiation process. Thus, a Council document from May 2008 points out that the default values for GHG emission savings "should be updated and expanded when further reliable data is available" (Council, 2008b: 7). Furthermore, individual biofuel production pathways, whose GHG performance is expressed by respective default values, shall only count towards the 10 per cent target if their additional GHG emissions as a result of land use changes are either zero or lead to positive carbon stock changes. However, there was no common position within the Council concerning this point by May 2008 (Council, 2008b). A further proposal in this context was brought forward by the British delegation which demanded the introduction of a fixed risk-adder (as described in sub-section 4.2.3), thus promoting a general penalty for indirect land use changes independent of the individual production pathway of biofuels. As the introduction of such a risk-adder could potentially, depending on the value, considerably hamper the biofuel industry, its lobbyists were very much against the inclusion of such a factor (Gaupmann, 2008; Dejonckheere, 2008).

Besides, the Council stated already in May 2008 that member states prefer the use of default values and hence, actual or aggregated values were left as being the second option. With this position, the Council is in line with the Commission and at odds with the EP. The same applies to the default values, where most member states supported the magnitudes put forward by the Commission (Council, 2008c), though some countries, like Belgium for instance, demanded more conservative default values as an incentive to use actual values (Council, 2008f).

The final position of the Council concerning the calculation of GHG emission savings of biofuels was mostly congruent with the original Commission's draft from January 2008. Also regarding the consideration of by-products, the Council argued, just as the Commission, in favor of applying the substitution method for policy analysis and the energy allocation method for regulatory purposes. However, the Commission shall review these methods together with possible changes or alternatives in its 2010 and 2012 reports (Council, 2008i). In addition, the Presidency's proposal put forward a more cautious approach towards default values, pointing out that they "should be updated and expanded when further reliable data is available" (Council, 2008i: Recital 45). Furthermore, the above mentioned claim constituting that no GHG emissions may be caused as a result of land use changes by any kind of biofuel production pathway, was integrated in Article 17(1a) of the Presidency's proposal. Finally, the Council particularly strengthened the report and monitoring obligations regarding several topics connected to the GHG emission performance of biofuels. For instance, the Commission shall not just issue one report on default values in 2012 as suggested in the initial draft, but prepare comparable reports every 2 years thereafter (Council, 2008i).

To conclude, the Council-internal discussions surrounding the required GHG emission saving rates for biofuels were rather intense, though to a huge extent dominated by economic interests of European

biomass producing countries and not by ecological considerations. Regarding the issue of indirect land use changes, it was particularly the UK who lobbied for increasing its weight in the Directive. In the end, a bonus for the production of raw materials for biofuels on degraded land was introduced and the monitoring obligations were extended. Although this is a step forward, it is still a quite reluctant one. Overall, the Council's modifications concerning the calculation of the GHG emission saving potential of biofuels were rather small.

4.3.4 The three "I's" – Council of the EU

When it comes to the identification of the main three "I's" shaping the negotiations within the Council, the analysis is particularly hampered by two factors: First, debates in this institution are not public and typically only little information about the course of the discussions diffuse through the thick walls of the Council building. Second, especially regarding the final standpoint of the Council from September 2008, it is difficult to assess to what extent the presented positions were influenced by the EP amendments from June/July 2008. It appears quite likely that the Council adopted some of its opinions strategically and thus, bringing itself into a good position for the final negotiations. The following examination will detect whether such consideration were part of the institution's strategy.

Regarding institutional factors influencing the policy making process within the Council, the *ad hoc* Working Group, set up by the Slovene Presidency in February 2008, was surely an important parameter. The main task of this body was to develop a common position on the sustainability criteria for biofuels and the renewables in transport target. However, the Working Group was staffed with the Deputy Permanent Representatives (MERTENS-group) instead of the environment or energy attachés, who have in general more in-depth knowledge on technical issues. This shows that the Slovene Presidency was obviously aware of the topic's importance, as the Deputy Permanent Representatives are equipped with more power and are positioned on an administratively higher level than the attachés. On the other hand, this also demonstrates that the Presidency underestimated the technical complexity of the topic. This fact was in the end one of the main reasons why the Working Group could not come up with a common position by May 07, 2008, as scheduled. Beyond, the Slovene Presidency itself revealed a great amount of uncertainty concerning certain aspects of the sustainability criteria. Particularly, the Presidency was insecure about a number of possible negative side-effects resulting from increased biofuel cultivation, such as increased CO₂ emissions due to indirect land use changes, deforestation, and a loss of biodiversity. On the other hand, it remained open to new scientific evidence in this field which can hardly be considered a 'weakness'. Though national interests should not play a role in how the Presidency in general accomplishes its job, it should be noted that Slovenia has no significant domestic biofuel industry and thus, had a rather neutral national position in the negotiations (SMESP, 2007).

This is however not the case for the French Presidency, which took over from Slovenia during the second half of 2008, as France is one of Europe's major biofuel producers. Without saying that this circumstance definitely affected the attitude of the new Presidency, it shall be expressed that the new approach on biofuels suggests a possible connection between French domestic interests and its role on EU level by that time. This link gets even more obvious in the following section, which presents the final version of the Directive and also comes back to the role of the French Presidency in the Tri-logue negotiations.

When the Presidency was taken over by France in mid-2008, the new "head" of the Council decided for an institutional change by splitting the Working Group introduced by the Slovene Presidency into several groups, one for each open question respectively. Furthermore, the French reconfigured the administrative setting of the Working Groups and lifted the responsibility up to the Coreper level. In the following months, a very intense exchange of positions between the Working Groups, the Presidency and the national governments took place and agreements on all unsolved issues were finally reached. This policy process clearly exemplifies the importance of different "styles" of Council Presidencies and how they determine the policy process and the final outcome, obviously a rather informal

factor of EU politics. In this particular case, the Slovene Presidency established the Working Group on a sub-optimal administrative level and its position regarding the sustainability criteria was not very constant throughout the first half of 2008. Beyond, also the missing national interest and the knowledge that the Directive would not be passed within its term very probably influenced the attitude of the Slovene Presidency concerning the issues at stake. On the contrary, the revised Renewables Directive as part of the Climate and Energy Package was the top-priority prestige project of the French Presidency. Furthermore, France has considerable national interest in the formulation of policies regarding biofuels. Finally, examples of prior French Presidencies reveal that they tend to concentrate the power in their own hands in a top-down manner, trying to undermine other actors on stage, both within the Council as well as with regard to the other institutions (Shackleton and Raunio, 2003). As the subsequent section will demonstrate, this behavior also very much shaped the policy process under examination. Summarizing, it can therefore be said that even though there are formal rules stipulating the institutional set-up and power relations, this case study shows how important informal factors, such as for instance the personal interest of the respective Presidency, shape both the negotiations and the final official position of Council.

Having clarified the institutional background, the following part discusses the ideational basis of the Council members as well as their central points of view shaping their interests in the policy process. Generally speaking, these fundamental motives of the member states can be divided into mainly economic consideration on the one, and concerns regarding social and environmental sustainability on the other hand. Thus, the main biofuel producers within the Community, such as Poland, Austria, Spain or France, strived to serve the interests of their energy crop farmers and hence, national economic deliberations were to a huge extent their guiding motive. Beyond, many Council members hold the opinion that cost-efficiency in verifying the sustainability criteria has to be assured and therefore demanded a preferably liberal overall design of the regulations. On the other hand, some parties attach very high importance to environmental considerations as their ideational basis, especially those with ambitious ecological policy goals such as Denmark, Germany or Sweden. In this context, a number of member states highlighted, though not as strong, the need to formulate sound social and environmental regulations especially for third countries. Others again had no specific and clearly formulated points of view on the sustainability scheme and the renewable energy in transport target. This group especially contains countries without a significant domestic biofuel industry and no respective policy goals, consisting particularly out of the new Eastern member states. Of course, in practice a mixture of different basic ideational premises is possible. Hence, countries like Germany or Sweden were not only guided by environmental deliberations, but did also care about their domestic biofuel industry.

Overall, economic considerations were the most important element that shaped the intra-institutional ideas regarding the sustainability criteria and the renewables in transport target. Thus, the Council's ideas were largely informed by national 'interests', such as those by the agricultural or biofuel lobby. However, environmental and ecological concerns also played a decisive role, even though it was always stressed that respective rules should not affect the European biofuel industry negatively or decrease their competitiveness compared to producers in third countries. Nevertheless, assessing the development of the ideational basis within the Council by applying a temporal perspective reveals that environmental standpoints gained influence throughout the policy process. An important event in this respect was the issuing of the "Gallagher Report" on indirect land use changes resulting from increased biofuel production. On the other hand, especially regarding this point it is difficult to distinguish between a real change of the member states' positions and a strategic approximation to the EP position in the period before entering the Trialogue negotiations. Having said that, evidence indicates that the Council very probably reacted to the EP's June/July amendments by incorporating many of the MEPs additionally claimed binding social and environmental provisions in the monitoring and reporting obligations. This outline shows that not only *intra*-institutional ideas, such as especially economic and industry-related considerations in the case of the Council, but also *inter*-institutional relations shape the basis for a party's positioning in the negotiation process.

The above described ideas represent the basis for the Council members' interests throughout the intra-institutional negotiations which were very much shaped by "classical" compromise solutions. Overall, economic interests clearly dominated the policy process within the Council. In this context, particularly those countries were engaged in highlighting European economic interest which have the respective domestic biofuel industry. Hence, for instance Germany and Spain lobbied against a strong review clause. Beyond, Spain and Poland stood up for a preferably low minimum GHG emission saving threshold for biofuels and a one-step approach. However, they had to give in to the pressure from the other Council members and a two-step approach was compromised. In the end, the Council remained rather cautious in changing the initial Commission proposal on the GHG emission savings, by only introducing additional reporting and monitoring obligations, e.g. concerning indirect land use changes, but no further binding criteria. Generally, the regulations of the Commission proposal regarding environmental sustainability were only slightly strengthened.

The same applies to the social dimension of the sustainability criteria, which should, according to the Council, consist of enhanced monitoring and reporting obligations but no binding requirements. A central concern in this respect, raised for instance by the Netherlands or the UK, was that such social criteria would not comply with WTO law.

In conclusion one can therefore say that the interests of the Council were of course influenced by the economic-oriented ideas presented above, but nevertheless also the more ecologically interested parties managed to get their message across and hence tempted the others to give in into respective compromises.

4.4 Final policy agreement

The previous sections analyzed ideational and institutional factors influencing the internal decision-making process within the Commission, the EP, and the Council as well as their concrete interests on the issues under examination. In the course of this analysis, substantial differences became apparent not only with regard to the different belief systems of the institutions, but also concerning their particular interests in the issues at stake. The following section presents the agreement reached among the different actors, i.e. the final design of the renewable energy in transport target and the sustainability criteria for biofuel production. In this connection, it will particularly be examined whose ideas and interests prevailed in the end and what institutional factors shaped the last negotiation period.

The basic conditions for the final negotiations on the revised Renewables Directive as part of the Climate and Energy Package were particularly shaped by three factors. These parameters also influenced the formulation of the regulation's ultimately legally binding version.

First, the French Presidency considerably increased the pressure on the Council members and the EP to find a solution until December 2008. The Climate and Energy Package was its prestige project and the overall performance of the French would have appeared quite disappointing if an agreement would not have been reached until the end of their term (Harms, 2008). The most important strategic step of the French Presidency in that respect was Nicolas Sarkozy's decision not to pass the Package on the "normal" Council level in the formation of the Environmental ministers, but on the level of the heads of state, what *de facto* requires unanimity (Pous, 2009). This very unusual procedure ultimately enhanced the possibilities for individual member states to affect the outcome substantially as every government needed to accept the compromise. Thus, these conditions practically worsened the chances of the EP to enforce their positions in the final Directive (Pous, 2009).

Second, *time* was, in several respects, an important factor during the final negotiations. Hence, in case of failing to find a compromise, the whole negotiation process would have had to be restarted, including especially the difficult and long intra-institutional process within the EP. This fact gained even more relevance as no "restart" on EP-level would have been possible before the elections in June 2009 as all internal decisions and positions passed before that date would have lost their legally binding character in the newly composed EP (Muth, 2009). Furthermore, the Parliamentarians wanted to avoid a continuation of the negotiations on the Climate and Energy Package under the Czech's Presi-

agency term which started at the beginning of 2009. This was particularly due to the MEPs' concern that the Czech Presidency would act in a rather EU-skeptical way, expressed for instance by a rather cautious support of innovative regulations. Furthermore, the Czech government had already indicated that there would probably be no time during its term to vote on the Package and thus, a decision would have to be further postponed to the second half of 2009 (Muth, 2009). Another circumstance that made time an important factor for the EP was especially Turmes' concern that unsolved issues from the Trialogue negotiations would have had to be dealt with on the level of heads of state. The ITRE rapporteur worried that this would have increased the possibility of "horse trading" and thus an additional weakening of the Directive's legal content. Thus, the EP was very much pushing to achieve a final solution on all parts of the Renewables Directive in the informal Trialogue negotiations, a demand that was successful in the end (Muth, 2009). To sum up, both the EP and the French Presidency were, out of different reasons, under enormous time-pressure to achieve a compromise on the Renewables Directive until the end of 2009.

The third variable influencing the final negotiations and the ultimate formulation of the Directive's content can be seen in the increasing influence of industrial lobby groups. Thus, during the last months before the law was passed, the Commission asked the JEC-Consortium already for the second time to develop default GHG emission saving values for individual biofuel production pathways (Phillips, 2008a). This group, consisting of representatives both from the Commission's Joint Research Centre as well as from the car and the oil lobby, considerably increased the saving values of biofuels in comparison to the default values laid down in the initial proposal. Thus, they made the targets easier to achieve, particularly for the benefit of the European biofuel industry (see sub-section 4.4.3). Furthermore, biofuel lobby groups successfully enhanced their influence during the final stage of the policy process. Referring to this, one should note that one of the major Spanish biofuel companies, *Abengoa Bioenergy*, received the well-known "Worst EU Lobbying Award 2008" for its intense efforts to countervail scientific studies about the negative consequences of biofuels through "misleading information and greenwash" (Phillips, 2008c). According to the European Environmental Bureau, this company tried intensely to weaken the regulations on biofuels and particularly the sustainability criteria by lobbying on the EU level (Pous, 2008).

Coming back to the actual negotiations, the Trialogue finally agreed on an ultimate version of the Renewables Directive on December 09, 2008 (Phillips, 2008b). The Council, in the formation of the heads of state, voted on the legislation on December 11/12 and the European Parliament passed the law on December 17¹⁷ (EurActiv.com, 2008b).

The following sub-sections will provide an overview on the final regulations concerning the renewables in transport target and the sustainability criteria for biofuels. The last part of this section will further outline which institutions, ideas and interests shaped the final stage of the decision-making process and how.

4.4.1 Renewable energy in transport target

The final version of the Directive introduces a *renewable energy in transport target*, explicitly open to all kinds of renewables (EP, 2008h). Thus, the expression does not follow the EP Committees' demand to limit the scope of the target solely to *road* transport. At the same time, the final formulation is very much in line with one of the Council's core concerns, namely to embrace the whole transport sector, and hence to make the target easier to achieve (e.g. through the incorporation of electric rail transport) (Muth, 2009). Beyond, also the numerical value of 10 per cent remains unchanged and with-

17 The final version quoted in this section has been published by the EP and will be denoted as EP (2008h) in this paper. One should acknowledge at this point that the final Directive referred to in this section is the final one as regards the content, but not concerning the formal structure. Thus, the Directive which is also final in terms of formal issues might differ concerning formal aspects, i.e. Article and paragraph numbers.

out further (sub-)specifications or penalty-mechanisms in case of non-compliance (EP, 2008h). This again is at odds with the Parliamentarian's demand who asked both for sub-targets for specific renewable energy sources and a penalty scheme. However, the Commission is supposed to prepare a report on the commercial availability of alternative renewables besides biofuels, particularly on hydrogen and renewable electricity (EP, 2008h: Art. 23 (8b IV)). In this context, the final version of the revised Renewables Directive stipulates that the electricity consumption of electric vehicles will be considered "2,5 times the energy content of the renewable electricity input" (EP, 2008h: Art. 3 (4c)). This particular support of electric vehicles is due to their generally higher energy efficiency compared to those powered by biofuel (Muth, 2009). Furthermore, advanced forms of biofuels, i.e. fuels made from wastes, residues, non-food cellulosic material, and ligno-cellulosic material, will be considered twice in comparison to other biofuels (EP, 2008h: Art. 21 (2)). Thus, it is again the position of the Commission and the Council that prevailed in the end.

Although the outcome presented so far would not particularly point to a success of the Parliamentarians to influence the negotiations to their own interest, one of their most important claims was incorporated into the final Directive: A substantial review clause was introduced, particularly assessing the minimum GHG emission saving threshold applicable from 2017 onwards, the possibility of reaching the target with *sustainable* biofuel production, and the impact of increased biofuel production on availability and prices of foodstuffs (EP, 2008h: Art. 8). Following a central proposal of the EP, the review will also apply to the overall 20 per cent renewables target by 2020, a claim very much opposed by many member states (Muth, 2009). This extension of the review clause to the overall target implicates a clear "victory" of the EP regarding the whole Directive, while the specific regulations on the renewables in transport target are only slightly stricter than those put forward by the Commission.

To sum up, the passed regulations regarding the 10 per cent target are quite liberal and open, thus without any specific sub-targets or a limitation to road transport. Therefore, it is clearly the Commission's and the Council's points of view that are reflected in the respective articles. However, the EP could at least achieve the introduction of a substantial review clause.

4.4.2 Sustainability criteria

As highlighted in the previous sections, the opinions regarding the sustainability criteria varied a lot among the main actors, particularly between the Commission and the Council on the one, and the EP on the other hand. How are these different points of views reflected within the final Directive?

To start with, the sustainability criteria incorporate not only environmental regulations but also refer to social issues. On the other hand, the scheme applies only to biofuels and bioliquids and not, like put forward by the EP, to all kinds of biomass for energy production (EP, 2008h: Art. 17). However, the final Directive demands the Commission to review the widening of the criteria to other biomass applications until the end of 2009, one year earlier as proposed within the initial Commission proposal (EP, 2008h: Recital 67). Though this sounds, *prima facie*, like a considerable loss for the Parliament, Josche Muth (2008), assistant to a Vice-President of the EP, already pointed out several weeks before the first Trialogue that there would be "no sustainability criteria for biomass from the beginning onwards". This assessment was largely based on the fact that most Parliamentarians were aware of the immaturity of the idea to incorporate all kinds of biomass for energy production in the scheme from the beginning onwards. Muth (2008) further points out that many MEPs changed their position in the course of the negotiations. For instance, while Anders Wijkman officially favored to extend the scope of the sustainability criteria to all kinds of biomass at the beginning of the policy process, he realized over time that this claim was not realistic since more research is needed to develop such far-reaching criteria (Muth, 2009).

Turning to the environmental dimension of the sustainability criteria, the listed areas under Article 17(3-5) stipulating where energy crop cultivation is prohibited largely reflect the positions of both the EP and the Council. For instance, both supported the exclusion of highly biodiverse grasslands, wetlands or areas for natural protection purposes. On certain points, particularly concerning the definition

of “continuously forested areas”, the EP and the Council reached a balanced compromise by meeting one another half way. However, almost all of the additionally demanded regulations on environmental sustainability put forward by the EP Committees did not find their way into the final Directive. For instance, areas that “provide basic ecosystem services in critical situations” are not included and binding regulations on soil, water and air protection as well as the prohibition to use certain agrochemicals are not mentioned in the European law. Beyond, the obligatory compliance of producing countries with certain international treaties, such as the Cartagena protocol on biosafety or the Kyoto Protocol, got excluded as well.

Nevertheless, many of the EP’s claims were incorporated in the overall largely extended monitoring and reporting obligations. For instance, producer countries have to report whether they have ratified and implemented the Cartagena protocol on biosafety. Furthermore, the first Commission report to be published in 2012 shall encompass a feasibility study on the potential implementation of “mandatory requirements in relation to air, soil or water protection” (EP, 2008h: Art. 18(9b)). In addition, Article 18(4) states that it should be determined what measures have been taken for the conservation of areas that provide basic ecosystem services in critical situations.

The situation is comparable for the social dimension of the sustainability criteria since Art. 17(7) clearly points out that these regulations consist of report obligations only. Thus, the Commission has to report whether countries that export biofuels have ratified and implemented particular ILO Conventions, but it is not mandatory for those countries to do so. Beyond, the institution shall monitor, *inter alia*, the impact on land use changes, commodity price changes and food security, as already indicated in the initial proposal from January 2008. The respective Article of the final Directive additionally encompasses monitoring responsibilities regarding possible displacements as a result of increased biofuel production (EP, 2008h: Art. 23(1)). While the position of the Council is almost exactly congruent with the final social requirements, the proposed social sustainability criteria promoted by the EP went much further, both regarding the covered issues and the legal strengths. For instance, the Parliament wanted the compliance with the ILO Conventions to be binding and also that no raw material should be procured from land obtained by forced eviction. Thus, the Parliament made quite substantial concessions to the Council when it comes to social issues.

To sum up, although the EP was able to get through with some of its positions, the Council definitely had a bigger influence on the final environmental and social sustainability criteria. Even where compromises have been reached, it very often appears that the member states still could pull through much more of their own positions while the Parliament had to deviate from its agenda. The extension of the monitoring and reporting obligations appear in many parts as if they would have been introduced to “save the Parliament’s face”. In the end, the social and environmental sustainability criteria are largely in line with the Commission proposal. If this also holds true for the regulations regarding the required GHG emission savings of biofuels, will be examined in the following sub-section.

4.4.3 GHG emission savings

The institution-specific analysis of the policy process revealed that the GHG emission saving threshold and accompanying regulations were a very serious discussion topic in the course of the negotiations. This was not least due to the fact that these regulations internalized some of the most crucial environmental (especially EP) and economical (especially Council) concerns of the main institutional actors involved.

The final Directive determines that biofuels need to save at least 35 per cent GHG emissions compared to conventional petroleum-based transport fuels. This amount shall increase to 50 per cent until 2017, even though this decision is subject to review until 2014. All installations where production starts in 2017 or later are required to save 60 per cent GHG emissions from 2017 onwards. In this connection, it should be noted that the EP originally supported a two-step approach, starting with 45 per cent in the beginning, rising to at least 60 per cent from January 01, 2015 onwards for all production facilities. The Council, on the other hand, favored the 35 per cent threshold right from the

start, rising to at least 50 per cent by 2017. Thus, the achieved compromise represents primarily the position of the Council with a slight move towards the EP opinion (60 per cent for all installations starting 2017 or later).

Just as the Commission proposal from January 2008, the final Directive favors the use of default values for determining the GHG emission savings of specific biofuel production pathways. Hence, using actual values or a mixture between disaggregated default values and actual values would be of subordinated preference (EP, 2008h: Art. 19). While the French Presidency expressed exactly the same position in its final proposal, the Parliament preferred the use of actual values. In this connection, the EP further asked to incorporate the binding obligation for the Commission to present a new set of default values until December 31, 2010 that additionally reflects regional and climatological conditions. However, all these claims of the Parliament did not make it in the final Directive.

When it comes to the calculation of the GHG emission saving potential of biofuels in Annex V (former Annex VII), no major changes took place compared to the Commission's initial proposal. One of the most crucial modifications is an explicit concession towards the EP position regarding indirect land use changes. Thus, Article 19(6) stipulates that the Commission shall present a report based on recent scientific evidence until December 31, 2010, on the effects of increased biofuel production on indirect land use changes, also stipulating how potential effects could be included in the Directive's calculation scheme. On the other hand, due to concerns regarding investment security, installations that were already running before 2013 would just have to stick to respective new requirements from the beginning of 2018 onwards. Thus, until the end of 2017 almost no biofuel producer would have to worry about potential negative influences of its production modalities on indirect land use changes (Pous, 2009). The effect of the strengthened report obligations of the Commission on this issue should hence be questioned (EP, 2008h: 23 (5f)). Furthermore, the demand by the EP Committees to include a specific variable for indirect land use changes (e_{iuc}) from the beginning onwards was not met due to a missing respective methodology. This issue was intensely discussed during the Trialogues, with the French Presidency particularly expressing the unwillingness of the Council to accept the incorporation of such a variable without a respective methodology (Muth, 2009). In addition, the demand of the EP to introduce a risk-adder in case a respective methodology to account for indirect land use changes is not developed until 2011 was not accepted by the Council. Beyond, the EP could not win recognition for its claim to use the substitution method in order to account for the additional saving potential of co-products during biofuel production. The energy allocation method remains the primary tool for this task, like it was already proposed by the Commission and supported by the Council.

Another modification regarding the calculation method for GHG emission savings of biofuels represents the incorporation of a bonus of 29 gCO₂eq/MJ for biofuels produced by raw materials obtained from restored degraded land (EP, 2008h, Annex V, Part C, Point 7). Despite the fact that this new element was based on a Council proposal, there was generally no considerable antipole during the Trialogues opposing this suggestion (Deurwaarder, 2008).

Although the methodology for calculating the GHG saving potential of biofuels was only slightly changed, the saving values in Annex V of the final Directive partly differ substantially from the former draft versions of the legislation. For instance, while the default GHG emission saving rate of rape seed biodiesel was 36 per cent in the Commission's initial proposal, this value increased to 38 per cent in the final Directive. Another example would be the default saving potential of sugar beet ethanol which climbed considerably from 35 per cent to 52 per cent (COM, 2008b: Annex VII ; EP, 2008h: Annex V). Particularly European grown raw materials for biofuel production benefit from this development, for instance the default value of sugar beet ethanol, which is predominantly produced in Europe, would now also comply with the second step of the GHG emission saving requirements of at least 50 per cent by 2017. Thus, the competitiveness and the market position of European biofuel producers was considerably strengthened by the new figures. In this context, it appears quite interesting that these modifications are largely based on research produced by a reunion of the JEC-Consortium, comprising representative from the Commission as well as from the car and oil industry (Phillips, 2008a).

Considering the whole decision-making process, it appears like this collaboration was largely backed by the Council, especially by governments with a significant biofuel industry, while the EP showed a quite critical attitude towards this new initiative.

In summary, the final regulations concerning the required GHG emission savings of biofuels represent to a large extent the positions of the Commission and especially the Council. The EP, on the contrary, was not able to leave its marks in the respective parts of the Directive.

4.4.4 The three "I's" in the final policy agreement

The following analysis will summarize the main ideas, interests and institutional factors that shaped the final negotiations and therewith the content of the revised Renewables Directive.

The ideational basis of the three main actors during this stage of the policy process did not vary from their preceding fundamental points of view identified in the above chapters. Thus, the Commission was primarily guided by rational considerations to enhance energy security and to safeguard the energy supply for the European economy, based on scientific facts. Certainly, environmental deliberations also played a role for the EU's top administrative body. This positioning is very much in line with the Council's most essential standpoints which affected the decision-making process within this institution. Furthermore, economic considerations, to a huge part motivated by domestic interests, decisively determined the ideas of the Council during the negotiations. As it was the case for the Commission, environmental, and partly also social considerations had also some influence on the institution's attitude. Also the third actor on the field, the European Parliament, was to a considerable degree affected by exactly those motives. One should note though that economic aims were only of subordinated importance for the EP.

Against this background, it appears straightforward that the Council and the Commission worked closely together during this ultimate negotiation period since they shared the same ideas to a large degree. However, the Council was surely the institution that shaped the final content of the Directive unlike any other actor. One of the reasons for the inter-institutional coalition building between the Council and the Commission was their joint assessment of the Parliamentarian's positions as being both unrealistic, such as in the case of extending the sustainability criteria to all kinds of biomass for energy production, and difficult to verify. Beyond, they both had the concern that specific demands of the EP, especially regarding binding social requirements, would not comply with WTO regulations.

In the end, it was nevertheless the Council which clearly managed to get most of its ideas and respective interests incorporated into the final Directive. One of the main reasons why the Council turned out to be the most important institutional actor during the last period of the negotiations was the role of the French Presidency. First and foremost, Sarkozy decided to vote on the entire Climate and Energy Package on the level of the heads of state. This required *de facto* unanimity within the Council and thus, decreased the actual scope of the EP to influence the final policy outcome significantly. After this decision, the Presidency could simply refuse to include demands from the EP in case a (low) number of member states did not support them. In this context, Pieter de Pous (2009) from the EEB advances the opinion that "the EP allowed having its role in the co-decision procedure to be marginalized without so much of a fight". Furthermore, he also stresses that the French national interest to support the domestic agricultural sector also considerably influenced the Presidency's strategy (Pous, 2009).

However, there remains the question why the EP put up with the Council's tactic as it is formally an equal partner in the co-decision procedure. The quite simple answer to this question is that the EP was running out of time. In case a compromise would not have been reached under the French Presidency in December 2008, the topic would have been further discussed under the Czech Presidency in the first half-year of 2009. However, the Czech government clearly signaled that their agenda was already full and that they would probably leave the issue to the Swedish Presidency taking over in the second term of 2009. Yet, waiting these six months was also not an option to the Parliament due to the EP-elections in June 2009. Assuming that the Directive would not have been passed before the elections,

all positions of the EP would have lost their legally binding character and the whole intra-institutional decision-forming process would have started again. Thus, the EP had very little room for maneuver. Beyond, Turmes also pushed for an early agreement in the informal Trialogues since otherwise, open questions would have been discussed by the heads of state within the Council. This typically implies a lot of “horse trading”, particularly when the negotiations concern a whole legislative package as in this case. On the other hand, the French Presidency was also under enormous time pressure since the Climate and Energy Package represented its prestige project. However, the overall general conditions regarding time were obviously to the disadvantage of the EP.

Another parameter in the negotiation’s final period that decreased the possibility for EP positions to prevail can be seen in the increased lobbying and partly even in the direct involvement of industrial lobby groups in the policy process. Hence, particularly the car and oil lobby directly affected the course of action in a way not favored by the EP by revising the default GHG emission saving values for individual biofuel production pathways together with the Commission. These new values made the achievement of the minimum GHG saving thresholds for European biofuel producers considerably easier. Beyond, also lobbying activities of the biofuel industry on the national level increased significantly, as for instance in the case of the biofuel-giant *Abengoa Bioenergy* in Spain. As a result, many representatives from green groups criticized the numerous compromises made in favor of commercial interests. For instance, Frauke Thies from Greenpeace Europe points to many loopholes in the sustainability standards for biofuels (Phillips, 2008b).

As hinted at above, especially the Council was able to push through many of its interests while the EP, for numerous reasons, was not as successful in doing so. The Commission, as third institution, also had a significant influence on the Directive’s final design. In this connection, especially Paul Hodson was equipped with a strong mandate from the Commission and had significant influence in the final Trialogue negotiations, especially concerning technical issues (*Pous, 2009*). Besides, the Commission managed to maintain its influence on the final regulation through its agenda-setting role. Concluding, one can say that many parts of the initial proposal concerning the issues at stake actually remained unchanged or where just slightly modified.

Besides such institutional factors, the considerable amount of scientific uncertainty when it comes to the effects of increased biofuel production on the environmental and social sustainability also affected the final regulations regarding the issues under examination to a high degree. In this context, the circumstance that the Commission pushed for a revision of the default GHG emission saving values not until so late in the policy process demonstrates a great deal of uncertainty concerning the real impacts of biofuels. Furthermore, most actors increasingly agreed that biofuels might have further negative consequences that cannot be assessed up to now, such as impacts on food prices or indirect land use changes. However, regarding this point, it was both the Council’s and particularly the Commission’s positions that prevailed in the end, stressing that binding obligations cannot be included for potential negative side-effects that cannot yet be measured scientifically. On the other hand, this uncertainty did not induce the two institutions to support the introduction of a stricter review clause, especially due to potentially resulting investment uncertainties.

These basic conditions led to the circumstance that the Commission and the Council could include much more of their interests in the final Directive than the EP, as shown in this section. Regarding all three main issues under examination – the renewable energy in transport target, the sustainability criteria for biofuels, and the GHG emission savings – the EP could, if at all, affect the policy process only to a limited extent. The fact that the EP could not push through many of its positions is certainly also due to its partly radical or at least extreme positions, such as extending the sustainability criteria to the whole biomass sector or introducing a very high risk-adder. Beyond, also the fact that the position of the EP was not backed by a Plenary vote must be considered a clear disadvantage for the Parliament. In this context, Turmes stated that he would be “less happy” about the final version of the Renewables Directive, particularly regarding most compromises made on the parts dealing with renewable energy in transport. Turmes continues by saying that the new regulation does not provide

the level playing field that avoids “unreasonable eco-fuel getting to the market” (Goldirova, 2008). On the other hand, without the influence of the EP, the Directive would have probably turned out to be considerably more liberal and economic-oriented, for instance expressed by a missing review clause or the lack of the now clearly formulated task to develop a calculation method to include the effects of indirect land use changes.

5 SUMMARY AND CONCLUSION

Having identified the three “I’s” of the key actors in European decision making as well as their respective influence on the final Directive for the case study under examination, this concluding chapter aims at highlighting the core findings and setting them into perspective with other research studies in this field.

As pinpointed in the introduction, the aim of this paper was threefold. First, the formal and informal factors shaping the policy process under examination and its outcome were identified. Second, the main fundamental driving forces (*ideas*) that determine the case-specific positioning (*interests*) of the actors during the negotiations were detected. Third, this study assessed the influence of each institution on the final policy solution and the reasons for potential variations.

These central research challenges were approached by analyzing the institutional decision-making process regarding two vital issues of the revised Renewables Directive, namely the 10 per cent renewable energy in transport target and the sustainability criteria for biofuel production. This focus was particularly chosen due to the high topical relevancy of biofuels today. Furthermore, the Directive represents a regulation in the area of “Environment”, a domain heavily regulated on EU level. Beyond, the legislative process framing the negotiations, the co-decision procedure, is the Community’s contemporary “standard” lawmaking procedure. Thus, the decision-making process under examination is, considering its formal and content-wise focus, rather representative.

The necessity for further research regarding the institutional balance of power within policy processes following the co-decision procedure is highlighted by the fact that there exists considerable disagreement among the scientific community regarding this question. In this connection, Arregui (2008) highlights the importance of analyzing case-specific dynamics as they are crucial to understand the evolution of a policy-outcome.

The information needed to accomplish the analysis was derived from all publicly available policy documents as well as from 16 semi-structured interviews with policy makers and representatives from lobby organizations and NGOs. These information were embedded into a methodological framework developed by Zito (2000), studying both formal and informal *institutional* factors shaping the policy process. Beyond, the *ideational* basis of the involved actors is assessed as well as the resulting individual *interests* stipulated in the negotiations. In this context it should be noted that the case study part of the above analysis confirmed the statement formulated in section 3.2 that these three “I’s” are highly interlinked and influence each other considerably. Furthermore, the case study comprehensively reveals that Zito’s framework was highly capable for reaching the above outlined aims of this paper.

One of these aims was to determine the case-specific fundamental beliefs of the three main actors and to find out how they shaped the institutions’ positioning in the policy process. This aim can only be answered institution-specifically and hence does not take inter-institutional factors into account. For the Commission, the case study revealed that it was to a large extent guided by economic and rational considerations while environmental deliberations only played a minor role. This positioning is based on the belief that enhancing energy security and safeguarding energy supply for the European industry is a primary task of the Community. Internally, this ideational basis was significantly shaped by the principal Directorate-General in charge of the Directive, DG TREN, and more specifically by Paul Hodson who pushed in this direction as no other actor within the Commission. Beyond, the insti-

tution's basic belief that scientific findings should only affect the content of the Directive in case they are practically verifiable shows their "rational" attitude during the policy process. The fundamental positions of the Council in the case study were largely in line with those of the Commission. Hence, they were mainly characterized by an economic orientation, with social and environmental sustainability playing only a subordinated role. The major reason for this positioning was the influence of national industrial interests, visible particularly for member states with a strong domestic biofuel industry.

On the other hand, the EP was primarily guided by the concern that the Directive should mainly aim at safeguarding environmental and social sustainability. The reasons for this basic belief can be seen both in the increasing media coverage concerning the negative side-effects of biofuels as well as in the strong influence of green NGOs on the Parliamentarians. Furthermore, the opinions of the two Committee rapporteurs, particularly those of Claude Turmes, played a crucial role in the EP's positioning. In addition, the EP showed its preparedness to include scientific findings into the Directive which are still subject to uncertainty while Commission and Council proved to be more hesitant to do so. This last notion confirms Zito's (2000) claim that scientific knowledge only partly determines the positioning of the institutions. My analysis, though, paints a more differentiated picture by showing that the three actors incorporate scientific expertise in diverse ways.

The examination of the institutions' main interests in the case study section of this paper comprehensively exposed that they were largely based on the actors' above outlined fundamental beliefs. Hence, the Commission and the Council also had comparable demands while they were pretty much at odds with the EP.

This division also becomes apparent when examining the formal and informal factors shaping the policy process and how they determined the influence of the individual institutions on the final outcome, the second and third aim of this research paper. As presented in sub-section 3.2.1, Zito (2000) outlines six formal and informal institutional factors that potentially affect the decision-making process. The parts of this paper discussing the three "I's" already indicated that those aspects also played a crucial role in my case study.

First, coalition forming represents an informal factor that can shape the negotiations to a large extent. In this regard, *intra*-institutional coalition forming within the Commission ("winners": DG TREN and DG AGRI) as well as within the Council ("winners": member states with biofuel industry) considerably shaped the positioning of the entire respective institution in the policy process, but also the actors' *inter*-institutional cooperation. Beyond, the Commission's and the Council's common assessment that many claims put forward by the EP were unrealistic and not possible to "translate" into actual policies, brought the two closer together in the negotiations. Besides, coalitions with external players represent a second important parameter that is increasingly relevant for the final policy outcome in recent years. In the case study under examination, the Commission worked very closely together with the car and oil industry while national biofuel and agricultural organizations largely affected the viewpoints of the member states in the Council. The internal decision-forming process within the EP, on the other hand, was to a large extent influenced by environmental NGOs. This circumstance very probably led to the quite "extreme" demands from the Parliament in the negotiations which presumably also weakened its impact on the final policy outcome.

Third, an institution's ability to formulate and set an agenda is of high importance in the policy process. With reference to the case study, the Commission significantly shaped the negotiations through preparing the first draft Directive whose content was just hardly predetermined by the European Council's rough guidelines. The Commission was furthermore successful when it comes to the fourth important institutional factor, *agenda-maintenance*. Thus, generally speaking, many parts of the Commission's initial proposal were just slightly changed, also the Council could prevail almost all of its demands. The EP, on the other hand, could only win recognition for a rather limited number of its claims. However, one cannot help but get the impression that many concessions made by the Council in favor of the EP position were rather "symbolic". One central reason why the EP did not manage to

influence the content of the final regulation to a greater extent was the missing backing of the institution's bargaining position by the whole Plenary, a notion which substantiates previous research conducted by Fouilleux et al. (2005).

A fifth, rather informal, factor determining the individual institutional leverage in the negotiations is the use of its prestige and resources, such as technical knowledge, strong personalities or organizational leadership. In this regard, the technical expertise of the Commission was a very decisive factor in the policy process, *inter alia* due to the fact that it, in turn, largely influenced the attitude of the Council. The EP, on the contrary, presumably lost influence in the decision-making process since it was not able to substantiate some of its demands (e.g. regarding e_{ituc}) with a sophisticated and implementable scientific basis. Concerning personality factors, Paul Hodson and Claude Turmes were very important and active shapers of the negotiations. It occurs very likely that without the strong and resolute commitment of Turmes, the EP would have had an even more limited influence on the final Directive. When it comes to organizational leadership, the French Presidency was the supreme dominating factor during the final stage of the negotiations.

This last finding leads to the sixth decisive institutional factor influencing the final policy outcome as identified by Zito (2000), namely each actor's ability to influence the positions of the other players (principal-agent analysis). The main reason for the central role of the French Presidency in the end was its decision to vote on all legislations which were part of the Climate and Energy Package on the level of heads of state what *de facto* requires unanimity. This finding backs research conducted by Steunenberg and Dimitrova (1999) who point to the Presidency's possibility to make a "take-it-or-leave-it" proposal to the EP. As pinpointed in the preceding section, the EP could not "turn the tables" as the institution itself was under enormous time-pressure, particularly due to the upcoming EP-elections in June 2009 and the following Czech Presidency. Hence, the negotiating of the final Directive within informal Trialogues was in the end not an advantage for the EP, thus contradicting a large research body which suggests the contrary (for instance Farrell and Héritier, 2003; Corbett, 2000, 2001 or Shackleton, 2000, 2001). In the end, the Council, or its Presidency respectively, can be regarded as the *principal* while the EP must clearly be labeled the *agent* in the inter-institutional negotiations.

Overall it can be concluded that informal processes played a more important role concerning the final policy outcome than formal factors, being largely in line with research conducted by Thomson et al. (2006). This finding also backs those scientists who stress that decision-making processes under the co-decision procedure cannot be assessed solely by analyzing formal components, for instance by using game theoretical models. Beyond, my analysis clearly backs previous research emphasizing that the Council is still the dominating factor in EU policy processes (see for instance Steunenberg and Dimitrova, 1999; Napel and Widgrén, 2006 or Thomson and Hosli, 2006b).

Though the above presented findings were based on only one case study, deliberate generalizations can be made due to their extensive consistency with previous research and the representative character of the policy process under examination. Hence, the dominance of informal institutional factors in the negotiations, particularly when it comes to the central role of the Trialogue negotiations, suggests a clear lack of transparency in EU policy processes. Beyond, the broad supremacy of economic deliberations in the negotiations indicate that, although the EU is today not a pure *economic* Community anymore, respective motives still largely dominate the actors' points of view. Finally, the clear ascendancy of the Council shows that the role of the EP as the only directly elected democratic element in EU decision-making can still be easily marginalized by the Council Presidency. Thus, even when applying the theoretically most "democratic" legislative *modus operandi* on Community level, the co-decision procedure, there exists a huge risks that intergovernmental tendencies and hence, national interests largely determine the policy process and its outcome.

In order to substantiate the above outlined interpretations of my findings, there exists a need for further case-specific analyses of policy processes following the co-decision procedure. Respective studies could particularly verify how robust my above suggested generalizations are.

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ANNEX

Table 1: List of interviewees

Interviewee	Organization	Place and Date	Lengths (approx.)
Dejonckheere, Dominique	Copa-Cogeca	Brussels, Oct. 16, 2008	20 min.
Deurwaarder, Ewout	European Commission (DG TREN)	Brussels, Oct. 17, 2008	30 min.
Fouquet, Dörte Dr.	European Renewable Energy Federation	Brussels, Oct. 16, 2008	45 min.
Gaupmann, Gloria Dr.	European Bioethanol Fuel Association	Brussels, Oct. 16, 2008	60 min.
Harms, Rebecca	MEP	Brussels, Oct. 14, 2008	20 min.
Janczak, Adam	Energy Attaché of the Permanent Representation of Poland to the EU	Brussels, Oct. 15, 2008	30 min.
Manning, Eibhilin	European Biomass Industry Association	Brussels, Oct. 14, 2008	45 min.
Muth, Josche	Assistant of Mechtild Rothe (Vice-President of the EP)	Interview 1: Brussels, Oct. 15, 2008	45 min.
		Interview 2: Phone interview, March 04, 2009	30 min.
Persson, Anette	Energy Attaché of the Permanent Representation of Sweden to the EU	Brussels, Oct. 14, 2008	30 min.
Pous, Pieter de	European Environmental Bureau (EEB)	Interview 1: Brussels, Oct. 13, 2008	45 min.
		Interview 2: Phone interview, May, 05, 2009	30 min.
Singer, Stephan Dr.	World Wildlife Fund (WWF)	Brussels, Oct. 14, 2008	30 min.
Tarand, Andres	MEP	Brussels, Oct. 15, 2008	15 min.
Thies, Frauke	Greenpeace	Brussels, Oct. 16, 2008	30 min.
Wijkman, Anders	MEP	Stockholm, Sep. 29, 2008	30 min.

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