

Signed and ratified? The EU's participation in multilateral environmental agreements

A closer look on the Kyoto Protocol

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UNIVERSITY OF OSLO

23 May 2014

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<http://www.duo.uio.no/>

Print: Representeren, University of Oslo

Abstract

The number of multilateral environmental agreements (MEAs) has increased significantly over the last decades, and they are regarded as central for tackling international environmental challenges. Such agreements normally not only need to be signed, but also ratified by a sufficient number of countries in order to enter into force. Scholars have identified a trend where the US seems to fail to ratify many MEAs it has signed, something which arguably is a worrying trend as it hampers international cooperation and possible effectiveness of any MEA. On the other hand, the EU rarely fails to ratify signed MEAs. Intuitively it seems strange that the EU has less problems ratifying already signed MEAs than the US, as the EU is arguably composed of more heterogeneous states. In addition, any MEA must be ratified both at the EU -and at the national level. In this thesis I ask why the EU nevertheless is able to overcome these hurdles.

Why the EU rarely fails to ratify signed MEAs is investigated from three analytical perspectives, namely leadership ambition, the EU decision-making system and the political system practised in EU member states. The analyses thus cover aspects at both the EU -and the domestic level. All three perspectives are analysed in relation to the Kyoto Protocol. While it is found that all three perspectives contribute to an explanation for why the EU rarely fails to ratify signed MEAs, the decision-making system seems to be of particular importance.

Abbreviations

COP	Conferences of the Parties
COREPER	Comité des Représentants Permanents
EC	European Community
ETS	Emissions Trading System
EU	European Union
MEA	Multilateral Environmental Agreement
NGO	Non-governmental Organisation
QMV	Qualified majority voting
UNFCCC	United Nations Framework Convention on Climate Change
UNTC	United Nations Treaty Collection

Acknowledgements

In the work with this thesis I stand indebted to my supervisor Tora Skodvin, whose guidance and advice have been of great value. Thank you, Tora! I would also like to thank Jon Hovi for helpful comments and suggestions.

A special gratitude to my parents for the immense patience and support they have given me during all my years of education.

Responsibility for any errors is entirely my own.

Oslo, May 2014

Gunnar Kornberg

Word count: 31766.

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1 Introduction

The number of multilateral environmental agreements (MEAs) has multiplied since the 1972 United Nations Conference on the Human Environment. Indeed, over ninety MEAs have since been produced (Lantis 2009, 73). This development is widely held to be favourable for making progress on tackling environmental problems that span national borders. However, for international agreements to come into force, they not only have to be signed, but also subsequently ratified by a predetermined number of states. Non-ratification thus poses a serious obstacle in the development of international cooperation, and while ratification does not per se secure effectiveness of a treaty, it is a necessary condition (Perrin, and Bernauer 2010, 406). Historically, scholars have not distinguished between signing and ratification, treating them more or less as the same. Recently, however, scholars have identified a trend that the US seems to sign many MEAs, but not subsequently ratify them (Schreurs, Selin, and vanDeever 2009; Kelemen, and Vogel 2010; Bang, Hovi, and Sprinz 2012). On the other hand, the same trend does not seem to apply to the EU. Ever since the Union became an actor in global environmental policy, it has ratified close to every signed MEA. In fact, of all agreements deposited with the UN and filed under Chapter XXVII: Environment, the EU has ratified 23 out of a total of 26 signed, while the same number for the US is 10 out of 19.

1.1 Puzzle

An intriguing question is what explains the difference outlined above? Why does the EU rarely fail to ratify MEAs, while ratification failure is not uncommon for the US? Not much research on the relationship between signing and ratification exists, and most studies have focused on the US and particularly its failure to ratify the Kyoto Protocol. It is, to my knowledge, less research on why the EU rarely fails to ratify signed MEAs. It may seem counterintuitive that it should be easier for the EU to ratify agreements than it is for the US. Arguably the EU consists of more heterogeneous states than the US, and it does not seem unreasonable to expect that to make it more difficult to agree upon anything at all. In addition, parliaments of each member state have the power to reject MEAs. Consequently, national parliaments' concerns may have to be addressed, which potentially could make reaching agreement even more challenging. Nonetheless, that the EU seems to overcome these obstacles serves as inspiration for this thesis. Hence, the research question is:

What explains that the EU rarely fails to ratify signed multilateral environmental agreements?

I approach the research question from three different angles, and investigate each in relation to the ratification of the Kyoto Protocol. Each approach or perspective seeks to identify factors that function as ratification drivers. The first approach investigates if leadership ambition may have played a role regarding the EU's ratification of the Kyoto Protocol. This perspective thus solely focuses on factors relating to climate policy and the Kyoto Protocol and not on the broader category of MEAs. As a theoretical framework I apply an aspect of leadership theory as presented by Underdal (1994), where he identifies three modes of leadership. Leadership through unilateral action is one of these, and the one I focus on. It is hypothesised that leadership ambition leads to unilateral action that in turn reduces the possibility for ratification failure. This is because measures stipulated in an agreement may already have been introduced in states that aim for leadership. The other two approaches focus more generally on ratification of MEAs in the EU. And although the Kyoto Protocol is used as case, the analyses seek to identify why the EU rarely fails to ratify MEAs as such. The second perspective investigates if the EU decision-making system regarding MEAs may be part of an explanation for why the Union rarely fails to ratify. It is hypothesised that the decision-making system of the EU reduces the possibility for ratification failure. The third perspective shifts focus from the EU-level to the domestic level. Because MEAs must be ratified nationally as well as on the EU-level, it is hypothesised that features of parliamentarism, being the political system practised in EU member states, reduces the possibility for ratification failure. Robert Putnam's (1988) theory of two level games serves as theoretical framework for both perspectives, and I utilise his division of ratification failure into voluntary -and involuntary defection. However, I use defection in a narrow sense. Whereas defection generally refers to some kind of free-riding, like failure to implement the agreement or not sign it in the first place, I apply it in the sense of ratification failure of already signed agreements.

By combining different approaches and analytical levels, the aim is to provide a holistic explanation for why the EU does rarely fail to ratify signed MEAs. The research project aims to contribute to answering a real and important problem. Because ratification of international agreements is pivotal in the development of international cooperation, identifying factors may contribute to explain successful ratification of MEAs is of crucial importance.

Before continuing with an overview of relevant literature and how I approach the research question, it is in order to underline a limitation. In this thesis I only investigate why the EU rarely fails to ratify signed MEAs. In other words, I do not consider reasons for why or why not the EU signs MEAs in the first place, nor do I consider if they are successfully implemented and commitments complied with.

1.2 Literature review

The literature on ratification has grown substantially as ratification increasingly has been preferred as a better indicator of participation in international agreements than signatures. The reason can be found in the legal difference between signature and ratification. Where the former only signals an intention to become a party, the latter actually implies consent to be bound by the treaty, thus making it a legally binding agreement (Haftel, and Thompson 2013, 359). Most of the research on ratification of MEAs seeks to identify factors that drive states' decisions to participate in international regimes. Therefore, as the literature directed on defection in the meaning of ratification failure of already signed agreements is scarce, this section mostly reviews the literature on ratification as such.

Explanations of ratification patterns can broadly be separated into international and domestic factors, and while characteristics at the country-level have dominated research, scholars have recently also taken interest in the international dimension (Roberts, Parks, and Vasquez 2004; Bernauer et al. 2010; Perrin, and Bernauer 2010). In their research on ratification behaviour of 180 countries vis-à-vis 255 MEAs, Bernauer et al. (2010) found that linkages between states, measured as involvement in international organisations, increased likelihood for ratification. Moreover, their results indicated that international factors had a stronger effect than domestic ones. Perrin and Bernauer's (2010) analysis verifies the importance of international factors as they find that diffusion effects are important for a country's decision on ratification. This corresponds to Lantis (2009), when he finds that international pressure in many cases affect ratification outcomes. In other words, a country's decision on ratification is affected by the actions of other countries. Von Stein's (2008) case study on ratification of the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol supports these findings. Her research revealed that a state's participation in social networks, measured as the number of memberships in international governmental organisations, positively affected ratification. However, contrary to Perrin and Bernauer (2010) she also found that,

although global ratification patterns have a positive impact, “... states are less prone to ratify if other states in their region are doing so” (von Stein 2008, 256). The latter finding is not supported in McLean’s and Stone’s (2012) research on the Kyoto Protocol and the EU, where they find that membership in the EU increased the likelihood for ratification. In short, although there is discussion on what effects international factors have on ratification, studies find that they do indeed play a role regarding ratification.

As ratification ultimately is a domestic procedure it is not surprising that most research have emphasised this aspect. Domestic determinants of ratification behaviour have included various factors such as ratification requirements, the political system a country practises and power of various actors like industry and non-governmental organisations (NGOs) within countries. Democracy has consistently been positively associated with ratification of MEAs (Leinaweaver 2012, 11). However, democracy is a broad and contested concept, thus making investigation of more detailed institutional features necessary. Recchia (2002) finds that where ratification power is centred on the executive, chances for ratification increases. This is so because it reduces, or in the extreme case, removes the ability of possible veto-players to reject an agreement, consistent with Tsebelis theory of veto-players (Tsebelis 1995). When the executive largely controls the ratification process, ratification poses few political costs, thus increasing its likelihood (Simmons 2009a, 68). Moreover, Lantis (2005, 412) finds that the executive’s strategies are central in predicting ratification outcome. Furthermore, Lantis notes that countries with majoritarian parliamentary systems are better able to generate support for preferred policies. This indicates that ratification may be easier to achieve in parliamentary systems, something that echoes the conventional wisdom that parliaments do not influence foreign affairs (Kesgin, and Kaarbo 2010, 20). The conclusion that the political system affects chances for ratification is supported by Bang, Hovi and Sprinz (2012), Hovi, Sprinz and Bang (2012) and Bang (2011) who have focused on how features of the US political system may complicate ratification.

All the works referred to above have contributed to an understanding of what factors contribute to a decision on ratification. However, what is common for nearly all of them is that they do not distinguish between the signature and ratification stages. Ratification is in other words normally not treated as a distinct outcome, but rather as something that automatically follows signature (Haftel, and Thompson 2013, 359). I contribute to the ratification literature by emphasising that ratification and signature are indeed two separate

processes, and analyse what factors may contribute to ratification of signed agreements. Signature is thus a given in my analyses. Arguably, such an approach is capable of yielding a more nuanced picture of ratification than studies that do not distinguish between signing and ratification. Moreover, the few studies that have analysed examples of ratification failure are limited to the US and particularly its rejection of the Kyoto Protocol. It is thus of interest to investigate why ratification failure does not seem to be an issue in the EU, thereby contributing to a more detailed understanding of ratification patterns.

1.3 Research design

In this section I present the method and discuss the data used to address the research question.

1.3.1 Method

The aim of this thesis is to identify factors that are likely to contribute to an explanation of why the EU ratifies nearly every MEA it signs. In order to do this, I apply two theories from the international relations literature, or more precisely a theory of leadership and the theory of two-level games. Both theories are developed in relation to international negotiations, and are therefore appropriate starting points for the analyses. The theories provide the basis for the development of hypotheses regarding the relationship between signing and ratification. The hypotheses are first discussed in general terms, before they are investigated using the Kyoto Protocol as a case. This Protocol may be one of the most scrutinised and analysed environmental agreement, but it nonetheless remains an interesting case. In the following, I briefly address the case-study as a research method, and discuss it in relation to my choice of the Kyoto Protocol as case.

Gerring (2007, 19-20) has defined the case-study as "... a spatially delimited phenomenon (a unit) observed at a single point in time or over some period of time". According to George and Bennett (2005, 31), case studies may be a suitable way to uncover empirical causes for a given outcome. The starting point is therefore often a puzzle, and indeed, what I seek to explain is a puzzle as explained above. According to Gerring, the case study has advantages when it comes to exploratory research because it is more open-ended and flexible compared to statistical methods with clearly defined variables (Gerring 2007, 39). Especially, when research focus on a certain outcome this advantage applies. However, my approach is not

exploratory in a strict sense since it takes already established theories as starting points. The research is, in other words, guided by theory. According to Levy (2008, 5), such studies may contribute to theory refinement.

The choice of the Kyoto Protocol as a case needs to be addressed. Although it is advised against choosing on the dependent variable (King, Keohane, and Verba 1994), this is almost unavoidable in this research project as the EU ratifies nearly every signed MEA. However, as argued by Geddes (1990, 149), choosing case on the dependent variable is “... ideal for digging into the details of how phenomena come about and for developing insights”. The universe of cases to choose from consists of every signed MEA filed under Chapter XXVII: Environment in the UNTC. Among these cases, the Kyoto Protocol stands forth. It was celebrated as a landmark agreement, and has been widely covered in scholarly literature. Thus, data access should be easier than for other, less known agreements. The Kyoto Protocol was also a result of prolonged and complex negotiations, possibly opening for insights that may not be identifiable in less sensitive agreements. Another factor that is in favour of choosing the Kyoto Protocol is the US’ failure to ratify it. As much research has been devoted to explaining the US rejection, the Kyoto Protocol seems like an appropriate place to start an analysis into why the EU rarely fails to ratify. It would perhaps be preferable to include a case where the EU failed to ratify, but as the Union very seldom fails to ratify MEAs (see section 2.1), it is deemed that US non-ratification of Kyoto is a good option. Particularly since it is the same agreement and that much research has been devoted to explain the US’ ratification failure. Thus, to some extent the critique presented by King, Keohane and Verba (1994, 129) that “... nothing whatsoever can be learned about the causes of the dependent variable without taking into account other instances when the dependent variable takes on other values” is avoided.

Another anticipated critique of the methodology, is that the research only includes one case. Consequently, it may be difficult generalise findings. Admittedly, the possibility for generalisation is generally weak for case-studies, and it is not given that including another case would increase generalisation potential. That said, case-studies are capable of making generalisations (Gerring 2007, 76), and particularly contingent ones. This means that if the same conditions are operational, they are likely to yield the same outcome (George, and Bennett 2005). In other words, the findings of investigating the Kyoto Protocol may yield

insights into why the EU also ratifies other signed MEAs. The choice of the Kyoto Protocol as a case may thus be characterised as appropriate, although with the mentioned caveats.

1.3.2 Data

The starting point for the thesis is that the EU seems to ratify every MEA it signs. In order to investigate possible reasons, it must first be established that the EU does indeed rarely fail to ratify signed MEAs. I do this by collecting and analysing own data. The UN provides an extensive database over every agreement deposited with the General-Secretary. The UN is a reliable and trustworthy provider of information, and as the data I am interested in merely contain facts on signing and ratification, there are no validity or reliability issues. However, only investigating MEAs deposited with the UN, leaves out agreements deposited elsewhere. Consequently there is a risk of selection bias. The UN mainly restricts its acceptance of being depository to open, multilateral agreements of worldwide interest, as well as regional agreements that are established within the UN framework of regional commissions that are open for participation for their entire membership. But, according to Massai (2011, 58), MEAs that address global and regional issues are usually adopted within the framework of UN bodies. Thus, it is unlikely that the inclusion only of MEAs deposited with the UN is biased. The selection of MEAs is therefore unlikely to have an impact on the result and conclusion of the research project.

Other empirical data I use to answer the research question consist mainly of secondary literature in combination with primary literature. The primary literature includes official EU documents like communications, decisions and strategy documents. As the EU promotes transparency, and publishes official documents on their websites, access to these documents does not pose a challenge. It might have been preferable to support the analyses with interviews of relevant actors, and thus triangulate between methods, something which could increase the validity and reliability of the research. However, as so much scholarly literature and accessible primary sources exist, combined with difficulty in gaining access to relevant interviewees, it was deemed that interviews were not critical for the results or conclusions of the thesis.

1.4 Structure of the thesis

The rest of this thesis is organised as follows. In chapter 2 necessary background material in order to conduct the analysis is presented. First, empirical data of the ratification records for the EU and the US regarding MEAs are provided to show that a significant difference between the two exists. Second, as MEAs are mixed agreements in the EU, it is important to know the meaning and possible implications of such agreements. Their background and consequences are therefore presented. Third, the background for and content of the Kyoto Protocol are presented. Chapter 3 is the first of three analytical chapters, that each discusses one explanatory perspective for the EU's ratification record. It addresses how a possible leadership ambition regarding climate change affected the EU's ratification decision. Chapter 4 analyses the EU's decision-making system and discusses how it may have an impact on the relationship between signing and ratification. Chapter 5 addresses the domestic level and looks into how the political system of parliamentarism practised in most EU member states affects decisions on ratification. Chapter 6 summarises the findings, before taking the broader view and investigates the three preceding chapters in relation to each other. In that way a more comprehensive explanation for why the EU rarely fails to ratify signed MEAs is sought.

2 Background

The aim of this chapter is to provide necessary background information in order to answer the research question. First, I present the ratification history of MEAs in the EU, and compare it to the US ratification record. Second, I briefly review what international agreements are and how they are regulated by the international law of treaties, thus describing the meaning of signing and ratification. Next, since MEAs are examples of mixed agreements, I present this particular type of agreement and their particular features. Finally, the Kyoto Protocol is presented.

2.1 Ratification history

Several scholars have pointed to a difference in ratification behaviour between the EU and the US regarding MEAs. However, it does not seem to be agreement on how to select agreements to be included in a comparison. Rather, it seems to be up to each scholar to decide which agreements to look at. Arguably, this is not a satisfying situation, as it might lead to selection bias. To overcome this issue I have used the United Nations Treaty Collection (UNTC), which is a database covering all multilateral agreements deposited with the General-Secretary, as a source. Currently the UNTC consists of over 550 multilateral agreements from all policy areas. It should be an appropriate source for investigating the ratification records for multilateral environmental agreements as many of those are global in scope, thus making the General-Secretary a natural depositor. However, it must be noted that MEAs not deposited with the UN are not included in this overview. Moreover, it only contains agreements that are signed and not those that are not signed at all, the rationale behind which is that this thesis is about the relationship between signing and ratifying, thus leaving agreements not signed at all irrelevant. That the total number of agreements for the EU and the US differ also relates to this selection rule. Amendments to agreements are not included as they only are ratified and not signed, thus falling outside the objective of the thesis. Only states that were members of the EU at the time of signing are included in the overview. However, I have not included the new member states from the 2004 enlargement.

Table 1: Signed and ratified multilateral environmental agreements in the EU and the US.

	Total signed	Total ratified	Ratification rate (%)
EU	26	23	88
US	19	10	53
EU before 1990	6	6	100
EU after 1990	20	17	85
US before 1990	6	5	91
US after 1990	14	6	43

Source: United Nations Treaty Collection

The total ratification rate is, as seen in table 1, very high for the EU. It may even be higher as two of the not ratified agreements were signed as late as in 2010 and 2013. Historically it takes the EU over 4 years from signature to ratification, because it is a requirement that plans for implementation of agreements must be in place before they can be ratified (Delreux 2011, 169). The third agreement where the EU is only a signatory and not a party to is the 1992 Agreement on the Conservation of Small Cetaceans of the Baltic, North East Atlantic, Irish and North Seas. The agreement only has 10 parties since participation is geographically limited, and is the only agreement in the overview in which all parties are European countries. Since the agreement was intra-European and all relevant countries had ratified it, it might be argued that ratification by the EU as such was not needed. Thus, if only those agreements of a more global scope are counted, the EU has ratified 23 out of 25. And it is not unlikely that the Union, at least judging by the historical record, will ratify the remaining two. The ratification rate may in other words be higher than the table indicates. In any case, it is safe to say that the EU's ratification rate is significantly higher than for the US (35% higher).

If agreements are divided into pre -and post 1990, interesting trends can be identified. First, that the mere number of environmental agreements signed by the EU after 1990 is significantly higher than the number for the US tells something about the EU's activity concerning environmental issues. Second, that the number of agreements signed by the EU is over three times as high compared with pre-1990 may reflect that the EU has progressively extended its competence in this area (Jordan 2005). In fact, it may be argued that it represents an "Europeanization" of environmental policy (Jordan, and Liefferink 2004, 6). Third, US ratification rate is significantly lower post-1990, than before that year. Indeed, the pre-1990 ratification level was almost as high as the total EU ratification percentage. It is thus the low

post-1990 rate that constitutes the difference in ratification rates between the US and the EU. Fourth, while the ratification rate for the US has changed markedly over time, the same is not the case for the EU where the rate has remained high throughout.

Looking at the ratification rate for individual member states for the same agreements, reveals that every member state normally ratifies signed MEAs that the EU is a party to. In fact, of the total of 352 signed MEAs by member states at the time of signing, the number of ratifications is 324, or 92%. Discounting one of the newest signed MEA from 2010, which 6 member states have not yet ratified the percentage rises to almost 94. Clearly, then, the pattern of ratification of every signed MEA seems to be repeated at the domestic level of the member states, meaning that member states and the EU show cohesion regarding MEAs.

2.2 International agreements

The 1969 Vienna Convention governs international treaty law (Verwey 2004, 87). A treaty is here defined as

... an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation (United Nations 1969, 333)

Although the Convention uses the term ‘treaty’, terms like ‘agreement’ ‘protocol’ or indeed ‘convention’ express the same concept. What is important is that the purpose is to establish binding commitments between the contracting parties (Verwey 2004, 90). According to Lantis (2009, 2) “... treaties are public, legal mechanisms by which states demonstrate their commitment to address common problems”. International agreements can be divided into bilateral and multilateral agreements. A multilateral agreement can be defined as an agreement between at least three parties that establishes reciprocal rights and obligations between themselves. Each party is further responsible to follow up their commitments as stated in the agreement (Verwey 2004, 101).

The rights and obligations in an agreement only apply if a state or an international organisation has expressed its consent to be bound. While there are many procedures for how consent to be bound can be expressed, the most common is signature followed by ratification (Verwey 2004, 112). This is the procedure used for the overwhelming majority of mixed

agreements in the EU (Heliskoski 2001, 86). In the two stage procedure of signature and ratification, the former implies that the signatory intends to be bound by the agreement and that ratification procedure can be initiated. Being a signatory also implies that one will refrain from acts that defeat the object and purpose of the treaty (United Nations 2012, 5).

Ratification is the final act that formally expresses consent to be bound by the treaty, and when the treaty enters into force, according to requirements laid down in the treaty, ratificators become legally bound by it. Most states must seek approval from the national parliament according to own constitutional requirements, before expressing consent to be bound internationally. Agreements need, in other words, to be ratified at the domestic level first. However, ratification on the domestic level must not be confused with ratification at the international level. That a parliament ratifies an agreement only implies that it approves that the government takes the necessary actions internationally (deposit of ratification instrument) that makes the agreement legally binding (United Nations 2012, 9). When the EU ratifies an agreement, it on the one hand commits itself to implement the agreement into EU legislation and on the other hand binds itself vis-à-vis other parties (Delreux 2006, 240).

2.3 Mixed agreements

In this section I describe the legal framework guiding the decision-making process in the EU regarding multilateral environmental agreements. The legal framework guides how the EU is to conduct negotiations and regulates by whom and how agreements may be concluded. It is therefore vital background material in order to understand the relationship between signing and ratification. The legal framework was changed with the treaty of Lisbon in 2009, but as the Kyoto Protocol and all but three agreements in the overview above, were concluded pre-Lisbon, I will describe the legal provisions as they were pre-Lisbon. In any case, although some new elements were introduced by the Lisbon treaty, the main features are the same. One difference, however, is that legal personality was transferred from the European Community (EC) to the European Union (Delreux 2011, 15). I therefore refer to the EC when addressing legal issues like competencies, but apply the term EU elsewhere as that is the commonplace usage, although not legally correct in the period before the Lisbon treaty.

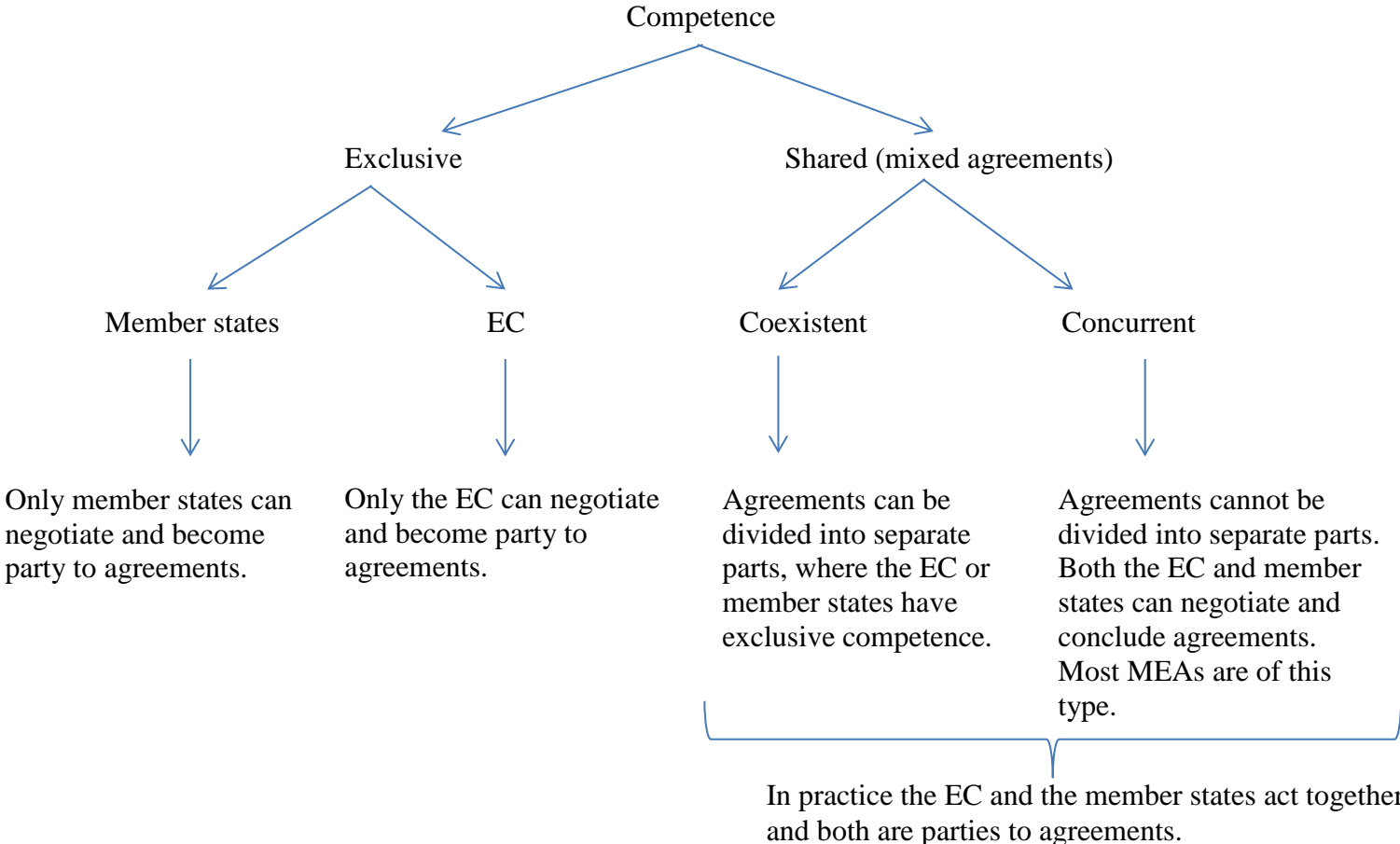
2.3.1 The legal framework

Before addressing the legal framework, a few words on legal personality is in order. A condition to be part of international agreements is to possess international legal personality. That the EC possesses legal personality is clearly stated in article 210 of the EC treaty: “The Community shall have legal personality” (MacLeod, Hendry, and Hyett 1996, 29). However, for legal personality to be effective, it must also be recognised by other parties. The EC struggled to attain recognition in the 1970s and 80s, partly because complicated divisions of powers between the EC and member states created uncertainty and confusion among other parties (Delreux 2011, 15). However, since that time, recognition has been gradually gained and few questions are raised concerning EC/EU participation (Vogler 1999, 42).

The question of competence regulates how international agreements are handled in the EC, and can basically be divided into three situations. Figure 1 below illustrates the different situations and their consequences for negotiations and conclusions of agreements. First, competence may exclusively be attributed the EC, second it may be shared between the EC and member states and third it may exclusively reside with the member states (Leal-Arcas 2003, 71). Environmental agreements usually involve shared competence and are therefore referred to as mixed agreements (Vogler 2011, 24). Mixed agreements are unique in that they are only used by the EU and its member states. Indeed, their use is pivotal for the external relations of the Union (Verwey 2004, 35), and perhaps particularly so in the field of environmental policy (Delreux 2011, 18). Mixed agreements reflect the fact that the EU is not a single state, but rather an entity between a state and an intergovernmental organisation (Leal-Arcas 2001, 487). A simple and straightforward definition of mixed agreements is that both the EU and its member states can be parties to it (MacLeod, Hendry, and Hyett 1996, 143). In other words, both the EC and the member states can sign and ratify agreements of a mixed nature. In fact, according to Meunier and Nicolaïdis (1999, 482) “... the core difference between exclusive and mixed competence comes at the ratification stage”. However, this definition does not say anything about why agreements are mixed. A more precise definition is that agreements that contain provisions where some elements fall under EC competence and others under member state competence can be regarded as mixed. In other words, competence is shared (Leal-Arcas 2001, 485). In order to better understand this rather complex arrangement, it may be informative to first know what exclusive competence is. Competence may exclusively reside with the EC or with each individual member state. When a state becomes a member of the EU, it accepts that certain sovereign powers are transferred to the EC (Verwey 2004, 16). It is these powers that are called competences in EC

terminology. Common commercial policy and common fisheries policy are examples of areas where the EC possesses exclusive competence, meaning that member states are no longer allowed to act on their own (De Baere 2008, 39). In such policy areas, then, the EC ‘speaks with one voice’ and it is the EC that represents member states in negotiations (via the Commission) and is the only actor than can conclude agreements. Member states can in other words only wield influence through their membership of the Union, and not as sovereign states. Conversely, if competences are exclusively attributed member states, external representation rest with state governments (Vogler 2011, 24). When competences are exclusive, responsibility for fulfilling commitments made in an agreement can squarely be placed with the actor that possesses the competence.

Figure 1: Competences and consequences for EU decision-making process



Shared competences blur the picture of who is to represent member states in negotiations and who can conclude agreements. In fact, negotiation of mixed agreements is not legally regulated in the EU (Eeckhout 2004, 215). Both member states and the EC may negotiate and become parties to mixed agreements (Lacasta et al. 2007, 214). They therefore raise difficult political and legal questions about the role of the EC and member states in the international order (MacLeod, Hendry, and Hyett 1996, 144). Understanding how such agreements are dealt with in practice and identifying principles that guide their treatment may give valuable insights into the relationship between signing and ratification. As can be seen in figure 1, shared competences can be of two types, concurrent and coexistent. On the one hand, coexistent competences mean that an agreement in principle can be divided into parts in which the EC and member states have exclusive competence. Consequently, the EC and member states can separately conduct negotiations for the parts of the agreement where they possess exclusive competence. For such agreements, then, it is obligatory that both the EC and member states are parties (Rosas 2000, 206). In these cases it is possible to allocate responsibility for fulfilling commitments in an agreement according to the division of competences. However, experience shows that it is difficult to distinguish and separate competences (Eeckhout 2004, 216). It is therefore common that the EC and member states negotiate as a single entity (Verwey 2004, 163). Agreements that involve concurrent competences, on the other hand, mean that they cannot be divided into separate parts where the EC or the member states possess exclusive competence (Leal-Arcas 2001, 490). This means that the whole agreement can be negotiated and concluded by both the EC and member states separately. In contrast to agreements where competences are coexistent, it is not obligatory that both the EC and member states are parties. MEAs mostly fall under this category (Rosas 1998, 146). Consequently, the EC may be a party to an agreement at the same time as not every member state are parties to it. Such instances are referred to as 'incomplete agreements' or 'partial mixity'. Incomplete agreements are especially complicated, as they raise questions about liability both internally in the Union, but also toward third parties. For as Eeckhout (2004, 223) points out: "... a Member State which does not participate in the conclusion of a mixed agreement risks none the less being bound by its provisions". Such a situation may be even more complicating if the agreement involves joint commitments, as the Kyoto Protocol did (Massai 2011, 59). Obviously, the EC wants to avoid incomplete agreements, and it is of vital importance that both the EC and member states closely cooperate in order to guarantee unity of representation (Verwey 2004, 163). And,

indeed, incomplete agreements are normally limited to agreements of regionally defined areas, where it is not natural for all member states to be parties (Ringbom 2008, 88). This may reflect that the possibility for incomplete mixed agreements is anticipated by the European Court of Justice. Based upon article 10 in the treaty on the establishment of the European Community, the Court has repeatedly emphasised the

... need for common action, or close cooperation, between the Community and its Member States in close association with each other in the negotiation and implementation of mixed agreements (Leal-Arcas 2003, 67).

This duty follows from what the Court has called the ‘requirement of unity in the international representation of the Community’ and can be traced back to the founding treaties of the Union. As a consequence, the duty of close and loyal cooperation is a fundamental principle of the external relations of the Union (MacLeod, Hendry, and Hyett 1996, 145). It should also be noted that the duty is mutual. Not only does it imply that member states must cooperate with EU institutions, but also that EU institutions must cooperate with member states (Hyett 2000, 251). And although this duty concerns all external relations of the EU, it may be suggested that adherence to the principle is of particular importance regarding agreements of a mixed nature. Indeed, as Eeckhout (2004, 223) notes, problems with mixed agreements “... becomes even thornier in cases of partial mixity”.

2.4 The Kyoto Protocol

The 1997 Kyoto Protocol was the result of the 3rd conference of the parties to the 1992 United Nations Framework on Climate Change. It was the first agreement that established binding emissions reductions commitments, and was referred to as a landmark treaty and widely celebrated as a great step forward in order to mitigate climate change (Böhringer 2003, 457; Oberthür, and Ott 1999, 1). 191 states, including the EU and all its member states are parties to the Protocol. Important countries that not are parties include the US that never ratified the Protocol and Canada that withdrew in 2011. In the Protocol, industrialised countries - so-called Annex B countries - committed themselves to reduce their overall greenhouse gas emissions by at least 5 percent below 1990 levels during the commitment period running from 2008 to 2012. Reduction targets varied among countries, with the EU having the highest target of 8% (Massai 2011, 42). After reaching an agreement on burden-

sharing that distributed emissions reductions among member states, the EU and its member states both signed and ratified the Protocol simultaneously, in 1998 and 2002 respectively (Knill, and Liefferink 2007, 75). That made the EU the first major emitter of greenhouse gases that ratified the Protocol. It took another three years until the Protocol came into force, as it required ratification not only from at least 55 parties to the Convention, but also that Annex B countries that ratified represented at least 55% of global emissions in 1990. With Russia's ratification in 2005, both these requirements were met.

3 Explanation 1: EU leadership ambition

In this chapter I will investigate if a possible EU leadership ambition concerning climate change may have affected the EU's decision to ratify the Kyoto Protocol. If EU leadership ambition led to adoption of policies and measures regarding climate change that were at least as tough as policies later agreed upon in the Kyoto Protocol, the EU should not have problems becoming a party to the Protocol. In addition, leadership ambition may also be a cause for the introduction of measures that would not have been initiated without such an ambition. In order to pursue this line of reasoning, this chapter is structured as follows. First, the theoretical framework is presented. Next, EU climate policy in the period before and after the Kyoto Protocol negotiations up until ratification is addressed. If leadership ambition is found to have been translated into concrete policies and measures, these can be compared to measures agreed upon in the Kyoto Protocol. Further, if Kyoto measures were not stricter than what the EU already had agreed upon, then the argument that leadership ambition contributed to ratification of the Kyoto Protocol is strengthened. For clarity, the mechanism can be illustrated as follows:

Leadership ambition (in climate change) → Unilateral adoption of ambitious measures (relating to climate change) both before/under negotiations and pre-ratification → Reduces costs related to ratification of international agreements (on climate change), and thus increases the chances for ratification.

Before continuing, it is in order to underline that this explanation merely addresses ratification of the Kyoto Protocol and not ratification of MEAs as such.

3.1 Theoretical framework

Leadership can, according to Underdal, be defined as "... an asymmetrical relationship in influence in which one actor guides or directs the behaviour of others toward a certain goal over a certain period of time" (Underdal 1994, 178). Further, he distinguishes between three modes of leadership, namely leadership through unilateral action, coercive leadership and instrumental leadership. Although leadership in reality often is a combination of these modes, I will for our purpose focus on leadership through unilateral action. This type of leadership is

exercised outside of the negotiation framework and can be identified when an actor “... moves to solve a collective problem by one’s own efforts, thereby setting the pace for others to follow” (Underdal 1994, 178). In other words an actor that behaves as a first-mover or frontrunner. A frontrunner can be conceptualised as an actor that approves or adopts policies and measures domestically before others. It thus makes sense for such an actor to seek to establish similar policies externally through multilateral agreements. Consequently a frontrunner may face few problems ratifying a signed agreement. The question, then, is if leadership ambition can lead to unilateral actions that in turn significantly lower the ratification hurdle. Thus, a hypothesis can be formulated as:

Hypothesis 1: EU’s leadership ambition regarding climate change led to unilateral action that reduced the possibility for EU ratification failure of the Kyoto Protocol.

In order to investigate if leadership ambition can contribute to an explanation of the EU’s ratification of the Kyoto Protocol, I investigate the Union’s climate policy in the period before and after the Kyoto negotiations, until ratification in 2002. If it can be demonstrated that the EU already had in place policies agreed to in Kyoto, or even more ambitious policies, ratification of the Protocol should not pose a challenge.

3.2 Climate policy in the EU pre-Kyoto

EU’s climate policy can be traced back to the late 1980s when the Commission explicitly addressed it in its research policy. In 1985 the Commission stated that CO₂ emissions were a vital environmental issue, and in 1988 it presented a Communication (an action plan) on the issue (European Commission 1988; Skjærseth 1994, 26). No measures to reduce emissions were proposed, however, and were not even thought to be realistic at the time, although it could be a very long term goal. This stance changed remarkably when two years later, in 1990, the Commission recommended “... the urgent need for a clear commitment by industrial countries to stabilize CO₂ emissions by the year 2000” (Bergesen 1991, 2, quoted in Skjærseth 1994, 26). This paved the way for the adoption in October 1990 of a resolution that targeted stabilisation of CO₂ emissions in 2000 at 1990-levels. This can be described as quite ambitious as emissions were expected to increase by 12% by the year 2000 (Skjærseth 1994, 25). Since then, the Commission was active in forming a ‘climate package’ that was to ensure that the emissions reduction target could be reached. In fact, a Commission draft from

November 1990 emphasised a ‘no-regret’ policy and stated that CO₂ emissions could be reduced by 15-20% without major macroeconomic costs (Skjærseth 1994, 27). The ‘climate package’ involved a carbon tax, establishment of a programme on renewable energy technologies (ALTENER) and strengthening of the energy saving programme (SAVE) among other measures (Gupta, and Ringius 2001, 284), indicating significant ambitions about reducing emissions. However, the Commission failed to get the ‘climate package’ adopted before the Rio Conference in 1992, and its climate policy consisted of the adoption of the stabilisation target described above, but without the means to achieve it (Skjærseth 1994, 32). The failure to adopt concrete measures has largely been explained by the different concerns member states had towards the climate change issue, and the need for unanimity in the Council regarding adoption of fiscal measures (Knill, and Liefferink 2007, 135). Also, the carbon tax was subject to massive lobbying from European industries that resisted it (Hovi, Skodvin, and Andresen 2003, 9). Nonetheless, a clear preference on the part of the Commission for an ambitious climate policy can be identified, which also resonated in the Council, as its adoption of the stabilisation target demonstrates. However, at the time no concrete actions had been taken, leaving high ambitions little honour.

The UN Conference on Environment and Development, or the ‘Rio Conference’, which was held in 1992 led to the establishment of the UNFCCC, which was the first international treaty exclusively dealing with climate issues. The EU became a party to the Convention in 1993, a year before it entered into force after reaching the required 50 ratifications. The EU was one of the actors that demanded concrete targets, but this was not achieved at the time (Knill, and Liefferink 2007, 74). Even if the UNFCCC did not contain any binding commitments, it provided the framework where further agreements, called protocols, could be negotiated and binding targets reached. Since the Rio Conference, the EU’s activities regarding climate change largely took place within the framework of the Convention, and the EU continued to call for concrete targets as part of an attempt to take the lead in international climate policy. This was partly achieved at the first Conference of the Parties (COPs) to the UNFCCC held in Berlin in 1995. In what has been referred to as the ‘Berlin Mandate’, it was decided that an agreement regarding emissions reductions should be signed no later than at COP-3 that would be held in December 1997 in Kyoto (Ringius 1997, 6). The EU’s ambition of binding targets was then finally achieved at COP-3 in Kyoto in 1997 through the Kyoto Protocol that the EU signed in 1998 and ratified in 2002. In order to understand how the EU, that earlier had failed to adopt concrete emissions reductions measures in its internal climate policy despite

ambitions to do so, managed to ratify the Kyoto Protocol we need to look at the burden-sharing agreement that had been negotiated between member states since before the Rio Conference. In contrast to other failed attempts at introducing measures directed at emissions reductions, this agreement resulted in concrete targets and may be said to be the first substantial result of the ambition of leadership in climate change.

3.2.1 Burden-sharing agreement

Negotiating the burden-sharing agreement was a prolonged and highly complex and difficult process in the EU that began before the establishment of the UNFCCC in 1992. Both the Commission and the member states recognised that to reach agreement within the Union, and thus achieve the ambitions the Union had set for itself both internally and externally, some kind of burden-sharing regarding emissions reductions between member states was inevitable. Indeed, this was implicitly acknowledged in the agreement of 1990 (Ringius 1997, 17). The reason for this was that several member states refused to agree on timetables and targets before this issue was resolved, something that reflected differences in the level of development between member states (Ringius 1997, 15). At the latest, then, the issue of burden-sharing had to be resolved before COP-3 commenced in December 1997, and it was indeed not until 1997 that the member states agreed on how to distribute emissions reductions. Up until COP-1, EU policy had been to stabilise emissions at 1990 levels in 2000. This was based upon each nation's own expected emissions trajectory up to year 2000, and thus not on the emissions reduction potential. It might be argued that this target really was not a change of status quo, as particularly Germany expected reduced emissions because of closure of heavy polluting industries in former East-Germany. The EU's actual climate policy at the time could thus not be called ambitious, not because ambitions did not exist, but because concrete measures were rejected in the Council by the member states.

However, a future global protocol was expected not merely to stabilise emissions, but to reduce them. This entailed that the issue of burden-sharing again needed to be addressed. Pressure on the EU to reach an internal agreement increased as it was considered vital for injecting new energy into global negotiations (Ringius 1997, 17). This pressure, however, may have been a consequence of the EU's own ambitions in climate change - it was, after all, the Union that proposed to establish a negotiating process for legally binding commitments (Gupta, and Ringius 2001, 287). While it is not necessary to go into detail about the burden-

sharing negotiations, it is illustrative to note that the EU in March 1997 adopted a negotiating position on climate change that proposed a 15% emissions reduction by 2010 relative to 1990-levels to be included in the Protocol (Commission 1997, 2). This was the highest proposed target among industrialised states and could, according to Ringius, “... be considered a historic decision in the context of EC and international climate policy as well as a significant decision in the area of EC environmental policy” (Ringius 1997, 7). In other words it demonstrated high ambitions on the part of the EU. However, it was higher than what most member states deemed acceptable, as table 2 shows, and only manageable if all industrialised countries made comparable reduction efforts (Commission 1997, 19).

Table 2: Comparison of Presidency proposal and national emissions targets for 2010 relative to 1990-levels.

EU member state	Presidency proposal	National emission target
Austria	-25%	-25%
Belgium	-15%	-10%
Denmark	-25%	-25%
Finland	-10%	0%
France	-5%	0%
Germany	-30%	-25%
Greece	5%	30%
Ireland	5%	15%
Italy	-10%	-7%
Luxembourg	-40%	-30%
Netherlands	-10%	-10%
Portugal	25%	40%
Spain	15%	17%
Sweden	5%	5%
United Kingdom	-20%	-10%
EU-Total	-15%	-9.2%

Source: Ringius 1997.

The gap between the proposal and member states’ national targets is significant and illustrative of the difference between ambitions on the part of the EU as a whole and its individual parts. Most importantly, however, is that it is a concrete expression of EU ambitions regarding climate change, as well as each member state’s pledged targets. The conditionality of the 15% proposal meant that this target was dependent on how the Kyoto negotiations turned out, and thus cannot be described as unilateral. It is, however, indicative of leadership ambition, and the national targets were in any case high compared to other

industrialised countries targets (though it may be argued that the 1990-baseline was favourable for EU member states). As can be seen in table 3, the final burden-sharing agreement is identical to the national emissions targets. However, this is not because the 15% target was abandoned. Rather, in what was called the 10/15 proposal, the 15% reduction target was kept, but the reductions pledged by the member states (really 9.2% and not 10%) were accepted as an interim solution. If the Kyoto negotiations resulted in a target above 10%, the Union would negotiate and distribute the additional percentages (Ringius 1997, 32). Again, then, the high ambitions of EU climate policy can clearly be identified, and even though the toughest target of 15% was conditioned upon the contribution of negotiation partners, it certainly shows how far the EU was willing to go - which was further than any other industrialised country. Thus, for the first time, the EU's ambition regarding climate change had resulted in concrete targets, which make it apt for comparison with the actual result of the Kyoto Protocol.

3.3 Results of the Kyoto negotiations

After long and hard negotiations, agreement was reached on the Kyoto Protocol one day after schedule on 11 December 1997. Although many issues were discussed, the issue of binding commitments was the most sensitive and contentious, and other discussions were mainly related to how this could be achieved. In the end the Protocol required the EU to reduce emissions by 8% (Oberthür, and Ott 1999, 147). This is 1.2% lower than what the EU internally already had agreed upon, and indeed 7% lower than their highest target. It was thus almost a halving of the reduction the Union had stated it would be willing to do given similar contributions by other parties. As a consequence the burden-sharing agreement was adjusted, and as table 3 shows this meant that most member states got more lenient targets except Spain, Portugal, Greece and Ireland that had to reduce their emissions growth, and the UK that had to reduce emissions by 2.5% extra compared to the burden-sharing agreement of 1997. Part of the reason for the UK's acceptance of the higher reduction target can be explained by the change of government in the UK in 1997, in which an arguably more ambitious Labour government regarding climate change came to power. In any case, even if a few countries got less favourable commitments, the revised agreement was on the whole less demanding and differences between member states' obligations less pronounced. And although environmental NGOs called for keeping the previously agreed reductions, and the

UK tried to reach reductions above what Kyoto demanded, the EU signed, on the proposal of the Commission, the Protocol in April 1998 stating that it would jointly fulfil its obligations (Commission 1998a; Oberthür, and Ott 1999, 147-148).

Table 3: The EU burden-sharing agreement.

EU member state	Burden-sharing agreement 1997	Revised Burden-sharing agreement 1998
Austria	-25%	-13%
Belgium	-10%	-7.5%
Denmark	-25%	-21%
Finland	0%	0%
France	0%	0%
Germany	-25%	-21%
Greece	30%	25%
Ireland	15%	13%
Italy	-7%	-6.5%
Luxembourg	-30%	-28%
Netherlands	-10%	-6%
Portugal	40%	27%
Spain	17%	15%
Sweden	5%	4%
United Kingdom	-10%	-12.5%
EU-Total	-9.2%	-8%

Source: Oberthür 2006, 69.

3.4 Climate policy in the EU post-Kyoto until ratification in 2002

As the last two sections have shown, the EU has from the beginning shown leadership ambitions regarding climate change policies, with the burden-sharing agreement as a highlight that translated ambitions into concrete targets. But in order to investigate the hypothesis of this chapter an evaluation of EU's climate policies in the period between signing and ratification is required. Was its leadership ambition sustained in the post-Kyoto period? If it was not, the argument of this chapter is weakened. For how can leadership ambition contribute to explain ratification if it is lost or diminished in the post-signing period? I will address this both in the development of EU climate policy, in particular the development of the European Emissions Trading system (ETS), but also in the international context where the EU put pressure on other countries to ratify the Protocol.

3.4.1 The emissions trading system

With the revised burden-sharing agreement, the EU had solved one of the most difficult questions relating to how it was to achieve its targets. However, distributing emissions reductions is not enough. How the reductions are going to be achieved must be addressed as well. That this was necessary becomes clear when looking at a Commission communication from 1999 that projected a 6% increase in emissions in the EU by 2010 relating to 1990-levels if no actions were taken (European Commission 1999). Although another projection in 2001 reduced the estimate to a 1% emissions increase by 2010 compared to 1990-levels (European Commission 2001c, 11), it nevertheless was 9% higher than targets agreed to in Kyoto. In short, if no measures were taken, the EU would not manage to meet its commitments. As, at the time, the EU had not yet ratified the Kyoto Protocol, and the burden-sharing agreement would not be legally binding until ratification (European Commission 1999; Oberthür 2006, 72), withdrawal would be the easy way out. And indeed, as member states started to recognise that reaching their targets would not be easy, they did not want to ratify before provisions on flexible mechanisms were specified (Delreux 2011, 80). Seen from this perspective, introducing emissions trading could be pivotal both for ratification of the Protocol and for the EU to reach its targets. The EU had both in the run-up to -and during the Kyoto negotiations been sceptical to the use of flexible mechanism, and these market-based mechanisms were mainly seen as US innovations. However, in the aftermath of Kyoto reluctance towards them began to fade, and the Commission intensified its work on emissions trading. In 1998 Commissioner for the Environment, Ritt Bjerregaard said that “we have to get involved in emissions trading ... we cannot let others dictate the rules” (quoted in Christiansen, and Wettestad 2003, 5). And already in the first Commission communication on an EU post-Kyoto strategy, it was noted that the EU could set up its own ETS by 2005. Under the Protocol, international trading would not become operational before 2008. It was noted that an early introduction of such a system would be a clear “expression of its [EU] determination to promote the achievement of targets in a cost-effective way” (European Commission 1998b, 20). A communication named “Preparing for implementation of the Kyoto Protocol”, further emphasised the importance of the EU giving weight to its words, and that preparations to an ETS should be made (European Commission 1999, 15). In a ‘Green Paper’ from 2000, the Commission further elaborated upon how such a system could be set up, thus preparing the ground for emissions trading. It aimed to familiarise decision-makers with this type of trading and start consultation with all relevant stakeholders. It also provided an economic case for

emissions trading and stated that “... the involvement of companies in emissions trading represents a unique opportunity for a cost-effective implementation of the Kyoto commitments” (European Commission 2000, 9). In the same year the Commission launched the European Climate Change Programme (ECCP) that was to

... drive forward EU efforts to meet the targets set by the Kyoto Protocol [and] ... engage the full range of stakeholders in the process of developing a strategy to cut greenhouse gas (GHG) emissions (ECCP 2001, 3).

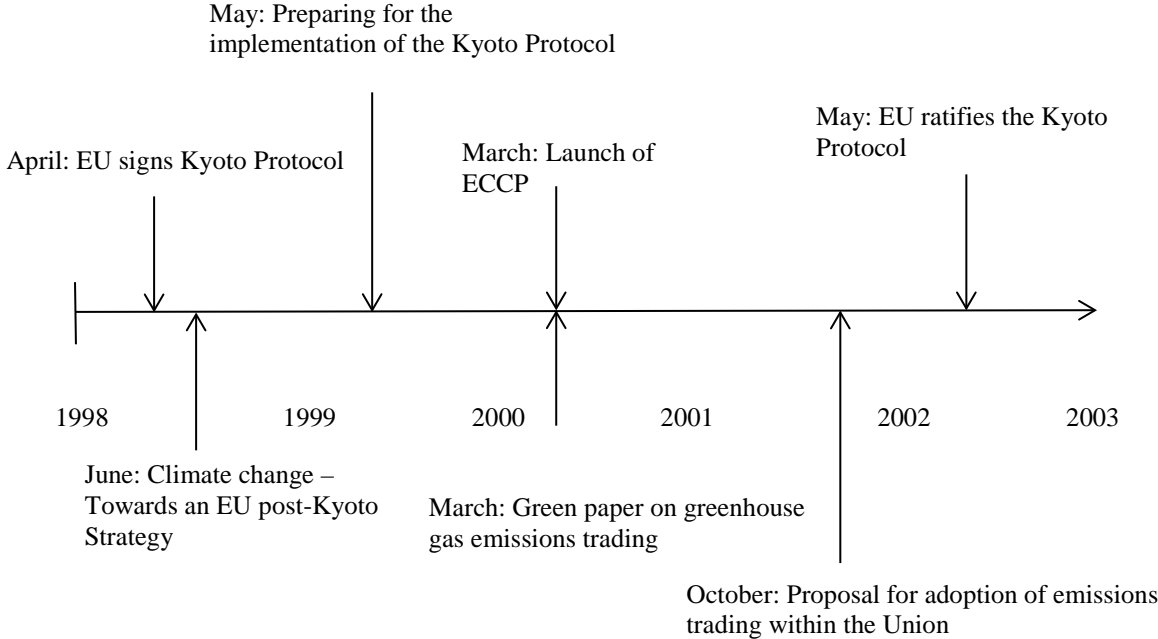
The programme was based upon the burden-sharing agreement and addressed how the Union could achieve its targets. In 2001, the first phase of the programme was summarised, and a number of possible measures that could double the emissions reductions required in the Kyoto Protocol were identified (ECCP 2001, 7). Later in 2001 the Commission proposed a package of three broad measures to deal with climate change, where one was a directive on mandatory emissions trading (Hovi, Skodvin, and Andresen 2004, 10). The proposal for a framework directive within the EU presented emissions trading as “one of the policy instruments that will impair competitiveness the least” (European Commission 2001d, 1). Environmental Commissioner Margot Wallstrøm characterised the proposal for emissions trading as “... a major innovation for environmental policy in Europe ... [and that it] will be an important cornerstone in our strategy to reduce emissions in the most cost-effective way”. Further, she emphasised that

With these proposals, we pursue the EU's ambition to provide leadership in addressing climate change. By presenting proposals for an emissions trading system and other emission reduction measures in parallel to the ratification instrument we wish to demonstrate that we are serious about delivering on the commitments we have signed up to (European Commission 2001b).

Moreover, economic analysis carried out on the behalf of the Commission, showed huge cost efficiencies in reaching Kyoto targets through emissions trading (Capros, and Mantzos 2000, 182). The proposal for emissions trading was adopted in 2003, thus giving the approval for the first large emissions trading system in the world, which it still remains. According to Christiansen and Wettestad (2003, 5) the development of the EU-ETS meant that the EU stood forth as “... a frontrunner in the development of an international marketplace for ET [emissions trading]”. Indeed, the ETS was to operate from 2005, three years prior to the

start of the first commitment period of Kyoto. As Wettestad (2005, 17) argued, the ETS could be viewed as “... the potential jewel in the crown for EU climate policy”. Although the ETS was adopted after ratification of the Protocol, it was the result of a purposeful process in the EU that started shortly after the signing of the Protocol, as the timeline below indicates.

Figure 2: Important events in the process of developing the ETS



The prospect of an ETS did not nearly suffer similar protests as the regulatory approach had in the 1990s. Particularly the carbon tax was vehemently opposed, and massive lobbying from industry was part of the reason for its rejection. Regarding an ETS, industry showed a rather positive attitude, and it was actually environmental NGOs that initially were sceptical and preferred other solutions (Wettestad 2005, 10). A possible explanation is that ETS represented new market opportunities and provided benefits that could be reaped by industries. The ETS avoided mobilisation of resistance as it facilitated the involvement of industry in a more constructive way compared to what a carbon tax was capable of. In line with the intention of the ECCP, meetings between stakeholders that included all major businesses and industry organisations were held. Meetings revealed that an overwhelming majority of stakeholders were positive to the Commission proposal in 2001 (Hovi, Skodvin, and Andresen 2003, 14). The introduction of an internal emissions trading pilot scheme in British Petroleum in 1998 and a similar system in Shell is an illustration of this positive attitude (Christiansen, and Wettestad 2003, 9). Certainly, European industry was not unified in its support of an ETS. The main point, however, is that it was not unified in its opposition like it was concerning a

tax on carbon. This clearly helped making ratification of the Protocol less controversial, and thus increased chances for its approval both in the Council and in the member states.

In sum, the Union's decision to venture into the field of emissions trading can be interpreted as the result of strong leadership ambitions and a desire to adhere to the Protocol. That the EU had not been enthusiastic about emissions trading at earlier stages, and the rapidity of which it was addressed and adopted supports the leadership ambition hypothesis. Even though the ETS was adopted after the Union ratified the Kyoto Protocol, and as such cannot explain ratification, its development was instrumental in showing and ensuring member states that their targets could be reached in a cost effective way. As can be seen in the timeline for the development of the ETS, a lot happened regarding emissions trading before ratification of the Kyoto Protocol, and expectations of adoption of an ETS may be considered as important as the actual adoption. The ability of reaching targets was a major concern for member states, and as noted above, member states did not want to ratify before flexible mechanisms had been explored. The ETS thus served as a concrete example of how targets could be reached and of unilateral action and leadership ambition in practice.

3.4.2 The international context

According to Oberthür and Ott (1999, 291), the EU post-Kyoto "... continued to strive for international leadership". Before the US decided to withdraw from the Protocol in 2001 it was doubted if the EU would ratify the Protocol if the US did not (Gupta, and Ringius 2001, 291), and after the US withdrawal, the EU put a lot of effort into convincing the US to get back on board (Lacasta, Dessai, and Powroslo 2002, 409). Failing at that, only Italy had reservations about proceeding with ratification of the Protocol without the US. However, in the end also Italy stood behind the common position of the EU (Groenleer, and Schaik 2007, 985), expressed by the Council in 2001 when it stated that the EU would "work to ensure the widest possible participation of industrialised countries in an effort to ensure the entry into force of the Protocol by 2002", and by 2005 show demonstrable progress in achieving commitments (Council of the European Union 2001, 6). Thus, without US participation, efforts to convince other countries to ratify the Protocol were intensified. Both before and after the US withdrew, the Union invested much political energy to secure support for the Protocol among other countries (Hovi, Skodvin, Andresen 2003, 18). It was stated that a major aim for the EU was the entry into force of the Protocol and that the EU needed to strengthen the international

dialogue. Among the key areas in that regard were signature, ratification, domestic actions and emissions trading (European Commission 1998b, 26-27). Moreover, in 1999 it was explicitly stated that “The EU should use its international relations to speed up ratification by as many Parties as possible” (European Commission 1999, 21). However, that goal was combined with the realisation that the EU must seek to implement the Protocol as soon as possible, since that would “enhance its credibility in the international negotiations and give a strong signal to other Parties to do the same” (European Commission 1999, 1). In 2000 the Environment Council adopted a strategy that reiterated the goal of having the Protocol to enter into force by 2002, and the EU was active in trying to persuade Japan, US and Russia to ratify (Gupta, and Ringius 2001, 291). Moreover, the EU used the leverage of EU-membership in order to convince Poland, which was in accession talks at the time, to ratify the Protocol. In the case of Russia, whose ratification was pivotal if the Protocol was to enter into force after US withdrawal, the EU admitted lenient concessions regarding emissions allowances and also supported Russia’s accession to WTO in order to secure its ratification (McLean, and Stone 2012, 109-110). Although the concessions towards Russia took place after the EU had ratified the Protocol, they were a continuation of persuasion attempts that began before EU ratification. Moreover, it is likely that neither Japan nor Canada would have ratified without pressure from the EU (Hovi, Skodvin, and Andresen 2003, 19). On the whole, then, it seems that the EU was the pivotal actor that secured the number of ratifications required for the Protocol to enter into force.

The important point for our case is that the role the EU played on the international arena would only be credible if the Union ratified the Protocol itself, which, according to analysts at the time, could not be taken for granted if the US decided to withdraw. After investing a lot of time and resources convincing others, it may be argued that it was in the interest of the Union to do so. Not only because of sunk costs relating to this effort, but also to retain reputation and standing as an important and serious international actor in its own regard. In fact, when the Commission proposed for an early ratification in 2001, it stated that it was its hope “to convince other Parties to follow suit rapidly” (European Commission 2001b). This statement, in combination with others quoted above, lends support to the argument that ratifying the Protocol was the only credible action the EU could take, given the pressure it exerted on other countries.

3.5 Assessment

This chapter has investigated the relationship between signing and ratification in the EU from the perspective of leadership ambition regarding the Kyoto Protocol. Such an ambition has been identified both in the period leading up to Kyoto and in the period between signing and ratification, supporting Schunz (2012, 208) when he writes that the EU "... was the most ambitious actor among industrialised countries ...". That leadership ambition has led to adoption of unilateral measures has been demonstrated, first with the burden-sharing agreement pre-Kyoto, and second with the development of the emissions trading system post-Kyoto. Since implementation of the burden-sharing agreement hinged on ratification of the Kyoto Protocol, the costs of non-ratification increased. As a member state representative expressed: "At some point, the political costs were too high to stop, even if we thought that we had not given the mandate to the Presidency for this or that" (Delreux 2011, 84). Based upon these developments it seems fair to suggest that support for the hypothesis is found. As the Kyoto Protocol required less from the EU than it already had pledged to do, the Union certainly could not complain on too strict commitments and should thus be in a position to smoothly pass ratification.

It may be argued that the Commission and some member states preferred a more ambitious protocol and was not satisfied with the outcome. Nevertheless, the final agreement was deemed better than the status quo, and not ratifying the Protocol because of too soft commitments was not considered. However, ratification did not proceed smoothly, as became clear when the EU initially was headed in the wrong direction regarding emissions. Developments post-signing were thus crucial in that they laid the basis for how the EU was to achieve targets. Leadership ambition may thus represent a driving force behind the development of the ETS. Although it cannot be established that without the ETS the EU would not have ratified the Protocol, it seems fair to suggest that it increased the chances for ratification since it increased the likelihood for fulfilment of commitments. For as a Commission official expressed: "You cannot ratify something if you do not know how to implement it" (Delreux 2011, 169). In addition to these factors, the role the EU performed on the international stage in trying to persuade other countries to ratify the Protocol, meant that the only credible action would be to ratify it itself. The development of mechanisms that visualised how member states could achieve their targets and persuasion of other countries

took place simultaneously, suggesting that both increased the probability for EU ratification of the Protocol.

4 Explanation 2: The EU decision-making system

4.1 Introduction

In this chapter I investigate the relationship between signing and ratification of MEAs in the EU by looking at the decision-making system for such agreements. A decision-making system can be structured in many ways, but arguably some systems are better at facilitating for ratification of signed agreements than others. The question is if the EU decision-making system reduces the possibility for ratification failure. In order to investigate this, Robert Putnam's theory of two-level games is applied as a theoretical framework. After first introducing the theory, the decision-making system for MEAs in the EU is presented, before it is analysed in relation to the Kyoto Protocol.

4.2 Theoretical framework

In a seminal article, Putnam introduced a theory that aimed to explain how the international (Level I) -and domestic (Level II) levels relate to each other in international negotiations (Putnam 1988). Because the theory acknowledged that the levels interact and cannot be analysed in isolation, it is called the theory of two-level games. That international agreements negotiated at Level I need to be ratified at Level II provided the link between the levels. In order to reach a ratifiable agreement, win-sets, meaning the range of agreements reached at Level I that would be acceptable and thus ratified at Level II, have to overlap. Win-sets were further deemed to be affected by Level II preferences and coalitions, Level II institutions and Level I negotiators' strategies (Putnam 1988, 442). The chance for a signed agreement to get ratified, then, largely depends on how the agreement corresponds to these parameters. Further, Putnam identified two sources of ratification failure: Voluntary -and involuntary defection. Voluntary defection refers to "... reneging by a rational egoist in the absence of enforceable contracts" (Putnam 1988, 438). This has been interpreted as not signing an agreement in the first place (Sprinz, and Weiß 2001, 68). However, reneging may be understood as retraction of a promise, and being a signatory to an agreement is just that: A promise or intention to become a party to the agreement. I therefore argue that voluntary defection is not reserved for the negotiation and signature phase, but also relevant for the ratification phase. That voluntary

defection relates to ratification failure is indeed suggested by Putnam (1988, 438) when he writes: “The possibility of failed ratification suggests that game theoretical analyses should distinguish between *voluntary* and *involuntary defection*”. In my usage, then, voluntary defection refers to an actor that deliberately rejects ratification of a signed agreement because of egoistical reasons or in order to achieve a better deal. It is in other words the same actor that signed the agreement, that later rejects to ratify it. Involuntary defection, on the other hand, refers to “... the behaviour of an agent who is unable to deliver on a promise because of failed ratification” (Putnam 1988, 438). In these cases ratification failure occurs because the win-sets of the actor signing the agreement (the executive or negotiators representing it) and domestic ratifiers do not overlap. It is thus because of domestic constraints that a government cannot follow up on the promise given by signing an agreement. Such a situation may be the case if a government overestimates domestic support for the negotiated agreement. It is thus divergent preferences between different actors that are the cause for involuntary defection. This stands in contrast to voluntary defection where it is the same actor that choose to reject an agreement he has signed. That said, it might still be hard to differentiate between the two forms of ratification failure empirically, but as Putnam (1988, 438) notes “... the underlying logic is quite different”. It is therefore a helpful analytical distinction. The reason for why they may be hard to separate is that a strategic negotiator might seek to misrepresent voluntary defection as involuntary (Putnam 1988, 439). Blame for ratification failure can in other words be shifted away from the signer to the institution whose approval for ratification is needed (normally the parliament). Even if such behaviour itself is risky as the credibility of a negotiator relies on the ability to “deliver at home”, it is possible that a negotiator considers it better than the alternative which would be not to sign in the first place.

In the case of the EU, voluntary defection, on the one hand, would mean that the EU signed an agreement, but subsequently rejected to ratify it by mere choice, and not because of constraints that hindered ratification. Involuntary defection, on the other hand, would mean that a disparity exists between what the EU negotiators believe the EU’s ratifiers’ opinion and attitude to be and vice versa. This means that negotiators at the time of signing expect the agreement to get ratified, but it is not. The source of involuntary defection is in other words miscalculation of the support of the agreement. In sum, the relationship between negotiators and ratifiers seems to be of paramount importance for the relationship between signing and ratification. If it is a relationship marked by close cooperation and coordinated activities, chances for ratification of signed agreements might be enhanced. Conversely, if the

relationship is characterised by conflict, large information asymmetries and negotiators that go beyond their mandate, chances for getting a signed agreement ratified might be significantly reduced. Given the theoretical insights above, a hypothesis can be formulated as:

Hypothesis 2: The EU's decision-making system for MEAs reduces the possibility for EU ratification failures of MEAs.

Investigating the EU's decision-making system for MEAs involves looking at several aspects of the decision-making process. Who are the negotiators? Who gives and formulates mandates to negotiate, who ratifies and what is the relationship between these actors? What, if any, control mechanisms exist if negotiators go beyond their mandate? What role, if any, do national parliaments play in EU decision-making? In short, the relationship between negotiators and ratifiers are central to this explanation. The decision-making process can analytically be divided into the three stages of authorisation, negotiation and ratification (Delreux 2011, 31). In the following I will make use of this distinction and analyse how they are dealt with in the EU. I will start with the ratification stage and take that as a point of origin for the analysis as it is the focal point of the thesis. The first part of the chapter is general in form as it refers to procedures that lay down how the EU is to conduct MEA negotiations. The second part focuses on the particular arrangements used in the Kyoto Protocol.

4.3 The decision-making system of the EU

4.3.1 The ratification stage

Ratification of international agreements in the EU is the prerogative of the member states in the Council. A decision on ratification can be taken after the Commission has presented a proposal for conclusion of an agreement based upon the agreement reached in the international negotiations. The proposal for ratification, in addition to the text for a Council decision itself, normally consists of an explanatory memorandum that includes descriptions of the negotiation process, the legal basis upon which the proposal rests and its consistency with other EU legislation. If the Council adopts the proposal of the Commission, the agreement is ratified. However, because MEAs are mixed agreements, national parliaments are capable of rejecting MEAs on the domestic level, something that could lead to incomplete agreements, where not every member state is party to an agreement the EU is party to. Clearly, such a

situation is complicated not only for the EU, but also for third parties. However, the EU has developed strategies for avoiding it. In fact, the Council normally does not ratify a mixed agreement before all member states have ratified it (De Baere 2008, 240). Consequently a Council decision is not taken independently of national parliaments. Indeed, the possibility for national parliaments to reject an agreement is also anticipated in the decision-making system. It is therefore appropriate to address national parliaments' role in relation to EU decision-making in this chapter, while the effects of parliamentarism as such on ratification are addressed in the next chapter.

The treaties of the EU did not provide specific rules for the involvement of national parliaments in EU decision-making until the 1997 Amsterdam treaty. The 1992 treaty of Maastricht included non-binding declarations for a desire of more involvement of national parliaments (Bergman 1997, 375). But it was up to each member state to scrutinise own governments in their activities related to the Union. Although recalling that scrutiny was a matter for each member state, it was decided in the Amsterdam treaty to enhance the involvement of national parliaments in EU affairs. It was decided that all Commission consultation documents (green and white papers and communications) should be promptly forwarded to national parliaments of the member states as well as

Legislative proposals should be made available at least six weeks before their discussion within the Council in order to allow Member States parliaments sufficient time to discuss them (De Baere 2008, 167).

While several links between national governments and EU decision-making can be identified, Bergman (1997, 376) argued that the most important are the European Affairs Committees. All parliaments of the 15 member states at the time of the Kyoto Protocol had established such committees. The status of these committees varies across member states, and also between issue areas, but at the least they ensure that an exchange of information, is taking place. In some member states the scrutiny process also binds the government to a particular policy position (Bergman 1997, 378). Thus, coordination of policy positions may be close between the government and parliament.

What does the involvement of parliaments mean for the chances for ratification failure? Clearly, the sharing of information between the EU and national parliaments facilitates for coordination of policy positions not only between governments in the Council, but also

between governments and their respective parliaments. Along the line of Van Aken (2012, 24) who argues that surprise voting outcomes in the Council are almost impossible, parliamentary involvement in EU affairs reduces the chances for surprise voting outcomes at the national level too. National parliamentary involvement in EU decision-making may thus be one way of avoiding ratification failure on the domestic level.

Ratification has a double significance for the EU. First, it means that the EU commits itself to implement the international agreement into EU legislation, and second, it binds the Union towards the external parties of the agreement (Delreux 2011, 21). Until the entry into force of the Lisbon treaty in 2009 the important EU institutions regarding ratification were the Council and the Commission. The European Parliament (EP) extended its powers in the treaty of Lisbon and its consent is now needed in order to conclude many agreements, of which MEAs are a part. However, even if the consent of the EP was not formally needed in the period pre-Lisbon, an interinstitutional agreement between the Council, the Commission and the EP existed. This meant that the EP should be informed by the Council before negotiations and by the Commission under and after negotiations, such that the EP could hold debates on the negotiations. In addition, according to the interinstitutional agreement, Members of the European Parliament could be part of the EU negotiation team as observers, although without the right to take the floor during negotiations (Delreux 2011, 22). Thus, while the Council and the Commission are the main actors regarding ratification before the Lisbon treaty, the EP could play a greater role than what it formally had.

An important aspect of the ratification stage is the decision-rule. Until the Maastricht treaty of 1993 unanimity was required for environmental matters, meaning that every member state in the Council had to accept the agreement for it to be ratified. With the entry into force of the Maastricht treaty, however, the decision rule for most MEAs was changed to qualified majority with exceptions including fiscal matters (Jordan 1998, 233). The requirements for qualified majority have been modified since the founding of the Union reflecting its increase in member states, but have stayed at around 70%. At the time of the Kyoto Protocol a qualified majority required 62 votes, representing 71.62% of total votes, whereas a blocking majority required 25 votes, or 28.74% of total (Tsebelis, and Yataganas 2002, 289). If the agreement was not proposed by the Commission an additional requirement was that at least 10 member states voted in favour of it. Under the qualified majority voting (QMV) procedure, votes in the Council are weighted, such that populous member states have a greater share of

votes than less-populous ones. The distribution of votes at the time of the Kyoto Protocol is shown in table 4.

Table 4: Distribution of votes in the Council 1995 - 2003

Country	Votes
Germany, France, United Kingdom, Italy	10
Spain	8
Belgium, Netherlands, Greece, Portugal	5
Austria, Sweden	4
Denmark, Ireland, Finland	3
Luxembourg	2
Total	87

Source: Hayes-Renshaw, Van Aken, and Wallace 2006, 180.

The introduction of QMV to include environmental matters meant that it was no longer subject to the “law of the least ambitious program” (Underdal 2002, 25). No single country could any longer veto an agreement. The proposal for a carbon tax suffered under the unanimity requirement (although it is hard to tell if it would have been enacted if QMV was the rule concerning fiscal matters). That the decision rule may shape policy outcomes seems without doubt (Hix, and Høyland 2011, 17). And as Underdal notes, decision-rules and procedures are “... arguably the most important determinant of institutional capacity to aggregate actor preferences into collective decisions” (Underdal 2002, 25). It is, however, not clear how the decision-rule may affect the relationship between signing and ratification. Indeed, it is not unlikely that introduction of QMV may make it harder for negotiators to predict the distribution of preferences in the Council, and thus blur the win-set and increase chances for involuntary defection. Indeed, misjudgement of preference distribution in the US Senate has been offered as an explanation for why the US has not ratified many signed MEAs (Bang 2011, 79). This may be easier with the unanimity rule, in which identification of only one country opposed to an agreement would be enough to send the agreement beyond the win-set. Even so, Delreux (2011, 39) concludes that QMV makes it easier to reach agreement in the Council on the ratification of international agreements. However, most EU policies are not put to the vote even if QMV is applicable, but rather adopted unanimously, a characteristic labelled the “culture of consensus” (Heisenberg 2005). In fact, as argued by

Mattila and Lane (2001, 31), unanimous adoptions are much more common than what rational choice models predict. It is important to note, however, that the “culture of consensus” does not entail that consensus is equivalent to unanimity. The minority needs to be at least partly appeased in some way (Heisenberg 2005, 79). Vote trading may be one such appeasement and is not unlikely to be present in the Council as obstacles to vote trading are not as prominent as they for instance may be in national parliaments (Mattila, and Lane 2001, 49). In other words, the “culture of consensus” does not imply that every member state support an agreement, but rather that no one rejects it (Delreux 2011, 182). A ‘culture of compromise’ may in other words be a more precise description of the widespread practise of unanimity, even when not required (Matilla, and Lane 2001, 41). It may also reflect the ‘duty of cooperation’ and the principle of loyalty (Wessels 2008, 185). Thus, to quote Van Aken (2012, 16): “... the virtual existence of a majority or the absence of a blocking minority in the Council provides momentum for consensus building”. A member state holding a minority view may therefore refrain from recording a negative vote, which in any case would be to no avail because of QMV. In fact, to do so could possibly be costly for the member state as it risks losing influence in further negotiations and upsetting other member states (Van Aken 2012, 13). As Putnam (1988, 438) noted: “... the temptation to defect can be dramatically reduced among players who expect to meet again”. Arguably there are few other states that interact to the extent that EU member states do in an established institutional framework. Repeated interaction over many years may also contribute to a sense of mutual understanding of each other’s positions, thus increasing the willingness to compromise. In fact, it is hard to understand the burden-sharing agreement without taking mutual understanding into account (Delreux 2011, 85). In short, then, it seems that the decision rule may be more important for the set of policies that can be adopted, than for the relationship between signing and ratification.

The Council and the Commission have above been identified as the main actors regarding ratification of MEAs. To be able to understand their role concerning the decision-making process in the EU, it is necessary to know these institutions and how they operate in more detail, a task to which I now turn.

4.3.2 The Council and the Commission

The Council functions as the EU's legislative branch and represents the interests of the member states as it is composed by one minister for every member state. Depending on the subject under consideration ministers with the relevant policy portfolio attend. It is seen as the most powerful of the political institutions of the Union (Schalk et al. 2007, 230), as it is the ultimate decision-maker regarding both signing and ratification. The Council is headed by the Council Presidency, a position held on a 6 month rotational basis by member states. The functions of the Presidency involves setting the agenda, call for a vote and sign adopted acts. It is also responsible for the smooth running of the Council and to mediate between member states in cases of conflict (Hartley 2007, 18; Archick 2013, 2). Although the Presidency is expected to be neutral and not able to advance domestic interests (Schalk et al. 2007, 230), the role of the Presidency has become increasingly important over the last decades as member states try to achieve as much progress on issues important to them during their term (Hartley 2007, 18). Indeed, Schalk et al. (2007, 245) found that "... presidencies in the voting stage have additional leverage in EU decision-making compared with other member states". The Presidency may also serve as the EU negotiator in international negotiations, either alone or as part of the troika that pre-2001 consisted of the previous, current and future Presidency, but where the previous Presidency was replaced by the Commission from 2001 (Delreux 2011, 24-25). The Council is assisted in its work by a Committee of Permanent Representatives of the Member States (COREPER), which consists of member states' ambassadors to the Union (Leal-Arcas 2004, 10). COREPER is in its turn assisted by working parties, established for every policy area the EU deals with.

The Commission consists of one Commissioner per member state who is appointed by his or her national government and approved by the Council for a period of 5 years. One of the Commissioners serves as Commission President, while the others hold distinct policy portfolios according to their expertise (Archick 2013, 2). The Commission's most important activities are to formulate proposals for new policies, to mediate between member states to secure adoption of proposals, to coordinate national policies and to oversee the execution of existing policies (Hartley 2007, 11). An important aspect of the Commission is that its Commissioners cannot take instructions from any government and governments must not seek to influence the Commission in its work (Moussis 2013, 57). This is supposed to secure the independence of the Commission, so that it is in a position to formulate the interests and goals of the Union as a whole. Regarding exclusive competence, the Commission is the negotiator

on behalf of the EU, and often performs this role in agreements of shared competence too, although it is not the only possible negotiator.

4.3.3 The authorisation stage

Before addressing the more complicated arrangements regarding mixed agreements, it is informative to start with a brief outlining of the procedure for agreements where the EU possesses exclusive competence. For such agreements, the decision-making process begins with an initiative from the Commission, in which it proposes an authorisation of itself to negotiate internationally on behalf of the Union. The proposal normally consists of two parts. The first addresses the background for the negotiations and the reasons for the initiative, while the second consists of a draft Council decision that includes the legal basis for the Commission as EU negotiator as well as the proposal for authorisation itself (Delreux 2011, 19). The proposal is then considered in the Council, first in the relevant Council Working Party, second in COREPER and lastly at the ministerial level, which makes the final decision on the authorisation of the Commission as EU negotiator. Decisions for authorisation on environmental matters are for the most part taken by QMV, with the exceptions mentioned above. In addition to making the decision, the Council may also issue a negotiation mandate or directive. The mandate consists of both a procedural and a substantive part. The former includes that the Commission has to report to the member states and that the Commission, member states and the Presidency must cooperate closely on issues of shared competence, while the latter is oriented towards what an acceptable agreement should include, so-called 'red-lines'. In practice this means that an agreement should be compatible with existing EU legislation, and in this light, mandates can be characterised as being quite broad. In short, the mandate determines the result that has to be obtained, but leaves open the strategy, thus leaving a lot of discretion to the negotiators (Thieme 2001, 257).

The above outlined the authorisation stage of negotiations in which the EU has exclusive competence. In mixed agreements, however, things are more complicated. In fact, no clear procedure exist as to who is to represent the EU in the international negotiations (Eeckhout 2004, 215; Delreux 2011, 26). First, the Commission no longer has the exclusive right of initiative, meaning that other actors may negotiate on the behalf of the EU, although authorisation by the Council is still needed. These other actors can either be the Presidency or a so-called 'lead-country' - that is a country with a particular interest in the issue at hand. In

addition, a member state can pursue its own negotiations outside of the EU framework, though this has actually never happened (Verwey 2004, 110). Some important differences between authorisation to the Commission and to the Presidency or a 'lead-country' exists that must be emphasised. Both the Presidency and a 'lead-country' will remain one of the ultimate decision-makers in the Council, that is, they will decide upon signing and ratification. They are in other words present at both Level I and Level II, which may alleviate possible information asymmetries between negotiators and ratifiers. In such cases a mandate is not issued, but instructions are given as position papers. In practice the distinction between mandates and position papers does not matter, and may be considered a *de jure* rather than a *de facto* difference. As a member state only serves as Presidency for a continuous period of 6 months it cannot expect to finish negotiations as these often take years to finish. This entails that the state holding the Presidency must be wary of pursuing own interests that may be incompatible with EU interests as a whole as that very well could backfire. Implicitly this leads to a close relationship between Presidency as negotiator and ratifiers. When a 'lead-country' serve as negotiator it must not only be authorised, but also selected among a possible pool of candidates, thus making the connection between negotiator and ratifiers even closer. Thus, it seems that whoever is EU negotiator, the negotiation position will invariably be a result of the aggregated interests of the Union as a whole, rather than representing particular interests of one member state or EU actor (the Commission).

4.3.4 The negotiation stage

Similarly to the authorisation stage, no clear procedure is established for how the EU is to conduct negotiations of mixed agreements, and much depends on characteristics of the agreement itself. However, it seems that most mixed agreements are negotiated in a similar fashion like agreements where the EU possesses exclusive competence, but the role for member states are more prominent (Eeckhout 2004, 216). Whether the negotiator is the Commission, a 'lead-country' or the Presidency, it does not negotiate independently from (other) member states. In addition to the issuing of a mandate, coordination meetings between EU-actors are organised and member states may directly take part in mixed negotiations, or at least attend the negotiations as observers (Delreux 2011, 50). In the following, I analyse these two aspects of EU negotiation arrangements and their relevance for the relationship between signing and ratification. The analysis is to a large degree based upon Tom Delreux's (2011)

extensive research into the EU as an international environmental negotiator, where he looked at the EU in eight major environmental agreements, of which seven are included in my data.

Coordination meetings

EU coordination meetings may take place in Brussels between negotiation sessions or on the spot during negotiations (Leal-Arcas 2003, 68). The former are held in the working party on international environmental issues, while the latter between negotiators and member states' officials present at the negotiations. On the spot coordination meetings are normally held in the morning and at lunch time, while an evening meeting is held if deemed necessary. As negotiations proceed and the situation requires it, coordination meetings are set up ad-hoc, something that normally occurs when negotiations are approaching the final phases (Delreux 2011, 166). Coordination meetings may be understood as a forum where the EU position can be determined and information shared, as it is a place for interaction between negotiators and ratifiers. First, as the mandate merely addresses 'red-lines', coordination meetings can be used to hammer out a more detailed position, also taking into account developments in the actual negotiations. Second, in order to take a more detailed position, member states are updated on what is happening in the negotiations as meetings usually start with a debriefing from the negotiators about the proceedings. Coordination meetings may thus be considered as a way to reduce information asymmetry between negotiators and ratifiers and involve the latter in the negotiations, and hence reduce the possibility for involuntary defection. Several mechanisms can be identified in this respect. First, coordination meetings may help to secure that negotiators do not go beyond their mandate as member states are able to scrutinise their performance, and if not satisfied try to steer them in the preferred direction. Second, because it lessens information asymmetry, both regarding what is achievable in negotiations and the flexibility of own position, the possibility for surprises in the ratification stage is reduced. Third, if it is assumed that the negotiators want to be successful in their role as representing the EU, meaning to get an agreement ratified, good communication with the ratifiers as a collective is paramount, which is exactly what coordination meetings may provide.

An interesting aspect of coordination meetings is that they are not a forum where the member states (ratifiers) instruct the negotiators. Rather, it is the negotiators that present the EU position, and the member states that react to it (Delreux 2009, 200). It is thus the negotiators that de facto to a great extent determine their own instructions, within the broad framework

provided by a mandate. That said, coordination meetings are not the only arena where negotiators and member states meet and interact. Informal gatherings, so-called 'breakout coordination meetings', among negotiators and certain active and interested member states take place in corridors and in between sessions, in which proposals are discussed and prepared. In fact, a national official stated that much of what happens in coordination meetings have already been decided by key-actors in the corridors (Delreux 2009, 201). This qualifies the view that the negotiators mainly instruct themselves, as their proposals may already have been filtered through central member states' positions. But while it is hard to determine the exact relationship between the negotiators and the member states during coordination meetings, it seems clear that a great degree of interaction between them is taking place.

Attending negotiations

In addition to being involved in negotiations via coordination meetings, member states can also attend the actual international negotiations. In this way they are able to directly evaluate the negotiators performance and thus ensure themselves that the mandate and what has been agreed to in coordination meetings are adhered to. Member state officials have for instance stated that "When the EU negotiator speaks, you prick up your ears to check if he reports what we agreed on" and "You certainly check whether your position is accurately expressed" (Delreux 2009, 198). This is confirmed by EU negotiators that describe the attendance of member states as "... having fifteen mothers-in-law sitting right behind you" (Delreux 2009, 198). However, member states are not able to attend all negotiation meetings, and certainly not in the final stage. In 'Friends of the Chair' negotiations, in which the chair of the international negotiations invites key actors in order to come to agreement on the most contentious issues, member states are not allowed access (except in the capacity of being chairs or co-chairs in working groups). In these settings, then, the member states have to trust that negotiators stick to the EU position as agreed upon in a mandate and more detailed in coordination meetings.

If agreement is reached at the international negotiations the final text is initialled, meaning that negotiating parties agree that this is the outcome of the negotiations. For the EU, this is thus a task for the actor that represented the Union. After initialling, the next step is the signing of the agreement which is normally done at a formal ceremony some time after

negotiations finished. No clear procedure for the signing of agreements exists in the EU as its treaties are silent on the matter (Vogler 1999, 38). In practice, though, the Council designates the Presidency to sign the agreement on behalf of the EU (Delreux 2011, 21). The decision-rule in the Council regarding signing is the same as for authorisation and ratification decisions. It is thus the nature of the agreement that determines the decision-rule. By signing an agreement the EU expresses its intention to be bound by the agreement, but it remains a political and not a legally binding agreement until ratification (Verwey 2004, 116).

4.3.5 Assessment

Reviewing the authorisation stage, it seems that no matter if it is the Commission, the Presidency or a 'lead-country' that serves as EU negotiator, the connection between negotiator and ultimate decision-maker (the Council) is close. This is perhaps most easily seen in the issuing of a mandate (or position papers), but also that they are a subset of the ratifiers in the case of the Presidency or a 'lead-country'. In the case of the Commission, it has as its institutional role to represent the interests of the Union as a whole. Although a mandate is broad, it is by no means ensured that negotiators will strictly adhere to it and not go beyond it. However, it seems a fair implication to make that a mandate strengthens the connection between negotiator and ratifiers. However, in order to be relevant this connection must be followed up during negotiations. And as the discussion of the negotiation phase showed, it seems fair to suggest that the close relationship between negotiators and ratifiers is maintained and perhaps even strengthened. The frequent use of coordination meetings between negotiators and member states, that are the ultimate decision-makers in the Council, exemplifies this. Involvement of the member states at the international negotiations, either through direct attendance or in coordination meetings, enables them to better grasp what was achievable at the international level. In turn, this may increase the chances for an agreement to be accepted by the member states in the Council (Delreux, and Van den Brande 2013, 126).

Involvement of national parliaments in the decision-making process via European Affairs Committees, may contribute to coordination of policy positions between governments in the Council and their national parliaments. It means that national parliaments' opinions are conveyed to the Council, and that Council decisions are not taken isolated from national parliaments' standpoints. By sharing important documents and give parliaments time to

debate issues, before possible voting in the Council is held, the chances for surprise outcomes at either level may be diminished. The overarching principle of the duty of cooperation in the external relations of the Union seems to be reflected in the way it negotiates. And although cooperation between actors at the EU-level inevitably is closer than the cooperation between EU-level actors and national parliaments, the latter is involved in the process. The fact that national parliaments have prompt access to EU documents and time to debate and form an opinion before the EU takes a decision is a testimony to their recognition by the EU. In sum, the EU decision-making system provides not only for close cooperation between actors on the EU-level, but also between the EU -and the domestic level.

Perhaps the most interesting aspect of the negotiation phase is that the Council (by delegation to the Presidency) signs the agreement after negotiations have been finalised. In other words, it is the same actor signing the agreement that at a later stage has to make the decision on ratification (Lacasta, Dessai, and Powroslo 2002, 364). This differs from the procedures of individual countries where these two operations are tasks performed by different actors (typically the executive and the legislative), or at least that certain requirements must be fulfilled for the executive to be allowed to proceed with ratification. Arguably this should have an impact on the relationship between signing and ratification. In fact, it is not unthinkable that this relegates the ratification stage to a formality, and that the threat of non-ratification really is exercised in the signature phase. However, as discussed in the previous chapter, developments in the period between signing and ratification that were unforeseen or unexpected can influence ratification decisions. Therefore, it cannot be argued that the ratification stage always is a formality, but that it also depends on developments between the stages. On the one hand, if nothing in the period between signing and ratification changes the reasoning for being a signatory, the ratification stage in all likelihood is a formality. On the other hand, if one or more critical events takes place that change the rationale for signing in the first place, the ratification stage may indeed function as a control mechanism at the EU-level, even if it is the same actor deciding on both signing and ratification.

In this light, possible ratification failure may be understood as voluntary defection. Since involuntary defection refers to the inability to deliver on a promise this would for the EU mean that the Council is not able to deliver on its own promise. It does not make sense that the Council is unable to deliver on its own promise as long as that only involves voting on ratification. The only way such a situation may happen is if the composition of the Council

changed markedly in the period since signing, so that preference differences were sufficiently large. Although that is theoretically possible, it remains highly unlikely in practice. Therefore, it is more fruitful to interpret ratification failure as voluntary. However, I argue that possible voluntary defection on the part of the EU differs from Putnam's definition of voluntary defection. Rather than interpreting signing as a strategic choice, voluntary defection may be understood to be a consequence of temporal changes. Indeed, it is hard to understand voluntary defection on the part of the EU as strategic. For what could be gained? The EU cannot present ratification failure as involuntary, meaning that third parties clearly know where to place the blame for the failure. Thus, the EU has no way to escape, or at least reduce, great political costs related to renegeing on a promise. In addition, costs related to negotiations and implementation planning would be wasted. In other words, these findings are consistent with a tendency to avoid process failure, as indeed has been characterised as an institutional norm in the EU (Delreux 2011, 182). On average it takes around 4 years from the EU signs until it ratifies because of planning on implementation. Major changes during this period that affect the EU's capability to fulfil its commitments, or interests in being a party to an agreement certainly could have an impact on ratification decisions. Indeed, as shown in the previous chapter, member states became sceptical about ratifying the Kyoto Protocol when they realised that emissions reductions might prove harder to reduce than anticipated. Thus, it may be argued that unforeseen developments or critical events in the period between signing and ratification may be sources of voluntary defection. Ensuring a well-founded negotiation stance is likely to reduce the impact of such unforeseen developments, as well as possessing a high capability to tackle them and take appropriate actions. In any case, such situations are arguably infrequent, thus leaving voluntary defection almost as unlikely as involuntary.

4.4 The Kyoto Protocol decision-making process

4.4.1 The authorisation stage

The Kyoto Protocol was negotiated on behalf of the EU by the troika, composed at the time of the former, current and future presidencies. Luxembourg held the Presidency for the second half of 1997, and thus during negotiations in Kyoto, while the Netherlands and the UK was its partners in the troika. The Netherlands had acted as the sole EU negotiator in the first half of the year that included preparations to the final negotiations, but because of the limited ability

of Luxembourg to negotiate such a multifaceted and complex issue, the troika was used as negotiation arrangement. However, the Council did not formally authorise the negotiation authority of the troika, and it was not contested by any member state. This has been explained by the importance put on presenting a united front in the negotiations and that the same approach already had been used in the previous COPs. In other words it was a continuation of established practise. It was also assumed that the Presidency (or troika) would be able to perform the role as negotiator. That the Commission was not involved in the international negotiations has been explained by the fact that EU competencies regarding climate change at the time were very limited, and member states were concerned that granting the Commission negotiator status would lead it to increase its competence in the area of climate policy (Delreux 2011, 78). As the troika was the negotiator, no mandate was issued, but Environmental Council conclusions provided the basis for EU position papers that were prepared for every article of the Protocol. These included the burden-sharing agreement. Thus, even in the absence of both an authorisation decision and a mandate, close ties between negotiators and ratifiers can be identified. These were possibly strengthened by the fact that negotiators were a subset of the ratifiers, blurring the separation of the two roles that exist when the Commission acts as negotiator. Given this, negotiators still had room to manoeuvre, and respond to new proposals that were presented in Kyoto and therefore impossible to address beforehand. As will be seen in the following section this created tensions between negotiators and ratifiers.

4.4.2 The negotiation stage

The negotiations in Kyoto were held over a period of one and a half week in early December 1997. Negotiations were divided into two phases, in which parties were supposed to find as much common ground as possible during the first week, so as to prepare the way for an agreement when ministers arrived for the last three days the following week (Oberthür, and Ott 1999, 80). Even if it was Luxembourg that held the Presidency in the EU, it was the Netherlands and the UK that were the most prominent EU negotiators in Kyoto reflecting both their bigger size and higher capability. In relation to the Kyoto Protocol the EU held many coordination meetings, both in Brussels and in Kyoto, and multiple expert coordination meetings were organised simultaneously (Delreux 2011, 79). During the negotiations the member states did not take the floor to speak for themselves which indicate that instructions were being adhered to by negotiators. Indeed, member state officials expressed that "... during

negotiations in the Subsidiary Bodies and in the first week of the Kyoto meeting, the Presidency and the troika did not go beyond their room of manoeuvre” (Delreux 2011, 80). However, as the intensity of negotiations increased towards the end of the conference, coordination meetings could not keep up with developments. Even if the EU became known for its “bunker mentality” as its coordination meetings almost were a continuous event, (Oberthür, and Ott 1999, 87), member states complained that it was impossible to follow every development in the negotiations (Delreux 2011, 83). In fact, the Danish Environment Minister publicly complained about the negotiating behaviour of the troika, while a troika member admitted that they might have accepted things that had not been discussed or accepted in coordination meetings. As member states could not attend the sensitive final negotiations on emissions reduction targets as these were conducted in Friends of the Chair-like settings, they had to trust that the negotiators adhered to previously agreed positions. In fact, in Kyoto that did not happen, and the troika both abandoned the 15% reduction target and made commitments on sinks without having renegotiated this with member states beforehand (Delreux 2011, 81). This situation clearly shows that information asymmetries between negotiators and ratifiers in favour of negotiators existed, this being a possible source of involuntary defection. However, ratification failure was not perceived as a real risk as member states never threatened to block ratification on either the EU -or domestic level (Delreux 2011, 80). It is not unthinkable that this, at least partly, was because the abandonment of positions made it easier for the EU to fulfil commitments (less stringent emissions reduction targets and the possibility to use flexible mechanisms). Another factor that perhaps helped alleviate the frustration of member states towards the end was that they acknowledged that the intensity of negotiations made it an almost impossible task to keep them up to date on what happened all the time. In other words, they did not think that the troika on purpose withheld information from them. This may reflect institutional norms developed in the EU, like the ‘culture of consensus’, trust and mutual responsiveness. And as described by Delreux (2011), coordination meetings in Kyoto, at least up to the final phase, indeed featured a cooperative and ‘we’re in it together’ atmosphere. This is consistent with statements both from member state officials and a troika official. The former expressed expectations that the EU negotiator takes its responsibilities in the intensive finalisation of negotiations, while the latter stated that:

We always tried to have consensus and we never singled out a member state. When a country could not directly agree, it really came under pressure from other countries not to block the process (Delreux 2011, 85)

Shortly after the negotiations had finished in Kyoto, the Commission presented its proposal for signature to the Council. In the proposal it was stated that “Although the Protocol as finally adopted is less ambitious than the European Union negotiating objectives, the outcome of the negotiations is positive for the global environment”, and that “The Community should exercise its leadership role also with respect to the signature” (European Commission 1998a, 2). It thus advised the Council to sign the agreement as soon as possible after it was opened for signature in March 1998. The Council heeded the Commission’s advice, and in a decision authorised the Presidency to designate persons to sign the Protocol on the behalf of the Union (European Commission 1998, 3). In the proposal, the Commission stated that it would submit a proposal for ratification in due course and also anticipated that work had to be done regarding implementation of the Protocol, mentioning emissions trading as a major issue.

4.4.3 The ratification stage

In an Environmental Council meeting 4 March 2002, agreement was reached on a decision to ratify the Kyoto Protocol, and that formal adoption of the decision would be taken without debate at a later meeting. The same meeting also opted for coordinated ratification by the Union and its member states, and urged member states “to make every effort to deposit their instruments of ratification or approval at the same time as those of the Community and, as far as possible, no later than 1 June 2002” (Council of the European Union 2002a, 4). The Council then formally ratified the Kyoto Protocol on the proposal of the Commission 25 April 2002, four years after signing it (European Commission 2001a; Council of the European Union 2002b). The decision was taken by unanimity, and although some member states contested that the applied decision-rule was QMV, this was because of concerns that the use of QMV could be extended and not because of opposition to becoming a party to the Protocol (Delreux 2011, 80). In other words, it does not seem as the decision-rule played a major role in the decision to ratify the Protocol. The period of 4 years between signing and ratification is not unusual when it comes to EU decision-making, since proposals from the Commission also deals with implementation. As described in the previous chapter, and anticipated in the

Commission's proposal for signature, preparations for implementation of the Kyoto Protocol required a big effort.

4.4.4 Assessment

Reviewing the decision-making process regarding the Kyoto Protocol, it seems fair to suggest that the relationship between the troika as negotiator and member states as ratifiers were close, both in the authorisation phase and during negotiations. However, tensions between the troika and ratifiers were identified in the final stages of negotiations when the intensity was high, and the troika abandoned positions in the mandate without consulting member states beforehand. However, this situation may be regarded as a result of the pace and intensity of the final negotiations, that Oberthür and Ott (1999, 88) described as “negotiation by exhaustion”. In sum, then, the relation between the troika and member states was mainly characterised by trust, and the EU was able to present a common position. No member state threatened to block ratification on either the EU –or the domestic level, thus leaving ratification failure at least on the EU-level highly unlikely.

5 Explanation 3: The political system in EU member states

5.1 Introduction

While the two previous chapters concerned characteristics of the EU, first regarding its internal and external role in climate policy, and second regarding its decision-making system, the present chapter directs attention to the level of the member states. As MEAs involve shared competence between the EU and the member states, they must be ratified at both levels, and Council decisions often contain reference to, and encouragement of, member state ratification (Verwey 2004, 176). National parliaments are in other words capable of holding their respective governments accountable for their actions in the Council (Thym 2008, 214). It is therefore appropriate to investigate what affects a decision on ratification on the domestic level as well. Even if ratification decisions on the two levels arguably are two sides of the same coin, as each member state is part of the EU's decision, it is possible that a member state does not ratify an agreement that is ratified by the EU as a whole. The reason for the possible discrepancy is that the ratifiers are not the same actor on both levels. While it is the government of every member state that represents the ratifiers at the EU-level, it is the parliament that holds that role at the domestic level. More precisely, the government needs parliamentary approval in order to ratify an MEA. In sum, ratification on the domestic level adds parliamentary approval as a veto point (Tsebelis 1995).

Previous research on US ratification patterns has offered explanations related to the political system. Bang, Hovi and Sprinz (2012) emphasised distinct institutional features with the US system like low party cohesion and discipline and the election of the President for a fixed term as explanations for ratification failure. Considering the ratification record of signed MEAs in the EU and its member states, it may be plausible that features of the political system of EU member states have the opposite effect. The large majority of EU member states practice parliamentarism, thus making it possible that attributes of this way of organising politics makes ratification failure unlikely. In fact, parliaments have been characterised as “rubber-stamp” institutions (Kesgin, and Kaarbo 2010, 21), meaning that they merely approve what the government proposes. Indeed, Thym (2008, 215) notes that it is probably correct that national parliaments are “... nodding through most mixed agreements

without substantive scrutiny or debate”. In the present chapter I investigate if parliamentarism can be a cause for why the EU and its member states rarely fails to ratify MEAs, and if so, what the mechanisms are. The analysis is limited to the 15 countries that were members of the EU at the time of the Kyoto Protocol. The theory of two-level games again serves as theoretical framework, while the rest of the chapter is divided into two sections. The first part discusses ratification requirements in parliamentary systems and investigates if they are consistently undemanding. The second part presents main characteristics of parliamentarism such as mutual dependence and non-separation of powers, and investigates how those may affect the relationship between signing and ratification.

5.2 Theoretical framework

As Putnam's theory of two-level games was presented in the previous chapter it is not repeated. However, while it previously was applied to the EU and its ratification system, it is now applied to the national level, something that requires elaboration. The concepts of voluntary -and involuntary defection are again used as points of departure. Voluntary defection refers to a government that signs an MEA that it later reneges on. An example of voluntary defection would be when the government signs an agreement, but later rejects to ratify it because of egoistical reasons or in order to get a better deal. Its meaning is thus similar to voluntary defection at the EU-level, the difference being that it is not the Council that decides upon signing and ratification, but the national government that represent the signer and the national parliament that decides if the government is allowed to ratify. Involuntary defection means that the government, for some reason, has misunderstood or wrongly predicted the support for the agreement in the national parliament. In other words, it is expected that the agreement will be ratified, while it in fact is rejected. The difference from involuntary defection on the EU level is, as for voluntary defection, that the government needs parliamentary approval in order to ratify.

That the political system a country practices can have consequences for the likelihood of voluntary -and involuntary defection seems unquestionable. Knill, Debus and Heichel (2010, 306) note that there is broad consensus that institutional constraints matter for the ability to adopt new policies, and Cheibub (2007) writes that “institutions do shape incentives”. Institutions, in turn, are shaped by the overarching political system. Through the institutions it creates, the political system can be a factor in making ratification procedures undemanding. If

these are undemanding, the probability for achieving ratification rises. Thus, on the background of the widespread application of parliamentarism in EU member states, a hypothesis can be formulated as:

Hypothesis 3: The practice of parliamentarism reduces the possibility for ratification failure of MEAs.

Parliamentarism may influence decisions on ratification through various mechanisms. First, it might be that ratification requirements themselves are undemanding in parliamentary systems, and second, the origin of the government and its relationship to parliament might affect decisions on ratification. I address these in turn in following.

5.3 Parliamentarism and ratification

5.3.1 Ratification requirements in parliamentary systems

The most important factor regarding ratification is arguably the ratification rule itself. If it can be demonstrated that the requirement for ratification is consistently undemanding in parliamentary systems, one would expect ratification to be likely. Indeed, an undemanding ratification requirement may make involuntary defection practically impossible. For as Weaver and Rockman (1993, 17) write: "... [a] determined parliamentary government can then do as it wishes, so long as it has a legislative majority". In other words, a government as signer of an agreement would not depend on support from separate institutions when taking the decision on ratification. In her book on human rights and international law, Beth Simmons developed an index over the stringency of ratification requirements in countries of the world (Simmons 2009b). Each country is given a score on the index, ranging from 1-4, with increasing stringency in ratification requirements. The basis for the index is the breadth of political support necessary for ratification. While Simmons' purpose is the study of why nations ratify treaties on human rights, the index is based upon descriptions in national constitutions or basic laws for how treaties are formally ratified, and thus not restricted to the area of human rights. An overview of ratification hurdles for the EU-15 is given in table 5 below. A score of 1 indicates that the executive alone decides on ratification, score 2 indicates that a majority in one legislative body is required, score 3 that a super majority is needed in

one legislative body or that a majority is needed in two separate legislative bodies, while a referendum is required if the score is 4.

Table 5: Ratification hurdles in the EU-15

Country	Political system	Ratification hurdle (1-4)	Number of signed MEAs not ratified
Germany	Parliamentarism	3	0
France	Semi-presidentialism	2	2
United Kingdom	Parliamentarism	1.5	3
Italy	Parliamentarism	2	6
Spain	Parliamentarism	3	0
Belgium	Parliamentarism	3	1
Netherlands	Parliamentarism	3	0
Greece	Parliamentarism	2	5
Portugal*	Parliamentarism	2	4
Austria*	Parliamentarism	3	1
Sweden	Parliamentarism	2	0
Denmark**	Parliamentarism	3	1
Ireland*	Parliamentarism	2	4
Finland*	Parliamentarism	2	1
Luxembourg	Parliamentarism	2	0

Source: Simmons (2009b); Lijphart (2012); own data

* Semi-presidential systems, but according to Lijphart (2012) may be regarded as parliamentary because the executive is selected by the legislature and depends on legislative confidence.

** If a treaty involves transfers of sovereignty a $\frac{5}{6}$ majority is required. If not, simple majority is sufficient.

Most of the EU-15 countries score either 2 or 3. In fact, it is only the United Kingdom that scores below 2, and its score of 1.5 reflects that parliamentary approval for ratification is not constitutionally defined (the UK does not have a written constitution), but rather relies on custom and convention. Six of the member states require a supermajority in one legislative body or a majority in two separate legislative bodies, while the remaining 8 require a majority in one legislative body. France, being the only semi-presidential EU member state in a practical sense, can be found in the latter category. From the overview, it seems safe to say, with the exception of the UK, that if a government does not control at least a legislative majority, ratification rules do indeed pose constraints on parliamentary governments. Moreover, requirements in non-parliamentary systems, like the US, Brazil and Argentina score 3 on the scale, which is not tougher than in six EU member states. Hence, it seems that the stringency of the ratification rule itself is not generally tougher in parliamentary systems.

If ratification requirements per se were to have an impact on ratification patterns for MEAs, it is reasonable to expect a correlation between the number of times a country has failed to ratify MEAs and the stringency of the requirement. However, as can be seen in table 5, this is not the case. In fact, the UK, being the country that has the weakest requirement (none constitutionally), has failed to ratify 3 agreements while countries like Germany, Spain and the Netherlands with requirements on the stringent side have a 100% ratification record. Great variation can be identified in countries with a stringency score of 2, ranging from 0 ratification failures to Italy's 6 and Ireland's 4. Thus, a brief comparison of ratification requirements and ratification failures provides no clear pattern. Two suggestions can be made on the basis of the comparison. First, parliamentarism per se does not provide for undemanding ratification requirements, and second, the stringency of the ratification requirements is not a good indicator for ratification patterns. In sum, there is nothing inherent in parliamentary systems that suggest that ratification requirements are weak. Parliamentarism as such can therefore not be said to reduce the possibility for ratification failure in the form of involuntary defection.

However, the above does not tell the whole story. Ratification requirements must be seen in the context of the governing structure. In order for ratification requirements to be relevant, domestic differences in preferences are necessary (Pahre 1997, 150). That is, if a single-party government controls a ratification proof majority in parliament, ratification failure is very unlikely since no relevant preference differences exists, given party cohesion. Ratification failure can then only be voluntary, and as argued in the previous chapter, this raises the costs and thus reduces the likelihood for ratification failure. The requirement would thus be rendered irrelevant. What the overview of ratification requirements does indicate, is that when a country has divided government, it is in principle not easier to overcome ratification requirements in parliamentary systems. The remaining part of the chapter will therefore focus on situations of divided government. Two ways in which parliamentarism nonetheless might be conducive for ratification can be identified. First, it might be the case that the occurrence of divided government is not likely in parliamentary systems, giving the situation of single-party government already described. Second, even if parliamentary systems yield divided government, the ratification hurdle might not be as high as requirements indicate. Mutual dependence and its possible consequence - strong party discipline - may contribute to make the hurdle lower than expected. The following two sections address these suggestions, starting with presenting what constitutes divided government in parliamentary systems.

5.3.2 Parliamentarism and divided government

While the term divided government was originally used in connection with presidential systems when different parties controlled the executive and legislative, it can also be applied to parliamentary systems. Concerning parliamentary systems, then, divided government may refer to two situations. First, when the government is a minority government (either single-party or a coalition) and second, when it is a majority coalition government. In the former disagreements may arise both within the executive (if coalition) and in relation to parliament, while in the latter it is preference differences within the executive that are important. In these situations, then, preferences of a legislative majority and the executive are unlikely to be consistently shared (Milner, and Rosendorff 1997, 127), thus making ratification requirements relevant. Both of these situations may lead to ratification failure, and in the following I will address the variants of divided government in the context of both types of ratification failure. But before discussing the impact that parliamentarism may have on ratification in situations of divided government, the prevalence of divided government in EU member states must be addressed.

In a summary of studies on parliamentary democracies, Strøm (1990) notes that all of them show that minority governments account for a substantial share (around one-third) of all governments (Strøm 1990, 8). Rasch (2004, 118) provides a list over the share of minority governments in 21 European countries from 1945 up to the turn of the millennium. Denmark is the country with by far the highest share of minority government with almost 9 out of 10 governments being minority. Sweden has the second highest share with 68%, whereas Ireland and Italy follow with 43% and 36% respectively. Among the countries with the lowest share of minority governments is found the UK, Germany, Belgium and Austria where minority governments represent less than 10% of total governments. However, in the latter three countries majority coalition governments amount to almost 90% of all governments, whereas in Ireland, Italy, Portugal and Spain the number is over half (Rasch 2004, 119). Without going further into the details about the types of parliamentary governments in EU member states, this brief summary shows that divided government is not unusual. Thus, it seems safe to say that if parliamentarism is to have a positive effect on ratification, it is not because it prevents situations of divided government. The next question, then, is how parliamentarism affects decisions on ratification when government is divided? In order to do so, main characteristics

of parliamentarism are presented, before a discussion of their possible effects on voluntary and involuntary defection follows.

5.3.3 Key characteristics of the relationship between the executive and the legislative in parliamentary systems

Parliamentarism is a way of organising a political system in which the government (the cabinet) grows out of the parliament (Kesgin, and Kaarbo 2010, 21), and it is the same parties that make up the legislature, choose a government and form an opposition (Pahre 1997, 148). Müller, Bergman and Strøm (2003, 13) provide a minimal definition:

... parliamentary government is a system of government in which the Prime Minister and his or her cabinet are accountable to any majority of the members of parliament and can be voted out of office by the latter.

This definition is similar to Braüninger and Debus (2009, 805) who writes that “... prime ministers in parliamentary systems can stay in power only as long as they command a legislative majority”. But it is not only parliament that has powers towards the government. A government may possess the power to dissolve parliament as well, although there is great variation in this capability across parliamentary systems (Lijphart 2012, 114).

Parliamentarism can thus be described as a system of mutual dependence and fusion of powers (Cheibub 2007, 49). The exact way a government forms varies among parliamentary systems, indeed in most cases it is actually not selected by parliament, but the important point for our purpose is that it leads to a non-separation of powers. The non-separation of powers may be enhanced if the same persons forming the cabinet also retain their seat in the parliament, although parliamentary systems vary also in this respect. (Lijphart 2012, 113).

The pivotal characteristic of a parliamentary system can thus be summarised as being that the government is accountable to parliament, and must be tolerated by it or risk being voted out of office (Müller, Bergman, and Strøm 2003, 10).

Another characteristic of parliamentarism is that the executive is of a collective or collegial nature, implying that the most important decisions are made by the cabinet as a whole (Lijphart 2012, 107). Thus, not only a close connection between the government and the parliament can be identified, but also within the government. The former led Pahre (1997) to emphasise that government preferences are not exclusively exogenously formed, but rather

endogenously. By this it is meant that government preferences are not independent from the preferences of the legislative, but rather a result of interaction between them. Particularly in a situation of divided government where the executive is not able to adopt policies without support from an opposition, the parliament may be capable of tying the executive's hands. This line of thinking may be extended to situations of majority coalition governments as well, as the government position would be a result of endogenous bargaining between coalition partners. Of course, the legislative may be capable of binding the executive's hands in a non-parliamentary system as well, but the stakes may be considered higher for the executive in parliamentary systems since it risks being deposed (Cheibub 2007, 53).

Because of the higher stakes, enforcement of party cohesion and party discipline is regarded as a key feature of the cabinet-legislative relationship (Keggin, and Kaarbo 2010, 21). In fact, party discipline is regarded as an important condition for a government's survival (Cheibub 2007, 10). Government parties must be well organised, cohesive and disciplined in order to ensure stable majorities, and multi-party governments have to employ means to deal with differences within the coalition (Braüninger, and Debus 2009, 805). As Sartori (1997, 190) notes "... calls for the parliamentary party to vote in unison" is frequent. It is usual to have party whips that enforce the party line, and parliamentarians may on the one hand be rewarded by the party for sticking to the party position. On the other hand, a party may punish actual or potential defectors by rejecting their re-nomination for the next election (Braüninger, and Debus 2009, 805). However, parties are not unitary actors, and can only be viewed as such to the extent that party leaders are able to maintain disciplined behaviour (Laver 1999, 28). Assuming party discipline, voting outcomes in parliament is not difficult to predict. Instead of predicting what each legislator might vote, it is enough to predict each party's vote. The number of predictions, and thus possible veto-players, are reduced, and with it the uncertainty related to voting outcomes. However, the argument that it is parliamentarism per se that leads to party discipline is disputed. Cheibub (2007) argues that it wrongly assumes that politicians are purely office-seekers and only desire to remain in office. If this was the case, then minority -or oversized governments should not exist, and we have already established that they do. Thus, according to Cheibub, parliamentarism is not the indispensable factor explaining party discipline. That said, he concludes that "party discipline may be higher, on average, in parliamentary than in presidential systems" (Cheibub 2007, 134). Based upon that, parliamentarism may be one route to achieve party discipline, albeit not the only one. And although complete adherence to the party line cannot be guaranteed, the discussion

points in the direction that parliamentarism gives quite strong incentives to enforce party discipline.

After reviewing main characteristics of parliamentarism, it is now time to investigate its influence on ratification by discussing the forms of divided government in the context of voluntary -and involuntary defection.

Parliamentarism and voluntary defection

Voluntary defection refers to retraction of earlier promises as given through signature of agreements. It is in other words a form of ratification failure that can happen in both types of divided government possible in parliamentarism. To illustrate how parliamentarism may reduce possibility for voluntary defection, a comparison with the US may be informative. According to Bang, Hovi and Sprinz (2012, 5), “US presidents have considerably more freedom to pursue [other goals than policy outcomes] than prime ministers in parliamentary systems”. The US president can therefore sign MEAs in order to demonstrate his preference for environment-friendly policies, not being dependent upon their possible ratification. It has been argued that this was what happened when the US failed to ratify the Kyoto Protocol, as it was never submitted to the Senate to get approval for ratification (Hovi, Sprinz, and Bang 2012). According to Lantis (2005, 411): “Clinton knew full well that the protocol would be ‘dead on arrival’ in the U.S. Senate, and instead chose to postpone serious consideration of the agreement until the political winds might change”. Signing the Protocol can in other words be interpreted as a way for the administration to show a climate friendly face. Rather than achieving a ratifiable agreement, at least for the foreseeable future, other considerations motivated the signing. The challenge, then, is to assess the possibility and likelihood for such opportunistic behaviour in a parliamentary system. Is a parliamentary government able to pursue own interests that are in opposition to a parliamentary majority?

Regarding a government that controls a parliamentary majority that can secure ratification, voluntary defection seems unlikely. One reason is that it is nearly impossible to misrepresent it as involuntary, and thus shift the blame away from oneself. In this regard, then, a majority coalition government is similar to a single-party majority government. The credibility loss, both domestically and towards negotiation partners, can therefore be considered larger when little doubt exists about the responsibility for ratification failure. In the case of intra-government disagreements, these are likely to be dealt with before signing an agreement,

rather than before ratification. Thus, the control-mechanism that ratification represents is moved to the stage of signing. However, it is not unthinkable, that critical events may take place during the period between signing and ratification. Such events may change the rationale for signing in the first place, thus making voluntary defection a plausible outcome. On the other hand, in such a situation the loss of credibility may not be great, because negotiation partners and domestic actors may be aware of the change in ‘facts on the ground’. It is also possible that the critical event affected other countries, such that they too would prefer to renege on the signed agreement, thus reducing credibility costs further. Moreover, it is not likely that critical events are frequent in the relatively short period between signing and ratification. For that reason, voluntary defection by a majority coalition government remains unlikely.

As the foregoing description of main characteristics of parliamentarism showed, the relationship between the executive and legislative is one of mutual dependence and accountability. As a consequence, a minority government is in no position to unilaterally follow own preferences without taking into account the opinion of a parliamentary majority. If a government was to do that, it takes the risk of being voted out of office. If the matter at hand is considered to be very important or defining for a government, it might be willing to take the risk and go against a parliamentary majority. However, consistent with the widely acknowledged attribute given to politicians, namely that they want to remain in office, such situations are rare. Moreover, as it is possible for a minority government to present voluntary defection as involuntary, it cannot escape the fact that it risks to be voted out of office. Shifting the blame, then, can only be a poor consolation, leaving voluntary defection unlikely.

Another critical event that does not change the ‘facts on the ground’, but rather the ‘facts of government’, meaning a change of government, can surely lead to voluntary defection. However, it may be regarded as a different variant of voluntary defection because of the change of government. It is in other words not the same actor that chose to sign the agreement that later decides not to ratify it. Regardless the variant of voluntary defection, the outcome may be that a signed agreement is not ratified. A condition for this happening, though, is that sufficient preference distances between the new and the old government exist. However, regarding international agreements, that MEAs are, it has been argued that factionalism is less common than in domestic politics, reflecting a view that factions stop their politics at the border (Keggin, and Kaarbo 2010, 21). Moreover, LeBlang and Chan (2003) found that

proportional representation systems, which all of the EU-15 except the UK practices, promote consultation and consensus-based policies. And although, the authors were investigating participation in wars, it is not unlikely that their finding also holds for decisions regarding environmental issues, even if these arguably are considered less monumental decisions. To the extent that a country seeks a consensus-based environmental policy, then, a change of government should not impact a ratification decision.

Parliamentarism and involuntary defection

Involuntary defection refers to the inability to deliver on a promise (Putnam 1988, 438). In other words, if a government is not able to keep the promise of becoming a party to an agreement by it has signed. Ratification failure is thus very unlikely to happen in a situation with a ratification proof majority coalition government, as differences *within* a government are likely to be dealt with before signing an agreement in the first place. Referring to the doctrine of collective cabinet responsibility, Laver (1999) writes

... once some matter has been decided by coalition partners in cabinet, however controversial and divisive this decision was, then all cabinet members are collectively responsible for implementing the decision (Laver 1999, 13).

The doctrine relies on the ability of party leaders to enforce party representatives to comply with decisions, something that arguably is easier in parliamentary systems, particularly if the same persons can be members of both government and parliament. Laver (1999) challenges the doctrine and goes on to show that party leaders may not be able to deliver on promises (may not even want to) given to coalition partners. This can happen if a critical event takes place, meaning an event that leads to government change or breakdown of voting cohesion (Baron 1998, 608). However, Baron describes a 'critical event' as extreme unlikely. Laver's discussion focuses on domestic politics, which cannot be represented as a two-level game. Therefore, the two-step procedure of signing and ratification is not applicable. As a consequence it can be claimed that critical events regarding MEAs and majority coalition governments, will likely be dealt with at the stage of signing and not the ratification stage. For that reason, involuntary defection by a majority coalition government is unlikely.

Regarding minority governments and involuntary defection it may be illustrative to start with a brief comparison with the US. Most non-ratified MEAs in the US can be regarded as

involuntary, as they have stalled in the Senate (Bang, Hovi, and Sprinz 2012, 2). One reason offered by the authors, in addition to particular Senate rules, is the low party cohesion and party discipline. The claim is based upon the propensity of senators to vote according to constituency interests even if it goes against the overall party line. As constituency interests may show great variation over the 50 states, this makes legislative outcomes hard to predict in the Senate (Bang, Hovi, and Sprinz 2012, 3). Two aspects of parliamentarism may be considered to reduce the possibility for a similar situation. First, if a government signs and submits an agreement that is rejected by parliament, either because of disregard for the parliament or miscalculations of support, it risks a motion of no confidence. Being as sure as possible that sufficient support for the agreement can be mustered in parliament is therefore very important. Perhaps more so than in the presidential system of the US, where the president does not face such sanctions and the stakes of non-ratification therefore can be considered as lower. A government may thus be more reluctant to sign an agreement they are not sure has sufficient parliamentary support. Second, enforcement of party cohesion and party discipline is regarded a key feature of cabinet-legislative relationship (Kesgin, and Kaarbo 2010, 21). As a consequence, predicting voting outcomes may be easier, and helps assuring a government that it has the sufficient support. In sum, then, it can be suggested that parliamentarism does indeed reduce possibility for involuntary defection.

5.4 Assessment

The discussion on the impact parliamentarism may have on the relationship between signing and ratification has inevitably been theoretical. However, it has revealed several interesting findings. Overall, it seems that the main characteristics of parliamentarism, like mutual dependence, parliamentary accountability and vote of no-confidence, contribute to reducing the chances for ratification failure. Ratification requirements, per se, were not found to be particularly weak in parliamentary systems and could therefore not account for high ratification rates. Instead, an analysis based upon divided government and the two forms of ratification failure was found rewarding. The main findings are summarised in figure 3 below.

Figure 3: Divided government and ratification failure

		Divided government	
		Majority coalition government	Minority (coalition) government
Ratification failure	Voluntary	Unlikely. Ratification only depends on government parties.	Possible, but most likely in special cases.
	Involuntary	Likely to be resolved before signature.	Unlikely. Risks vote of no confidence.

A high ratification rate is perhaps most easily explained when the government is a majority coalition, as is the situation in the left column of the table. The upper-left pane represents a coalition government that voluntarily defects. The reason why this scenario is unlikely can be illustrated by the question: Why sign in the first place? Retracting on a promise could in this situation not be misrepresented as involuntary, and the blame would therefore be squarely placed on the government, hurting its credibility both domestically and internationally. However, if a critical event takes place in the period between signing and and ratification, voluntary defection is a possible scenario. Even so, given that critical events are infrequent, the argument that voluntary defection by a majority coalition government is unlikely stands. In the lower left pane, a majority coalition involuntarily defects. This can only happen in a situation of *intra*-government disagreement. However, it is likely that such disagreements would be resolved before signing. The costs related to not signing compared to non-ratification of a signed agreement is likely to be higher, both in the form of credibility loss and sunk political costs devoted to negotiation and implementation plans.

The upper right pane represents a minority government that voluntarily defects. This is a possible scenario. Such a government is in a position to misrepresent ratification failure as involuntary and thus shift the blame for ratification failure. In other words it does not face the same credibility costs, and may actually improve its (environmental) reputation, as arguably the Clinton administration sought by signing the Kyoto Protocol. The ability to present the ratification failure as involuntary may therefore be central to its likelihood. Such a strategy is risky, however, as credibility is related to the ability to deliver on a promise (Putnam 1988,

439). Moreover, the risk is great in parliamentary systems as the government risks a vote of no confidence. To the extent that a government fears that parliament might hold a vote of no confidence, ratification failure can be reduced to comprise only agreements that governments deem important enough to risk being voted out of office. The lower-right pane represents a minority government that involuntarily defects. Even if a government in this case cannot be blamed for ratification failure, it is not a likely outcome. The reason for which, yet again can be found in the risk of being voted out of office. As a minority government depends on being tolerated by a parliamentary majority, it is likely that involuntary defection only happens when an agreement is deemed as so crucial for the government that it is willing to risk a vote of no confidence.

Parliamentarism seems to contribute to a low rate of ratification failures. The main mechanism is the mutual dependence between the executive and the legislative, where the executive risks to be voted out of office by a parliamentary majority. Although the discussion highlighted that remaining in office may not be the only concern politicians have, such situations are likely to be special cases and therefore infrequent. Moreover, mutual dependence may induce a high degree of party discipline. If successfully enforced, party discipline makes predictions of voting behaviour less uncertain. In that way, possible misunderstandings and misperceptions are reduced, and not likely to be causes of failure for ratification. Although parliamentarism is no guarantee for avoiding ratification failure, the discussion in this chapter reveals that it has inherent features that make rejection of signed agreements less likely. This corresponds to research on ratification of the Kyoto Protocol by McLean and Stone (2012), where they found that parliamentary political systems ratified sooner than others. In sum, then, parliamentarism may be suggested to reduce the possibility of ratification failure.

5.5 Ratification of the Kyoto Protocol in Germany and the UK

In order to concretise the general implications of parliamentarism on ratification decisions outline above, it may be instructive to look closer at the ratification process of the Kyoto Protocol in EU member states. I choose Germany and the UK for this purpose. Germany is arguably the most important EU member state because of its size both in terms of population and the economy and as the major emitter of greenhouse gases in Europe. The UK is also a

big EU member state, but practises a very different version of parliamentarism than Germany. Moreover, it was Germany and the UK that were responsible for almost all of the net emissions reductions necessary to achieve the EU commitment under the Kyoto Protocol (Sprinz 2001, 15), thus making their ratification pivotal. In the following, I address the ratification process in these two countries in the context of parliamentarism.

5.5.1 Germany

Germany is a federal parliamentary republic and practices a bicameral system, where the two chambers are the Bundestag (parliament) and the Bundesrat (upper house). The Bundestag is popularly elected and the chamber from which the government originates, while members of the Bundesrat are chosen by the Länder governments and thus represents their respective Länder. The Bundestag is the principal legislative body that has to approve the government's policy and its ratification of international agreements are thus required (Frowein, and Hahn 1991, 363). The role of the Bundesrat is more ambiguous, but its possible influence on policy outcomes depends on the type of legislation. For most climate related bills, the Bundesrat only has the power to object, a power that can be overruled by a majority in the Bundestag (Mehling et al. 2013, 36). It is thus the Bundestag that is the pivotal player regarding ratification of MEAs and thus the Kyoto Protocol. That said, the Bundestag is generally subordinate to the government concerning foreign affairs, possibly explaining the lack of attention given to the Bundestag in these matters (Jäger et al. 2009, 418-419). Every government since 1949 has consisted of a coalition of parties (Mehling et al. 2013, 36) and at least since 1970 every government has commanded a majority in the Bundestag. Majority in the Bundesrat in the same period was less common as it only occurred in 9 out of 35 years (Manow, and Burkhart 2007, 168). But for the reasons given above, diverging majorities in the Bundesrat and the Bundestag does not play a central role regarding climate policy. Germany can thus be situated in the left column in figure 3.

Being a large emitter of greenhouse gases, surprisingly little debate on climate change issues has surfaced in Germany. In fact, most of the discussion was undertaken some time before the Kyoto Protocol could be envisioned. Two Enquête Commissions of the Bundestag in the late 1980s and early 1990s laid the basis for a German emissions reductions target. The Commissions included eleven members from all major parties in the Bundestag along with eleven climate change scientists, thus illustrating a consensus-driven approach to the issue

(Sprinz 2001, 13). The Commission released a report in 1988 that called for 30% emissions reductions by 2005 (Lantis 2009, 99). This illustrates the broad support an ambitious climate policy had in Germany. As a general point concerning foreign affairs Jäger et al. (2009, 419) note: “The government regularly consults with key members of the parliament and tries to anticipate the parliament’s reactions to those governmental moves that require parliamentary approval”. This is consistent with Manow’s and Burkhart’s (2007, 169) finding that the government anticipates vetoes and shows a propensity to compromise in such situations.

The Bundestag voted unanimously to ratify the Kyoto Protocol on 22 March 2002, and the Bundesrat passed the Protocol on 5 April 2002. Germany thus ratified the Protocol shortly after the Environmental Council in the EU on 4 March 2002 reached agreement on a decision to ratify the Kyoto Protocol. The lack of a vibrant debate on the Kyoto Protocol itself and the unanimous acceptance reflects, according to Weidner (2005) the broad consensus on climate policy in Germany. Similarly, Sprinz and Weiß (2001, 85) writes that “... ratification of international accords does not pose a problem in Germany due to the lack of political cleavage in Germany on climate policy ...”. Sprinz and Weiß also emphasise that the government at the time controlled a majority in the Bundestag and as Lantis (2009, 98) writes: “The chancellor knew that the legislative majority he enjoyed would be sufficient to ratify the Kyoto Protocol”. To quote Jäger et al. (2009, 419), because the main political fault line

... is not between the executive and legislative branches. Rather, it is between the governing coalition, which spans both the federal executive and the majority of the Bundestag, on the one hand and the opposition parties in parliament on the other hand. Thus, domestic ratification of the government’s foreign policy is usually assured, at least as far as the Bundestag is concerned.

The above quote clearly relates a ratification decision to the main characteristic of parliamentarism, namely the non-separation of powers. In Germany this has led to the forming of majority coalition governments, which in turn reduces the ratification hurdle, given the tendency of party discipline. That said, since broad consensus existed on the issue of climate change - as the unanimous approval of the Kyoto Protocol illustrates - it may be likely that the outcome would have been the same independent of the political system. However, the discussion of parliamentarism in Germany revealed that ratification failure should be unlikely as the government usually is a majority coalition government and thus belong in the left column of figure 3.

5.5.2 United Kingdom

The United Kingdom is a constitutional monarchy with a parliamentary system of governance. Parliament consists of two chambers, namely the House of Commons and the House of Lords. However, almost all legislative power belongs to the former, while the latter merely possesses the power to delay legislation (Lijphart 2012, 18). Parliament thus almost exclusively refers to the House of Commons, and in the following I adopt this usage. For our purpose, then, the system practised may be treated as unicameral. The British parliamentary system is characterised by a concentration of executive power in one-party and bare-majority cabinets, as well as cabinet dominance (Lijphart 2012, 10-12). This is reflected in the fact that every post-war government except two, have been one-party majority governments, which means that the UK falls outside figure 3 as divided government normally does not occur. Add to that the high likelihood for partisan voting as party discipline is often strictly enforced (Whiteley, and Seyd 1999, 53) and ratification becomes highly likely. In fact, before the Constitutional Reform and Governance Act of 2010 came into force, parliament had no role regarding the ratification of treaties. Ratification was in other words a prerogative of the government (Thorp 2011, 2). Indeed, the government did not even have to inform or involve parliament in the treaty-making or ratification decision (Thorp 2009, 1). However, the informal ‘Ponsonby rule’ from 1924 that stated that a treaty subject to ratification to be laid before parliament for at least 21 sitting days before ratification, developed into constitutional practise. This rule leaves parliament with a chance to scrutinise treaties before ratification by the government, but does not amount to a power to reject treaties. Nor is a debate or a vote on a treaty required, as this would depend on “people to make a noise” to cite Jack Straw, at the time Secretary of State for Justice (Thorp 2009, 3).

The Kyoto Protocol was laid before parliament on 7 March 2002, three days after the decision in the Environmental Council in the EU. In her statement in that regard, Margaret Beckett, at the time Secretary of State for Environment, Food and Rural Affairs, said “The protocol will be before Parliament for the next 21 sitting days. At the end of that period, my right hon. Friend the Foreign Secretary will sign the UK's instrument of ratification” (House of Commons Debate, 2002). This quote clearly exemplifies the limited role played by the parliament. That said, ratification of the Protocol was not controversial as the replies following Ms. Beckett’s statement suggests. Indeed, they welcomed the decision on ratification. As was the case for Germany, then, because of agreement across party lines, the

Protocol most likely would have been ratified independent of the political system. However, it seems fair to suggest that the British version of parliamentarism is particularly suited to avoid ratification failures. This is confirmed by the fact that divided government is most unusual, and as argued in section 5.3.1, single party majority governments leave ratification failure very unlikely. In fact, the only variant of ratification failure would be voluntary defection, similar to what was found at the EU-level.

5.6 Assessment

Ratification of the Kyoto Protocol seems to have been a formality in both Germany and the UK. This is reflected in the political consensus concerning the climate change issue in both countries and the importance put on making the Kyoto Protocol a reality. It can therefore be suggested that parliamentarism did not play a central role regarding ratification of the Kyoto Protocol. However, what the discussion does suggest is that both varieties of parliamentarism practised in Germany and the UK leaves ratification failure unlikely. In other words they confirm what was anticipated in the first part of this chapter.

6 Discussion of findings and conclusions

The previous three chapters analysed why the EU rarely fails to ratify MEAs from three different perspectives. The present chapter aims to bring these aspects together and thus provide a more comprehensive explanation. But first, the findings of the preceding chapters are summarised.

6.1 Findings

Chapter 3 investigated if EU leadership ambition regarding climate change played a role in its ratification of the Kyoto Protocol. It was hypothesised that leadership ambition regarding climate change led to unilateral action that in turn made ratification failure of the Kyoto Protocol unlikely. That a leadership ambition regarding climate change existed seems to be well supported. Official documents, independent analysts and actual actions all point in the same direction. High ambitions could first be identified in the emissions reductions target of 15% that, despite prolonged negotiations, led to the burden-sharing agreement. Moreover, preparations for an emissions trading system were started shortly after the signing of the Protocol. As the EU had been reluctant to such market-based mechanisms during negotiations, the turnaround is remarkable. It may therefore be claimed that without a leadership ambition, the development of the ETS would be less likely. Why would the EU spend a lot of resources developing it, if it did not have high ambitions of adhering to the Protocol? Moreover, on the international scene, the EU made big efforts to convince other countries to ratify the Protocol (Groenleer, van Schaik 2007, 985). Clearly, then, a leadership ambition can be identified, and it is likely that it led to unilateral action, exemplified first by the burden-sharing agreement and second by the ETS. The main question, however, is what consequences the leadership ambition had for ratification? As the discussion in chapter 3 showed, the Kyoto Protocol resulted in significantly weaker commitments than what the EU already had negotiated internally. Consequently, both signing and ratification should not pose a major problem. However, as projections in the period between signing and ratification showed, the EU would not meet the targets stipulated in the agreement. Thus, the easy way out would have been to not ratify the agreement. That the EU nonetheless proceeded with

ratification as the first large emissions emitter, suggests that leadership ambition regarding climate change played a role in the decision.

Chapter 4 directed the attention to the EU decision-making system for MEAs. It was hypothesised that the decision-making system reduces the possibility for ratification failure of signed agreements. The main finding of the investigation into the EU decision-making system was that it is the same actor - the Council - that takes the decision on both signing and ratification. Failure of ratification in the form of involuntary defection was therefore found to be highly unlikely. An interesting aspect of the decision-making system was that it encourages close cooperation between actors by forcing them into an interdependent relationship. Negotiation mandates, and close contact and coordination during negotiations are both expressions of the interdependency. Consequently, the negotiator is not likely to be in a position to express own opinions that might be in opposition to an overall EU position. However, if negotiators regardless were able to do that, the signing of an agreement would have to be accepted by the Council. Thus, it is likely that an agreement that is not acceptable to ratifiers will not be signed in the first place, thus moving the control-mechanism of ratification to the stage of signing. In other words, the decision-making system of the EU increases the probability that ratification automatically follows signing, as much of the literature on ratification has taken for granted. Changes in the period between signing and ratification were identified as possible sources of ratification failure as voluntary defection. These changes might be events that alter the reasoning for signing the agreement in the first place. However, it was argued that such events are inherently infrequent and should therefore merely represent deviations from the norm.

Chapter 5 shifted focus from the level of the EU to the domestic level. Because MEAs are mixed agreements in the EU, they must also be ratified by each member state, according to their respective procedures, adding a complicating factor to the ratification game. It was hypothesised that parliamentary political systems reduces the possibility for ratification failure. Although parliamentary systems do not generally provide for undemanding ratification requirements, they feature characteristics that are capable of making ratification less of a hurdle than formal requirements give an impression of. Most importantly is the mutual dependence between the government and the parliament, where the government risks to be voted out of office if it disregards a parliamentary majority. Next, two possible variants of divided government were discussed in relation to ratification failure. It was found that

failure to ratify was unlikely in both variants, particularly if party discipline is successively enforced. However, critical events in the period between signing and ratification were emphasised as possible sources of ratification failure. Two types of such events were identified. The first regarding ‘facts on the ground’, meaning events that change the rationale for signing in the first place, and the second regarding ‘facts of government’, meaning a change of government. Although, both of these critical events may indeed represent causes of ratification failure, they arguably are inherently infrequent. Thus, a parliamentary system seems to overall reduce the possibility of ratification failure. Finally, the ratification process of the Kyoto Protocol in Germany and the UK were examined. And although the investigation revealed that the agreement most likely would have been ratified regardless of the political system because of cross-party agreement, it strengthened points made in the theoretical discussion.

6.2 Towards a comprehensive explanation

Support for all three hypotheses was found in the previous chapters. In this section I turn the attention back to the research question and try to integrate insights gained in the analyses into a comprehensive explanation. To remind the reader, I repeat the research question:

What explains that the EU rarely fails to ratify signed multilateral environmental agreements?

In the introduction it was noted that the EU is made up of more heterogeneous states than the US, and that it does not seem unreasonable to expect that to make it more difficult to agree upon anything at all. Indeed, the rather complex decision-making system regarding MEAs does not refute that expectation, and neither does the prolonged burden-sharing negotiations. However, expected difficulty in reaching agreement within the Union may have a different effect. Indeed, because agreement can be hard to reach, it is as far as possible ensured that no member state has incentives not to ratify when agreement is reached in the EU. This is reflected in the striving for consensus and compromise that characterises how the Union negotiates. The striving for consensus and compromise encompasses all external relations of the Union, but perhaps even more so for mixed agreements, since they need to be ratified at the domestic level in addition to the EU-level. If consensus and a common position is not achievable it seems more likely that the EU does not sign an agreement in the first place.

Indeed, this is underscored by the fact that it is the same actor (the Council) that has the last word regarding both signing and ratification. Consequently, involuntary defection is not possible, and it thus seems to be the threat of national parliaments' non-ratification that poses the major challenge for the EU's participation in signed MEAs. Although it is possible that not all EU member states are parties to MEAs that the EU is a party to, such a situation clearly is complicated, and something the EU wants to avoid. If several national parliaments fail to ratify an agreement, the result may be that the EU itself does not ratify. Particularly when agreements involve joint commitments like the Kyoto Protocol did, it may be enough that only one member state fails to ratify. An indication of the importance for participation of all member states is that the Council normally ratifies a mixed agreement only after every member state has done so (Eeckhout 2004, 218; De Baere 2008, 240). However, that may not always be the case, and regarding the Kyoto Protocol the Council made the decision to ratify before every member state had done so. That said, the EU did wait until every member state had ratified, before doing the final ratification act of depositing its instrument of ratification simultaneously with all member states. That all member states ratify MEAs is also important for the EU as it increases its voting power - given that the EU manages to vote en bloc - in possible future meetings of the parties (Delreux 2011, 170). In other words, it is of major importance that all member states also are parties. Several mechanisms contribute to the coordination of policies between the EU -and the domestic level, thus reducing the possibility of ratification failure. The previous analyses have shown that the decision-making system at both the EU -and the domestic level are conducive for cooperation. In the following I take the broad view and discuss how the EU decision-making system facilitates for cooperation and how it interacts with the national-level, such that the chances of ratification failure are reduced at both levels.

Both Putnam (1988) and Delreux (2011) discuss what effects international pressure might have on states ratification decisions. Putnam named the phenomenon 'reverberation', while Delreux called it 'international compellingness'. No matter what it is called, the rationale is that in an interdependent world, it matters what others do. As member states in the EU may be said to be particularly interconnected, the effects of reverberation may be enhanced.

Consequently, if a majority in favour of an MEA exists at the EU-level, this reverberates to the domestic level and parliaments. As Putnam (1988, 455) writes: "Suasive reverberation is more likely among countries with close relations ...". In connection to the Kyoto Protocol, Delreux (2011, 83-84) quotes member state representatives that expressed: "We really felt a

collective pressure” and “At some point, the political costs were too high to stop it [the Kyoto Protocol]”.

The effect that the EU as such can have on domestic ratification decision is further underscored by quantitative research. Perrin and Bernauer (2010, 422) claim that ratification behaviour of states is influenced by other states or specific types of other states (like neighbouring states). Moreover, McLean and Stone (2012) find that one of the most powerful explanations for ratification of the Kyoto Protocol was being an EU-member. It seems clear, then, that the EU as such has an effect on domestic ratification decisions that increases the chances that they will be in line with the overall EU position. On the other hand, if an agreement concerns an area of particular importance to a member state it is not certain that the effects discussed above are powerful enough. However, within the Council, issues can be linked synergistically to use Putnam’s wording (Putnam 1988, 456). Although issue linkages and side payments also are a possibility internationally, they can arguably play a greater role within the Union. The reason why, is that the EU is a complex entity that covers a whole range of issues discussed and bargained over between member states. Representatives from the same states meet each other numerous times a year, discussing and bargaining over a whole range of subjects of differing importance to each member state. In fact, the burden-sharing agreement can be interpreted as a side payment, where the member states most interested in achieving an agreement took on tougher reductions than others. Moreover, through the EU, the member states are forced into an interdependent relationship, and although it is theoretically possible to leave the Union, this has become more difficult and costly because of already extensive established ties. In addition to increasing interdependence between member states, the Union may also foster a process of socialisation. The Council, for instance, holds three formal meetings per year in addition to informal meetings. In these meetings, friendships and alliances for the common interest of the Union are formed (Moussis 2013, 69). Consequently, an atmosphere of partnership may be established (Delreux 2011, 51). Thus, it is not unlikely that a sense of a common “European interest” develops. Indeed, German Environment Minister from 1998-2005, Jurgen Trittin, wrote that “Germany does not participate in such negotiations [international environmental negotiations] as a nation state“ and “Independent national environmental policy no longer exists inside the European Union” (Trittin 2004, 24). Thus, the EU provides the institutional arena where deals, that would be unlikely outside the EU arena, can be reached. The notion of defection as ratification failure should therefore be adjusted to the institutional framework of the EU, where other

mechanisms are at work than on the anarchic international scene. Indeed, the EU seems to live up to Putnam's (1988, 438) prediction that the temptation to defect "... can be dramatically reduced among players who expect to meet again". In short, the effects of reverberation and repeated meetings seem to be strengthened in the institutional framework of the EU.

The way the EU negotiates, with emphasis on cooperation and consensus, reflects the 'duty of cooperation' as the fundamental principle guiding external relations. In fact, as was discussed in chapter 4, the EU decision-making system not only tries to achieve consensus between members of the Council, but also between the EU -and the domestic level. In the words of De Baere (2008, 254-255) the

... inter-institutional dialogue within the Community is subject to the same mutual duties of sincere cooperation as those that govern relations between Member States and the Community institutions.

De Baere (2008, 255) continues by stating that the mutual duties are of "... vital importance for the harmonious further development of Community external relations". It may even be argued that if a member state does not ratify a mixed agreement it violates the duty of cooperation. The argument is that, if a member state has expressed its willingness to enter into a binding agreement by signing it, it should not hold back on ratification (Eeckhout 2004, 219). However, against that view, it may be argued that domestic constitutional procedures must be taken seriously. Eeckhout (2004) therefore concludes that the reason for ratification failure must be addressed, in order to decide if a member state violates the duty of cooperation. If it is because the member state tries to extract last-minute concessions or get a more favourable deal, it may very well be that it represents a breach of the duty. If, on the other hand, the national parliament is opposed to the agreement as such, violation of the duty would be harder to establish. Thus, it can be suggested that the 'duty of cooperation' considerably reduces the possibility that a member state for reasons of self-interest, without taking into account the interests of the Union as a whole, fails to ratify a signed agreement. Consequently, it can be argued that the one remaining possibility for a member state to not ratify a signed agreement is that it is completely unacceptable in the first place. However, given what is known about how the EU makes decisions, how likely is that? It seems fair to suggest that it is not likely at all. As argued above, consensus in the EU does not mean that everybody has to support an agreement, but rather that no one rejects it. This can be achieved

through compensations, which the institutional framework of the EU gives ample room for. One concrete example of such compensation is the burden-sharing agreement.

Given the importance of the EU decision-making system that seems to contribute to ratification of signed agreements, what merits do leadership ambition and parliamentarism have? As was made clear in chapter 5, the practise of parliamentarism cannot be said to have affected the outcome of the Kyoto Protocol, which in all likelihood had been ratified regardless of the political system. Indeed, as Eeckhout (2004, 218) suggests: “Some international agreements are of such political importance that these difficulties [ratification at the domestic level] are easily overcome”. The Kyoto Protocol was arguably one example of a highly politically important agreement, perhaps particularly because of the EU’s leadership ambition in climate change. The costs of failing to ratify the Protocol may also be considered as extra high because of the burden-sharing agreement. Even if it is some merit in the assumption that parliaments do not play an important role regarding foreign affairs (Kesgin, and Kaarbo 2010, 21; Thym 2008, 215), and even if Trittin (2004) is correct in his statement about Europeanization of environmental politics, national parliaments remain an important player. That this is the case can be seen in the recognition that national parliaments are given since they have the possibility of involving themselves in the EU decision-making process. By making themselves heard, parliaments’ opinions may be taken into account in the Council before a decision is made, thus reducing the possibility for ratification failure on the domestic level. Moreover, each government needs to take the opinion of a parliamentary majority into account because it is dependent on the latter’s support. Parliament’s influence may thus be channelled both through its influence on their respective government and through their involvement in the EU decision-making process. This state of affairs means that when an MEA is of particular importance for a member state, its parliament is capable of making itself heard before a decision is taken by the EU. Thus, the threat of ratification failure on the domestic levels seems to be reduced through a combination of national parliaments’ influence on their governments and the EU-level, and their tendency to “nod through” most mixed agreements.

Regarding leadership ambition, it seems that it can play a supporting role regarding ratification of signed agreements, and indeed it might have been necessary for the ratification of the Kyoto Protocol. In that regard, it can be argued that leadership ambition is important if critical events occur in the period between signing and ratification. Two such events can be

identified in relation to the Kyoto Protocol. First, the US decision to withdraw, and second, the predictions that the EU was on its way of failing to reach its emissions reductions target. Although it can never be established that the EU would not have ratified the Kyoto Protocol without having a leadership ambition, the previous discussion certainly shows that it had a positive influence. In that sense, then, leadership ambition may be regarded as being a ratification driver, but not a necessary factor for securing ratification. This is underscored by the fact that the EU also ratified every MEA at a time when it was regarded as a laggard in environmental policy (Kelemen, Vogel 2010). Thus, both leadership ambition and the political system seem to be of secondary importance compared to the EU decision-making system.

Can the results be generalised to other types of agreements? Although the findings relate to MEAs generally and the Kyoto Protocol particularly, it does not seem unreasonable that they may also have some merit for other types of mixed agreements. Especially the explanations relating to the decision-making system and the political system may have broader applications. The main features of the decision-making system in the EU for MEAs are maintained for other agreements of a mixed nature. Thus, it is not unlikely that same mechanisms apply to all mixed agreements. Most importantly, the Council remains ultimate decision-maker regarding both signing and ratification. As long as it is the same actor signing and ratifying, the chances of ratification failure are likely to remain very low independent of type of agreement. Although this would have to be investigated, research on trade negotiations shows that threats of non-ratification have not been employed (Dür 2006), thus indicating the same trend as for MEAs. The main feature of parliamentarism – mutual dependence between executive and parliament – is the same independently of issue area. It may therefore be argued that if parliamentarism contributes to reducing the possibility for ratification failure, it does so not only for MEAs, but also for other types of agreements. However, the willingness of a government to risk a vote of no confidence may be higher in some policy areas than others. Likewise, the willingness of parliament to hold a vote of no confidence may vary between policy areas. It is therefore difficult to generalise the findings of the present research. Leadership ambition was only analysed in relation to the Kyoto Protocol, and therefore represent the perspective that is least generalizable. It may be argued, however, that if leadership ambition can have an impact on the highly contentious climate change policy area, it may also have an effect other environmental agreements that are less disputed. On the other hand, it may be that it is exactly when negotiations are tough that leadership

ambition can play a role. In sum, more research is needed in order to say if the explanations offered in this thesis are valid for a wider range of agreements.

6.3 Conclusion

I have in this thesis uncovered many factors that act as ratification drivers for signed MEAs in the EU, and together they contribute to explain why the EU rarely fails to ratify signed MEAs. These can briefly be summarised as:

- The Council represent both signer and ratifier at the EU-level.
- The institutional framework of the EU and interdependence between EU-actors.
- The emphasis of the EU decision-making system on cooperation and consensus.
- The duty of cooperation and loyalty in the external affairs of the Union.
- Involvement of national parliaments in the EU decision-making process.
- Practise of parliamentarism in EU member states.

All these factors can work in the same direction. When they do, as they did in the case of the Kyoto Protocol, chances that the EU fails to ratify MEAs can be regarded as very slim.

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Appendix 1: EU ratification history

Overview of signed and ratified MEAs listed under the UN Environmental Chapter for the EU

Name of agreement	Year	Signatory	Party
Convention on Long-range Transboundary Air Pollution	1979	Yes	Yes
Protocol to the 1979 Convention on Long-range Transboundary Air Pollution on Long-term Financing of the Co-operative Programme for Monitoring and Evaluation of the Long-range Transmission of Air Pollutants in Europe (EMEP)	1984	Yes	Yes
Vienna Convention for the Protection of the Ozone Layer	1985	Yes	Yes
Montreal Protocol on Substances that Deplete the Ozone Layer	1987	Yes	Yes
Protocol to the 1979 Convention on long-range transboundary air pollution concerning the control of emissions of nitrogen oxides or their transboundary fluxes	1988	Yes	No
Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal	1989	Yes	Yes
Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution concerning the Control of Emissions of Volatile Organic Compounds or their Transboundary Fluxes	1991	Yes	Yes
Convention on Environmental Impact Assessment in a Transboundary Context	1991	Yes	Yes
Convention on the Protection and Use of Transboundary Watercourses and International Lakes	1992	Yes	Yes
Convention on the Transboundary Effects of Industrial Accidents	1992	Yes	Yes
Convention on Biological Diversity	1992	Yes	Yes
Agreement on the Conservation of Small Cetaceans of the Baltic, North East Atlantic, Irish and North Seas	1992	Yes	No
United Nations Framework Convention on Climate Change	1992	Yes	Yes
Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Further Reduction of Sulphur Emissions	1994	Yes	Yes
United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa	1994	Yes	Yes
Kyoto Protocol to the United Nations Framework Convention on Climate Change	1997	Yes	Yes
Protocol to the 1979 Convention on Long-Range Transboundary Air	1998	Yes	Yes

Pollution on Persistent Organic Pollutants

Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Heavy Metals	1998	Yes	Yes
Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters	1998	Yes	Yes
Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade	1998	Yes	Yes
Protocol to the 1979 Convention on Long-range Transboundary Air Pollution to Abate Acidification, Eutrophication and Ground-level Ozone	1999	Yes	Yes
Cartagena Protocol on Biosafety to the Convention on Biological Diversity	2000	Yes	Yes
Stockholm Convention on Persistent Organic Pollutants	2001	Yes	Yes
Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context	2003	Yes	Yes
Protocol on Pollutant Release and Transfer Registers to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters	2003	Yes	Yes
Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity	2010	Yes	No
Nagoya - Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety	2010	Yes	Yes
Minamata Convention on Mercury	2013	Yes	Yes
Sum		26	23
% ratified out of total signed			88

Appendix 2: EU member states ratification history

Overview of number of MEAs signed, but not ratified by the EU-15 countries.

Name of agreement	EU member state that has signed, but not ratified
Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution concerning the Control of Emissions of Volatile Organic Compounds or their Transboundary Fluxes	Greece, Portugal
Convention on the Protection and Use of Transboundary Watercourses and International Lakes	UK
Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants	Ireland, Portugal
Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Heavy Metals	Greece, Ireland, Italy, Portugal
Protocol to the 1979 Convention on Long-range Transboundary Air Pollution to Abate Acidification, Eutrophication and Ground-level Ozone	Greece, Ireland, Italy, Austria
Stockholm Convention on Persistent Organic Pollutants	Italy
Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context	Belgium, France, Greece, Ireland, Italy, UK
Protocol on Pollutant Release and Transfer Registers to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters	Greece, Italy
Nagoya - Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety	Denmark, Finland, France, Italy, Portugal, UK

Appendix 2: US ratification history

Overview of signed and ratified MEAs listed under the UN Environmental Chapter for the US

Name of agreement	Year	Signatory	Party
Convention on Long-range Transboundary Air Pollution	1979	Yes	Yes
Protocol to the 1979 Convention on Long-range Transboundary Air Pollution on Long-term Financing of the Co-operative Programme for Monitoring and Evaluation of the Long-range Transmission of Air Pollutants in Europe (EMEP)	1984	Yes	Yes
Vienna Convention for the Protection of the Ozone Layer	1985	Yes	Yes
Montreal Protocol on Substances that Deplete the Ozone Layer	1987	Yes	Yes
Protocol to the 1979 Convention on long-range transboundary air pollution concerning the control of emissions of nitrogen oxides or their transboundary fluxes	1988	Yes	Yes
Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal	1989	Yes	No
Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution concerning the Control of Emissions of Volatile Organic Compounds or their Transboundary Fluxes	1991	Yes	No
Convention on Environmental Impact Assessment in a Transboundary Context	1991	Yes	No
United Nations Framework Convention on Climate Change	1992	Yes	Yes
Convention on the Transboundary Effects of Industrial Accidents	1992	Yes	No
Convention on Biological Diversity	1992	Yes	No
United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa	1994	Yes	Yes
Kyoto Protocol to the United Nations Framework Convention on Climate Change	1997	Yes	No
Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade	1998	Yes	No
Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants	1998	Yes	No
Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Heavy Metals	1998	Yes	Yes
Protocol to the 1979 Convention on Long-range Transboundary Air Pollution to Abate Acidification, Eutrophication and Ground-level Ozone	1999	Yes	Yes

Stockholm Convention on Persistent Organic Pollutants	2001	Yes	No
Minamata Convention on Mercury	2013	Yes	Yes
Sum		19	10
% ratified out of total signed			53