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**Understanding the Legitimation of Controversial Institutions:
Stakeholder Critique and Legitimation of the EU Emissions
Trading Scheme (ETS)**

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Summary

Legitimacy matters. It empowers an authority in three crucial ways: it ensures support, compliance and low levels of opposition. It is also assumed that democratic institutions must rely on legitimacy to transform their power into authority and to function effectively. However, it seems that legitimacy is a fragile relation that can be questioned and endangered by the smallest of events. Misbehaviour, controversial decisions or poor performances seem to be reason enough to question an institution's legitimacy. Nevertheless, it must be acknowledged that in many instances, the contestation leads neither to a downfall nor to destitution or disempowerment. How can controversial institutions avert running into a legitimacy crisis? **How can institutions that fail to meet the normative criteria of legitimacy and that are broadly criticised remain legitimised?**

The present dissertation contributes to answering this research question in two stages. First, it explores the theoretical aspects of the question and advocates a sociological approach to the study of legitimacy (Articles 1 and 2). The main benefit of this approach is to define legitimacy as a social relationship, rather than a feature institutions can develop unilaterally. Borrowing concepts from Boltanski and Thévenot's pragmatic sociology, the dissertation clarifies the distinction, first, between legitimacy and legitimation and, second, amongst different degrees of legitimacy troubles (legitimation problems, legitimation crisis, and legitimacy crisis). Second, the empirical part applies this perspective to a particular case study, namely stakeholder legitimation of the Emissions Trading Scheme (ETS) of the European Union (EU) (Articles 3 and 4). By contrast to many previous studies, the empirical analysis does not rest on predetermined standards or objects of legitimacy; it explores the "legitimacy relationship" between the constituency and the authority without assuming *a priori* what the former expects from the latter. First, it questions what and how the constituency justifies the institution; and second, it examines who in the constituency keeps legitimising it.

The research finds that the ETS is legitimised; however, it is not legitimate. Like most institutions, the ETS faces a legitimacy deficit: according to stakeholders, "what is" is not totally aligned with "what ought to be". However, despite its shortcomings, it remains justified by a significant part of the constituency.

Two elements can explain the ETS legitimation. Firstly, if stakeholders criticise the ETS performances, its design, the European Commission's behaviour and the decision-making process, they keep justifying one important element of the ETS, namely the commonality it builds. They appreciate the fact that the ETS is the result of a compromise among stakeholders and that the Commission is only a mediator in these negotiations – it is not an authority that would impose its decisions on the stakeholders. They keep legitimising the ETS because they believe it is the outcome of the most appropriate mode of decision-making at the EU level.

Secondly, this successful legitimation rests on an unbalance among stakeholders. The ETS is legitimised to and by only a portion of the stakeholders, the insiders ; it is justified to and by those who participate in the decision-making process. Those who challenge the ETS legitimacy have failed to politicise the topic to the point where there are legitimacy struggles in the public sphere. Their arguments are neglected in the institutional negotiations and they are presented as less relevant actors. For the time being, the ETS is not facing legitimation problems in the stakeholder constituency and it is a-legitimate in the citizen constituency, the institution is not considered a political object and, its legitimacy is not discussed. Thus, the ETS is not (yet) at risk of legitimacy troubles. These issues could arise if the topic becomes politicised among citizens.

These empirical findings highlight the difference between normative and sociological legitimacy. The successful legitimation of the ETS among stakeholders does not imply that it fulfils the criteria of legitimacy developed in normative theory. The policy has not yet proven its effectiveness or its merits; the institution is still broadly criticised: its lack of transparency, inequality among stakeholders and the Commission's lack of neutrality are seen as severe shortcomings. Moreover, the legitimation of the ETS rests on the exclusion of parts of the EU's constituency. A legitimised institution is not a perfect one.

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List of acronyms

Commission	European Commission
CO ₂	Carbon dioxide
ETS	EU Emissions Trading Scheme
EU	European Union
NEPI	New Environmental Policy Instrument
NGO	Non-Governmental Organisation
Parliament	European Parliament
UN	United Nations
UNFCCC	United Nations Framework Convention on Climate Change
US	United States

“The oil price shocks of the 1970s didn’t wean us off oil, so why should we believe that
a high carbon price will wean us off carbon?”

Jim Watson, Professor at UCL

Introduction

“The perception of legitimacy matters, because, in a democratic era, multilateral institutions will only thrive if they are viewed as legitimate by democratic publics. If one is unclear about the appropriate standards of legitimacy or if unrealistically demanding standards are assumed, then public support for global governance institutions may be undermined and their effectiveness in providing valuable goods may be impaired” (Buchanan & Keohane 2006, 407).

Scholars and statespersons agree that legitimacy matters. It empowers an authority in three crucial ways: it ensures support, compliance and low levels of opposition (Reus-Smit 2007, 163-164). It is also assumed that democratic institutions must rely on legitimacy to transform their power into authority (Buchanan 2002, 691) and to function effectively (Beetham 2013, 33). However, it seems that legitimacy is a fragile relation that can be questioned and endangered by the smallest of events. Misbehaviour, controversial decisions or poor performances seem to be reason enough to question an institution’s legitimacy (Schweiger 2016, Gills et al. 2018, Murray & Longo 2018). Nevertheless, it must be acknowledged that in many instances, the contestation leads neither to a downfall nor to destitution or disempowerment. How can controversial institutions avert running into a legitimacy crisis?

How can institutions that fail to meet the normative criteria of legitimacy and that are broadly criticised remain legitimised¹?

The present dissertation contributes to answer this research question in two stages. First, it explores the theoretical aspects of the question and advocates a sociological approach to the study of legitimacy (Articles 1 and 2). Second, the empirical part applies this perspective to a

¹ An institution is legitimate when “it can be justified in terms of people’s beliefs” (Beetham 2013, 11). Legitimation is the process through which political power is actually justified. An institution is considered legitimised when it does not face legitimation problems, when it remains justified by and to its constituency (or a relevant part of it). See more definitions in this introduction and in Articles 1 and 2.

particular case study, namely stakeholder legitimation of the Emissions Trading Scheme (ETS)² of the European Union (EU) (Articles 3 and 4).

Legitimacy and legitimacy problems are popular topics in political science and, as such, there are countless definitions of, and criteria by which to assess, an institution's legitimacy or lack thereof (Andrev 2007, Fossum 2016, Schweiger 2016). Broadly speaking, the literature can be divided into two approaches. On one hand, some scholars see legitimacy as a desirable characteristic, evidence of an institution's rightness. Normative theorists debate the sources and standards that would foster this type of legitimacy (March & Olsen 2009, Neyer 2010, Bernstein 2011, Beetham 2013, Beetham & Lord 2013), while empirical researchers apply them to different types of institutions, such as nation states (Holbig & Gilley 2010, Dizolele & Kambale 2012), international organisations (Daemmrich 2011, Dostie & Paquin 2014) and private actors (Matejek & Gössling 2013). The underlying assumption is that the proposed standards – whether democracy, justice or performance – are intrinsically valuable, ethical or moral (Bäckstrand 2006, Neyer 2010, Deleixhe 2018) and/or that they are the most effective way to ensure public support and compliance (Scharpf 2009, Stevenson & Dryzek 2012).

On the other hand, scholars who choose a sociological approach conceive legitimacy as a product of legitimation practices; they emphasise that “legitimacy is not caused, but created” (Abulof 2015, 75). As a dynamic process, legitimacy is never achieved but regularly renegotiated between the constituency and the authority (Denitch 1979). It is the result of interactive legitimation and delegitimation practices between the authority and its constituency (Gronau & Schmidtke 2015, 539). The theoretical assumption here is that legitimacy is a “normatively dependent” concept (Forst 2017, 139), but that the relevant norms³ vary across

² The acronym ETS refers only to the EU Emissions Trading Scheme. When talking about the instrument in theory or in other parts of the world, I will refer to emissions trading.

³ Drawing on convention theory, I understand cultural and social norms as conventions in the sense of ‘collective cognitive devices’ (Favereau 1989). No matter which form they take (e.g. legal norms, industrial standards, local

constituencies and socio-political contexts (Abulof 2013, 697). Therefore, instead of measuring an institution against normative standards, scholars who adopt this approach study how legitimacy is ascribed (Reus-Smit 2007, Peters 2013) or negotiated between an authority and its constituency (Matejek & Gössling 2013, Spicer 2013, Tallberg & Zürn 2019).

The first part of this dissertation expands on the sociological approach and clarifies key definitions. It differentiates and connects legitimacy to its neighbouring notions (legitimation, legitimacy deficit, legitimation crisis, legitimacy crisis). The main objective is to describe and justify the theoretical assumptions and concepts used in the empirical articles, which analyse how stakeholders legitimise and delegitimise the ETS.

The ETS was designed in 2001 to reduce polluting emissions and incentivise investment in green technology (European Commission 2019b). For a long time, the EU was wary of emissions trading and implemented command-and-control measures to protect the environment (Majone 1996). However, during the negotiations of the Kyoto Protocol, the EU accepted to add emissions trading as one of the mechanisms to reduce emissions suggested in the Protocol. This dramatic change was motivated by both internal and international factors. Internally, the EU was struggling to convince its member states that regulations could suffice in curbing global warming (Damro & Luaces-Mendez 2003a, 84-85). The ecotax proposal was also mired in conflicts in both the Council and Parliament (European Commission 1992). At the international level, the EU was eager to strike a compromise involving the United States (US), which was

customs, etc.), they normatively govern and make possible the always uncertain coordination of human action. More concretely, the conventions provide '[...] shared templates for interpreting situations and planning courses of action in mutually comprehensible ways that involve social accountability, that is, they provide a basis for judging the appropriateness of acts by self and others' (Biggart and Beamish 2003: 444). As Reynaud and Richebe notices, the power of conventions '[...] arises from the mere fact of belonging to a group, or rather, from the will to participate in a collective action' (Reynaud and Richebe 2009: 7). By contrast to structuralist understanding, I do not see the conventions as *transcendent* and external to actors. Instead, I treat the conventions as internal to actor imbued with 'critical capacity' (Boltanski 1999) to reflect upon them and potentially alter them. For more on convention theory, see e.g. Boltanski and Thevenot (1999, 2000), Jagd (2007), Wagner (1999).

the main proponent of emissions trading. In this discussion, the EU was at a disadvantage since, for one thing, it was not familiar with the instrument and, for another, the US was supported by many other countries, including Canada, Australia and Norway (Damro & Luaces-Mendez 2003a, 84-85). Thus, in 1997, the Kyoto Protocol was adopted and created “a new commodity in the form of emission reductions or removals” (UNFCCC 2020).

Soon after these negotiations, in 2000, the Commission published its Green Paper on Greenhouse Gas Emissions Trading within the EU (European Commission 2000) and, in 2001, its proposal for a directive establishing the ETS (European Commission 2001). In 2003 the Council and Parliament adopted the directive with an overwhelming majority (European Union 2003) and the ETS was eventually launched in 2005 for a pilot phase. The ETS is young enough to be thoroughly studied but old enough to be properly evaluated by its stakeholders. This was an important argument to select it as a case study.

Since then, the ETS has become “a cornerstone of the EU’s policy to combat climate change and its key tool for reducing greenhouse gas emissions cost effectively” (European Commission 2019b). It has been reformed three times and further integrated⁴. The assumption that guides the ETS is that a higher price of carbon will lead to greater emissions reduction. Therefore, the reforms aim at adapting the demand and/or supply of allowances to raise their prices. This can be done mainly through five channels. First, the cap – the total amount of acceptable emissions translated into a number of allowances – can be progressively decreased. Second, the scope of covered gas and economic sectors might be widened. Third, the allowances can be auctioned or given for free to operators. Fourth, the penalty for non-compliance can be increased. Fifth, the ability to use offset credits can be authorised, limited or forbidden.

⁴ See Appendix 1 for more details.

So far, the ETS has produced, at best, mixed results. The surplus of allowances – caused by the high cap, the use of offset credits, and the limited demand during the financial crisis – lowered the price of carbon and concomitantly the incentives to reduce emissions and invest in green technology (CANEurope 2016, Carbon Market Watch 2016). The Commission acknowledges that the reduction of the EU’s emissions during Phase 2 was mainly due to the economic crisis (European Commission 2020a). Likewise, it notes that, while emissions decreased by 23% between 1990 and 2018, it is difficult to measure how much of that is attributable to the ETS (European Commission 2020b). Moreover, the ETS is, at the moment, subsidising high polluters rather than encouraging them to reduce their emissions (FERN et al. 2013). The ETS is undoubtedly a problematic and controversial institution. The institution has been criticised notably for its deficient design (Cefic 2015), lack of transparency (MacDonald 2014), undemocratic features (CEO 2016) and market approach (FERN et al. 2013). Therefore, it makes a relevant case study to understand how controversial institutions can remain legitimised.

To understand how the ETS has remained legitimised despite these shortcomings, the thesis focuses on stakeholders⁵, understood as a constituency of their own, a group in which legitimisation and delegitimation practices interact. Studying this constituency has two main advantages. First, it complements the literature on stakeholders that tends to describe them as actors in need of legitimacy (MacDonald 2012, Kohler-Koch & Quittkat 2013) or as a legitimisation or control mechanism (Dryzek & Niemeyer 2007, Kohler-Koch & Quittkat 2013, Trenz 2017). Second, stakeholders are a group that is sufficiently integrated and active in the public sphere to participate meaningfully in the legitimisation and delegitimation of the EU or ETS (see Article 2) (Binder & Heupel 2015, Tallberg & Zürn 2019).

⁵ Stakeholders are those affected by the problem being researched and those in a position to do something about it (Bammer 2019).

The empirical research uses claims-making analysis to examine more than 200 position papers and 20 interviews with stakeholders representing all parties in the debate (energy-intensive and non-energy-intensive industry and business, economic and climate think tanks, environmental and development NGOs, etc.). The sample of documents and interviews was selected to include insofar as possible all interests defended in the public debate, even minority voices. After reconstructing the development of emissions trading at the global and European levels from the early days, claims-making analysis made it possible to evaluate in detail stakeholder justifications and criticisms of the ETS.

Investigating how criticised institutions remain legitimised is particularly important in the current political context. Firstly, it contributes to a broader research project conducted through PLATO, an Innovative Training Network grouping 15 PhD researchers. This project assesses the post-crisis legitimacy of the EU and investigates whether, after multiple crises (financial, economic, migratory, etc.), the EU has managed to remain legitimate. The theoretical clarifications and the gathered empirical data help answer these questions by showing that poor performances and contested decisions do not necessarily translate into legitimacy problems. Moreover, it offers new insights into the ways in which the EU could foster its legitimacy. These findings, combined with those of the other PLATO researchers, could provide valuable insights into new ways of conceptualising and strengthening the EU's legitimacy and legitimation.

Secondly, studying the legitimacy and legitimation of climate institutions is particularly important to pursue because this is a deeply political issue. EU climate policies are often justified through scientific explanations (Delbeke & Vis 2015) and technocratic arguments (Remling 2018); they are presented as an issue for experts. However, this should not hide the fact that decisions regarding climate change are political choices and favour some interests over others. They affect social relations, involve resource redistribution and produce unforeseen

effects (Eriksen et al. 2015). So it is crucial to investigate how these institutions remain legitimised despite their controversial performances.

This introduction clarifies the theoretical and methodological points that cannot be detailed in the four articles that follow. It begins with a literature review of academic research on legitimacy and emissions trading. The second section introduces the analytical framework and defines the main concepts used throughout the thesis. The research design section then spells out the data collection and analysis method and presents the case study. It is followed by a brief discussion of the ethical questions underlying this research. The last sections summarise the articles and, lastly, give the findings and conclusions.

Literature review and added value of the research

Contributions from two main fields in political science provide relevant insights to this research. The following section first introduces the academic debate on legitimacy and identifies an important unsettled question that this dissertation helps address: how can legitimacy be conceptualised in order to conduct a sociological analysis of the legitimacy of normatively problematic institutions? It then presents the literature on emissions trading and the ETS, and demonstrates the need to study ETS legitimacy through a sociological lens.

Legitimacy

As mentioned above, the literature on legitimacy can be divided into two strands. Despite their close ties, this distinction between normative and sociological legitimacy needs to be properly acknowledged because “the validity conditions of a statement about legitimacy depend on the context in which the statement is made” (Gaus 2011, 2). The conceptualisation of legitimacy, the method of analysis and the conclusions will differ greatly according to the chosen approach.

Scholars who choose a normative approach to legitimacy are interested in “an institution’s exercise of authority as rightful and worthy of recognition based on its conformance to principles such as justice, public interest, and democracy” (Tallberg & Zürn 2019, 583). Whether they discuss the most relevant normative standards (Scharpf 2009, Neyer 2010, Beetham & Lord 2013) or apply them to empirical case studies (Mena & Palazzo 2012, Dostie & Paquin 2014, Steffek 2015), these scholars invariably presume legitimacy to be “a property or characteristic of regimes which satisfy criteria laid out by the observer” (Barker 2001, 9).

This dissertation, by contrast, adopts a sociological approach and considers “legitimacy and legitimation as observable empirical phenomena” (Tallberg & Zürn 2019, 583). Therefore, this review focuses mainly on this segment of the literature and highlights two crucial conceptual issues this thesis helps address. Firstly, the current literature defines legitimacy in many ways; therefore, it is necessary to assemble the different pieces in order to develop an empirically applicable conceptualisation of legitimacy. Secondly, while many scholars study legitimacy and legitimation crises, no consensus exists at the moment on the definition of such crises or on the conditions to be met to diagnose such crises. This dissertation contributes to this strand of the literature by presenting a model that details how institutional deficiencies evolve into a legitimation crisis, and eventually, a legitimacy crisis.

The first knot this dissertation helps disentangle is the thorny issue of conceptualisation. Legitimacy has been defined many times. For Weber (1964), legitimacy is a belief: “the basis of every system of authority, and correspondingly of every kind of willingness to obey, is a belief, a belief by virtue of which persons exercising authority are lent prestige” (Weber 1964, 382). It is also rooted in justifications: an authority cannot be legitimate without justifying the domination system it embodies (Weber 1978, 31). In empirical research, however, “social scientists [reduce] the explanation of beliefs to the processes and agencies of their dissemination

and internalisation, rather than an analysis of the factors which give people sufficient grounds or reasons for holding them” (Beetham 2013, 10).

Beetham clarified the definition of legitimacy by defining it as such:

“A given power relationship is not legitimate because people believe in its legitimacy, but because it can be justified in terms of their beliefs. This may seem a fine distinction, but it is a fundamental one. When we seek to assess the legitimacy of a regime, a political system, or some other power relation, one thing we are doing is assessing how far it can *be justified in terms of* people’s beliefs, how far it conforms to their values or standards, how far it satisfies the normative expectations they have of it” (Beetham 2013, 11, emphasis in the original).

This spells out important aspects of the sociological approach to legitimacy. First, the source of legitimacy is the relationship between the institution and social norms (Bickerton 2010, 1090). Thus, second, it is “the result of an interactive process that relies both on the bottom-up attribution of legitimacy to international institutions by social constituencies and on legitimacy claims made by political elites” (Gronau & Schmidtke 2015, 537). And therefore, third, legitimacy relies on social communication (Habermas 1984, Reus-Smit 2007). Finally, if legitimacy cannot be observed directly, it can be inferred from legitimation and delegitimation practices (Tallberg & Zürn 2019).

All these elements relating to the definition of legitimacy are currently scattered in the literature. The first objective of this dissertation is to build a coherent and empirically applicable definition of legitimacy. Gathering the different pieces, it builds on this literature to define legitimacy as a social relationship (see Analytical framework) and to clarify the relation between legitimacy and legitimation (see Article 1).

In a second phase, the thesis expands on this conceptualisation to explain the distinction between legitimacy deficit, legitimation crisis and legitimacy crisis. At present, the literature

on these topics is highly confusing and scholars often diagnose legitimacy or legitimation problems without first specifying the characteristics of the phenomenon they are studying. Habermas (1975) is one of the few authors to have developed a model of legitimation crisis. In his view, it is induced by the crisis tendencies of capitalist economies that have been displaced via state interventions into the sphere of politics (Habermas 1975). Other scholars have defined legitimacy crisis as a crisis in trust (Kochel 2011) or as a “decrease in social acceptance [that] causes major disruptions in the organization's normal operations” (Zheng 2010, 15). Moreover, a legitimacy crisis could be said to occur “when there is a serious threat or challenge to the rules of power, or a substantial erosion in the beliefs which provide their justification” (Beetham 2013, 168), when there is a lack of support (Lindgren & Persson 2010, van Dijk et al. 2011), or when an institution faces disempowerment (Reus-Smit 2007).

These many definitions have led scholars to look for legitimacy and legitimation problems in all kinds of directions and to apply very diverse indicators (Lindgren & Persson 2010, Rinehart Kochel 2010, van Dijk et al. 2011). How can researchers recognise a legitimacy crisis when they see one? Building on the sociological approach, this dissertation presents a model that describes how institutional deficiencies can eventually transform into a legitimacy crisis. It develops empirically applicable concepts that distinguish the different types of legitimacy problems an institution can face. It then identifies the necessary conditions to be met to identify such a legitimacy crisis. This fills an important gap in the literature and offers a framework that could be applied in future research.

Emissions trading and the ETS

The second field of research relevant to this dissertation is the literature on emissions trading and on the EU ETS. Climate and environmental institutions are undeniably a booming topic and they are studied through many disciplines (economics, finance, philosophy, ethnology,

geography, etc.). So far, three main aspects of emissions trading have been studied in political science. The historical perspective describes the development of the instrument at the national and international levels. A second type of research focuses on its evaluation. Lastly, a third strand of literature discusses its ethical aspects and normative legitimacy. However, little research has been carried out on the sociological legitimacy of the ETS.

The first strand of literature studies how emissions trading became a popular instrument to mitigate climate change. Some scholars focus on the negotiations at the international and United Nations (UN) levels (Weale 1992, Breidenich et al. 1998, Faure et al. 2003, Matsuo 2003). They detail how emissions trading became one of the three market-based mechanisms “to help countries meet their emission targets, and to encourage the private sector and developing countries to contribute to emission reduction efforts” (UNFCCC 2007, 2) under the Kyoto Protocol. Another popular type of research studies the development of the EU ETS. It explains the EU’s change of mind during the Kyoto negotiations (Damro & Luaces-Mendez 2003a, b) (Cass 2006) and the events and internal negotiations that made the ETS the cornerstone of EU climate policy (Braun 2009, Jordan et al. 2010, Aykut 2014, Skjaereth & Wettestad 2008, Wettestad 2005, Delbeke & Vis 2015, Zapfel & Vainio 2002). Scholars also explore the role in the evolution of the ETS of actors such as non-state stakeholders (Mäenpää 2016, Skjaereth 2019), the Commission (Skjaereth & Wettestad 2010) or the Parliament (Jevnaker & Wettestad 2017). Finally, part of the literature focuses on the development of emissions trading schemes at the national level, for instance, in China (Hübler et al. 2014, Zhang 2015), in the United Kingdom (Pearson 2004, Nye & Owens 2008) or in New Zealand (Jiang et al. 2009, Bullock 2012).

Complementarily to the historical studies, a second strand of literature investigates the effects of emissions trading through different perspectives. These scholars evaluate the economic consequences of emissions trading (McKibbin et al. 1999, Tietenberg 2010, Lin & Jia 2019)

and of the ETS in particular (Grubb & Neuhoff 2006, Zhang & Wei 2010, Mol 2012, Meadows et al. 2015). They also discuss its environmental impacts (Venmans 2012, Dechezleprêtre et al. 2018) and its consequences outside Europe (Fuhr & Lederer 2009, Wettestad 2009, Hourcade & Shukla 2013, Aglietta et al. 2015). Furthermore, they explore the political consequences of ETS on member states (Kemfert et al. 2006) or on supranational governance (Wettestad et al. 2012). This strand of literature also includes more prospective research that attempts to predict the ETS future consequences (Zhu et al. 2014, Brink et al. 2016) or advocates reforms or alternative solutions (Woerdman 2000, Jagers & Hammar 2009, MacKenzie 2009, Kanamura 2013).

Finally, a third strand of research focuses on the normative and ethical aspects of emissions trading (Ott & Sachs 2002, Bernstein 2004, Bäckstrand 2008, Blum & Lövbrand 2019). These scholars challenge the theoretical economic model behind emissions trading. They conclude that emissions trading is problematic because the financial model is erroneous (Reyes & Gilbertson 2010, Spash 2010, Bond 2013, Ball 2018, Hache 2020) or, on the contrary, describe carbon as a “virtuous commodity”⁶ (Paterson & Stripple 2012). They also argue for more efficient climate protection instruments (Hermann & Matthes 2012, Darby 2014) or more equitable institutions and policies (Van Vossole 2012, Richards & Lyons 2016). Finally, this strand of literature also considers broader ethical questions, such as the relation between capitalism and climate protection (Böhm et al. 2012, Van Vossole 2012, Brink et al. 2016).

Few studies focus on ETS legitimacy. Most research assesses the legitimacy of climate governance: scholars apply an “input-throughput-output” framework (Kronsell 2012, Bernauer & Gampfer 2013), comment on its democratic features (Bäckstrand 2006, Stevenson & Dryzek

⁶ “This notion highlights carbon’s fictitious and imaginative character (its virtuality) as well as the possibility for ethical contestation at every moment of commodification (its virtue)” (Paterson & Stripple 2012, 579).

2012) and, in particular, on the involvement of non-state actors (Vormedal 2008, Lövbrand et al. 2009, Meckling 2011, Hanoteau 2014). Similarly, when studying emissions trading, scholars apply normative criteria: they discuss its legal legitimacy (Láncos 2009), democratic legitimacy (Baldwin 2015) and output legitimacy (Paterson 2010, Caney & Hepburn 2011, Page 2012). ETS legitimacy is assessed mainly in two ways. On one hand, some scholars adopt a technocratic perspective and study stakeholder involvement and the role of expertise (Venmans 2012, Turnhout et al. 2015). On the other, researchers focus on output legitimacy and evaluate ETS effectiveness (Woerdman 2000, Clo 2011). Few scholars adopt a combination of these indicators (Skjaereth 2010).

At the moment, we know little about how constituencies legitimise climate institutions and the ETS in particular. While scholars have studied the ETS normative legitimacy, they have neglected the sociological approach. This dissertation intends to complement current research by applying a new perspective on the legitimisation of the EU ETS.

Analytical framework

Developing a sociological understanding of legitimacy requires four important precisions presented in this section. The first subsection briefly comments on the place of normativity in this approach. The second introduces pragmatic sociology, the theoretical approach used throughout this thesis. The third details the epistemological and ontological position taken in this research. The fourth and last subsection defines the main concepts used in this dissertation.

Normativity in the sociological approach to legitimacy

The distinction between normative and sociological legitimacy is very popular but is seldom acknowledged appropriately in political science (Gaus 2011, 2). Although these two approaches

have been presented separately above, it is necessary to understand how they are interlinked in order to avoid misusing normative standards while conducting sociological research.

Legitimation practices – whether they emerge from the authority or the constituency – are rooted in normative considerations (Tallberg & Zürn 2019, Dellmuth & Tallberg 2020). Similarly, the normative standards of legitimacy established by political theorists are considered valid because of their social relevance:

“Where the acquisition and exercise of power meet societally accepted standards of rightful authorisation and due performance the power holder will be accorded legitimacy in the sense of normative validity. By the same token serious deviation from these standards will lead to a ‘legitimacy deficit’ and diminution of moral authority, with implications for the degree of obedience and support a power holder can command” (Beetham 2013, xiii).

Taking a sociological approach to legitimacy does not erase the normative nature of legitimacy. Legitimacy is a normativity-bound concept (Peters 2013, Forst 2017). However, this can be understood in two ways (Forst 2017, 188-189). It can refer to the socially constructed norms in society. Legitimacy in that case reflects the appropriate exercise of authority according to these social norms (Suchman 1995, Tallberg & Zürn 2019). It can also refer to the variety of justifiable standards for assessing an institution’s legitimacy. This is the core of political theory (Beetham & Lord 1998, Rawls 2005, Neyer 2010). These two conceptions can interact when sociological analysis feeds into normative theorising (Lord & Magnette 2004, Beetham 2013, Forst 2017).

This dissertation adopts the first approach. ETS legitimacy is assessed against the social norms that stakeholders deem relevant and not against predefined normative standards. However, the present analysis goes beyond stakeholder beliefs. It intends to understand the legitimation and

delegitimation processes. This responds to the necessity to build bridges between sociological and normative legitimacy and to explain better the processes by which legitimacy is created:

“[The] study of political legitimacy should be more prudent in the adoption of two views of political theory. First, it is sometimes (unwittingly) driven by an ethics-first perspective. Second, it frequently refers legitimacy to individuals’ beliefs about the rightness of political order. Both views have shortcomings regarding a proper account of political legitimacy which should analyse societal practice of legitimation as a dynamic process” (Gaus 2011, 1).

Exploring the legitimation and delegitimation processes requires the development of empirically applicable tools that can take into account the normative and sociological aspects of legitimacy. Pragmatic sociology offers valuable insights to achieve this objective. It enables the study of legitimacy as a dynamic relationship rather than as a feature that an authority possesses or not. The next subsection presents the main characteristics of pragmatic sociology and how it can be used to analyse legitimacy.

Pragmatic sociology

Pragmatic sociology offers three main advantages to the study of legitimacy. Firstly, it is a strand of sociology that explores the role of normativity in human actions. Secondly, it leaves room for pluralism of justifications. Pragmatic sociology does not assess which justifications are best or majoritarian; instead it examines the variety of justifications (Blokker 2011, 252). Thirdly, it gives a new role to critiques, which can help both legitimise and delegitimise an institution.

Sociology is the study of social relationships and social institutions (state, religion, family, race, gender, etc.). Pragmatic sociology⁷ has been baptised as such because “it analyses social orders from the perspective of action and actors” (Quéré & Terzi, 92). This point of view is not unique in sociology. However, the most distinctive feature of Thévenot and Boltanski’s approach is its aspiration to study a wide variety of actions oriented towards moral (Quéré & Terzi, 92). This can be better understood by comparing pragmatic sociology with two other popular sociological strands, namely functionalist and critical sociology.

Functionalist sociology (popularised notably by Durkheim and Parsons) highlights the role of structure and the maintenance of social order, and downplay the role of conflict in social life (Giulianotti 2016). It examines in particular how institutional structures frame individual behaviours. For instance, Durkheim showed how people who are more integrated in communities (family, religious communities, etc.) are more likely to commit suicide than those in more individualistic circumstances (Durkheim 1970). Critical sociology, by contrast, studies how an individual’s social environment shapes their actions. It sheds light mainly on the domination and power relationships in society, whether it investigates the relationship between individuals and their environment or among individuals. Bourdieu, for example, theorised the reproduction of intersubjective domination and how economic, cultural, social and symbolic capitals participate in the reproduction of social classes (Bourdieu 1979). He also argues that individuals behave in a homologous way to their environment. They adopt the codified imperatives of their social class and their actions are relatively determined by their social position (Susen 2014b).

⁷ In sociology, the pragmatic approach has been defined in various ways (for more detail, see Barthe et al. 2013). This section describes Boltanski and Thévenot’s pragmatic perspective.

Pragmatic sociology does not focus on the structural constraints on individual behaviours, nor on the learned *habitus* that dictates one's actions. Instead it explores the role of normativity in human actions. It studies the moral motives of actions, the normative requirements individuals face and the constraints they need to consider, and the devices and normative structures in which their actions take place (Quéré & Terzi 2014, Boltanski 2009). Therefore, this is an essential perspective to understand how individuals legitimise institutions.

Secondly, by contrast to critical and functionalist sociology, pragmatic sociology does not see individuals as agents trapped in a structure or social environment. Instead they are in constant relation with the structure and are able to mould it as much as they are moulded by it (Blokker 2011). According to this approach, "social groups" (such as nations, social classes, families, etc.) are not homogeneous. Although they might share some common characteristics (culture, language, socio-economic background, etc.), individuals themselves do not automatically acknowledge a sense of commonality with each other. These common characteristics are noticed by the researcher, but not necessarily by the individuals within the social groups. The importance given to individual interpretation opens the door to a pluralist approach to the study of normativity and thus legitimacy. Individuals within a group do not necessarily offer the same justifications to one's actions or to an institution. Pragmatic sociology enables the examination of legitimacy without presupposing any normative standards and without limiting the plurality of justifications among one particular group.

Third, pragmatic sociology makes room for critiques. For Bourdieu, only experts can express a critique. He argues that critique must come from an external observation and objectivation of the social relationships. Therefore, it is not available to individuals embedded in the structure (Susen 2014a). According to pragmatic sociology, everyone can express a critique. Similarly to Bourdieu, pragmatic sociologists argue that individuals must be aware of power relationships to articulate a critique against them. However, by contrast to the French sociologist, they do not

believe power relationships are ever “masked” or that individuals can be made unaware of them. All individuals “are equipped with the capacity to convert their complicity *with* power into an exercise of reflection *upon* power” (Susen 2014a, 177).

Therefore, normative conflicts and critiques are considered a normal part of social life. They are intrinsic to the social system and enable its maintenance as much as they can endanger it. Critiques are not necessarily “against” the system and do not automatically endanger its legitimising norms, its normative justifications. According to pragmatic sociology, the predominant legitimising norms in the system can be fortified if the object of critique is “justified by the same normative positions as those invoked by the critique” (Boltanski & Chiapello 2011, 33). Moreover, the system has the ability to adapt itself according to the critiques or to change just enough to silence them for a while (Boltanski & Chiapello 2011). Considering critiques as part of the system is a valuable theoretical approach to study how criticisms can affect an institution’s legitimacy.

Using sociological tools offers many advantages to expand our understanding of legitimacy. Pragmatic sociology helps take into account both the normativity in which legitimacy is rooted and the social nature of the concept. It renders more visible the fact that the beliefs of individuals and the normative orders of society are dynamic and forever changing. It is therefore a valuable approach to study legitimisation practices. The next section clarifies these ideas by distinguishing epistemological and ontological objectivity.

Epistemological and ontological remarks

In order to understand how legitimacy is conceived in this dissertation, it is necessary to engage in a brief discussion of the philosophy of science. Researchers often take for granted what knowledge is and how it is generated (Carter & Little 2007). One important aspect of defining

knowledge and scientific research is the definition of what reality is. However, most researchers omit to detail their presuppositions about reality and thus the phenomenon they observe.

This research adopts a critical realist approach. In political science, empiricism and constructivism are two popular ontological positions. Critical realism offers a middle ground between these two positions. It can be summarised as follows. It is realist because it assumes that there is an objective reality, there are objects (material or social) that the researchers can know. In that sense, it believes in ontological objectivity (Porpora 2015, 16). It does not affirm, however, that everything is observable. Social reality is constituted of both objective and social relations, of observable and unobservable interactions. It is also critical because any attempts at describing and explaining the world are bound to be fallible, and because those ways of ordering the world, its categorisations and the relationships between them, cannot be justified in any absolute sense, and are always open to critique and their replacement by a different set of categories and relationships (Scott 2005). Therefore, “there is no epistemically objective way to determine what exists” (Porpora 2015, 17).

The empiricist position derives from natural sciences and affirms that social phenomena are observable in the same way as natural phenomena. It argues that any reality is measurable if the researcher conceives the adapted instrument. Causal links are established through a hypothetico-deductive process. In order to find the general universal laws, the scientist makes predictions and then runs tests to verify these predictions (Coman et al. 2016, 11-12). This ontological and epistemological position is very popular among (post-)positivist researchers and particularly for quantitative studies.

By contrast, constructivism does not believe in objective ontology or epistemology. The main assumption is that everything is constructed and that nothing exists outside the social constructions (Coman et al. 2016). Following this premise, constructivist researchers do not

believe that knowledge exists in a state of awaiting discovery, but instead is constructed by humans and their social interactions. Moreover, there is no possible objective observation of reality because researchers place their own beliefs and underlying theories upon the object they observe (Carr 2006, 429). This means that social science should not focus on finding the cause of an observed effect; rather, it should try to understand the sense the actor gives to its actions. This is an interpretative process.

Critical realism adopts the objective ontology of empiricism and, similarly to constructivism, rejects epistemological objectivity. This can be illustrated as such:

“We may not be able to know anything in a value- or theory-neutral way, but it hardly follows that there is nothing ontologically objective to be known. We may understand global warming only via our own concepts, but, surely, if it is happening, global warming is an ontologically objective fact independent of how or even if we conceptualize it. Our understanding may be socially constructed but not the ontological reality itself. If it is really happening, global warming will not cease by our merely ceasing to think about it. The same I will argue for social structure” (Porpora 2015, 16).

This ontological position helps define legitimacy as a social relation. Like any other social relation, legitimacy has an objective dimension – it gives ground to a power relationship that exists whether the constituency is aware of it or not – and a subjective or socially constructed dimension, which determines what relationships are justified and which justifications thereof are acceptable (see next subsection). The epistemological standpoint justifies why this research follows an inductive and interpretative approach (see Research design section).

Defining the main concepts

The first two articles of this thesis present the theoretical conceptualisation of legitimacy, legitimation and legitimacy crisis used in the empirical research. For clarification purposes, this section introduces briefly these definitions.

Legitimacy

Legitimacy is understood as a social relation that grounds the justification of asymmetric power relationships (Beetham 2013, 25). It is not an attribute that an authority gains or owns; nor is it a popular belief (Weber 1978) or a simple perception (Suchman 1995, 574): legitimacy is a social relationship between an authority and its constituency.

Legitimacy provides diffuse support to an institution, “a reservoir of good will upon which a system may draw credit in times when things are going badly from the point of view of providing satisfactions for the members of a system” (Easton 1965, 249). Specific support, on the other hand, corresponds to “the satisfactions that members of a system feel they obtain from the perceived outputs and performance of the political authorities” (Easton 1975, 437). The objects of specific support can be the institution’s authorities, policies, actions, etc. Diffuse support is more durable than specific support and is less dependent on the institution’s outputs and performances (Easton 1975, 444). It can have different objects such as the regime, the authority and the political community.

As mentioned above, the difficulty with legitimacy, like with many other political concepts, is that it is not directly observable, but can only be inferred: “‘Legitimacy’ does not exist as a feasible subject of empirical or historical enquiry, in the same sense that God does not exist as a possible subject for social scientific study” (Barker 2001, 26). However, legitimacy can be inferred from legitimation practices, “activities employed to establish and maintain a reliable

basis of diffuse support for a political regime by its social constituencies” (Gronau & Schmidtke 2015, 540). An authority that wishes to gain legitimacy should make sure its rules and actions are in line with social norms (“what is” should be aligned with “what ought to be”). Nevertheless, rules and actions that fit social norms might not be enough; the authority is still dependent upon dynamics of legitimation. Indeed, to gain legitimacy, an authority should be justifiable on moral grounds and recognised as justified by its constituency (Tallberg & Zürn 2019).

First, legitimation practices “comprise both the bottom-up attribution of legitimacy by social constituencies and the top-down cultivation of legitimacy by rulers” (Gronau & Schmidtke 2015, 539). Second, they are always communicative and ‘performative’; they “may be discursive or behavioural, directed at constituencies or observers, and sincere or manipulative in their intent” (Tallberg & Zürn 2019, 588). They can also be more or less successful (Gronau & Schmidtke 2015, 541-542) (see Article 1). Finally, since legitimacy is constructed in a social environment, legitimation strategies can only be consequential if they are deployed in the public sphere (See Article 2).

Since legitimacy is not directly observable, this thesis focuses on legitimation and delegitimation practices. Only those claims that could affect diffuse support (i.e. not those that attacked or justified the policy) were considered as legitimising or delegitimising claims (see Article 4). As detailed in the next subsection, the distinction between specific and diffuse support is crucial to distinguish the different legitimacy problems (legitimacy deficit, legitimation crisis, legitimacy crisis) (see Article 2).

Legitimacy deficit, legitimation crisis and legitimacy crisis

A **legitimacy deficit** appears when the institution’s reality does not fit social norms, when “what is” is not aligned with “what ought to be”. As long as it remains unnoticed, this

discrepancy is not problematic for the institution. However, if the legitimacy deficit becomes politicised⁸, if the institution's legitimacy is brought into question in the public sphere, the institution runs into **legitimation problems**. At this stage, the institution's survival is not threatened.

If the institution fails its re-legitimation attempts and delegitimising discourses become predominant in the public sphere, it eventually produces a **legitimation crisis**: there is a deficit of specific support and the diffuse support starts deflating. What implications does the legitimation crisis have for the institution? A legitimation crisis prevents an institution from re-legitimising itself by purely discursive means. However, the institution's existence can still go unchallenged and its functioning remain uninterrupted (Stark 2010, 4-6). Nevertheless, as the legitimation crisis grows more severe, the stock of diffuse support for the institution is depleted. This shifts the focus of the constituency from policy failures to the legitimacy of the institution itself, its *raison d'être* or project. The institution must then be able to defend its existence.

A **legitimacy crisis** occurs when failure to deal with the legitimation crisis leads to a deficit of diffuse support. An institution dealing with a legitimacy crisis faces a growing probability of policy failure or even disempowerment (Reus-Smit 2007). However, the institution only risks falling into disempowerment insofar as there is a feasible alternative project in sight that could replace the current institution. If no such an alternative exists, the institution remains in a state of legitimacy crisis and further deteriorates.

Therefore, a legitimacy crisis is not the opposite of legitimacy; it is a particular moment in the legitimation process. Obstacles and backlashes appear throughout the legitimation process and

⁸ Politicisation can be defined as “moving something into the realm of public choice, thus presupposing the possibility to make collectively binding decisions on that matter. In most political systems, a collective choice about an issue is based on a prior process of putting the issue on the agenda, some deliberation about the right decision, and the interaction of different positions regarding the choice” (Zürn 2019, 978).

the legitimacy crisis is one of these obstacles. Contrary to others, however, it cannot be solved if the institution does not change dramatically.

Grammars of commonality

When studying legitimation practices, political scientists often focus on the norms the authority or constituency mobilise to legitimise and delegitimise the institution (e.g. economic performances (Tong 2011, 150), democratic principles (Føllesdal 2006), nationalism (Holbig & Gilley 2010, 401-402)). However, pragmatic sociology sheds light on another important aspect of legitimation, namely the format of justifications.

Some researchers in political science tend to take the collective for granted (Thévenot 2011, 385). Social groups (defined by their nationality, social class, institutional structures, etc.) are conceived as relatively homogeneous bodies. Researchers do not question what binds the group together; they assume that the group members share common norms that are deemed relevant to assess an institution's legitimacy. By contrast, pragmatic sociology sees social groups as a collection of individuals with their own normative beliefs, justifications and constraints. It investigates the ways groups organise public discussions and solve normative conflicts. It explores "the various operations and devices which practically bring [a group] together, in a cognitive, social and political sense" (Thévenot 2011, 384). While political science studies the institutions put in place to alleviate societal tensions (e.g. parliaments, activist groups, public debates, etc.), pragmatic sociology focuses on the format these institutions take.

Thévenot distinguishes three formats or **grammars of commonality**. The grammar of public justification applies to groups that solve normative conflicts through deliberation and argue about the common good, groups where the authority has the mission to safeguard the common good (Eranti 2018). In these groups, the institution is legitimised by reference to the common good since the format of discussion centres on what is good for all. It has been shown, for

instance, that in France individuals who refer to their own interest are considered illegitimate in the public discussion (Lamont & Thévenot 2000).

In contrast, a grammar of individual interest describes groups that solve conflicts through negotiations. Their discussions consist of opposing views. They have different preferences between publicly available options, rather than different conceptions of the common good. They achieve compromise by negotiating between individual, and often opposing, choices (Eranti 2018). In those groups, legitimation practices must be expressed in terms of interests or stakes. In the US, for instance, it is very common to refer to individual interests to legitimise or delegitimise an institution (Lamont & Thévenot 2000).

Finally, the third grammar, that of personal affinities, characterises groups that organise discussions around emotions and familiar feelings, and where the discussion opposes strong personal attachments that are generalised to the community. The aim is not to produce unanimity; there is plenty of room for differences. The authority must ensure the preservation of a commonplace that is to be hospitable to a plurality of affinities (Lamont & Thévenot 2000). In that case, legitimising justifications do not centre on the common good or individual preferences, but on strong relationships and familiarity (Eranti 2018). Local governments or activist groups exemplify this grammar well. St Petersburg Park activists, for example, justify their actions by referring to the trees as their brothers to signify that they are really meaningful to them (Lonkila 2011 quoted in Eranti 2018). Similarly, cultural symbols with strong emotional resonance can be used as justifications in public discussions (Ylä-Anttila & Luhtakallio 2016).

The grammars of commonality are really useful to study legitimation practices since they help to look beyond the content of justifications. They are a key tool to explore how stakeholders with different normative preferences can justify the same institution (see Article 3).

Research design

In order to study how the ETS is criticised and legitimised, this research adopts an inductive approach and follows an iterative process between theoretical assumptions and empirical findings. The main goal is to avoid imposing prior constructs and theories as some sort of preferred *a priori* explanation to understand the legitimation of the ETS. The advantage of the inductive approach is that in conducting interviews, reading secondary accounts, or reviewing historical documents, the researcher may discover new elements that previous theories had overlooked (George & Bennett 2005, 128). Therefore, the research question and the results are derived from issues and data found in the field rather than from theoretical assumptions made in advance.

Of course, the research process was also guided by conceptual definitions and theoretical assumptions that help determine where to look and what to look for. While always open to discussion and necessarily limited, conceptualisation represents “the indispensable first step towards the generation of knowledge [...] and is central to the scientific enterprise” (Davis 2005, 11). This explains why the definition of concepts is an important part of this introduction and the two first articles of this dissertation.

It must be noted, however, that the research collects and analyses new data on the voice of stakeholders in the ETS. This creates rich opportunities for the discovery of new insights into legitimation and delegitimation rather than the affirmation of existing concepts (Gioia et al. 2012, 17). The next subsections present how this data was collected and analysed.

Data collection

To unveil how stakeholders criticise and legitimise the ETS, this dissertation builds on different data sources. The data for the empirical part of this project comes from official documents, historical accounts, position papers and interviews.

The first step of the research required understanding the historical development of the ETS. Official documents, academic papers and media articles are essential to paint an accurate picture of the political environment in which it was created and has been reformed. Official documents were mainly collected from the Commission's official website (1992-2019) and the EU database of legal documents (EUR-Lex). I also consulted press releases from the Council and Parliament (2000-2019). These documents are crucial to understanding the EU's position regarding climate policy in general and emissions trading in particular. They are complemented by academic sources and media articles (1996-2020) that detail the design and reform process.

This data allowed me to reconstruct two important processes. The first concerns the acceptance of emissions markets as a valid instrument to reduce emissions at the international level and its adoption at the EU level. While the US had implemented different emissions trading schemes in the 1970s, it became a central topic of the negotiations in 1996-1997 during the negotiations of the Kyoto Protocol. This led the EU to design its own ETS, the first international emissions trading scheme. This was necessary to understand how the EU reversed its earlier aversion to "free-market environmentalism" (Damro & Luaces-Mendez 2003a) to develop a trading scheme of its own. The second process examined in the research is the succession of negotiations and reforms that explain the state of the ETS today.

In order to reconstruct these two processes, the analysis focuses on documents collected in two continuous but distinct periods of time: from 1992 to 1999 and from 2000 to 2019. These dates were chosen for a purpose. In 1992 the Commission launched its proposal – which later failed

– for an ecotax (European Commission 1992) and by 1999, after the Kyoto negotiations, it had revised its strategy (European Commission 1999). In 2000 the Commission published its Green Paper on Greenhouse Gas Emissions Trading within the EU (European Commission 2000). The analysis stops right before the first discussions on the European Green Deal (European Commission 2019c) because it is still too early to draw any conclusions on this ambitious but controversial proposal. This was an essential step that helped me map the different stakeholders, diverging interests and ideologies, and identify relevant interviewees for the empirical articles.

In a second step, the research explored the different interests defended by the stakeholders in the debates as well as their critiques and justifications of the ETS. The analysis rests on the examination of more than 200 position and recommendation papers from 25 stakeholders (see below). The aim was to have a sample that includes all parties involved in the debates (whether they took part in the formal negotiations or not) and to gather data on a long period of time (2000-2019). Moreover, different types of stakeholders are represented: economic and climate think tanks, environmental and development NGOs, energy-intensive and non-energy intensive industry and businesses. The sample also includes bigger stakeholders (industrial lobbies, well-known NGOs) and smaller ones (small think tanks and NGOs).

At first, the objective was to analyse the same number of documents for each stakeholder. However, this proved unsuccessful because of the uneven number of publications among them. Therefore, the sample includes at most ten publications (spread over the longest possible period) from each stakeholder. I have chosen to include stakeholders that have published fewer documents on the ETS but bring a new perspective on the matter (e.g. Deutsche Bank, Green Finance Observatory, etc.). These stakeholders, while not solely focused on the ETS and its negotiations, have developed expertise, critiques and justifications that are relevant for this research.

In order to triangulate the findings from these documents, a series of 20 stakeholder interviews⁹ was conducted. The initial idea was to interview all the stakeholders included in the document sample. However, some refused to be interviewed because of in-house policy or practical considerations. The interviews pursued two objectives: first and foremost, they were tailored to explore how the stakeholders legitimise and delegitimise the ETS; a secondary purpose was to better understand the historical development of the ETS and the different interests present in the negotiations. The questions were designed to interrogate further the justifications offered in the documents and to uncover new justifications or criticisms that did not appear in the publicly available position papers¹⁰.

The interviews provided extensive data for this research and the sample proved sufficient to answer the research questions. For one thing, interviews offer a great array of data and do not constitute a single “data point”: “In-depth interviews provide qualitative researchers with a great deal of valuable evidence. In such interviews, informants not only answer the specific, prepared questions that the researcher poses, but often offer their own more nuanced responses and unprompted insights” (Munck 2004, 116). For another, the findings show that stakeholders tend to express the same kinds of critiques and justifications regardless of the interests they represent. The research therefore focuses on the common ground among them rather than their differences and it seems that expanding the sample would not have led to new findings.

For the purpose of this research, semi-structured interviews and open-ended questions were considered most helpful since the main goal was to grasp stakeholder justifications of the ETS

⁹ All interviews are protected by the data protection guidelines of the Data Protection Official for Research and the EU’s General Data Protection Regulation (GDPR). They were recorded and later transcribed and stored according to these regulations. The anonymity of all interviewees is guaranteed, though most agreed to be mentioned by name. Since there was no consensus among them, all the interviews are anonymised. The data will be archived and available at the Norwegian Centre for Research Data (NSD).

¹⁰ See the interview guides in Appendix 2 for more details.

rather than gather factual information. Interviewing stakeholders was an effective way to acquire information missing from official documents and position papers, and open-ended questions allowed them to articulate their views (Aberbach & Rockman 2002, 674).

Claims-making analysis

The gathered data is analysed through a particular form of qualitative content analysis: claims-making analysis (Krippendorff 2004). It aims at “the subjective interpretation of the content of text data through the systematic classification process of coding and identifying themes or patterns” (Hsieh & Shannon 2005, 1278). The unit of analysis is the claim (speech acts, sentences, paragraphs), not the discourse as a whole. A claim can be defined as any communicative action “which articulate[s] political demands, decisions, implementations, calls to action, proposals, criticisms, or physical attacks, which, actually or potentially, affect the interests or integrity of the claimants and/or other collective actors in a policy field” (Statham 2005, 12). These claims are studied through content analysis technique to make “replicable and valid inferences from texts (or other meaningful matter) to the contexts of their use” (Krippendorff 2004, 18). This method is particularly suited to the objective of this thesis since it focuses on analysing the relevant parts of the discourse rather than studying it as a whole. It also helps explain how stakeholders make sense of their environment.

The claims were coded following an inductive approach. At first, the categories remained general. Adopting, insofar as possible, an inductive category development (Mayring 2004) allowed new insights to emerge from the data (Kondracki et al. 2002). Qualitative content analysis requires several steps. The first stage of the analysis tried to adhere faithfully to the terms used by the respondent and the main objective was to identify the numerous objects of the claim. At that stage, the analysis remained purely descriptive (Gioia et al. 2012, 20). In the second stage of the analysis, the coding classified claims according to their object and

differentiated among positive, negative and neutral claims. The data was also coded to distinguish different types of actors according to their function (e.g. climate NGO, energy-intensive industry, etc.) and their role in the negotiations (participant or non-participant in the formal negotiations with the Commission). In a third step, and thanks to this categorisation, the objective was to observe relevant patterns in the stakeholders' justifications and criticisms. The data revealed notably two important insights about ETS legitimation. First, when observing the positive claims, it became clear that the main object of legitimation was the grammar of commonality– the coordination mechanism, the various operations and devices which practically bring a group together, in a cognitive, social and political sense – rather than the policy, authority or institutional design. And second, when analysing the negative claims, there was a divide between the stakeholders who took part in the negotiations with the Commission and those who did not. These two observations are the topics of the empirical articles. The next section details the case study examined in these articles.

Case selection

Legitimation relations go two ways: the authority justifies itself to a constituency and the constituency legitimises the authority. This dissertation focuses exclusively on the latter to understand how a constituency can simultaneously criticise and legitimise an institution. Even accepting limits to how far stakeholders can confer authority, an understanding of how a constituency can simultaneously criticise and legitimise does add to existing understandings of how an authority can be acknowledged as such. The dissertation adds that understanding by exploring a single case study, defined as “a well-defined aspect of a historical episode that the investigator selects for analysis, rather than a historical event itself” (George & Bennett 2005, 71). The case study is the stakeholder legitimation and critique of the EU ETS.

Case study research allows for a more accurate conceptual validity than statistical approaches (George & Bennett 2005, 78). Since the objective is to avoid predefining relevant standards of legitimacy, it would have been difficult to operationalise indicators applicable in a large-N analysis. Moreover, case study is a powerful method to derive new hypotheses and variables (Gerring 2006). Finally, the inferences made from the single case rest on a sample of data within it. Within-case analysis is an effective method to help with theoretical development (George & Bennett 2005).

The research attempts neither to explain the development of the ETS itself nor to produce an exhaustive description of the measures implemented through it. Neither does it detail why stakeholders accepted its implementation in the early 2000s. Instead, it focuses on one particular aspect, the current *evaluation* and *justification* of the ETS by the stakeholders. This section justifies why studying stakeholders in the ETS is a relevant way to discuss legitimacy in controversial institutions.

Studying stakeholders

When studying legitimacy in a constituency, many scholars focus on citizens (Armingeon & Guthmann 2014, Hobolt & Wratil 2015). This dissertation explores another group, namely stakeholders. It is crucial to learn more about that particular constituency for four main reasons. First, stakeholders are fully embedded in the legitimation process – whether they serve as a legitimation mechanism for the EU or as actors that should be legitimate themselves. Second, stakeholders are an important constituency in the attribution of legitimacy. Third, studying stakeholders (and not citizens) makes it possible to challenge the hypothesis of the “permissive consensus”. It is important to challenge the hypothesis of a “permissive consensus” which lives on in claims that citizens are mostly indifferent to European integration, in spite of newer theories that the Union is, to the contrary, marked by a ‘constraining dissensus’ (Hooghe and

Marks 2009). Stakeholders plainly are not a passive constituency. In this case, the stakeholders are a politicised and not a passive constituency. Stakeholders have the necessary interest to evaluate the ETS and the possibility to delegitimise it. Therefore, they are a relevant constituency to examine how criticised institutions avoid legitimacy problems. Lastly, stakeholders are a suitable case study because the group is sufficiently integrated to discuss legitimacy.

Firstly, in EU and international governance, stakeholders are embedded in the legitimisation process. They are seen as a legitimisation mechanism, a group used to enhance legitimacy (Dryzek & Niemeyer 2007, Kohler-Koch & Quittkat 2013, Trenz 2017). They would ensure more representativeness (Baccaro 2006, Greenwood 2007b, Bernauer & Gampfer 2013); enhance participatory democracy (Smismans 2006, Mena & Palazzo 2012, Kohler-Koch & Quittkat 2013); or help produce expert-based and more effective outcomes (Héritier 2003, Kudrna 2016, Ydersbond 2018) (see further discussion in Article 1). Simultaneously, they are described as actors that should be legitimate themselves (MacDonald 2012, Kohler-Koch & Quittkat 2013). Since stakeholders exercise, directly or indirectly, some public power and influence the decision-making process, they should also be held to legitimacy standards. Stakeholders must be legitimate to the authority in order to facilitate their participation in the decision-making process (Maloney et al. 1994, Pettinicchio 2012). They must also be legitimate to the other stakeholders to be recognised as fair participants (Phillips 2003) and to the citizens if they are to serve as a legitimisation mechanism (Santana 2011).

Secondly, stakeholders are also a particular constituency that attributes legitimacy (Agné et al. 2015). A growing literature assesses the effect of the communication of elites on citizen perceptions of the EU or international organisations (Maier et al. 2012, Dellmuth & Tallberg 2020). Another strand of literature examines how elites participate in the legitimisation and delegitimation of international organisations or the EU (Héritier & Reh 2012, Binder & Heupel

2015, Hurrelmann et al. 2015, Tallberg & Zürn 2019). Therefore, it is necessary to understand how this constituency attributes legitimacy.

Moreover, an institution should be legitimate to stakeholders for practical and normative reasons. Practically, since stakeholders act as a link between citizens and the authority, they need to recognise the institution as legitimate in order to help as sound advisers and contribute to policy implementation (Steffek et al. 2008). As mentioned above, they can also help legitimise the institution to citizens (Héritier & Reh 2012, Tallberg & Zürn 2019). Normatively, legitimacy among stakeholders complements – but does not replace – legitimacy among citizens. Since many institutions cannot be explicitly legitimised by citizens (since they are not politicised or submitted to regular elections), stakeholders are a complementary constituency to which an institution should be legitimate. Moreover, in institutions that are dependent on popular legitimacy, legitimacy among stakeholders is important to ensure stability and compliance (Baccaro 2006, MacDonald 2012).

Thirdly, the research examines stakeholders rather than citizens because it is important to question the hypothesis of the “permissive consensus”. It has been argued that the EU’s legitimacy is sustained by a generalised disinterest “rather than affective/identitive (emotional) support by the constituent publics – i.e., an abstract, non-politicized, passive and output-oriented ‘permissive consensus’” (Chrysochoou 2009, 30). The EU would have avoided legitimacy issues thanks to the disinterest of citizens (Lindberg & Scheingold 1970, Hurrelmann 2007, Hurrelmann et al. 2015). In this case, the stakeholders are a politicised and not a passive constituency. Stakeholders have the necessary interest to evaluate the ETS and the possibility to delegitimise it. Therefore, they are a relevant constituency to examine how criticised institutions avoid legitimacy problems.

Additionally, we know that legitimacy is not only a matter of rationality, but is affected by framing and persuasion (Chong & Druckman 2007, Dellmuth & Tallberg 2020). Although stakeholders are not immune to strategic communication and discursive tricks, they have a certain expertise that allows them to challenge the information and arguments, and more easily spot possible mistakes (Hajer 2012). Therefore, choosing stakeholders limits slightly the potential for manipulation and minimises the role of media or other intermediaries in their evaluation of the ETS (Sheafer 2001, Etter et al. 2016).

Finally, the selected sample is a relevant group to study legitimacy. As mentioned above, legitimacy can only be discussed in groups that share some common understandings. On one hand, stakeholders are socialised into a common culture and all participated in the public debate on the ETS. On the other, the sample remains very diverse in terms of resources, power, objectives, interests and ideological beliefs in order to be able to analyse their differences and similarities.

Nevertheless, analysing this particular constituency is not equivalent to studying citizens: “European elites and European publics share no uniform sense of what the EU should look like and where it is headed; its competences and institutional make-up have been, and will likely remain, the object of political conflict” (Banchoff & Smith 2005, 2). Therefore, the arguments used by the stakeholders to legitimise or criticise the ETS or the fact that they keep legitimising it despite its deficiencies cannot be extrapolated to the general public. However, many aspects of this thesis can inform further research on legitimacy. First, the broad questions addressed through this case study are relevant for other institutions and should be tested in other constituencies. Also, while studying stakeholders does not offer a complete picture of ETS legitimacy, it certainly sheds light on one crucial constituency and thus contributes to the academic debate on the role of elites in the legitimation of supranational institutions.

Studying the ETS

The research focuses on the ETS for three main reasons. Firstly, the ETS is a widely criticised institution and yet it keeps developing and remains legitimised. This paradox is the knot that the present research attempts to untie. Although the ETS was widely praised by political and civil society actors (Elkerbout 2017, ERT 2018), it has also fallen short of expectations: it is not yet proven that it reduces emissions (CANEurope 2016, Dechezleprêtre et al. 2018), its cost-efficiency is questioned (WVMetalle 2017, WWF 2019), it produces counterproductive effects (Attac 2016, Hache 2019), and loopholes enable some actors to fraud (FERN et al. 2013, CEO 2016). In addition to these shortcomings, stakeholders – including European institutions – expressed many criticisms against it. The Commission itself recognises that the ETS is not yet working optimally (European Commission 2019d). Despite the widely shared opinion that the ETS is problematic (for different reasons and to varying degrees), it is not yet facing legitimacy issues since the EU keeps developing it without much opposition.

Secondly, the ETS was chosen because it is a relatively young institution, and it was possible to retrace its creation and detail its evolution. Neither is the ETS too young, however. It was necessary to select an institution that stakeholders knew and could evaluate thoroughly; thus, time and hindsight were required.

Finally, as the cornerstone of EU climate policy, the ETS is a critical case study. Often the institution and its legitimacy are assessed through technocratic standards (Remling 2018). However, the technocratic debate tends to conceal the fact that the causes, evaluations and solutions to climate change are deeply rooted in ideological beliefs and political choices. Using a sociological lens to study the ETS makes it possible to analyse the political conflicts and normative choices that are crucial to thoroughly understand how the institution is legitimised and delegitimised.

This thesis does not attempt to study whether stakeholders evaluation of the ETS has evolved with time. Since its creation, the ETS has been reformed several times (see Appendix 1). However, this is not a historical analysis. The goal is to understand how, today, the stakeholders justify and criticise the ETS.

The ETS as an Institution

All along this thesis, the ETS is conceived as institution. Many researchers have conceived it as a policy (e.g. Skjaereth & Wettstad 2008, Grubb & Neuhoff 2006, Zhang & Wei 2010). Policies are “detailed plan of how something will be done” (Collin 2004, 182). “Ruling is an assertion of the will, an attempt to exercise control, to shape the world” and policies are the “instruments of this assertive ambition” (Goodin, Rein & Moran 2006, 3). The ETS is one of these instruments.

However, the ETS is also an institution, “an organisation or society set up for a particular purpose” (Collin 2004, 123). It is a societal set up that establishes a common ground, a shared understanding of perceived problems and appropriate solutions; it defines the values and normative principles that should guide their actions and decisions (March & Olsen 2010).

This differentiation is crucial to this thesis because, as presented in the theoretical framework above and in Article 1 and 2, studying legitimacy requires the ability to distinguish between specific and diffuse support. Policies (and modification of policies) can affect specific support for an institution, they are one of the “explicit actions” through which authorities can be evaluated (Easton 1975, 438). However, since they cannot be object of diffuse support, they can neither be objects of legitimacy according to the definitions above and the model presented in Article 2. According to our conceptualisation, legitimacy provides diffuse support to an institution (see above p.20), it refers “to evaluations of what an object is or represent – to the general meaning it has for a person – not of what it does” (Easton 1975, 444).

Diffuse support “consists of a ‘reservoir of favorable attitudes or good will that helps members to accept or tolerate outputs to which they are opposed or the effects of which they see as damaging to their wants’. Outputs and beneficial performance may rise and fall while this support, in the form of a generalized attachment, continues. The obverse is equally true. Where support is negative, it represents a reserve of ill-will that may not easily be reduced by outputs or performances” (Easton 1975, 444).

Therefore, in order to study the ETS legitimacy and to apply our model, it is necessary to conceive it as an institution that can be the object of specific and diffuse support.

Generalisability

Studying the stakeholders involved in the EU ETS debate might appear to be a rather precise topic. It is true that climate policy and the ETS in particular are highly technical issues that stir intense discussions among scholars. This dissertation contributes to these debates by studying the ETS legitimacy with a new approach. However, despite its singularities, this case study can also offer valuable theoretical and empirical insights for other research for mainly two reasons.

First, generalisability should not be thought only in aggregate data set and quantitative studies (Donmoyer 2000, 51). Lincoln and Guba reconceptualise generalisability as transferability and note: “The degree of transferability is a direct function of the similarity between the two contexts, what we should call ‘fittingness’” (Lincoln and Guba 1985, 124, emphasis in the original). The ETS is, in many aspects, comparable to other institutions. It is the result of a power struggle and encompasses a particular ideology that guides its norms and actions. As in any other institution, some stakeholders are more powerful or have more resources than others. In the negotiations, diverging ideologies and interests come into conflicts and the decisions are made to achieve, as best as possible, a compromise among all parties. Like many other matters in the EU, the ETS (and climate policy in general) are legitimised through technocratic and

democratic arguments. Therefore, while emissions trading can appear as a technical issue, the founding and development of the ETS resemble those of other institutions at different levels of governance. The findings of this thesis could thus be transferred to similar case studies.

Second, the research addresses broad questions of social science that are not limited to the ETS or climate policy. The novel conceptualisation of legitimacy presented in the first two articles can be relevant for many researchers in social science. Considering legitimacy as a social relation offers a new perspective that could be applied to any institution at the local, national, regional and international levels. The goal pursued in these two papers was to open a discussion that could enrich the academic discussion on legitimacy and would offer empirical tools that could be applied in any case study.

As mentioned above, the ETS was chosen because it is an institution that is criticised by almost all parties involved. None of the stakeholders seem satisfied with the current state of the institution. While it is difficult to affirm that many institutions are as controversial, there are few arguments that would explain why the empirical findings of the last two articles are not only applicable to the ETS. The fact that stakeholders do not justify the authority or the policy as much as they legitimise the grammar of commonality is an interesting conclusion that should be tested in other cases. If it is confirmed, it could give the EU and other political institutions a new way to legitimise themselves towards stakeholders and citizens. Moreover, the problematic limited legitimisation of the ETS detailed in the fourth article – the fact that it is legitimised to and by a restricted group of stakeholders – is an issue that could be found in many other examples. Once again, these findings address larger issues of political science, namely the thorny questions of the object and subject of legitimisation.

Ethical considerations

Every research project brings its share of ethical issues. In this case, three important concerns needed attention. Firstly, interviews are a delicate exercise. They require to gain enough relevant information on the topic under study while respecting the interviewee's privacy and security. The data collection and storage respect the legal and ethical requirements mentioned in the General Data Protection Regulation (European Union 2016) and in the guidelines of the National Committee for Research Ethics in the Social Sciences and the Humanities (NESH). The Norwegian Centre for Research Data (NSD) gave its approval for the research project and the data collection. As required, the interviewees were informed and gave their consent to be interviewed and for the subsequent use of the data (NESH 2020, guidelines 7-8). The data has been anonymised and stored according to NSD recommendations.

Secondly, in this project, it was particularly important to anonymise the data as soon as possible. The ETS is a market that generates billions every year (European Commission 2019a). As in any other market, some actors make profits in illegal or ethically questionable ways (corruption, speculation, money laundering, etc.). Some of the interviewees witnessed and/or denounced such practices, which can put them at risk of retaliation. Some gave me the authorisation to identify them in the articles. Nevertheless, since the research and the arguments developed in this dissertation do not require any names, the data was anonymised as soon as possible (NESH 2020, guidelines 9-12).

Thirdly, this dissertation is part of a broader European research project, PLATO, that includes 14 other PhD fellows and 30 supervisors in 9 universities. For the success of all, it was necessary to cooperate in a fair and open way (NESH 2020, guidelines 28-31). The two co-authored articles follow the guidelines of the University of Oslo (UiO 2020) and the NESH (2020, guideline 25). In both instances, my colleague and I contributed evenly to the conception

and drafting of the article. We agreed on the arguments put forward and take equal responsibility for the final version. Finally, while this project was funded by the EU, the research was conducted independently and with scientific integrity. Neither the European Commission nor the project leaders influenced the content or conclusions of this dissertation.

Coherence of the dissertation and presentation of the articles

While each of the four articles included in this dissertation is a stand-alone piece, their combination helps answer the overarching question of this thesis. Therefore, before introducing each article individually, this section explains how they form a coherent whole and thus belong in the same dissertation.

Coherence of the dissertation

This thesis is divided into a theoretical and an empirical part, both of which are necessary to answer the research question. While they must be presented successively, theoretical and empirical considerations are inter-woven, thus bridges must be built between the four articles. The dissertation was not conceived as a comparison between case studies or between theories. Instead, it elaborates a theoretical framework that is, later, applied to a case study. The two empirical pieces use the same type of data (documents and interviews) and the same method (claims-making analysis). However, they explore different research questions that contribute to the overall objective of this dissertation.

Article 1 lays out the conceptual groundwork of this dissertation. It justifies why a sociological approach to legitimacy is needed. It shows how conflating legitimacy with predefined normative standards (e.g. democracy) can lead to a deficient understanding of legitimacy and unsuccessful legitimization strategies. It demonstrates that, in order to actually foster legitimacy, an institution needs to know who its constituency is and what norms matter in that group. After

explaining the relevance of the sociological approach, the article delineates the tasks such an approach must tackle. Firstly, it is necessary to conceptualise legitimacy in a way that allows for the sociological analysis of legitimacy and legitimacy problems in the case of the ETS (Article 2). Secondly, the dissertation must explore the alternative legitimation mechanisms: if the ETS does not rest on democratic legitimacy, what other basis of legitimacy does it have? (Article 3). Finally, it is essential to understand how the constituency – in this case, stakeholders – participate in the legitimation and delegitimation of the ETS (Article 4).

Next, Article 2 presents a sociological conceptualisation of legitimacy that is independent from any normative standards, such as democracy or justice. It introduces a model that details the mechanisms that transform institutional deficiencies into legitimacy problems or even a legitimacy crisis. In doing so, it spells out the necessary conditions for an institution to experience legitimacy problems and offers a theoretical explanation to the dissertation's research question. Article 2 presents the toolbox necessary to analyse how stakeholders legitimise the ETS and to understand why it has not (yet) run into legitimacy problems. The theoretical concepts developed in these two articles were necessary for the empirical analysis in article 3 and 4. However, since, as seen below, the ETS was not politicised among citizens, the application of the model to this case study can only be limited. Nevertheless, the clarification of the concepts and the mechanisms that lead to a legitimacy crisis were indispensable to conduct a reliable empirical analysis.

Article 3 is the first empirical analysis. It investigates how stakeholders legitimise the ETS. The sociological approach and inductive method make it possible to analyse stakeholder justifications with few presuppositions. The objective is not to search for certain standards (such as democracy or justice) that would prove ETS legitimacy. Instead the aim is to understand *what* stakeholders justify. They criticise the policy, the authority and the decision-making process, but they justify them in a manner that shows the grammar of commonality they regard

as legitimating the ETS is one based on shared interest and negotiation. These findings contribute to the dissertation's research question by showing that, although an institution might be criticised in many aspects, its legitimacy might not be challenged as long as the constituency finds one element to legitimise.

Lastly, Article 4 explores further why the ETS has not run into legitimacy issues by analysing stakeholder criticisms. It demonstrates that, at the moment, the ETS is legitimised by and to the insiders, the stakeholders who contribute to institutional negotiations. Outsiders, on the other hand, fail to make their voice heard within the institution and fail to politicise the ETS and its deficiencies outside the institution. It illustrates empirically what Article 2 develops theoretically: one necessary condition for an institution to run into legitimisation problems is its politicisation. As long as the ETS remains a technocratic issue, its legitimacy will not be challenged. However, if citizens gain awareness of the matter and question the ETS in the public sphere, the EU might have a hard time justifying this controversial institution.

The four articles contribute differently to understanding how criticised institutions do not always run into legitimisation problems. The first two articles set out theoretical concepts necessary for the empirical analysis in Articles 3 and 4. Article 3 and 4 then analyse two different mechanisms by which stakeholders avoid the legitimisation problems that might otherwise be expected from criticisms of the ETS. The first mechanism, analysed in Article 3, is a grammar of commonality; or, in other words, stakeholders' own understanding of what they have in common and of what they can legitimately do in common. Article 3 details how ETS stakeholders understanding of what they can legitimately do in common is limited to the pursuit of individual interests through negotiation. It would not legitimately be a part of their role to seek to agree norms, values and deliberation. All that however facilitates agreement on otherwise criticised policies by bracketing or avoiding disagreements on norms and values. The second mechanism, analysed in Article 4, is a form of institutionalised disequilibrium between

stakeholders. The ETS has ‘insider stakeholders’ and ‘outsider stakeholders’ who do and do not participate in consultations. But the only stakeholders who are included are those whose criticisms are limited to implementation rather than criticisms of ends, norms or values.

Article 1: “Conflating Policy, Democracy and Legitimacy: The Case of Stakeholder Involvement”

Co-authored with Bastiaan Redert, PhD candidate at the University of Antwerp, and to be published in an edited volume of work from the PLATO project.

Over the past couple of decades, scholars and practitioners have studied and provided solutions to the EU’s legitimacy problems. With their advice, the EU has attempted to improve its democratic features as a way to foster its legitimacy (Fung 2006, Greenwood 2007a). Nevertheless, despite its attempts, the EU still struggles to ensure its legitimacy and it seems the many instruments have not produced the expected results. Why? This article argues that the EU’s efforts have had limited results because they rest on a problematic conceptualisation of legitimacy.

Despite the patchwork of legitimacy conceptualisations, it seems that academics and policy advisers agree on the idea that enhancing democracy would foster legitimacy (Banchoff & Smith 2005, Schmidt 2013, Blockmans & Russack 2019). However, this broad consensus can add confusion to the study of legitimacy since scholars tend to mobilise different variants of democracy (e.g. participative, representative, deliberative, etc.) and apply various definitions of legitimacy. Despite this shortcoming, this quasi-equivalency between democracy and legitimacy has shaped many of the EU’s instruments to foster its legitimacy.

Against this backdrop, the article advocates a sociological understanding of legitimacy and argues that legitimacy cannot be equated with democracy or any other normative concept when

studying a constituency. Legitimacy is reconceptualised as a social relationship between an authority and its constituency. As such, legitimacy is relational (i.e. the result of an interactive process) and social (it must emerge in a group setting). Thus, in order to gain legitimacy, an authority is still dependent upon dynamics of legitimation that might or might not succeed in fostering legitimacy.

Finally, to illustrate the pitfalls of conflating legitimacy and democracy, the paper explores a popular legitimation strategy, stakeholder involvement. Although many theoretical arguments might justify the involvement of stakeholders in the decision-making process (Dryzek & Niemeyer 2007, Kohler-Koch & Quittkat 2013, Trenz 2017), there is no guarantee that it will indeed affect the EU's legitimacy. It is a way the EU attempts to justify itself, but it does not ensure that the citizens (or other constituencies) will indeed acknowledge or accept this justification.

Article 2: "Rethinking the Legitimacy Crisis: How to Catch the Loch Ness Monster of Political Science"

Co-authored with Jan Pesl, PhD candidate at ARENA, University of Oslo.

Article 2 deepens further the reflection on the sociological approach to legitimacy and introduces an operational model that enables researchers to distinguish legitimacy crisis, legitimation crisis and legitimacy deficit. This article contributes to political science research by collecting elements scattered in the literature on sociological legitimacy and legitimacy crisis, and addresses theoretically the dissertation's question: why do most institutions *not* run into a legitimacy crisis despite the many criticisms?

The article answers this question in two steps. First, it presents a model that conceives the

legitimacy crisis as the outcome of legitimation and delegitimation dynamics. It details the mechanisms that can turn institutional deficiencies into a legitimacy crisis. In a second step, the article spells out the necessary conditions for legitimacy problems to occur and evolve into a legitimacy crisis. Legitimation problems can only arise in societies where there is a functioning public sphere, a space where legitimation and delegitimation practices can take place. Moreover, the institution and its deficiencies must become a salient object of politics in order for delegitimation and legitimation practices to affect the level of support. Without politicisation, the process through which an object is “moved” into “the realm of public choice, thus presupposing the possibility to make collectively binding decisions on that matter” (Zürn 2019, 978), citizens cannot become aware of the legitimacy issues and the institution remains unchallenged. These conditions are tested in Article 4.

Article 3: “The Grammar of Commonality as an Object of Legitimation: Stakeholder Legitimation in the EU Emissions Trading Scheme”

Article 3 explores how stakeholders, despite their divergent interests and their criticisms of the ETS, keep legitimising the institution. It is based primarily on the data from the 20 interviews and completed with primary and secondary sources such as position papers and official documents.

When studying sociological legitimacy, most scholars tend to assume what norms are relevant to the constituency under observation or what object it evaluates (policy, authority, system, etc.). This article contributes to the literature on ETS legitimacy by reflecting on these presuppositions. It examines how stakeholders legitimise the institution despite its shortcomings without defining a priori the norms or object of legitimacy they deem relevant.

To do so, it uses tools from pragmatic sociology as well as the definitions introduced in Articles 1 and 2. It does not regard the stakeholders as a homogeneous group, but as a collection of

various normative beliefs, interests and constraints. Thus, it studies how this group is brought together, how personal concerns are voiced and how conflicts are resolved. It adopts Thévenot's distinction between grammars of commonalities, the coordination mechanism, the "various operations and devices which practically bring a group together, in a cognitive, social and political sense" (Thévenot 2011, 384).

It then operationalises two grammars (that of public justification and that of individual interests) into three indicators (the format of discussion, the role of the authority, and the subject of the authority). Using these and applying claims-making analysis, it studies stakeholder claims. The article demonstrates that stakeholders do not justify the ETS for its objectives, democratic features or results, but because of the commonality it establishes. Stakeholders believe the grammar of individual interest to be the most appropriate at the European level, i.e. the discussion is organised as a negotiation (as opposed to deliberation), the Commission plays a role of mediator (rather than being an overarching authority), and the discussion gathers a community of interests (not of citizens). The ETS, according to the stakeholders, is not the best policy or the fairest institution. However, stakeholders do believe the ETS is justified by shared interest, which they regard as the appropriate grammar of commonality at the EU level.

In unveiling a novel object of legitimation, the article leads to three important contributions for political science literature. First, legitimacy does not necessarily require shared normative principles. Stakeholders acknowledge that they have very different definitions of the common good and they would not accept that the Commission – or any other authority – impose its own normative principles. They believe that the ETS is legitimised notably because the negotiations allow for normative conflicts. Second, it could open the way for the EU to implement new legitimation strategies. Rather than focusing on strategies adapted to the grammar of public justification (e.g. increasing citizen participation or deliberative mechanisms), the EU could attempt to develop legitimation strategies better suited to the grammar of individual interests.

Third, the paper highlights the fact that an institution is legitimised when it fits well enough the grammar it embodies. This, however, does not ensure that the institution is morally good, effective or democratic.

Article 4: "The Problematic Legitimation of the EU Emissions Trading Scheme: When Legitimation Relies on Exclusion"

Article 4 contributes to this dissertation by analysing how stakeholder criticisms affect ETS legitimation. The current literature on ETS legitimacy argues that increased participation of member states and environmental NGOs, as well as the progressive improvement of the ETS should grant it sufficient legitimacy (Skjaereth & Wettestad 2008, Skjaereth 2010). By contrast, some scholars believe the ETS will encounter legitimacy issues if it fails to deliver the expected results (Grubb et al. 2005, 131). This article examines one more reason why the ETS can be highly criticised whilst its legitimacy remains intact.

The article uses claims-making analysis to examine 120 position papers and 20 interviews and to analyse how stakeholders criticise the ETS and how these criticisms affect its legitimation. It shows that there is a difference between the insiders (the stakeholders who participate in the institution) and those outside the institution. ETS legitimacy is indeed challenged, but mainly by outsiders. Insiders criticise the ETS because they consider that it does not implement well enough the norms and values it is designed to materialise. The outsiders, on the other hand, criticise these norms and values. Thus, the ETS does not run into legitimacy issues because it relies on the institutionalised disequilibrium between stakeholders: those who are embedded in the institution legitimise it (even though they advocate for some reforms), while those who attempt to challenge its legitimacy are disregarded and have no space to express their grievances.

These findings raise normative and practical questions. Firstly, if insiders agree on legitimising the ETS, they also use its norms and values to argue for diverging reforms. These conflicts can, voluntarily or involuntarily, stalemate the decision-making process. Therefore, successful legitimisation does not necessarily lead to the progress or correction of the ETS. Secondly, in excluding the outsiders, insiders limit the scope of ETS legitimacy. The ETS is legitimate only to those who participate in it. The subject of legitimacy is thus very restricted. As long as the issue is not politicised, ETS legitimacy will remain stable (see Article 2). Nevertheless, if citizens, along with their demand for climate policy, begin questioning the ETS, the EU will have a hard time defending its legitimacy.

Findings and concluding remarks

This thesis examined how stakeholders legitimise the EU ETS and how their critiques affect its legitimacy. The final section of this introduction summarises the findings and their implications. First, it provides new insights into an important question: is the ETS legitimate? Second, it answers the research question of the dissertation, namely how can criticised institutions remain legitimised? Finally, it presents implications for ETS legitimisation and legitimacy.

Is the ETS a legitimate institution?

From a sociological perspective, the ETS is legitimised; however, it is not legitimate. Like most institutions, the ETS faces a legitimacy deficit: according to stakeholders, “what is” is not totally aligned with “what ought to be”. However, it is not (currently) facing any legitimacy problems because it is not politicised.

The ETS is legitimised by a portion of the stakeholders; it is justified by those who participate in the decision-making process. Those who challenge ETS legitimacy have failed to politicise

the topic to the point where there are legitimacy struggles in the public sphere (whether we consider the entire EU public sphere or a smaller public sphere that would gather only stakeholders and European elites). Therefore, the ETS is not facing legitimation problems in the stakeholder constituency. For the time being, the ETS is a-legitimate in the citizen constituency, the institution is not considered a political object and, its legitimacy is not discussed. Thus, the ETS is not (yet) at risk of legitimacy troubles. These issues could arise if the topic becomes politicised among stakeholders or citizens.

These empirical findings highlight the difference between normative and sociological legitimacy. The successful legitimation of the ETS among stakeholders does not imply that it fulfils the criteria of legitimacy developed in normative theory. The policy has not yet proven its effectiveness or its merits; the institution is still broadly criticised: its lack of transparency, inequality among stakeholders and the Commission's lack of neutrality are seen as severe shortcomings. Most stakeholders who assess the ETS against these normative standards accept that they are ideals and will never be achieved. Therefore, they do not expect the institution to meet them and tolerate its shortcomings. A legitimised institution is not a perfect one.

While the current legitimation of the ETS is successful, it is also questionable. It rests on the imbalance among stakeholders and the technification of the debate (the ETS is discussed as an issue for experts and citizens are not involved). Legitimation of the ETS requires the exclusion of parts of the EU's constituency. From a sociological perspective, the ETS is legitimised at present.

How can criticised institutions remain legitimised?

The dissertation provides theoretical and empirical answers to its overall research question. Firstly, legitimacy crisis is not the opposite of legitimacy, but instead an obstacle in the legitimation process. There must be a functioning public sphere and the legitimacy problems

must be politicised in order to create a legitimacy crisis. When defined as such, it becomes clear why so many institutions can be criticised but not face a legitimacy crisis. In some contexts (e.g. at EU level), it can be argued that the public sphere is not yet integrated enough to lead to a legitimacy crisis. Moreover, many institutions are not politicised, and so they do not become a topic of discussion in the public sphere. This is the case of the ETS.

Secondly, criticisms do not necessarily endanger legitimacy. Many criticisms affect legitimation and specific support for an institution but not its legitimacy or diffuse support. Most legitimation problems can be solved (by re-legitimising the institution or making small institutional changes) and so never escalate into more severe legitimacy problems. Also, when an institution's legitimation is up for question in the public sphere, it does not necessarily mean that the institution is losing the struggle. In many examples, and specifically in the case of the ETS, the part of the constituency contesting the legitimacy is smaller and/or less powerful than those legitimising the institution. Then, the institution's *raison d'être* or its legitimising norms never really get challenged.

Thirdly, criticisms and justifications can have different objects. In the case of the ETS, stakeholders criticise many elements (the policy, authority, institution, etc.) but justify one important object, namely the grammar of commonality. They do not expect the ETS to become more efficient or more democratic any time soon. However, they participate and support the institution because they believe that the grammar of individual interests is the best way to solve conflicts and reach decisions at the EU level. Of course, they also support the institution for various practical reasons. Nevertheless, when asked to justify it, they legitimise the grammar of commonality realised by the ETS.

Finally, critiques can be a valuable opportunity to foster legitimation. By pointing out the institutional flaws, they give the institution space to reassert its legitimising norms and to defend

its current policies or design. Critiques are an intrinsic part of democracy and public debates can be a great platform to reinforce legitimacy. Therefore, excluding critical voices might not necessarily be the best way to protect an institution's legitimacy. Including as many opinions as possible might offer the institution an opportunity to justify itself.

Implications for the ETS and its legitimacy

Legitimacy is a social relationship. It is forever changing and negotiated. This has crucial implications to improve the EU's legitimation strategies and the ETS. As long as the ETS and climate change are seen as technical issues that can only be discussed by experts, the EU will not be able to foster ETS legitimacy and the institution will not be corrected effectively.

Questioning democratic legitimation and stakeholder involvement

The thesis shows that the current legitimation strategies put in place by the EU might be ill-fitted. Firstly, the EU's normative justifications of the ETS do not align with stakeholder expectations. The Commission repeats over and over that the ETS is the most cost-effective solution (European Commission 2019b). However, claiming its effectiveness is not a legitimising argument for the stakeholders who keep denouncing its disappointing impacts and high costs. If the EU really wants to foster its legitimacy or the legitimacy of its institutions, it must take into account what its constituencies deem relevant and appropriate. Similarly, democratic arguments have little effect on the stakeholders who keep denouncing the lack of transparency or inequality in the negotiations.

Additionally, in clarifying the definitions of legitimacy, legitimation and legitimacy crisis (Article 1 and 2), this thesis contributes to stakeholder democratic theory by making explicit why it is a conceptual mistake (See Article 1) to suppose, as some in the literature do ((Greenwood 2007b, Lindseth 2010), that merely consulting stakeholders can foster legitimacy.

However, this assumption rests on a conceptual mistake (see Article 1). Thus, stakeholder involvement is a legitimization strategy that does not automatically guarantee an increase in legitimacy. Moreover, stakeholders make up a particular constituency that does not necessarily defend the same norms and interests as citizens. The division between insiders and outsiders (Article 4) demonstrates that the stakeholders who participate in the negotiations fail to represent society at large (e.g. non-Europeans or anti-capitalist groups have no room in the debate). Additionally, the technification of the debate tends to obliterate the fact that stakeholders are not neutral and participate in an ideological and political decision-making process (Article 3 and 4). These elements are a valuable opportunity to shed lights on an important “vector” of the EU’s legitimacy, technocratic legitimacy, and a popular legitimization strategy, stakeholder involvement.

However, involving stakeholders has two important consequences for legitimacy. Firstly, as politically active actors, stakeholders can participate in the legitimization or delegitimation of an institution. They cannot guarantee an institution’s legitimacy, but they can participate in the politicisation process and its (de)legitimation. Secondly, in bringing forth criticisms against the institution, they can help improve it and they give the institution opportunities to re-legitimise itself. When stakeholders discuss an institution in the public spheres, they offer it a great opportunity to justify itself.

Treating climate protection as a political issue

The study of the ETS shows that, when reforming the ETS, focuses on correcting the deficiencies of the policy (lowering the cap, creating the Stability Market Mechanism, etc.). However, in doing so it conceals the ideological debates implicitly at play (e.g. market solutions vs regulatory solutions). This has two important consequences for the ETS legitimization. Firstly, by negotiating with stakeholders only on the policies, the EU fails to question the validity of

the ETS and to correct effectively its deficiencies the EU, once it implemented the ETS failed to question again its validity. Emissions trading might be a good idea on paper (even though its creator himself disavowed his invention (Johnson 2009), but its implementation is, at best, controversial and, at worst, counterproductive. If the EU wishes to legitimise the ETS, it must be able to also question (and maybe reaffirm) the ideologies underlying the ETS. Secondly, in integrating further the carbon market, the EU limits the possibility to challenge the political ideology that it realises and to implement other kinds of institutions (Hache 2019).

Second, it is crucial to include climate considerations into other political areas. Stakeholders unanimously argue that the ETS is in need of reforms. However, these reforms will not be satisfying as long as the carbon market is thought of as an instrument separate from other societal issues. The ETS affects wealth creation and redistribution, trade at the EU and global levels, the relationships between the North and the South, transactions in the financial sector, etc. It cannot be evaluated only in terms of a number of allocations traded or potential emissions cuts. Its effects ripple across the entire society and even outside the EU. These consequences cannot be ignored. Legitimising and improving the ETS and the EU's climate governance requires taking into account how it affects the daily lives of EU citizens.

Finally, the EU has been and could remain a very valuable player in global climate governance. But this will partly depend on its ability to adapt to the current politicisation of climate change mitigation. So far, the technification of the debate has allowed the EU to pursue its climate agenda without much accountability to citizens. It has never had to justify its results to them or to legitimise the political ideologies underlying its decisions on the matter. However, the current polarisation and politicisation of climate issues might affect the EU's legitimacy in the coming years. Since 2018, students across the world have been demanding more action from their representatives, but decision-makers have not (yet) taken significant measures. While citizens seem more and more preoccupied, governments and EU decision-makers are slow in

implementing changes and keep repeating mistakes from the past (BirdLife 2019). At the moment, the ETS has not run into legitimacy issues because it is not politicised. This could change rapidly in the coming years and the EU will need to find convincing justifications for this controversial institution and its climate policies in general.

Climate change is one of the greatest challenges the EU is facing today and will have to face in the coming decades. Citizens might not be willing to leave the matter in the hands of European experts much longer if the EU does not improve its legitimisation strategies. Nevertheless, these cautionary conclusions should not hide the fact that the EU has been trying to advance its climate agenda and new measures have been taken to listen to citizens (European Commission 2019c). Although this research suggests that the EU needs to improve its current legitimisation strategies and climate institutions, it also acknowledges that, contrary to many big players in international relations, the EU has the merit of paying attention to both issues.

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Appendices

Appendix 1 – The different phases of the EU ETS

In order to increase emissions reductions, the ETS has been reformed in mainly two ways. Firstly, broadening the geographic scope, the number of greenhouse gas or sectors covered expands the “carbon market” and the number of actors involved in the policy; it raises the demand for allowances. Secondly, limiting the cap, the number of allowances allocated for free and the types of offset credits tradeable on the market reduces the offer and therefore should increase the allowances’ price.

	Phase 1 (2005-2007)	Phase 2 (2008-2012)	Phase 3 (2013-2020)	Phase 4 (2021-2030)
EU's climate target	Preparing for the implementation of the Kyoto Protocol	-8% emissions compared to 1990 levels, Commitment made under the Kyoto Protocol	Europe 2020 strategy sets 3 targets: <ul style="list-style-type: none"> • 20% cut in greenhouse gas emissions from 1990 levels • 20% of EU energy from renewables • 20% improvement in energy efficiency 	EU's Climate and Energy Framework sets 3 targets for 2030: <ul style="list-style-type: none"> • At least 40% cuts in greenhouse gas emissions (from 1990 levels) • At least 32% share for renewable energy • At least 32.5% improvement in energy efficiency
ETS' emissions reduction target		-8% emissions compared to 1990 levels	-21% emissions compared to 2005 levels	- 43% compared to 2005 levels
Main objective	Pilot Phase aims to demonstrate the validity of concept	Reducing emissions	<ul style="list-style-type: none"> • Same as Phase 2 • Foster innovative energy technologies and carbon capture and storage 	<ul style="list-style-type: none"> • Same as Phase 3 • Funding low-carbon innovation and energy sector modernisation

Geographic scope	EU27	EU27, Norway, Iceland, Lichtenstein	EU28, Norway, Iceland, Lichtenstein	EU27, Norway, Iceland, Lichtenstein
Covered greenhouse gas	Carbon dioxide (CO ₂)	<ul style="list-style-type: none"> • CO₂ • Nitrous oxide (N₂O) via voluntary opt-in by member states 	<ul style="list-style-type: none"> • CO₂ • N₂O • perfluorocarbons (PFCs) from aluminium production 	Same as Phase 3 Uncertainty about the UK
Covered sectors	<ul style="list-style-type: none"> • Power generation installations • Energy-intensive industries 	<ul style="list-style-type: none"> • Same as Phase 1 • Aviation sector for flights within the EEA from 01.01.2012 (to be revised in 2023) 	<ul style="list-style-type: none"> • Same as Phase 2 • Petrochemicals, non-ferrous and ferrous metals, aluminium and other chemical industry • Carbon capture and storage installations 	Same as Phase 3
Cap	<ul style="list-style-type: none"> • Cap set at national level • Emissions registered in national registries 	<ul style="list-style-type: none"> • Same as Phase 1 • Guidance on how to establish national caps 	<ul style="list-style-type: none"> • Single EU-wide cap replace national ones • Linear reduction factor 1.74% 	<ul style="list-style-type: none"> • Single EU-wide cap • Linear reduction factor of 2.2%
Tradable units	EU Emissions Allowances (EUAs)	<ul style="list-style-type: none"> • EUAs • Offset Credits: Unlimited use of Clean Development Mechanism (CDM) credits and Joint Implementation credits (JI) 	<ul style="list-style-type: none"> • EUAs • Offset Credits: Newly generated (post-2012) international credits may only come from projects in Least Developed Countries. Credits from 	<ul style="list-style-type: none"> • EUAs • The use of offsets is not envisaged but the EU ETS could be linked to other national or international ETS that would bring

			<p>CDM and JI projects from other countries are eligible only if registered and implemented before 31 December 2012.</p>	<p>foreign credits onto the EU ETS.</p>
<p>Management of allowances</p>	<ul style="list-style-type: none"> • Free allocation of nearly all allowances • Allocation through national plans • Penalty for non-compliance 40€/t CO₂ 	<ul style="list-style-type: none"> • Free allocation reduce to 90% of Phase 1 • Allocation through harmonised national plans • Auctioning introduced in some countries • Penalty for non-compliance 100€/t CO₂ 	<ul style="list-style-type: none"> • Auctioning of 57% of allowances • Introduction of a <i>Market Stability Reserve (MSR)</i>, a mechanism to reduce the surplus of allowances in the carbon market and to improve the EU ETS's resilience to future shocks • Introduction of <i>New Entrants Reserve (NER)</i> to assist new installations coming into the EU ETS or covered installations whose capacity has significantly increased since their free allocation was determined • Unlimited banking is allowed, no borrowing 	<ul style="list-style-type: none"> • Same as Phase 3 • Reinforcement of the MSR and establishment of the cancellation mechanism • Additional funding through the <i>Innovation Fund</i> and <i>Modernisation Fund</i> to support the demonstration of innovative technologies and breakthrough innovation in industry and in modernising the power sector and wider energy systems, boosting energy efficiency

This table has been created with the information available on the European Commission's website https://ec.europa.eu/clima/policies/ets_en

Appendix 2 – Interview guide

Below is a list of prepared questions for the interviews conducted with stakeholders of the EU ETS. The questionnaire was a guideline and more spontaneous questions were asked according to the issues and topics brought up by the interviewees. Most of the interviews were conducted in English, but two of them were conducted in French.

Introductory questions

1. How would you describe the organisation you represent?
2. Who do you represent in the negotiations with the EU?
3. When did you start working on the EU ETS?

Questions to understand the stakeholders' perception of the ETS

1. What is the ETS?
2. What are the objectives of the ETS?
3. How was it created?
4. Who was involved in the negotiations in the early days of the ETS?

Questions to understand the stakeholders' perception of the negotiations

1. What are the different positions represented in the debate?
2. Were you happy with the outcome of the negotiations in 2008 and 2018?
3. Who were your allies in these negotiations?
4. Who were you opponents?
5. Some stakeholders think we should scrap the ETS and design new policies. What do you think about that?

Questions to understand the relationship with the Commission

1. When and how often do you communicate with the Commission? To which DG do you talk?
2. Do you communicate with Members of the European Parliament or of the European Council? With whom? How often?
3. Do you feel that the Commission listens to you? Why or why not?
4. Who does the Commission involve in the negotiations? Who should be involved?
5. Do you think another authority would be best suited to manage the ETS? Why or why not?
6. If you could say anything to the Commission, what would you say?

Final questions

1. If you could change anything in the ETS, what would it be? Why?
2. Is there any final issue you would like to address?