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The Struggle Within

Examining the presence of 'win-win' solutions in EU environmental legislation

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Abstract

Previous research point strongly to economic growth and competitiveness being the primary interests of the European Union (EU). This interest influences all policy areas including environment. However, combining economic development with environmental protection is widely recognized as a difficult task. This thesis aims at finding empirical evidence of the so-called 'win-win' concept of Ecological Modernization in the formation and adoption of EU environmental legislation. 'Win-win' is the theoretical possibility of finding mutually beneficial solutions for economy and environment.

A case study has been conducted using three EU policy areas with different levels of theoretical tension between economic and environmental interests. Three environmental legislative acts and their respective proposals from each policy area have been examined. A qualitative text analysis with an analytical tool based on ecological modernization, controlled against two adjacent environmental discourses, have been used for this task. The results show that 'win-win' notions based on ecological modernization have been successfully included in legislation from the policy area with weak tension, and somewhat successfully included in the one with moderate tension. When strong tension is present, an unbalanced consideration in favor of environment has instead been found. This could indicate a strong EU devotion to protecting the environment, or that stringent environmental legislation is necessary to ensure the proper functioning of the internal market. Overall, the innovation capacity and level of support from affected stakeholders within a policy area seems to affect the inclusion of 'win-win' solutions.

Keywords: Ecological modernization, win-win situations, European Union (EU), environmental legislation, renewable energy and energy efficiency policy, automotive policy, fisheries policy

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1. Introduction

The aim of this thesis is to find empirical evidence of the so-called 'win-win' concept of ecological modernization (EM) in the formation and adoption of European Union (EU) environmental policy. The 'win-win' concept is characterized by the possibility of a combined positive development of economic growth and environment protection, a notion embraced strongly by the EU.[1] However, due to the well known difficulty of combining growth with environmental protection, it is not a stretch to assume that they are treated in an unbalanced way. I will therefore examine if balance between economic and environmental interests has been included in the EU's policy processes by searching for aims at 'win-win' outcomes. For the purpose of studying this, I have chosen to examine proposals and adopted versions of EU legislation from three types of policy areas - an 'easy' one where there is assumed to be weak tension between economy and environment, a 'medium' one with assumed moderate tension and a 'difficult' one where strong tension is assumed to be present. The legislative acts will then be categorized as indicating successful, or unsuccessful, 'win-win' features. This is done in order to establish if the EU is able to balance both the economic and environmental aspects of ecological modernization in its policy making. Hopefully, I will also establish where the threshold for 'win-win' possibilities is.

Even though the EU has, loudly and clearly in treaties and official documents, proclaimed its ambition to achieve balance, there are a number of rational reasons for the Union to take larger consideration for the economy. One obvious example is that, in case of a unilateral response by the EU against environmental degradation, some of the more emission- and energy-intensive industries could threaten to move abroad due to the increased costs resulting from stricter policies. Industrial countries like the US, which have avoided signing the Kyoto protocol, could gain advantages by not contributing while the EU undertakes a costly 'green' transformation. This logic "*...calls into question the extent of the EU's commitment when this threatens other, economic goals. Here environmental values come directly in conflict with economic values.*"[2] Furthermore, regarding the EU's aim to achieve balance, it has been said that "*...the components of this value do not always coexist in an easy relationship and thus the realisation of any of these values through political action is not always ensured.*"[3] The argument for a possible unbalanced consideration for environment and economy in EU policy making is thus a quite well-grounded assumption.

Most studies on the application of EM have focused on either its theoretical basis or on the business sectors and countries that are expected to adopt or benefit from a 'win-win' development. My study will follow a somewhat different path by, in some regard, combining the two and thereby filling a research gap. I will in this thesis establish the extent to which the EU is utilizing EM to find 'win-win' solutions when adopting environmental policy. The study will thus focus on the EU's potential to push for these solutions by using examples of policy areas where 'win-win' should be easy, moderately difficult and difficult to incorporate. This will lead to a conclusion about the level of ambition the EU has on taking

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[1] Baker, S. (2007): "Sustainable development as symbolic commitment: Declaratory politics and the seductive appeal of ecological modernisation in the European Union", *Environmental Politics*, Vol. 16:2

[2] Baker, S. (2006): "Environmental values and climate change policy" in Lucarelli, S. & Manners, I. (ed.) *Values and Principles in European Union Foreign Policy,* p. 81

[3] Baker (2006): p. 96

consideration of both environment and economy even when strong tension can be expected. As written by Drake (et al): "*...for the environment truly to benefit, drivers for change – legislation, market forces and innovation – will have to influence all business sectors, not just those most obviously linked with environmental improvement or degradation.*"[4]

My study will hopefully contribute three things; 1. Find empirical evidence for or against the EU balancing economic-environmental tension in environmental legislation; 2. Provide an argument for or against the possibility of 'win-win' altogether as EU should be the ultimate venue for it to be realized and; 3. Establish to what extent environmental legislation is strengthened or diluted between proposal and adoption stage. I do not have any ambition to discuss or establish the extent to which EM is a 'good' or 'bad' political strategy for achieving a 'green' development. I will merely establish the EUs level of commitment to finding balance and 'win-win' solutions when developing and adopting environmental legislation.

[4] Drake, F., Purvis, M., Hunt, J. (2004): "Meeting the environmental challenge: A case of win-win or lose-win? A study of the UK baking and refrigeration industries", *Business Strategy and the Environment,* Vol: 13, p. 174-175

2. Previous research

2.1. The theory of ecological modernization (EM)

The subject of this study steams from my interest in the possibility of tension in EU environmental policy making. EM, with its 'win-win' concept, provides a great tool for identifying how the Union deals with this tension. EM is not an easily defined theory. A number of articles have been devoted to this task by, for example, distinguishing it from sustainable development or discussing its different definitions as a theory, environmental discourse, ideology, policy strategy or analytical approach. For my thesis, EM will be viewed as a theory, strategy and discourse as these are the most common descriptions of the concept and fit well with the aim of the study. In this section, I will describe and define the main principles of EM and discuss how it differs from the adjacent concept of sustainable development (SD).

Up until the last couple of decades, environmental protection and economic development had experienced an antagonistic, mutually exclusive, relationship. EM, introduced in the 1980's, provided an approach in which the two goals were combinable into a positive-sum game, a 'win-win' situation. EM views environmental protection as having a positive effect on technological innovation and economic efficiency rather than being an obstacle against it. Hence, economic development benefits from steps towards environmentalism according to this approach. EM was developed as both a practical and theoretical guide for retaining environmental problem-solving on the political agenda at a time when economic success received increased priority in the industrialized world.[5] The economic rational of EM theory is strongly built on the so-called Porter hypothesis, which, described in short, assumes that "*...stringent environmental regulation (under the condition that it is efficient) can lead to win-win situations, in which social welfare as well as the private net benefits of firms operating under such regulation can be increased.*"[6]

EM was, at least initially, "*...primarily seen as a strategy intended to maintain and improve market competitiveness, in which the environmental benefits of such technological change are incidental rather than a core concern for innovation and implementation.*"[7] According to this description, the view on environmental protection did not change in any significant way when EM was introduced, but made it possible for both private and public interests to rationalize a 'business as usual' path as an answer to demands for greater environmental consideration. A lot of criticism has been aimed at this, and some regards EM mainly as a rhetorical ploy aimed at accommodating critique from environmentalists after the 1980's deregulatory era.[8] I believe that this is one of the factors making EM an interesting concept to study.

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[5] Berger, G., Flynn, A., Hines, F. & Johns, R. (2001): "Ecological Modernization as a Basis for Environmental Policy: Current Environmental Discourse and Policy and the Implications on Environmental Supply Chain Management, Innovation": *The European Journal of Social Science Research,* Vol. 14:1, p. 56-58, Hajer, M.A. (1997): *The Politics of Environmental Discourse: Ecological Modernization and the Policy Process,* Oxford University Press: Oxford, p. 31-33 (electronic resource)

[6] Wagner, M. (2003): "The Porter Hypothesis Revisited: a literature review of theoretical models and empirical tests*",* Center for Sustainability Management, p. 6

[7] Christoff, P. (1996): "Ecological modernisation, ecological modernities", *Environmental Politics*, Vol. 5:3, p. 480

[8] Christoff (1996): p. 483

EM can be defined as a target-oriented policy approach where the end goal is to create a "*...self-sustaining demand for resource-efficient products and services, with a lasting impact on consumption and production patterns...*".[9] Ideally, the role of governments in EM is to push forward the development through regulation while leaving it up to market forces to find commercially viable solutions on how to comply.[10] Differing from the traditional view on environmental regulation as a governmental command-and-control process, EM relies on a development towards 'greening' led by business and industry through incentives of profit and increased competitiveness. An increase of ecological consideration can also be boosted by growing societal concern for environmental issues. Initially, it was optimistically believed that the 'greening' could be driven solely by market forces. It is however argued today that political influence is very much needed as a 'driver'. EM rejects the notion that environmental obligations is a threat to growth and embraces the idea that a willingness to innovate towards 'greener' production is an opportunity for profit.[11]

On the surface, EM can quite easily be compared or confused with SD as the largest difference might appear to be EMs lack of focus on the social aspect of development. The differences are however much vaster, especially if one compares the standard version of EM with the definition of SD formulated by the Brundtland commission. One important difference is that SD does not answer the question of who should be responsible for managing environmental issues. At the same time, it is quite vague on concrete measures for achieving sustainability. EM, on the other hand, assumes that foremost market forces will find solutions to foster competitiveness, growth and secure long-term economic development. SD, as developed by Brundtland, also build quite heavily on the notion of social democracy while EM is much more in line with neo-liberalism, the main governing ethos behind global development the last 30 years.[12]

The main change argued for through SD is decreased consumption by highly industrialized countries to an ecologically sustainable level, based on the finite resources that the world possesses. This would, in turn, allow developing countries to industrialize without compromising the ecological integrity. This 'North-South' dimension is not equally, if at all, present within EM. Some of the measures could even include the relocation of pollution-generating activities and resource exploitation from the West to developing countries. Other issues concerning global development and distribution or global environmental problems is also quite absent in EM.[13] Furthermore, EM problematizes overuse of natural resources, but it is mainly rationalized by the economic loss that would result from their depletion. As long as this is avoided, the resources can be continuously exploited. Hence, EM does not question the development model of western economies regarding growth or consumption to the extent

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[9] Schepelmann, P., Stock, M., Koska, T., Schüle, R. & Reutter, P. (2009): "A Green New Deal for Europe - Towards green modernization in the face of crisis", (Commissioned by *the Greens* and *European Free Alliance*, published by *Green European Foundation*), p. 80

[10] Drake *et al.* (2004): p. 183

[11] Drake *et al.* (2004): p. 173

[12] Baker (2007): p. 301-302

[13] Langhelle, O. (2000): "Why ecological modernization and sustainable development should not be Conflated", *Journal of Environmental Policy & Planning*, Vol. 2:4, p. 309

that SD does. Combined, the ethical considerations emphasized in SD is in many ways absent in EM in favor of efficiency procedures.[14]

The distinction has been summarized very comprehensible by Susan Baker, who writes that "*While the literature often confuses ecological modernisation with sustainable development, ecological modernisation is a more limiting concept. It does not address the underlying contradiction in capitalism: a logic of ever-increasing consumption in a world characterised by material resource limitations. The proposition that ecological modernisation offers a viable solution to our ecological crisis is problematic for those that point to the expansionist character of capitalism as the main course of environmental degradation.*"[15] Maarten Hajer, who was early in developing an understanding of EM has argued that it "*...does not call for any structural change but is, in this respect, basically a modernist and technocratic approach to the environment that suggests that there is a techno-institutional fix for the present problems...*".[16] This captures one of the main elements, as well as limitations, of EM. Basically, it is foremost intended as a strategy for well-developed and industrialized countries where the capacity for a 'green' innovational and technological development already exists. [17]

EM has received a lot of criticism from scholars due to its overconfidence in market-based and technical solutions and its belief that no major structural change is needed to curve the negative environmental impact of current production and consumption patterns. EM can thus not be used as a way to achieve SD as it views continued growth as a solution to environmental degradation. However, even though EM might appear to be a limited version of SD, Buttel argues that it rather should be seen as an improved synonym to it. The reason is mainly that EM includes concrete solutions achievable with current instruments and are thus a realistic, or at least optimistic, approach for handling many environmental issues.[18]

Apart from the positive view on combining economic growth with environmental improvements, EM and SD share another feature - their many different interpretations and definitions. SD has been said to have an *endless* number of different definitions, and EM seems to be following this path.[19] I believe that the lack of a clear and coherent definition makes EM an interesting concept to study, and hopefully I will be able to contribute in some minor regard to its development.

As mentioned, EM has mainly been identified within business settings and in non-binding EU publications such as green-books or strategic policy document. I believe that the aim for EM and 'win-win' in actual adoption of policies needs to be highlighted. To what extent is the EU actually trying to bridge economic-environmental tension by including these aspects in its legislation? In order to identify the possible barriers for doing this, one needs to understand the emergence and position of environment as an EU policy area.

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[14] Baker (2007): p. 302-303

[15] Baker (2007): p. 313-314

[16] Hajer (1997): p. 32

[17] Buttel, F.H. (2000): "Ecological modernization as social theory", *Geoforum,* Vol. 31, p. 64

[18] Buttel (2000): p. 63

[19] Langhelle (2000): p. 304, Buttel (2000): p. 58

2.2. Environment as an European Union policy area

It is stated in article 2 of the treaty of Rome that "*The Community shall have as its task, by establishing a common market and progressively approximating the economic policies of Member States, to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the States belonging to it.*" [20] Strengthening the economy and welfare of the Member States has obviously always been one, if not the main, motive behind European integration. According to Knill & Liefferink[21], the 'spill-over' effect can explain the later development of environment as an EU policy area. Harmonization of domestic environmental policies was needed for the inner market to function properly and climatic or environmental issues were thus not the main concerns. Even though this concern probably is much more present today, the policy area came into existence as a byproduct of the general economic integration.

This image is not altogether shared by El-Agraa[22], who states that a growing concern for environmental degradation, stemming foremost from Germany, the Netherlands and a few organizations, played the biggest role in its introduction back in the 1960's. However, El-Agraa also states that in some cases "*...joint EU standards could clearly be justified as part of product harmonization to prevent different national standards acting as non-tariff barriers to inter-state trade.*"[23] Baker, who has studied the values and principles guiding EU environmental policy, is found somewhere between the views of El-agraa and Knill & Liefferink. She writes that *"It is undeniable that the European integration project was founded on economic values, especially belief in the achievement of economic prosperity through the construction of a single, European, free market. (...). Despite differences within and between member states, there is nevertheless a general consensus in Europe that environmental protection cannot be left to market forces and that environmental protection is a legitimate goal of government*".[24] Baker supports the notion that environment has been, and is, an important area for the Union. Her conclusion does however suggest that this is due more to its community building function than to an actual 'moral obligation' to protect the environment. She has found that "*Instead of giving 'principled priority to the environment', evidence to date suggests that the EU has merely given (...) more general, and less consequential, commitments to the employment of good policy-making strategies (good governance), applicable to any type of policy integration.*"[25]

Clearly, scholars are pointing to different explanations regarding the development of environmental policy and the way it is being handled. In these cases, they do however seem to agree that economy (and trade) have influenced the environmental policy field to some degree. It is a widely accepted fact that the EU always has aimed at developing a regulatory framework, including environment, beneficial to economic interests. This entails not jeopardizing the competitiveness of European companies.

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[20] Treaty establishing the European Community (1957): article 2, p. 4

[21] Knill, C. & Liefferink, D. (2007): *Environmental policy in the European Union*, Manchester: University Press p. 216

[22] El-Agraa, A.M. (ed.) (2007): *The European Union - Economics and Policies,* 8th edition*,* Cambridge: Cambridge University Press) p. 331

[23] El-Agraa (2007): p. 331

[24] Baker (2007): p. 311

[25] Baker (2007): p. 309

Following up on this, the European Commission has proclaimed that "*There can be no question of our European economy suffering the consequences of a unilateral global environmental protection policy while our trading partners could avoid measures influencing energy prices and hence the competitiveness of industry and employment"* [26] This quote indicates that if the EU has to choose between increasing its global competitiveness at the expense of environmental protection or the reversed, increased competitiveness might often be chosen.

From the late 1980's and forward, the EU has been more keen on showing its intent to combat climate change and general environmental degradation. With the Single European Act of 1987, environmental protection became an explicit goal of the EU.[27] This became even more apparent with the Maastricht Treaty from 1992, in which it is stated that: "*Community policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Community. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay. Environmental protection requirements must be integrated into the definition and implementation of other Community policies.*"[28] Internationally, the EU has put a lot of effort into becoming an important player in environmental norm-setting by pushing for strict measures, especially in the field of climate change.[29] It is also stated in article 175 of the Treaty of Nice that the EU is: "*...determined to see the European Union play a leading role in promoting environmental protection in the Union and in international efforts pursuing the same objective at global level.*"[30]

An example of the EU's positive view on 'green' innovations and development within the industry sector can be found in the following statement from the European Commission: "*Maintaining Europe's leadership in renewable energy will also increase our global competitiveness, as "clean tech" industries become increasingly important around the world."* [31] This statement points strongly towards the attractiveness of EM as a political strategy for the EU, which will be further elaborated upon in the next section.

The main features of EM and the development of environment as an EU policy area has now been described. I will in the following section put forward reasons for, and previous research supporting, EM being an attractive strategy for the EU. This will provide a platform from which my research questions and analysis will depart as well as further motivate the use of EU as testing ground for the occurrence of EM and 'win-win'.

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[26] Baker (2006): p. 81

[27] Gouldson, A. & Murphy, J. (1996): "Ecological Modernization and the European Union", *Geoforum,* Vol. 27:1, p. 15

[28] Treaty on European Union (1992) article 130r, paragraph 2

[29] Baker (2006)

[30] Treaty of Nice amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts (2001): article 175

[31] COM(2012) 271 final - Renewable Energy: a major player in the European energy market, p. 2

2.3. Ecological modernization in the European Union

According to Susan Baker,[32] the EU can be said to have adopted two approaches. One is declaratory, for which SD serves as a way to gain legitimacy both internally and externally. The other one is the actual political strategy that has been embraced in policy processes, represented by EM. EM, as a political strategy, allows the EU to commit symbolically to SD through 'empty rhetoric', indicating that political statements are not backed up by actual policies in this direction but rather follows the path of EM. Baker has written that: "*Sustainable development acts as the meta-narrative, framing and legitimising the integration project. In contrast, the promotion of ecological modernisation is the reflection of the reality of organised power and interest group politics in the EU. This distinction, between ideology and reality characteristics of EU environmental policy, is an example of the more general distinction between symbolic and real apposite of political power.*"[33]

Differing from the approach taken by the US, the EU have not based its environmental policy strictly on economic theory. However, cost-benefit analysis is standard procedure for calculating the outcome of taking, or not taking, action. With the adoption of the fourth Environmental Action Program in 1987, EM was introduced as a way for the European industry to enhance its competitiveness while taking environmental consideration by viewing the environment as a factor of production with a certain price. The technological innovations connected to a path towards eco-efficiency could also contribute to expanding markets or opening up new ones. [34]

The strongest advocacy for EM being the approach adopted by the EU can perhaps be found in Gouldson & Murphy's "Ecological modernization and the European Union".[35] In this article, the development of EM as the preferred strategy is discussed, and how it has come to gain in influence since the beginning of the 1990's. Amongst other things, the Commission's white paper on competitiveness and employment is discussed. The authors point towards the Commission's aim to work towards a labor intensive and environmentally benign development. This development could only be created through the promotion of clean technologies, leading to a positive-sum game for economy and environment.[36] This is a great example of the EU (or at least the Commission) promoting EM rather than SD as emphasis is put on a technological solution for, in many ways, continuing on the current path rather than suggesting structural changes.

Summarizing the benefits of EM as approach for an organization like, for example, the EU, Baker writes that "*First, it supports the notion of rational progress and the continuity of our established patterns of social organisation and societal development. Second, it restores confidence in the power of the political, economic and administrative system to respond effectively and efficiently to the negative 'externalities' of its economic model. Finally, it promises the continuity of modernity, with its principles of growth, profit and consumerist views of human welfare.*"[37]

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[32] Baker (2007): p. 297-298

[33] Baker (2007): p. 313

[34] Baker (2006): p. 83, 92

[35] Gouldson & Murphy (1996)

[36] Gouldson & Murphy (1996): p. 16

[37] Baker (2007): p. 300-301

As a political program, EM provides governments with an opportunity to legitimize environmental protection as an economically responsible action.[38]

Supporting the notion that well-balanced EM policy is beneficial for the EU is the findings by Costantini & Mazzanti.[39] Based on the earlier mentioned Porter hypothesis, they have written about how environmental policy and innovation in the EU affects its trade competitiveness. The conclusion of their article is that: "*environmental policy actions seem to foster export dynamics rather than undermine EU competitiveness in international markets*".[40] The authors show that a high level of environmental regulation, combined with a high innovation intensity, has an especially positive impact on the export competitiveness of high-tech sectors.[41] This is an important finding for the thesis as it shows that many EU businesses are positively affected by high level of internal environmental regulation and should thus support adoption of EM policy.

However, some authors do contradict this by claiming that stringent environmental policy proposals become diluted when reaching the adoption stage. According to Knill & Lifferink, Member States tries to be as unrestricted as possible and are thus pursuing weak legislation.[42] This gets support by the following claim by Gouldson & Murphy: "*The reluctance of national governments to pursue policies compatible with ecological modernization is often associated with concerns regarding the impact of environmental policy on industrial competitiveness.*"[43]

EM is foremost based on the belief system found in market liberalism, making it attractive for the EU in which the importance of economic interests and the inner market are underlined strongly. EM is seen as a way to retain the current economic development and political structure while dealing with environmental problems. The most important factors making EM an attractive strategy for EU are the following:

- The possibility to gain legitimacy from industry and business in Europe when implementing environmental policy
- The possibility to, while introducing new environmental policy, assure development in a modern way
- No need to push for large structural changes (such as proposed by SD), making it an 'easier' alternative
- Modern and more efficient production will reduce environmental impact
- Consumer behavior will shift automatically as supply of 'green' products increases - little need for consumers to actively change their behavior.

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[38] Christoff (1996): p. 483

[39] Costantini, V. & Mazzanti, M.(2012): "On the green and innovative side of trade competitiveness? The impact of environmental policies and innovation on EU exports", *Research Policy,* Vol. 41:1, p. 132-153

[40] Costantini & Mazzanti (2012): p. 145

[41] Costantini & Mazzanti (2012): p. 145

[42] Knill & Lifferink (2007): p. 218

[43] Gouldson & Murphy (1996): p. 18

- Money can be made through environmental solutions, efficiency and by selling new 'green' technology
- Preventive solutions are cheaper and more effective than 'end-of-the-pipe' solutions

Theoretically, there is obviously strong evidence supporting the EU as a suitable candidate for adopting and practicing EM. The main reason is EMs' favorable way of dealing with the tension between economic and environmental interests, thus not jeopardizing, but modernizing, the current capitalistic and market liberal path. A second reason is that a combination of environmental pressure, 'green' societal advocacy and a capacity to deal with these issues have made a number of Member States pioneers in formulating and implementing new forms of environmental legislation. These Member States, often identified as Germany, the UK, the Netherlands and the Scandinavian countries, have a record of successfully pushing environmental legislation to the EU level and are thus a very important force in shaping EU environmental policy.[44] The pioneer countries exhibit perfect conditions for successful EM, but it should also be a very attractive alternative for other Member States less keen on performing large structural change such as suggested by, for example, SD.

A final argument supporting the plausible adoption of EM by the EU is provided by Lifferink et al.[45] They have examined the gap between adopted environmental policies and the strictest policies available in a number of countries. Their conclusion is that EU membership is the most powerful explanatory factor behind environmental policy output. If Member States have a tendency to embrace environmental legislation in general, EM influenced 'win-win' policies should be welcomed with open arms.

[44] Jänicke, M. (2005): "Trend-Setters in Environmental Policy: the Character and Role of Pioneer Countries", *European Environment,* Vol. 15, p. 129-132, 137

[45] Liefferink, D., Arts, B., Kamstra, J. & Ooijevaar, J. (2009): "Leaders and laggards in environmental policy: a quantitative analysis of domestic policy outputs", *Journal of European Public Policy,* Vol. 16:5, p. 696

3. Research problem and questions

As has been shown, retaining economic development and combating environmental degradation are two very important goals for the EU. These goals were, for a long time, seen as more or less mutually exclusive. When ecological modernization with the 'win-win' concept at its core was introduced, it provided a strategy where the two interests, in theory, could be combined into a positive-sum game. 20 years have passed since it became an EU treaty obligation to include environmental policy goals into all policy areas. There is however reason to believe that there is still tension between the interests and that they are treated unbalanced by the EU. This is due to the Union's primary interest in economic growth and retaining, or preferably improving, the competitiveness of European businesses. As suggested by Berger et al, "*In practice, economic development issues always have a more prominent role than environmental protection.*"[46] Based on this, I will test if there is empirical evidence for mutually beneficial 'win-win' solutions in EU environmental legislation and, if found, if these are permeated by EM. The following questions will be answered:

- To what extent is 'win-win' aspects and solutions, based on ecological modernization, present in the proposals and adopted versions of EU environmental legislation?
- To what extent is the balance between economy and environment improved or diluted between the stages of legislative proposal and adopted legislative act?
- Does the occurrence of 'win-win' differ between policy areas with different levels of theoretical tension?

It is important to point out that my aim is not to try to 'frame' the EU for doing a poor job with regards to environmental protection. Rather, I will critically evaluate the rhetoric permeating the Union's environmental legislation from an EM perspective and hopefully illuminate the difficulty of striving towards two goals that, by many, are deemed incompatible.

[46] Berger *et al.* (2001): p. 70

4. Study design

Now, I need to ask myself how to design a study in order to answer the research questions. For the EU to receive legitimacy for its many and strong claims about aiming to achieve sustainability, the ambition of policies has to display balance between economic and environmental interests and goals. The following sections will be devoted to describing and motivating my cases and material, as well as developing the analytical tool for conducting the empirical analysis.

4.1. The cases - policy areas to be tested

I have chosen three different policy areas as cases for illustrating the way the EU deals with tension between economy and environment. From each of the areas, three legislative acts, and their respective Commission proposal, will be examined. The three policy areas do, to different degrees, include tension. Below, they are described and the labeling of their theoretical level of tension (weak, moderate and strong) is motivated. This motivation builds on the difficulty of including 'win-win' factors from three perspectives - producer, consumer and the general public. The reason is that a 'greening' of some policies might, for example, be beneficial for producer and the general public but not for the consumer, or for the consumer and general public but not for the producer, and so on. Strong support for legislation towards EM 'win-win' by all three groups would simplify adoption of policies based on this approach, and the other way around. Overall, the greater the theoretical tension between economic and environmental interests, the smaller the chance of finding and including 'win-win' solutions.

Many different policy areas including for example maritime, agriculture and nuclear energy were considered, skimmed and deemed irrelevant or non-optimal for my analysis. To some degree, the number of relevant acts available determined what areas could be used. This reduced the number of choices quite a bit. However, the chosen areas still represent a variety of different environmental and economic interests and aspects.

4.1.1. Renewable energy & energy efficiency (weak tension)

These sectors have, by default, a sort of inherited EM approach. New technology is necessary for them to develop further, technology that can be very profitable. Except the reduced emissions from using renewables or being energy efficient, growth could create a considerable number of new job opportunities within construction and engineering.

By strengthening policies in these areas, consumers would benefit from lower energy prices and the general public through reduced emissions. Renewable energy producers could benefit from low operating costs (minor waste and resources use) and from reselling new innovative technology. Some tension could however arise if other energy producers object to unfavorable support for renewables. The reason for combing two different areas is that their tension should consist of similar factors. Also, too few acts existed in the two areas separately.

4.1.2. Automotive (moderate tension)

The European automotive industry employs 7% of EU citizens within manufacturing and constitutes 3% of EU GDP.[47] This makes changes threatening its competitiveness highly unlikely. A loss in competitiveness means risking a large number of jobs. This would be highly damaging from both producer and general public perspectives.

Differing from the logic of renewable energy, there are still few easy ways for consumers to switch from using fossil fuels to renewable alternatives. When it comes to the choice of car, factors such as size, functionality, safety and so on are probably more important than fuel source. Also, driving for example an electric car is more inconvenient as charging stations are still rare. A strong incentive can however be created through subsidizing purchases of fuel efficient cars. As a large reform has the potential of hurting this important business sector, a rational step forward for legislators would rather be to proceed with caution. Adopting a safe 'business as usual' approach would thus theoretically be more likely than adoption of strong 'green' legislation. However, road transport emits huge amounts of GHG, giving the sector great potential for environmental improvements.

It is possible that a Commission proposal for environmental improvements within this sector could show strong evidence of EM influence. However, when Member States with large automotive industries (e.g. Germany, Italy, France, Czech Republic) get their say through the Council, it is expected that any legislation threatening competitiveness will be met with some resistance. Legislations that will be examined within this sector are all related mainly to the production of vehicles and how emissions could be decreased through technical improvements.

One of the main reasons why this area was not chosen to represent the strongest tension is the potential for technological development and innovation. Unlike fisheries, small improvements leading to reduced environmental impact are constantly being developed for vehicles. This development can be an important factor for retaining competitiveness on a global level and are thus an incentive for the industry.

4.1.3. Fisheries (strong tension)

Most of the environmental issues of this sector concern the sustainable use of an important resource - fish. The strong tension should stem from the difficulty in limiting the activities for an already strained industry (at least small or local actors) as well as limiting the supply of reasonably priced fish for consumers. It is also a tricky sector to supervise compared to, for example, automotive. Iceland's hesitance of joining the EU and conflicts with Morocco display the importance of this industry and the difficulty of finding solutions benefiting everyone.

Summarizing the EUs Common Fisheries Policy (CFP), it is stated on the Union's official website that "*The objectives of the CFP are: protection of stocks against over-fishing; a guaranteed income for fishers; a regular supply at reasonable prices for consumers and the processing industry; and sustainable biological, environmental and economic*

[47] http://europa.eu/legislation_summaries/internal_market/single_market_for_goods/motor_vehicles/index_en.htm (viewed: 2013-05-08)

exploitation of living aquatic resources."[48] The EU clearly aims at long-term balance between economy and environment here. However, limiting catches and fishing activities is a very direct restriction of profit. Protecting marine environments and biodiversity is also a non-profitable activity and there is little chance that innovations can be of much help in this policy area. This should theoretically create strong tension between economic and environmental interests and make solutions built on EM difficult.

4.2. Material and data gathering

Environmental legislation within the three policy areas has been chosen as the data to be analyzed. When searching for relevant policies, it quickly became apparent that relatively few legislative acts can include any aspects of EM. EM is foremost an environmental policy approach and finding traces of the discourse within legislation with other focuses (e.g. harmonizing narrow technical aspects or setting rules for monitoring of a specific activity) is highly unlikely. This has been confirmed through examination of some legislative acts unconnected to environment.

Two kinds of documents will be used in my study, adopted EU legislation and their respective Commission proposals. The reason is that I want to establish what the EU aims to accomplish through legislation, as well as determine the level of improvement or dilution that occurs as legislation passes through the adoption stages. I will not examine the outcome of policies as the intended goal of the EU, what they say rather than the actual impact, is in focus of this study.

Three sources have been used for collecting legislation. *Eur-lex*, the official database for EU law, has been the primary source as this is where all legislation in force can be found.[49] However, other databases can be more comprehensible and easier to search and *summaries of EU legislation* and the EC's *sector specific web-pages* have therefore also been used.[50]

The chosen legislative acts fulfill these requirements:

- Have been adopted through the ordinary legislative procedure (previously co-decision procedure). Exception is fisheries, where the Parliament is excluded from final decision.
- Was adopted between the years 2000-2012. The newer they are, the bigger the chance that they include environmental/economic 'win-win', as this is a quite new concept. This also provides a good delimitation.
- Connect to environment and economic activities in some way - the stronger connection the better. A directive like 2005/39/EC which sets standards for safety belts in cars does (by default) not include any tension between economic and environmental interests and will thus not contribute to my study.
- Belong to one of the chosen policy areas
- Relatively central legislation within the policy area, or at least legislation with large impact.

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[48] http://europa.eu/legislation_summaries/maritime_affairs_and_fisheries/index_en.htm (viewed: 2013-05-08)

[49] http://eur-lex.europa.eu/en/legis/latest/index.htm (viewed: 2013-03-04)

[50] http://europa.eu/legislation_summaries/index_en.htm (viewed: 2013-03-04), http://ec.europa.eu/policies/index_sv.htm (viewed: 2013-03-04)

A substantial number of possible acts have been considered, and nine out of these have been chosen. Hopefully, this means the ones being examined in the study are representable for the policy areas as well as EU environmental policy as a whole.

There are different forms of EU regulation. In order to narrow the number of documents needed to be examined, I have chosen to focus only on legislation that have been proposed by the commission and adopted by the Council, or the Council and the Parliament. Commission regulations, for example, are often adopted in order to implement a previously adopted legislative act. These do not need to be approved by the other EU institutions and are thus not as relevant for my study as ordinary legislative procedure acts.

The first parts of the acts, before the actual articles of the legislation are presented, provide background, relevance and in some cases expected outcome. These will henceforth be called 'introduction points' and are where the largest differences between proposals and legislation is expected to be found. In the proposals, the introduction points are often proceeded by an 'explanatory memorandum' where the impact assessments are summarized. This part is of greatest interest for this thesis as the intentions and general aims of a legislative proposal is found here. The actual articles of an act might be of more technical character, making them rather difficult for someone with little knowledge of these aspects (like me) to draw any conclusions from. If a proposal is adopted practically unchanged, the Council and the Parliament must be considered to support the predicted outcomes presented through the explanatory memorandum.

During the development of legislation, a number of other institutions and actors than the ones mentioned here are usually involved. Drafts are sent back and forth and estimates, assessments and opinions are taken into consideration before a final proposal and legislation is adopted. All of these stages will not be considered or evaluated as the final versions should reflect the collective opinion, view and goal of the EU. Three legislative acts and their respective proposal will be examined from each policy area. The reason why relatively few acts will be used is that the proposals usually cover around 30 pages each and legislative acts around 15 pages, adding to a total of nearly 400 pages (excluding annexes) that need to be closely viewed.

4.3. Analytical tool

4.3.1. Ecological modernization

As I aim to establish the degree to which EM based 'win-win' permeates environmental legislation in the EU, a qualitative text analysis method will be used. Based on previous research regarding EM and, in particular, 'win-win' outcomes, I have outlined four factors that will help me measure this. A number of specific issues within each of the factors would need to be addressed or referenced to in the proposals and legislations for them to be classified as promoting 'win-win' solutions. With these factors and the different aspects within each one, I have tried to capture the essences of what EM and 'win-win' are and aim to achieve. The definition of EM that I will be using is the one outlined in the previous research.

(1) Environmental factors:

I will foremost search for references to environmental benefits through efficiency and technological improvements, as these are central ideals in EM. Examples are energy-efficiency, resource-efficiency, eco-efficiency, eco-innovations and sustainability. The more the solutions for decreasing environmental impact are based on innovations or technological development, the stronger the case can be made for it to be 'win-win' solutions. Efficiency, doing more with less, is an equally important ideal. Garbage and (in some cases) emission are examples of waste that, if decreased, could render both economic and environmental benefits. Full life-cycle considerations, including innovative ways to reuse or recycle products and material could also be signs of 'win-win' solutions. References to ways of achieving sustainable development and reducing general environmental and climatic impact will, naturally, also be payed attention to. Finally, mentions of preserving natural resources as a necessity for securing long-term economic development will be regarded as signs of EM. However, in cases where references to preserving resources are not connected to economic benefits, a civic environmentalist approach (see below) might be a more suitable discursive description.

(2) Economic factors:

EM is based on market liberalism and capitalist rationale, making growth and competitiveness two keywords strongly linked to the theory. Perhaps most importantly, a legislation cannot jeopardize the competitiveness of European businesses. There should be fairly clear references to how, for example, 'green' innovations and development can secure future competitiveness for the legislation to be classified as promoting 'win-win' solutions. One important factor to look for is economic incentives for business/industry to evolve towards environmentally benign activities. Lastly, societal benefits in form of job creation connected to this development could be a strong indicator of EM.

(3) Modernizing factors:

Differing somewhat from related theories and discourses, EM puts substantial emphasis on innovation and diffusion of clean technology and how it can lead to modernity. References to solutions based on new technology (for example energy efficient or emission reducing innovations) is therefore central to this factor. Modernization should be closely connected to environment and economy in order to be deemed as promoting an EM approach. A good example is solutions reducing the fuel consumption of cars, which could be a profitable 'win-win' invention decreasing environmental impact and costs for consumers. Even though there should be an inherent rationale for businesses and industries to develop, incentives created by the EU through legislation (both sticks and carrots) would display a commitment for change.

(4) Cooperation factors:

An important part of EM theory is that the best policies are produced through cooperation between government and business/industry. Optimal 'win-win' solutions are thus found when both legislator and affected actor are satisfied with the decision. EM puts strong emphasis on market based solutions, making it probable that references to such will be found if a legislation have been passed based on EM principles. Command-and-control measures should not be a very common sight as market based solutions like flexible mechanisms (e.g. emission trading) and self-regulation are the preferred choices. As I will examine the EU, cooperation between "government" and "business/industry" will in many

cases be views as cooperation between the Community and Member States (representing their domestic business and industry sectors). Amongst these four factors, this is probably the least central one and it is plausible that references to cooperative factors are scarce.

By using this guide, I will examine the proposals and adopted legislations in order to establish if the acts have been formulated in accordance with EM as previous research suggests, and if they promote 'win-win' solutions. If many of the factors are accommodated in a legislative act, there is strong evidence that EM and 'win-win' solutions are being sought. The factors are very much interconnected, meaning that references to only one of them, or to one independent from another, is not necessarily enough to be classified as 'win-win'. However, the factors are in many ways naturally connected, for example the focus on environmental improvements based on modernity.

It is important to set clear boundaries to EM using adjacent discourses. If only criteria for EM were to be used, findings might be accidentally bent to support an expected outcome. A difficulty in finding adjacent discourses was that few others have similar specific ideas on how to achieve its goals. While EM explicitly promotes incentives for technological improvement in business/industry sectors, other discourses rather suggest more general eco-centric consideration, transformed institutions and so on. The lack of comparable criteria makes it rather difficult to measure the influence of different discourses on legislation. I will therefore try to capture the essence of discourses that borders EM in both directions, i.e. one focusing more on environment integrity and one focusing more on economic efficiency. These are represented by a *Civic environmentalist* and a *Liberal environmentalist* approach.[51] I use the word discourse as to describe "*special ensembles of ideas, concepts and categorization that are produced, reproduced and transformed in a particular set of practices.*"[52]

4.3.2. Civic environmentalism (CE)

CE was most influential in how environmental issues and their possible solutions were viewed in the 1960-1970s, but are still a strong competitor to the more market liberal approaches of today. This discourse is more than anything else concerned with environmental protection. While the means in many regards is as important as the end according to EM, the end result - such as reduced waste, air and water pollution and use of natural resource and chemicals - is the focus of CE. In short, this approach sides strongly with environmental integrity rather than with economic efficiency. Capitalism, industrialism, economic growth and social inequality are seen as the roots to environmental degradation.[53]

One easily distinguishable factor telling EM and CE apart is flexible versus command-and-control legislation. While EM in most regards relies on setting a favorable framework in which actors are free

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[51] The outlines of these discourses have foremost been based on Zannakis, M. (2009): *Climate Policy as a Window of Opportunity - Sweden and Global Climate Change,* Department of Political Science, University of Gothenburg: Gothenburg, Bäckstrand, K. & Lövbrand, E. (2007): "Climate Governance Beyond 2012: Competing Discourses of Green Governmentality, Ecological Modernization and Civic Environmentalism" in Pettenger, M. (ed.) *The social construction of climate change*, Ashgate: Hampshire

[52] Bäckstrand & Lövbrand (2007): p. 125

[53] Zannakis (2009): p. 58-59, 72.

to find the best way to achieve the targets, CE is skeptical towards self-regulation and favors stringent measures backed up by strong enforcement. If flexible solutions are still used, CE emphasizes strict criteria to make sure that the goals are met. CE is also critical towards too much reliance on experts and instead supports a notion that actors affected by a policy should be involved in its development. Concluded, CE is more radical and reform-oriented than EM and also requests a higher level of environmental protection. The goal is to achieve ecological sustainability rather than modernity as it is viewed as feeding the environmental crisis as well as consolidating global inequalities. The balance between economic and environmental consideration is not emphasized as strong as within the EM discourse and 'win-win' outcomes are thus not sought to the same extent. The link between environmental protection and (at least short term) economic growth is simply weaker within the CE approach.[54]

Evidence of strong CE is probably less likely to be found in the final legislative acts than EM or LE (see below). The main reason is that criticism of economic growth as an overarching goal, associated with CE, is unlikely to be expressed by the EU. However, I expect to find a slightly stronger focus on environmental aspects in the Commission proposals. When the Council (i.e. the Member States) gets its say, the demands should be weakened and flexibility increased as not to distort competitiveness of important domestic businesses/industry branches.

'Win-win' outcomes according to the CE approach would foremost be recognizable through the argument that economic development should be decoupled from environmental degradation. Differing from EM, 'win-win' is thus not always the best outcome but preferable if growth can be achieved in an environmentally non-harmful way.

4.3.3. Liberal environmentalism (LE)

LE is a market liberal approach promoting free trade, economic expansion, incentives and market forces as a way of solving environmental problems. This approach is synonym with going about business as usual as: "*...liberal environmentalism predicate environmental protection on the promotion and maintenance of a liberal economic order...*".[55] Market mechanisms will resolve environmental issues naturally according to LE and it therefore neglect calls for reform as a mean to achieving a more sustainable society. Like EM, LE stresses the compatibility of environmental protection and a market liberal economy focusing on growth. 'Win-win' outcomes are thus strived towards, but is not believed to need the governmental guidance emphasized by EM. As long as there is economic incentives for change, market forces will act. I would also argue that LE could be distinguished from EM due to the weak focus on modernity. This is viewed as a natural development even without incentives, as promoted in EM.

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[54] Bäckstrand & Lövbrand (2007): p. 131-136

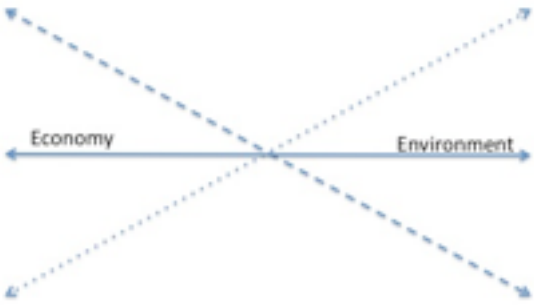
[55] Bernstein, S. & Cashore, B. (2001): "Globalization, Internationalization and Liberal Environmentalism: Exploring Non-domestic Sources of Influence on Canadian Environmental Policy" in *Canadian Environmental Policy: Ecosystems, Politics and Process,* 2nd Ed, Debora L. VanNijnatten and Robert Boardman, (ed.) Oxford: Oxford University Press

”*Flexible and cost-effective problem solving is a central discursive feature in the weak version of ecological modernization...*”.[56] This ”weak version” is what I refer to as LE, and it could be used to describe an EM approach tweaked towards economic efficiency.[57] Even though the goals and solutions of EM and LE are similar, the discursive features differ. EM argues that energy- and resource efficiency (through modernity) will lead to economic benefits. LE advocates a more optimistic use of resources because if one is depleted, another one (or new technology) will be used in its place. LE thus departs from the economic, rather than environmental, efficiency perspective. Regarding the cooperation factors, LE is strongly in favor of flexible, market based solutions. Intervention should be kept low and governments should ideally provide frameworks strengthening competition and the functioning of the market. Signs that this discourse is influential in EU environmental politics would foremost be strong emphasis on retaining competitiveness and growth when environmental legislation is passed. Differing from EM, a LE approach would foremost emphasize the economic benefits from environmental measures, not the other way around or a balanced emphasis on the two. Further, LE is more likely to be found at the international stage rather than the at national one. The discourse did for example influence the solutions adopted through the Kyoto Protocol. When LE is applied in national contexts, it can, and sometimes does, take on the form of EM if national conditions allow it. [58]

Internalization of external costs, ”polluter pays principle”, is a market solution and a strong feature of LE (and EM). This means that the cost of pollution generated from production of goods should be included in the price. Policies with the potential to harm trade liberalization or market functioning are rejected, including subsidies for both ‘green‘ alternatives and non-environmentally friendly activities. A LE version of ‘win-win’ would strongly emphasize the economic aspect as environmental benefits are believed to occur naturally from economic development. The need for governmental intervention would be played down except for economic incentives created to ‘guide’ market actors in the right direction.

EM, CE and LE will be described and mentioned as three separate discourses but they more or less represent different balances of EM. In a broad sense, they are translatable into one of the three options shown in figure 1. A filed line would indicate a well-balanced EM approach. The dotted line displays unbalance towards environment, which can be translated into CE while and the dashed line represents unbalance in favor of economy, pushing EM towards LE.

Figure 1



[56] Bäckstrand & Lövbrand (2007): p. 130

[57] Zannakis (2009): p. 69-70

[58] Zannakis (2009): p. 90, 159

5. Empirical analysis

The following chapter is devoted to the analysis and discussion of each of my cases based on the analytical framework presented in the methodology chapter. I will begin with renewable energy, which has the lowest level of theoretical tension between economy and environment, followed by automotive and lastly fisheries. Each legislative act and its respective proposal will be discussed thematically using slightly reformulated versions of my first two research questions. All three questions will then be answered in the summary of my main findings.

Theme 1 - To what extent is 'win-win' aspects and solutions, based on ecological modernization, present in the proposal and adopted legislative act?

Theme 2 - To what extent is the balance between economy and environment improved or diluted between proposal and adopted legislative act?

As all of the examined documents comprise several hundred pages, I will focus on highlighting certain sections that are representative for each document. The analysis and discussion will be kept on a more general level by finding patterns permeating the proposals and legislations. Also, if no substantial changes has been made between proposal and adopted legislation, little focus will be spent on theme 2. Abbreviations will be used in the following sections where **LP = Legislation proposal** and **L = Legislation**. Each proposal and adopted legislation will also receive a number from 1 to 9 following these abbreviations.

5.1. Renewable energy & energy efficiency

5.1.1. LP/L1 - COM(2002) 415 final & Directive 2004/8/EC - on the promotion of cogeneration based on a useful heat demand in the internal energy market

Theme 1

This directive, which aims to promote cogeneration (combined production of heat and power), builds: "*...on the dual objectives of contributing both to security of energy supply and to climate change polices.*" [59] Cogeneration is by itself not seen as a target but rather as: "*...an efficient tool to generate energy savings and to pursue the targets of reductions in CO2 emissions*"[60] According to the intention, L1 will presumably fulfill both environmental and economic goals. Energy savings is profitable from many perspectives while decreased dependency on energy imports would likely be economically beneficial for the EU in the long-term, even though it is not specifically mentioned. According to its own descriptions, the directive will support current and promote new installations of high-efficiency cogeneration. Cogeneration is seen as a key element in future environmentally friendly investments for heat and power. L1 will also provide some regulatory certainty and set provisions for financial support, thus ensuring cooperation from the energy industry.[61]

[59] COM(2002) 415 final, p. 1

[60] COM(2002) 415 final, p. 1

[61] COM(2002) 415 final, p. 2

The overarching goal of L1 is to promote the use of energy efficient power and heat. Progress is said to have been lacking, but is believed to be increasable if investments are made for improved technology. This is a good example of a policy exhibiting EM traits. Energy savings and reduced GHG emissions should be profitable both economically and environmentally, at least in the long-term. This possibility of a 'win-win' outcome is however not as clearly emphasized as expected.

Several reasons for political support for the legislation is given early in LP1. Among them is less fuel consumption and less emissions, increased competition among producers and opportunities for new enterprises. The largest share of electricity from cogeneration is used in industrial processes, indicating the economic benefits for some sectors. Increasing the use of cogeneration should lower emissions for users while reducing costs due to its efficiency, a classic example of 'win-win'. Based on the following statement, L1 should lead to a balanced development: "*...cogeneration can due to its high fuel efficiency and reduced environmental impact contribute to Community policies on sustainable development...*"[62] Again however, this aspect is only weakly highlighted.

"*The aim is to promote cogeneration wherever an economically justified potential is identified in order to save energy and reduce CO2-emission.*"[63] This statement displays the focus on economically viable solutions. LP/L1 is permeated by assurances that only cost-effective action leading to efficient production will be taken and supported.[64] The strong emphasis on national flexibility and incentives through investment support might point towards LE. Also, until external costs can be internalized in the market, the Commission supports nationally created incentives for cogeneration such as tax reductions, direct price support and investments.[65] The aim is thus to establish the polluter pays principle, supported strongest by LE. However, combined with the focus on technological development, a stronger case can be made about the text being permeated by EM.

Theme 2

There are many quite insignificant changes made between LP1 and L1. Some do however clarify certain norms and values and the economic aspect is overall more in focus. Introduction point 2 has, for example, been changed to emphasize the directives contribution to increased competition on the internal market.[66] Further, while article 1 of LP1 explains that the purpose is to create *"...a framework for promotion of cogeneration based on useful heat demand in the internal energy market*"[67], L1 states the purpose to be to "*...increase energy efficiency and improve security of supply by creating a framework for promotion and development of high efficiency cogeneration.*"[68] L1 is thus more explicit regarding the aim for energy efficiency and

[62] COM(2002) 415 final, p. 13

[63] COM(2002) 415 final, p. 3

[64] See, for examples, COM(2002) 415 final, p. 7, 13, 15

[65] COM(2002) 415 final, p. 10

[66] Directive 2004/8/EC, p. 1

[67] COM(2002) 415 final, p. 20

[68] Directive 2004/8/EC, p. 4

development of better technology. These are both strong traits of EM and should be expected to have positive impact on both environment and economy.

Article 7 (1) of L1 states that: "*Member States shall ensure that support for cogeneration — existing and future units — is based on the useful heat demand and primary energy savings, in the light of opportunities available for reducing energy demand through other economically feasible or environmental advantageous measures like other energy efficiency measures.*"[69] 'Environmental advantageous measures' is not included in LP1, but should be considered as strengthening in environmental terms. According to L1, other solutions should instead be supported if they are better either economically or environmentally, not just the former. This might seem like a small change, but the implications could be quite big. If shown to be cheap but environmentally inefficient (compared to other measures), LP1 still supports the promotion of cogeneration while L1 does not.

5.1.2. LP/L2 - COM(2008) 19 final & Directive 2009/28/EC - on the promotion of the use of energy from renewable sources

Theme 1

LP2 concerns renewable energy, which, if innovation aspects are emphasized, is a solution much in line with EM. As explained in the explanatory memorandum: "*The Community has long recognised the need to further promote renewable energy given that its exploitation contributes to climate change mitigation through the reduction of greenhouse gas emissions, sustainable development, security of supply and the development of a knowledge based industry creating jobs, economic growth, competitiveness and regional and rural development.*"[70] This expectation is also mentioned elsewhere[71], making the aim of 'win-win' very clear. Further, the directive: "...*aims to establish an overall binding target of a 20% share of renewable energy sources in energy consumption and a 10% binding minimum target for biofuels in transport to be achieved by each Member State*". [72] These targets are expected to contribute to energy security, environmental protection and improved competitiveness for the renewable sector, further strengthening the aim for 'win-win'.

LP2 has been proceeded by extensive consultation with stakeholders. The general consensus seems to have been that 'win-win' outcomes were possible as the directive promotes local employment, stimulates economic growth and increases European industry leadership globally while contributing to energy security and reduced emissions.[73] LP/L2 shows that the EU strongly acknowledges the 'win-win' aspect of renewable energy and are more than willing to capitalize on it. It is also stated that "*The main purpose of binding targets is to provide certainty for investors*".[74] Clearly, the importance of avoiding loss of competitiveness or economic uncertainty has been acknowledged. Action on EU level is justifiable as:

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[69] Directive 2004/8/EC, p. 5

[70] COM(2008) 19 final, p. 2

[71] see, for example, COM(2008) 19 final, p. 3

[72] COM(2008) 19 final, p. 2

[73] COM(2008) 19 final, p. 5

[74] COM(2008) 19 final, p. 13

"*An overall objective could not be reached without overall commitment*". [75] The choice of directive as instrument is expected to provide flexibility as Member States can implement the rules to suit national circumstances.

The proposal suggests that: *"A new legislative framework for the promotion and the use of renewable energy in the European Union will provide the business community with the long term stability it needs to make rational investment decisions in the renewable energy sector so as to put the European Union on track towards a cleaner, more secure and more competitive energy future."*[76] Altogether, focus on efficient technology and competitiveness is strong and points towards influence of EM. Traces of LE, emphasis on rational economic choices, are however also found.

Theme 2

So, has there been any improvement or dilution from proposal to directive? Introduction point 2 of LP2 emphasizes increased use of biofuels as a way to decrease oil imports. L2 has expanded on this by including other measures as well: "*...technological improvements, incentives for the use and expansion of public transport, the use of energy efficiency technologies and the use of energy from renewable sources in transport*"[77] A clear step towards EM is expressed here and the additional measures do have some 'win-win' potential.

L2s third introduction point states that: "*The opportunities for establishing economic growth through innovation and a sustainable competitive energy policy have been recognised.*" This is nowhere to be found in the proposal, showing that a 'win-win' outcome is emphasized stronger by the Parliament and the Council. Overall, the introductory points in L2 is focused on outcomes like less emissions, economic growth and employment. In LP2, these points mainly concerns the implementation of the directive, not the desired outcome. L2 also mentions the technological development aspect of promoting renewable energy to a much larger extent than LP2, and highlights that it only will be effective if combined with increased energy efficiency and reduced energy consumption. Further, L2 supports Member State encouragement of targets exceeding national ones on local or regional level as well as action plans for raising awareness of benefits with renewables.[78] The directive once again expresses benefits of renewables and the need to promote it stronger than the proposal. Improvements regarding the expressed aim for 'win-win' (though mainly the environmental aspect) have thus been made.

5.1.3. LP/L3 - COM(2011) 370 final & Directive 2012/27/EU - on energy efficiency

Theme 1

As the name implies, L3s objective is to ensure a 20 % primary energy saving in the EU by 2020.(LP3 p.5). LP/L3 is connected to LP/L2 as energy efficiency is seen as an important step in reaching the target of renewable energy share. According to LP3, energy efficiency is the most cost-effective and fastest way to increase security of supply, and is an effective way to reduce GHG emissions responsible

[75] COM(2008) 19 final, p. 10

[76] COM(2008) 19 final, p. 3

[77] Directive 2009/28/EC, p. 1

[78] Directive 2009/28/EC, p. 19

for climate change. It is viewed as one of the most important steps for achieving a future low carbon competitive economy.[79]

Apart from being environmentally beneficial, LP3 is also very straight forward on how the regulation can contribute economically through growth and job creation. Also: "*Energy savings free up financial resources that can be reinvested elsewhere in the economy and can help alleviate public budgets that are under strain. For individuals, energy efficiency means paying less on their energy bills. (...) Finally, producing more with less energy should improve EU industries' competitiveness and give them the lead in the global markets for energy efficiency technologies. Energy efficiency and savings benefit the EU economy as a whole, the public sector, business and private individuals.*"[80] This is the clearest example of expected 'win-win' found in my study. This possibility, emphasized throughout LP/L3,[81] supports the assumed low tension between economy and environment in issues of energy efficiency. The three groups, from which the theoretical tension is calculated in this study, will all benefit from this directive according to the quote above.

Dependency on energy imports seems to be the primary concern from which this directive stems. However, issues of environment, economy and resources are also of major concern and are all expected to benefit. The mentioning of scarce resources points away from the influence of LE in this act.[82] There are also many mentions of Member States needing to support increased energy efficiency through a number of different measures, including financial support and subsidies. Put together, LP/L3 does not suggest an especially market based approach on how to reach its target. However, LP/L3 seems to be in line with other ideas of EM. Introduction point 1 makes this, as well as the aim for 'win-win', clear: "*Shifting to a more energy-efficient economy should also accelerate the spread of innovative technological solutions and improve the competitiveness of industry in the Union, boosting economic growth and creating high quality jobs in several sectors related to energy efficiency.*"[83]

Both LP3 and L3 are surprisingly light on references to technological development and innovation as instrument for achieving energy efficiency. Instead, the change is expected to happen through action from government, industry and private consumers. Interested parties and stakeholders have been involved in developing LP3, and sharing responsibility between different levels of society and the consumer chain should thus have broad support.[84] The directive is also believed to contribute to "*...a new energy efficiency strategy that will enable all Member States to decouple energy use from economic growth.*" Growth decoupled from increased environmental stress is an important condition for CE 'win-win'. Further, L3 will to some extent be a 'command-and-control' measure as: "*...voluntary measures are assessed as insufficient to tap all the available potential for savings.*"[85] Combined, many of the proposed solutions and the expected outcome is in line with CEs version of 'win-win'. Traces of EM are however equally visible,

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[79] COM(2011) 370 final, p. 1, 5

[80] COM(2011) 370 final, p. 1-2

[81] See, for example, COM(2011) 370 final, p. 4, 8-9 & Directive 2012/27/EU, p. 1

[82] also mentioned in COM(2011) 370 final, p. 9 & p. 2 of L3

[83] Directive 2012/27/EU, p. 1

[84] COM(2011) 370 final p. 2

[85] COM(2011) 370 final, p. 3

emphasizing innovations, competitiveness and growth as effects if energy savings are made. Further, L3 sets no specific saving targets for the Member States. This allows for great flexibility, but could result in insufficient action. If only CE had been influencing the legislation, a minimum target had been expected. Determining that only one of the approaches have been influencing LP/L3 would be incorrect, and I argue that both are clearly visible. To conclude, LP/L3 exhibits strong 'win-win' outcome potential according to its own projections.

Theme 2

Very few changes have been made between proposal and legislation here. The reason can be found in the following statement: "*The European Council and the European Parliament have urged the Commission to adopt a new ambitious strategy on energy efficiency for determined action to tap the considerable potential.*"[86] Energy efficiency as an environmentally beneficial action and the importance of finding cost-efficient solutions are however emphasized slightly stronger in L3.[87] The rhetoric is thus a bit more distinct on both economic and environmental aspects, even though the expected outcome is unchanged.

5.1.4. Policy area conclusion

Summarizing the results, all proposals and directives exhibit aims for 'win-win' outcomes, based primarily on the principles of EM. Economy and environment has thus been balanced in the formulations of these acts. Many of the provisions found will, according to their own descriptions, satisfy the interests of consumers, producers and the general public and the assumed low level of tension can thus be said to be correct.

5.2. Automotive

5.2.1. LP/L4 - COM(2004) 162 final & Directive 2005/64/EC - on the type-approval of motor vehicles with regard to their reusability, recyclability and recoverability

Theme 1

LP/L4 is designed to set standards for new vehicles to be "*re-usable and/or recyclable up to 85 % by mass and re-usable and/or recoverable up to 95 % by mass.*".[88] The directive is believed to significantly affect vehicle constructions and the automotive industry. This might create opposition to its implementation from manufacturers, creating possible tension. A majority of the Member States does however support the directive according to LP4. The expected outcome of LP/L4 is protection of environment and human health.[89] This objective does not include any economic aspects and hence there are no explicit references to 'win-win' outcomes. It is also stated that: "*...manufacturers shall develop and shall put on the market new vehicles, which comply with requirements that are sufficiently stringent as to ensure that targets will effectively*

[86] COM(2011) 370 final, p. 2

[87] Directive 2012/27/EU, p. 2, 4

[88] COM(2004) 162 final, p. 20

[89] COM(2004) 162 final, p. 4

be met when these vehicles will reach the end of their life...".[90] This directive is thus not very flexible other than applying to the car fleet average, deeming it as a more or less command-and-control measure.

LP4 states that: "*...it is extremely difficult to predict what investments manufacturers will have to make to fulfil the requirements...*".[91] It is however stated that the cost increase is expected to be 30€ for each vehicle produced. This should lead to a slight competitive disadvantage against non-European manufacturers, but LP4 ensures that: "*The proposal poses no risk for the companies in this sector.*"[92] It is further stated that the benefits of the directive should be viewed from an environmental policy point of view. As such, it cannot be concluded that LP4 aims at finding a 'win-win' solution. The aimed outcome is beneficial only to the environment.

Article 7 states that "*The manufacturer should (...) recommend a strategy for the treatment of end-of-life vehicles (...) based on proven technologies, which are available or in development at the time of applying for the vehicle approval.*"[93] The development of new technology is not mentioned or encouraged. A likely reason is that unproven technologies provide uncertainty to the fulfillment of the directives requirements. Exploiting new options could potentially have led to efficiency, environmental and economic benefits, making the absence of references to it surprising. To conclude, LP/L4 lacks 'win-win' solutions and seems to rather promote an environment and resource friendly development without direct economic benefits, at least for manufacturers. Together with the absence of flexibility and market measures, LP/L4 should be placed in the CE category.

It was expected that LP/L4 would be more economically focused. This environmental legislation is more theoretically inspired by the provisions of CE. Based on the theoretical tension between economy and environment that is expected in this policy area, I am quite surprised to find that a directive demanding quite much from the manufacturers without proposing any way to benefit economically is put forward.

Theme 2

L4 has not in any significant way changed its wordings compared to LP4. Some changes were expected to occur due to the (possibly) quite unfavorable effects on vehicle manufacturers and, by extension, their respective Member States. The directive was deemed necessary as a part of the EUs attempt to reduce waste in all activities. Still, finding and including ways to make it profitable (i.e. creating a 'win-win' outcome) could have been expected.

5.2.2. LP/L5 - COM(2007) 593 final & Regulation (EC) No 79/2009 - on type-approval of hydrogen-powered motor vehicles

Theme 1

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[90] COM(2004) 162 final, p. 4

[91] COM(2004) 162 final, p. 18

[92] COM(2004) 162 final, p. 42

[93] COM(2004) 162 final, p. 21 & Directive 2005/64/EC, p. 2

According to LP5: "*If* (hydrogen) *fuel is produced in a sustainable manner, the use of this propulsion technology could significantly contribute to the improvement of the environment.*".[94] Unharmonized rules for the type-approval of hydrogen powered vehicles is believed to hold this development back and the objective of L5 is thus to avoid varying standards while providing a high level of environmental protection and public safety. LP5 mentions different policy options that have been considered before the proposal was drafted. The option to not propose a new regulation was deemed harmful as it would decrease predictability for manufacturers and lead to unnecessary barriers against the development of hydrogen technology.[95] The legislation is thus viewed as a way to both improve the conditions for manufacturers while contributing to environmental protection and promotion of new clean technology, all strong features in an EM version of 'win-win'.

Regarding the option of self-regulation, LP5 states that "*It is not clear that a self commitment provides an adequate guarantee that hydrogen vehicles will be as safe as conventional vehicles or that there will be appropriate sanctions available if the self-commitment were to be breached. (...) Moreover, it is not apparent that the use of a voluntary approach would offer any additional benefits to the industry, governments or the general public.*"[96] The lack of belief in market based measures points away from a LE, and to some extent an EM, approach. However, a type-approval framework should, according to LP/L5: "*...contribute to the confidence in the new technology for potential users and the public at large...*" and "*...accelerate the placing on the market of vehicles with innovative propulsion technologies and vehicles which use alternative fuels with a low environmental impact.*"[97] Hence, LP/L5 aims at supporting an environment friendly development based on new innovative technology. This should indicate EM as influential in its development.

A community level response is viewed as beneficial from three perspectives (industry, government and public) pointing to a possible 'win-win' outcome. Strengthening this is that a EU wide legislation would make it possible to: "*...reap the economies of scale as production series can be made for the whole European market.*"[98] The possibility of a strong 'win-win' outcome from L5 is however quite weak. There is an absence of expressed economic benefits, leading to an unbalanced consideration for environment and economy. It is mentioned that large investments from manufacturers have been made in hydrogen technology, and it is possible that further incentives are deemed unneeded for the development to move forward. Still, references to future advantages (exports) from having developed 'green' technology was expected.

<u>Theme 2</u>

Introduction point 6 has been somewhat reformulated in L5 resulting in wordings that could be tied to EM, due to the focus on new technology: "*Hydrogen is considered as a clean way of powering vehicles for the future, on the way towards a pollution-free economy based on the reuse of raw materials and on renewable energy*

[94] COM(2007) 593 final, p. 2

[95] COM(2007) 593 final, p. 4

[96] COM(2007) 593 final, p. 5

[97] COM(2007) 593 final, p. 9

[98] COM(2007) 593 final, p. 5

resources, as vehicles propelled with hydrogen emit neither carbon-based pollutants nor greenhouse gases."[99] It is further stated in L5, but not mentioned in LP5, that the commission should work towards international harmonization on this issue. This could indicate a strive towards reducing the risk of competitive disadvantages against non-European manufacturers, but also a way to promote environment friendly technology abroad.[100] L5 also encourages the Commission to assist in the establishment of hydrogen filling stations, unmentioned in LP5. The Parliament and the Council thus want supranational support, indicating that Member States are unwilling to, or incapable of, handle it by themselves. The mentioning of this aspect could, if somewhat stretched, indicate a minor improvement of the economic consideration.

5.2.3. LP/L6 - COM(2007) 856 final & Regulation (EC) No 443/2009 - setting emission performance standards for new passenger cars as part of the Community's integrated approach to reduce CO_2 emissions from light-duty vehicles

Theme 1

The following statement can be found early in LP6: "*The aim of this Regulation is to create incentives for the car industry to invest in new technologies. The Regulation actively promotes eco-innovation and takes into account future technological developments. In this way, the competitiveness of the European Industry is enhanced and more high-quality jobs created.*".[101] Several aspects of EM are present here, including a strong aim for a 'win-win' outcome through increased competitiveness, new jobs and an eco-friendly development based on modernity. Further, it is believed that the proposed legislation will "*encourage high-value-added technology exports".*[102] LP6 is also very clear on the need of community action as the ever increasing GHG emissions from road transport is neutralizing emission reduction achieved in other sectors. Early on, it is stated that: "*In setting emissions standards it is important to take into account the implications for markets and manufacturers' competitiveness, stimulating innovation and reducing energy consumption.*"[103] This displays the presence of a certain pattern of thinking which strongly resembles EM, with consideration of both economic and environmental interests.

The opinions of the competitiveness and the environmental Council of Ministers constellations, mentioned briefly in LP6, are both positive to the legislation. The competitiveness council views it as beneficial for both the climate and for preserving the automotive industry's global competitiveness which at least shows that a 'win-win' outcome is believed to be achievable through the regulation.[104] It is suggested that the mandatory reduction should be met *"by means of improvements in vehicle motor technology, and (...) by other technological improvements and by an increased use of biofuels.*".[105] The way to achieve the reduction is thus through modernity, central to EM.

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[99] Regulation (EC) No 79/2009, p. 1

[100] Regulation (EC) No 79/2009, p. 2

[101] COM(2007) 856 final, p. 3

[102] COM(2007) 856 final, p. 5

[103] COM(2007) 856 final, p. 3

[104] COM(2007) 856 final, p. 4

[105] COM(2007) 856 final, p. 3

Overall, many of L6s provisions can also be traced to a LE approach. Emphasis on modernity and biofuels does however rather suggest the environmentally improved EM model. It is highlighted that competition between the diversity of manufacturers must not be distorted by the regulation and that it will be carried out in a sustainable way. "Sustainable" is not explained in this context, but it seems to be pointing to economic rather than environmental sustainability (i.e. not threatening competitiveness).[106]

It is stated in LP6 that a regulation has been deemed necessary due to the failure of a voluntary commitment made by manufacturers in 1998 to reduce emissions from new cars and promote fuel efficiency.[107] The fact that such an option was unsuccessful points to a failure of market based measures, advocated strongest by the *business as usual* approach. When it failed, binding measures were instead proposed which shows the importance of the reduction. A directive could have been a middle road, but was rejected as to avoid non-compliance. A Community target does however "*provide manufacturers with more planning certainty and more flexibility to meet the CO2 reduction requirements than would be provided by separate national reduction targets*".[108] This displays a will to achieve the goal together with the industry, rather than choosing a command-and-control approach. Governmental intervention is (to a certain degree) important in EM, which could point towards it having influenced the now adopted binding targets.

It is impossible to miss the signs of this proposal aiming for a positive development for both the environment, through reduced emissions, and for the competitiveness of manufacturers, through new innovative technology. In conclusion, LP/L6 includes many factors pointing towards the aim of a strong 'win-win' outcome and EM discourse strongly permeating the text. 'Win-win' can of course be found in other approaches as well, but the focus on achieving it through modernity is characteristic for EM.

Theme 2

The first point of L6, stating the objective of reducing emissions, has been changed from LP6 to include "*while ensuring the proper functioning of the internal market*".[109] I interpret this change as a way to ensure that the regulation does not damage or distort competition in the automotive sector, surprisingly left out in LP6. Point 11 of L6, which does not appear in the proposal, states that: "*Appropriate funding should be ensured in the general budget of the European Union to promote the development of technologies intended to reduce radically CO2 emissions from road vehicles.*"[110] This could be a sign of a compromise in which manufacturing Member States agree to the legislation if everyone splits the bill. It does however also improve the possibility of a 'win-win' outcome.

[106] COM(2007) 856 final, p. 4

[107] COM(2007) 856 final, p. 9

[108] COM(2007) 856 final, p. 9, 12

[109] Regulation (EC) No 443/2009, p. 1

[110] Regulation (EC) No 443/2009,, p. 2

5.2.4. Policy area conclusion

Even though it is nowhere mentioned, one could expect L4 to result in a small competitive disadvantage compared to non-European manufacturers. Differing from LP/L6, LP/L4 does not mention the potential advantage in developing new methods or technology that can create profits if or when world demand for it increases. There is neither any mentioning of the (possible) lower costs of parts from suppliers steaming from recycled or reused materials.

Only LP/L6 exhibits a clear aim for a 'win-win' outcome. LP/L4 aims at only accommodating environmental improvements (less waste and resource use) and LP/L5 leans towards the same direction. As LP/L6 is very clear on the potential environmental and economic benefits from developing new clean technology, it is surprising that this is not emphasized stronger in LP/L4 and LP/L5. The theoretical tension between the two interests, expected to be moderately strong in this area seems to be somewhat correct. It was however expected to be formulated in favor of economy, which turned out to be incorrect. Further, the environmental legislations were not diluted as Member States (through the Council) got their say and was passed practically unchanged even though it could potentially hurt the competitiveness of manufacturers compared to non-European actors.

5.3. Fisheries

Because the Common Fisheries Policy (CFP) is an exclusive competence of the Community, all adopted legislation is in the form of regulation.

5.3.1. LP/L7 - COM(2002) 185 final & Regulation (EC) No 2371/2002 - on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy

Theme 1

This regulation is a step in the CFP and aims at providing "*...coherent measures concerning the conservation and management of living aquatic resources and limitation of the environmental impact of fishing* (and) *conditions of access to waters and resources...*"[111] Put another way, the regulation shall "*...ensure exploitation of living aquatic resources that provides sustainable environmental, economic and social conditions.*"[112] The measures adopted through the legislation are based on the precautionary principle, and the suggested measures for achieving the goals are foremost targets for sustainable stocks, limited catches, limited number of vessels, limited fishing efforts and the creation of economic incentives for selective fishing.[113] LP/L7 is very environmentally focused. Protecting marine ecosystems and natural recourses by limiting different aspects of fishing activities is the main goal. Except the vague reference to taking economic aspects into account, introduction point 14 is the first time the economic concern is mentioned. It is stated here that "*In view of the precarious economic state of the fishing industry and the dependence of certain coastal communities on fishing, it is necessary to ensure relative stability of fishing activities...*".[114] Even though it is highlighted here, this aspect is surprisingly absent throughout LP/L7.

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[111] COM(2002) 185 final, p. 11

[112] Regulation (EC) No 2371/2002, p. 3

[113] Regulation (EC) No 2371/2002, p. 4

[114] COM(2002) 185 final, p. 9

Article 2 states that LP/L7 "*...shall aim to contribute to efficient fishing activities within an economically viable and competitive fisheries and aquaculture industry, providing a fair standard of living for those who depend on fishing activities and taking account of the interest of consumers.*"[115] As this claim is not backed up by the provisions of L7, it shows that the EU wants to be perceived as taking responsibility for all stakeholders.

LP/L7 proclaims that: "*The Community fleet should be reduced to bring it into line with available resources...*".[116] This is a very clear indication that the EU wants to limit fishing activities, thus choosing environmental benefits such as biodiversity and sustainable stocks over (short-term) economic benefits from a less restricted industry. The aim to reduce fishing activities is further made clear by the aim to "*...severely restricting public aid for investment in fishing vessels and to eliminate aid for the transfer of Community over-capacity to third countries would inhibit further growth in fishing effort...*"[117] Strengthening the possibilities for Commission or Community action against non-compliance is also mentioned frequently.[118] Articles 21 through 28, for example, specify various instruments for inspecting and enforcing the new rules. These extensive control procedures displays mistrust or a fear that some fishers will try to gain competitive advantages by evading the rules (a case of tragedy of the commons).

The situation before the regulation is described to have occurred due to a poor regulatory framework.[119] The restrictions of fishing activities can thus be seen as both a correction of previous errors and as punishment against the fishers management of a common resource. The absence of any plan for loss of employment or any other economic aid for those affected negatively is the most obvious sign of the latter. Examples of this is that: "*With this system in place, national fleets will progressively decrease in size...*"[120] and "*No exit from the fleet supported by public aid shall be permitted...*".[121] Some help from the EU is however provided as article 20 states that remaining fishing opportunities shall be distributed among the Member States as to assure relatively stable fishing activities.

A bit unexpectedly, the EU here takes significantly more consideration for biodiversity and sustainable fishing stocks than for the interests of the fisheries industry. A sustainable stock provides a sustainable opportunity for income for fishers in the long-term perspective, but will most likely reduce overall employment and profit. There is no mentioning of sustainable stock or biodiversity as an economically rational goal, strengthening a conclusion that LP/L7 is not market friendly but rather a purely environmental, top-down, action.

To conclude, there are weak signs that this regulation will lead to a 'win-win' development for both economy and environment. The environment will benefit greatly while the possibility to profit from

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[115] Regulation (EC) No 2371/2002, p. 3

[116] COM(2002) 185 final, p. 9

[117] COM(2002) 185 final, p. 3-4

[118] See, for example, COM(2002) 185 final, p. 3, 5-7, 9-10, 20-26 & Regulation (EC) No 2371/2002, p. 9-12

[119] COM(2002) 185 final, p. 4

[120] COM(2002) 185 final, p. 4

[121] Regulation (EC) No 2371/2002, p. 6

fishing will be reduced. EM would suggest that eco-systems and biodiversity shall be protected only if economically rational. LP/L7 rather seems to aim at protecting these for more moral or environmental reasons, thus excluding the influence of EM as a possibility. Further, criteria from the modernity factor of EM is nowhere to be found. It was expected that some form of innovation would be suggested to, for example, prevent catching unwanted species. Traces of CE is much more visible as the regulation aims at a very weak form of 'win-win' in favor of environment. Supporting CE further is the proposed involvement of a wide range of stakeholders (not only industry and government) in the management of stocks.[122] Fisheries is presented in this study as a difficult policy area in which to include EM and 'win-win' outcomes, and I believe LP/L7 is a good example of this assumption being correct. Environmental sustainability, not sustainable development, is the goal and expected outcome of this regulation.

Theme 2

So, has there been any improvement or dilution between proposal and adopted legislation? L7 has added an introduction point stating that "...*given the temporary biological situation of stocks,* (the EU) *should safeguard the particular needs of regions where local populations are especially dependent on fisheries and related activities...*".[123] Even though this is a small adjustment, it indicates that the Council wants to strengthen the economic situation for those most affected by the regulation. This change was expected. L7 has also added an article suggesting a plan to ensure fishing stock recovery to safe biological limits. This should be regarded as an attempt at strengthening the positive environmental impact of the legislation, while regarding "...*the economic impact of the measures on the fisheries concerned.*" [124] Combined, L7 has to a small extent improved on both the economic and environmental aspects but has not created better conditions for a 'win-win' outcome.

5.3.2. LP/L8 - COM(2007) 605 final & Regulation (EC) No 734/2008 - on the protection of vulnerable marine ecosystems in the high seas from the adverse impacts of bottom fishing gears

Theme 1

The context for adopting this regulation is described as following: "*Certain marine ecosystems such as seamounts, deep water corals and hydrothermal vents are threatened by fishing practices that can have destructive effects on the physical integrity of the habitat. Bottom fishing gears, when deployed in areas containing these ecosystems, have been documented to destroy deep water corals and sponges, and with them the complex ecosystem they host and support.*"[125] L8 will apply to EU fishing vessels using bottom gears in international waters.

The tension between economic and environmental interests on this issue is clearly displayed in LP8. Referring to opinions from stakeholders, it is stated that: "*The Commission received essentially two sets of opposing views: on the one hand, environmental non-governmental organisations (ENGOs) pleaded with the EU to support a blanket moratorium of bottom trawling in the high seas as the only means to ensure effectively the preservation*

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[122] See, for example, COM(2002) 185 final, p. 2, 7, 11

[123] Regulation (EC) No 2371/2002, p. 2

[124] Regulation (EC) No 2371/2002, p. 4-5

[125] COM(2007) 605 final, p. 2

of vulnerable deep sea ecosystems. On the other hand, the fishing sector stated its opposition to the blanket ban approach." [126] This refers to another option that would lead to total prohibition of bottom fishing on international waters. The option was however abandoned due to expected "*...significant economic and social negative impacts on the EU fleets.*"[127] The Commission thus seems to have taken a stance supporting both sides and choosing the most balanced option available. This displays some consideration for the state of the industry in the formulation of LP/L8. The regulation will however limit certain fishing activities and should thus reduce possibilities to profit, but no references to potential negative impact are included. Even though a 'win-win' factor is non-existent here, the Commission at least aims at adopting the least economically harmful option.

The focus on environmental protection is very strong in LP/L8: "*The protection of vulnerable marine ecosystems (...) against impacts from bottom fishing gears requires limiting or excluding the use of such gears in areas where these ecosystems are found. Although impacts are variable according to different gears, these ecosystems are extremely fragile and should be protected by means of area closures. (...) action should be taken urgently on a precautionary basis.*"[128] However, similar to LP/L7, LP/L8 seems to be at least partially aimed at regulating a previously unregulated activity. This would improve the functioning of the internal market and ensure fishing on equal terms. There are more similarities between LP/L8 and LP/L7. Both restrict fishing activities and none of them suggest ways to profit economically from the change. LP/L8, much like LP/L7 thus treats economic and environmental interests in an unbalanced way, in favor of the latter. Few, if any, traces of EM can be found in LP/L8, foremost visible through the absence of modernizing factors and the concern for a seemingly non-profitable (or non-economically measurable) environmental issue. L8 states that the authorities handing out permits shall rely on the best scientific and technical information available.[129] This implies that better information, achievable through innovations, should be mutual beneficial. It is however not elaborated upon which, if stretched a bit, shows a lack of considering modernity as a part of the solution. Together with stringent command-and-control regulation and focus on ecological sustainability, the influence of CE is evident.

Theme 2

Introduction point 10 of LP8 suggests a 1000m depth limit for deploying fishing gear to protect the most vulnerable areas. This would also be a "*...reasonable choice providing a suitable degree of protection while compatible with the continuation of bottom fisheries for demersal species generally found at shallower depths...*"[130] L7 has changed point 10 to instead prohibit bottom gear fishing in areas where the vulnerability of marine ecosystems are unassessed.[131] This change potentially strengthens both the environmental protection and fishing possibilities by restricting or allowing bottom gears from case to case. Protection of depths more than 1000m is more uncertain with L8, but protection of other depths are potentially increased. L8 also gives some extra room for adjusting to the new rules by providing 30 days from publication

[126] COM(2007) 605 final, p. 3

[127] COM(2007) 605 final, p. 5

[128] COM(2007) 605 final, p. 4

[129] Regulation (EC) No 734/2008, p. 3

[130] COM(2007) 605 final, p. 10

[131] Regulation (EC) No 734/2008, p, 2

until the regulation enters into force. LP8 suggests only seven days. These are small changes, but they make the outcome of L8 more uncertain than LP8. The changes however potentially reduce negative economic impact and strengthen environmental protection.

5.3.3. LP/L9 - COM(2007) 602 final & Regulation (EC) No 1005/2008 - establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing

Theme 1

Illegal, Unreported and Unregulated (IUU) fishing is viewed as constituting: "*...one of the most serious threats against a sustainable exploitation of living aquatic resources...*"[132] The objective of L9 is basically to: "*...establishes a Community system to prevent, deter and eliminate IUU fishing.*"[133] The economic-environmental tension on this issue is made clear by the following statement: "*While much has been done, there is no doubt that IUU fishing is far from being eradicated. The Commission considers that the persistence of such practices despite Community and international action and their dramatic environmental and socioeconomic consequences call for an urgent and firm reply by the Community.*"[134] Obviously, the EU is determined to protect marine environments while some fishers persist on violating the restrictions, interpreted as an attempt to retain a certain level of profit. This is further highlighted by objections made by fishers during the Commission lead consultation on this issue. Fishers requested the regulation only to be applied to non-Community fleets as EU fishers does not, and can not, conduct IUU fishing due to the existing strong control regime.[135]

Another concern raised during the consultation was that a uniform response, ignoring regional differences, could create unnecessary new constrains to fishing activities in certain areas. An option answering to this critique was considered but abandoned. Even though it would probably have had less negative impact on fisher activities, it did not provide enough environmental protection according to LP9.[136] Stringent legislation was thus chosen over an approach that balanced the different interests better.

The focus on protecting fishing stocks is very strong in LP/L9. To a large extent however, it seems like the legislation aims at filling a regulatory gap and ensure the proper functioning of the internal market rather than protecting the stocks. Two things support this notion. Firstly, all three fishery acts point to an under-regulated policy area. Secondly, the rules of L9 will also apply to imported fish, ensuring continued competitiveness of EU fishers. The second point is supported by the statement about "*...the vulnerability of the Community market to the imports of fisheries products stemming from IUU fishing* (and) *various means which could be set up by the Community to put an end to those imports.*"[137]

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[132] COM(2007) 602 final, p. 2

[133] Regulation (EC) No 1005/2008, p. 5

[134] COM(2007) 602 final, p. 2

[135] COM(2007) 602 final, p. 4

[136] COM(2007) 602 final, p. 4, 6

[137] COM(2007) 602 final, p. 5

LP/L9 states that: "*The persistence of a high number of serious infringements against the rules (...) lies to a large extent in the non-deterrent level of sanctions prescribed within member states' legislation...*"[138] Once again, strong economic incentives and weak sanctions for fishers are confirmed to be a reason for violating the rules, giving witness to the strong tension. The EU aims at overcoming parts of the issue by ensuring continued competitiveness for Community versus non-Community fishers. This is done by strongly emphasizing that imported fish must have been caught under the same rules applied within the EU, controlled through strict labeling.[139]

Securing a sustainable fish stock is economically rational from a long term perspective. It is thus a sort of 'win-win' solution, but a very weak one as economic growth is not ensured. Only one interest could be satisfied, and in this case the environmental one was obviously chosen. Further, LP/L9 sets many provisions about when action is appropriate and sanctions for infringement of the rules constitute the majority of the regulations articles.[140] Combined with the absence of market solutions, indicating a command-and-control approach, this points to a permeation of CE. Concluded, the EU has not been able to balance the tension between economic and environmental interests in the development and adoption of this legislation.

Theme 2

Very little change has been done between LP9 and L9 and overall, only clarifications of rules has been added. L9 does however strengthen the protection against IUU fishing from non-Community vessels as well as the rules for importing fish.[141] These changes slightly reduces risks of competitive disadvantages for EU fishers, but does not strengthen the possibility of 'win-win'.

5.3.4. Policy area conclusion

None of the acts within this policy area are based on a market friendly approach or suggests market based solutions. They all exhibit traits of a classic 'command-and-control' approach, taking little consideration for the economic state of the fisheries industry. The aim of the CFP, which all the acts build on, is to *"...ensure exploitation of living aquatic resources that provides sustainable economic, environmental and social conditions.*"[142]

Based on the previous research, EM and 'win-win' should be difficult to achieve in the protection of environments unmeasurable in economic terms (e.g. corals) and this is what creates the strong tension. Having examined three environmental fisheries policies, this assumption turned out to be correct. However, the restrictive policies adopted here can be both a sign that the EU takes great consideration for the environment and/or a sign that regulation within the area has previously been lacking. In conclusion, neither proof of 'win-win' solutions nor influence of EM could be found. Using my analytical tool, fisheries policy rather seems to be permeated by CE.

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[138] Regulation (EC) No 1005/2008, p. 4

[139] See, for example, Regulation (EC) No 1005/2008, p. 2-3

[140] Regulation (EC) No 1005/2008, p. 3 & COM(2007) 602 final, p. 14

[141] Regulation (EC) No 1005/2008, p. 3, 9

[142] COM(2007) 602 final, p. 10

5.4. Summary of main findings

Table 1: Summary of main findings

Legislation	Well balanced win-win'?	Permeated by EM?	Improved/diluted between LP and L?
LP/L1	Yes - but weakly emphasized	Yes - and also LE	Improved
LP/L2	Yes	Yes - and also LE	Improved
LP/L3	Yes	Yes - and also CE	No change
LP/L4	No	No - rather CE	No change
LP/L5	Yes - but weak	Yes	No change / Slightly improved
LP/L6	Yes	Yes	Slightly improved
LP/L7	No	No - rather CE	Slightly improved
LP/L8	No	No - rather CE	Slightly improved, but with more uncertain outcome
LP/L9	No	No - rather CE	No change

Table 1 provides a summary of the results based on my first and second research questions. With this table, the answer to the third question also becomes clear. To answer the first and third one, EM and 'win-win' aspects are present in the proposals and adopted legislations from policy areas with weak or moderate tension between economic and environmental interests. As have thus been shown, the occurrence of 'win-win' differs between policy areas with different levels of theoretical tension.

Answering the second question, the balance between economy and environment is improved or remains unchanged between the stages of legislative proposal and adopted legislative act. It is important to keep in mind that improvement and dilution refers to rhetoric and formulations, what the EU tries to exhibit. This does not necessarily coincide with what the actual outcome will be.

6. Discussion

Aim of the study and the improvement of proposals

The aim of this study has been to find empirical evidence of the 'win-win' concept of ecological modernization in the formation and adoption of EU environmental policy. This has now been fulfilled through the analysis presented in chapter 5. Previous research related to this study is mainly focused on EU action in international negotiations and policy statements, not on actual legislation. I believe that my results thus says something different about the EU than earlier research have done. Policy statements run the risk of being nothing more than empty rhetoric while international negotiations seldom leads to concrete action. Adopted legislation is on the other hand hard evidence of what the EU is and what it aims to become. As such, this thesis provides more reliable evidence of the extent to which the EU strives to achieve balance and sustainability.

The choice to examine environmental legislation builds on the assumption that economy is the primary interests of the EU. With this thesis, I wanted to provide a challenge for this notion by testing it in an 'extreme' context - environmental legislation. Previous research suggests that EM is the approach through which the EU tries to canalize balance between economy and environment. This should imply that EM permeates environmental legislation in all EU policy areas. My study has shown that this assumption is correct to a certain extent. When tension between economic and environmental interests is low or moderately low, the aim for EM based 'win-win' outcomes are most often successfully included in proposals and adopted legislations.

Somewhat surprising, the possible economic benefits from the legislations are not always emphasized as strongly as in for example LP/L3 or LP/L6. A conclusion that can be drawn is that advertising 'win-win' outcomes is not always deemed important. If this signals a lack of commitment to finding balanced solutions, or if the economic benefits are implicit or even 'too obvious to state', is difficult to determine. Based on the previous research, I would however suggest the latter. The norm of economic growth is very strong in the EU and has permeated the integration process since the founding days. As such, an implicit general aim to achieve further economic development is highly plausible. An empirical finding supporting this claim are the (often secondary) objectives aimed at ensuring the proper functioning of the internal market. This could also strengthen a 'between the lines' presence of LE.

Many proposals have been improved during the adoption phase, though most improvements consist of minor changes. Still, the assumption about environmental legislative proposals often becoming diluted when reaching adoption stage is incorrect. This goes against Gouldson & Murphy's notion about Member State reluctance to adopt stringent environmental legislation. I believe that interplay between five probable factors can explain this finding. Firstly, Member States in general are positive to stringent environmental legislation. This is supported by both the Porter hypothesis and the findings of Lifferink et al. Secondly, backed by the conclusion drawn by Jänicke, 'pioneer countries' have strong influence on the outcome of environmental legislation. Thirdly, as previously mentioned, adopting stringent rules ensures a proper functioning of the internal market. Fourthly, the EU aims at exhibiting a united front on environmental issues. This claim is backed by Baker who suggests that environmental policy acts as

a community building function rather than being viewed as a moral obligation. Lastly, the EU has become increasingly outspoken on issues of climate change and environment since the 1980s and forward, rhetoric that sooner or later had to be backed up by action for reasons of legitimacy.

Explaining the strong influence of CE

The results point to a correlation between strong tension and large influence of CE. Furthermore, many proposals exhibiting traits of CE are not changed to focus more on the economic aspects when adopted. These are unexpected findings. Based on my theoretical notions and the previous research, a somewhat larger influence of LE was rather expected in both proposals and legislations as tension rose. The five factors mentioned above could explain, or at least nuances, the results pointing towards an influence of CE in these cases. Furthermore, in addition to a presence 'between the lines', the absence of LE could also be explained using Zannakis' description of this discourse as mainly visible in international contexts. EM is also more closely adjacent to LE than to CE. This should imply that adding modernity and a few other changes to LE would instead result in development towards EM, leading to additional positive effects. These factors could explain the dominance of EM and CE found in the material.

In general, the EU is not necessarily, or even likely, particularly aware of the discursive influences found in the examined acts. Those exhibiting strong EM traits do however seem to have been deliberately developed based on this approach. The reason is that all the EM factors I outlined have been included in some acts (e.g. L3 and L6), making it highly unlikely to be a coincidence.

Discussion on ecological modernization

Given the results, what implications does my thesis have on EM as a theory? EM seems to be an environmental policy approach applicable only to a certain degree. If innovation capacity and support from affected parties is strong within an EU policy area, legislation can be expected to be influenced by EM and include 'win-win' solutions.. Further, I aimed to provide an argument for or against the possibility of 'win-win' altogether as EU should be the ultimate venue for it to be realized. This has been done by determining that 'win-win' is very much possible, as long as the level of tension is not too strong. However, as this thesis does not cover the outcome of policies, I have not determined the possibility of 'win-win' effect, but merely the possibility of including 'win-win' in legislative acts.

As there is yet to exist a perfect solution on how to accommodate a positive development of both environment and economy, adoption of EM as a political strategy offers something of an 'easy fix' to the problem. I would argue that EM has some critical limits on how to deal with imminent climatic and environmental problems. If EM had been introduced earlier, it might have been enough to reverse the negative environmental impact from industrial societies. However, as we stand today, my projection is that EM offers too little too late in terms of required change and reform. It is none the less possible that EM can provide a path to avoid the most 'dirty' and inefficient industrial alternatives for developing countries.

Further, instead of doing nothing, EM provides a way to combine environmental protection with economic growth to some extent. The conditionality for effective environmental policy should however

not be economic profit, or the much needed path-change will probably not take place. EM is not the problem, but it provides an alternative in which governments and markets can avoid making politically and economically expensive structural changes. Stronger measures are required, but one should not expect a voluntary commitment to replace economic profit with environmental and ecological profit as long as money sets the rules.

The limitations of my study

In addition to the theoretical tension, the different domains to which the policy areas belong could very well explain the variations found between them. I considered this aspect when designing my study, but chose the 'theoretical tension approach' as it made policy areas easily and clearly distinguishable from one another. There is of course the possibility that I have theorized incorrectly in this regard. However, as 'win-win' is absent in the examined fisheries acts, and only included to a certain extent in the automotive acts, the chosen approach seemed to function correctly.

Another possible limitation is that this thesis does not include any explicit explanatory theory in the traditional sense. EM is however a multifaceted concept functioning as theory, discourse and political strategy. I have used it in a theory testing capacity by measuring it against EU environmental legislation, previously untested using EM. EM also provides an analytical framework from which the tool for testing its own applicability has been developed.

Regarding my results, they cannot objectively determine if EU environmental policy is balanced or unbalanced. What I can conclude is that the EU, in its rhetoric, aims at portraying itself as wanting to balance economic and environmental interests. Important to remember is that the answers I found are based on conditions I myself have put forward. If done in another way (different material, different selection, different analytical tool), the answer might have been different. I do not assume that these are final answers, generalizable to all policy areas. They do however exhibit a clear trend within this context, making it highly probable that similar results would be found within other policy areas or by using slightly different methods.

6.1. Further research

Continuing on the research that have been conducted through this thesis, I would suggest that a logical step forward would be examining the outcomes of legislative acts exhibiting EM and 'win-win' features. There is always the chance, or risk, that aim and result differ. This is particularly true regarding directives as they might not be implemented in a satisfactory way once they reach the Member States. Assessing the outcomes would thus provide information about the next step in the policy process. By examining the economic and environmental effects of these policies, the following question could be answered: Are the 'win-win' ambitions translated into actual 'win-win' outcomes? The answer would provide additional evidence of the effectiveness of EM as approach for overcoming the difficulty of combining economic growth and environmental protection.

I have discussed possible reasons to the outcome of the empirical analysis. To further interpret the results, explanatory theories are likely needed. Initially, I had the ambition to do exactly this, but the scope of the study limited that possibility. I would therefore suggest applying, for example, Normative

Power Europe or Rational Choice Institutionalism on the results as to better interpret the actions of the EU.

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