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# The European Union's Performance in Multilateral Environmental Agreements: Was the Lisbon Treaty a Game Changer?

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### **The European Union's Performance in Multilateral Environmental Agreements: Was the Lisbon Treaty a Game Changer?**

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## About the Author

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## **Abstract**

Drawing on a comparative framework, this paper analyses to what extent and how the institutional reforms of the Treaty of Lisbon impacted on the 'actorness' and effectiveness of the European Union (EU) with regard to the negotiation of Multilateral Environmental Agreements. In order to examine whether the Lisbon Treaty was really a game changer, the paper compares two case studies before and two case studies after the entry into force of the Lisbon Treaty in the fields of climate change (Copenhagen COP-15 2009 and COP-21 Paris 2015) and biological diversity (Cartagena Protocol 2000 and Nagoya Protocol 2010). The paper finds significant variation across the four cases, with no clear improvement after the Lisbon Treaty but a more effective EU in the biodiversity regime compared to climate change. The case studies show that the EU's performance in international environmental negotiations mainly depends on the external context and not on the EU's internal institutional set-up and external representation. Moreover, the climate change regime cannot be seen as the archetypal case of environmental governance, which is why environmental policy fields other than climate change should receive more academic attention.

## Introduction: Has the Lisbon Treaty made the EU more effective on the international stage?

"A lot of Europeans in the room is not a problem, but there is only an advantage if we sing from the same hymn sheet. We need to think about this and reflect on this very seriously, or we will lose our leadership role in the world."<sup>1</sup> This statement by Climate Commissioner Hedegaard was emblematic for the criticism of the performance of the European Union (EU)<sup>2</sup> at the 2009 Copenhagen Climate Summit (COP-15). The EU did not manage to play a significant role during that summit and Hedegaard linked the EU's lack of goal achievement, or 'effectiveness', to its internal institutional set-up and the resulting external representation.<sup>3</sup> In doing so, she drew on a line of thought that connects the EU's political system to its ability to act externally, or 'actorness', based on the assumption that stronger EU actorness will translate into more effectiveness. As such, a unified EU – or in Hedegaard's words, 'singing from the same hymn sheet' – is sufficient to speak of an effective EU, no matter to what extent the EU's policy objectives have in fact been attained.<sup>4</sup> The same reasoning was behind the reform of external representation brought about with the Lisbon Treaty, which attempted to strengthen the EU's actorness by strengthening its cohesion.<sup>5</sup> Recent studies have cast doubts on this alleged correlation and have searched for alternative explanations for EU effectiveness or the lack thereof.<sup>6</sup> However, the linkage between the concepts remains empirically underexplored in academic research.<sup>7</sup>

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<sup>1</sup> L. Phillips, "Hedegaard: EU must speak with one voice on climate", *EUObserver*, 15 January 2010.

<sup>2</sup> The European Union refers to the post-Lisbon European Union, but also its predecessors, the European Economic Community, the European Community and the European Union as established by the Maastricht Treaty.

<sup>3</sup> L. Groen & A. Niemann, "The European Union at the Copenhagen climate negotiations: A case of contested EU actorness and effectiveness", *International Relations*, vol. 27, no. 3, 2013, pp. 309.

<sup>4</sup> E. da Conceição-Heldt & S. Meunier, "Speaking with a single voice: Internal cohesiveness and external effectiveness of the EU in global governance", *Journal of European Public Policy*, vol. 21, no. 7, 2014, pp. 961-962.

<sup>5</sup> T. Corthaut & D. Van Eeckhoutte, "Legal aspects of EU participation in global environmental governance under the UN umbrella", in J. Wouters, H. Bruyninckx, S. Basu & S. Schunz (eds.), *The European Union and multilateral governance: Assessing EU participation in United Nations human rights and environmental fora*, Basingstoke, Palgrave Macmillan, 2012, pp. 146-154.

<sup>6</sup> da Conceição-Heldt & Meunier, *op. cit.*, pp. 961-963; S. Oberthür & L. Groen, "The effectiveness dimension of the EU's performance in international institutions: Toward a more comprehensive assessment framework", *Journal of Common Market Studies*, vol. 53, no. 6, 2015, pp. 1323-1325; S. Oberthür & F. Rabitz, "On the EU's performance and leadership in global environmental governance: the case of the Nagoya Protocol", *Journal of European Public Policy*, vol. 21, no. 1, 2013, pp. 40-44.

<sup>7</sup> E. Drieskens, "Golden or gilded jubilee? A research agenda for actorness", *Journal of European Public Policy*, vol. 24, no. 10, 2017, pp. 1540-1543.

This paper investigates to what extent and how the Lisbon Treaty has strengthened the EU's actorness as well as its effectiveness in the area of Multilateral Environmental Agreements (MEA). It carries out a comparative analysis of four cases in the domains of biodiversity and climate change and analyses whether the Lisbon Treaty was really a game changer when it comes to the EU's performance in MEA negotiations. The EU's actorness is discussed after aggregating its 'opportunity', 'presence' and 'capability'. 'Opportunity' focuses on the external context, 'presence' on the EU's internal legislation and 'capability' on the EU's institutional set-up. The paper argues that the Lisbon Treaty did not significantly strengthen either the EU's actorness or its effectiveness. Indeed, the external context, as shown in the 'opportunity' component of actorness, provides the largest explanatory power for the EU's effectiveness and the Lisbon Treaty did not have an impact on that. Consequently, actorness can only be a useful tool to study effectiveness if the external context is duly taken into account, meaning that the 'opportunity' variable has to be given sufficient weight in the analysis.

The selection of case studies is, first of all, driven by their impact on the planet. According to Steffen *et al.*, climate change and biodiversity are among the most progressed environmental dangers and the public has become increasingly aware of them.<sup>8</sup> Second, several MEAs have been agreed upon in the fields of biodiversity and climate change allowing for a comparison between the pre- and post-Lisbon period.<sup>9</sup> For each time period, one case study focuses on the field of biodiversity and the other on climate governance. The four cases are: the 2000 Cartagena Protocol on Biosafety; the 15th Conference of the Parties (COP-15) to the United Nations Framework Convention on Climate Change (UNFCCC) in Copenhagen in 2009; the 2010 Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation; and the 21st COP (COP-21) to the UNFCCC in Paris in 2015.

The two policy fields are very different with regard to both the EU's internal policies in place as well as the international regimes dealing with these areas. This

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<sup>8</sup> W. Steffen *et al.*, "Planetary boundaries: Guiding human development on a changing planet", *Science*, vol. 347, no. 6223, 2015, pp. 1286-1287.

<sup>9</sup> While this would also hold for the field of chemicals, the post-Lisbon Minamata Convention on Mercury resulted in a standoff between the EU institutions, which were trying to taking advantage of their newly gained powers. This resulted in a hostile relationship between the different institutions and complicated the EU's negotiation position, a situation which is not necessarily representative for a normal negotiation context. See Corthaut & Van Eeckhoutte, *op. cit.*, pp. 157-160.

allows for a comprehensive comparison across two different fields of global environmental governance, and to study how the link between the EU's actorness and its effectiveness plays out in different contexts. Conclusions can therefore also be drawn on whether climate change is indeed the most representative example in the field of environmental governance, as is often assumed.<sup>10</sup>

The next section introduces the concepts of actorness and effectiveness and operationalises them. The third section applies the analytical framework to the four case studies, based on which the conclusions are drawn.

### **Conceptual framework: Using actorness to study the EU's effectiveness in multilateral environmental negotiations**

Research on EU foreign policy generally finds significant differences between policy areas and periods when it comes to the EU's ability to "behave actively and deliberately in relations to other actors in the international system", or actorness.<sup>11</sup> A first wave of academic literature tries to explain these differences by – sometimes implicitly – linking the EU's institutional set-up to its international actorness. In this body of literature, actorness tends to be considered as being the same as effectiveness, while others see the former as a precondition for the latter. What is problematic is that varying levels of actorness and effectiveness have been observed across policy fields, seemingly unrelated to the different decision-making procedures in place.<sup>12</sup> As a result, a second wave of more recent literature has distinguished these notions and has also looked at external factors to explain varying measures of effectiveness.<sup>13</sup>

The Lisbon Treaty aimed to increase the EU's internal cohesion and actorness, and consequently, as often argued by policy makers, its effectiveness as well.<sup>14</sup> This

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<sup>10</sup> Keukeleire & Delreux, *op. cit.*, p. 230.

<sup>11</sup> G. Sjøsted, *The external role of the European Community*, London, Gower Publishing House, 1977, p. 17.

<sup>12</sup> da Conceição-Heldt & Meunier, *op. cit.*, pp. 961-962; Drieskens, *op. cit.*, pp. 1538-1540; M.L.P. Groenleer & L.G. Van Schaik, "United we stand? The European Union's international actorness in the cases of the International Criminal Court and the Kyoto Protocol", *Journal of Common Market Studies*, vol. 45, no. 5, 2007, pp. 969-972.

<sup>13</sup> da Conceição-Heldt & Meunier, *op. cit.*, pp. 961-962; Oberthür & Groen, "The effectiveness dimension of the EU's performance in international institutions", *op. cit.*, pp. 1321-1325; Oberthür & Rabitz, *op. cit.*, pp. 40-44; S. Schunz, *European Union foreign policy and the global climate regime*, Brussels, P.I.E. Peter Lang, 2014, pp. 301-309.

<sup>14</sup> Corthaut & Van Eeckhoutte, *op. cit.*, pp. 146-154.

makes the discussion on the linkage between both concepts again relevant, particularly in light of the need for more systematic research.<sup>15</sup>

Bretherton and Vogler define actorness as “an entity [exhibiting] a degree of autonomy from its external environment [as well as] from its internal constituents, and which is capable of volition or purpose”.<sup>16</sup> As a consequence, this entity should be “capable of formulating purposes and making decisions, and thus engaging in some form of purposive action”.<sup>17</sup> They operationalise actorness by using the variables of ‘opportunity’, ‘presence’ and ‘capability’, which are further discussed below, and which are then applied to the case studies by using a three-level scale of ‘low’, ‘medium’ and ‘high’. The score accorded depends on the evaluation of the different criteria discussed below and as shown in Table 1 below.<sup>18</sup> The changes introduced by the Lisbon Treaty potentially have an effect on the EU’s internal legal and institutional context, which is reflected in the ‘capability’ variable. However, they cannot influence the external context, such as the position of other key countries. Hence, the ‘opportunity’ variable is not directly influenced by the Lisbon Treaty.<sup>19</sup>

The ‘opportunity’ variable “denotes factors in the external environment of ideas and events which constrain or enable actorness”.<sup>20</sup> Due to growing interdependence and globalisation, the EU’s actions on the international stage are increasingly shaped by the external environment. Moreover, individual nations are more and more seen as incapable of dealing with some of today’s major problems, leading to an ‘opportunity’ for regional organisations, such as the EU, to act. The indicators for ‘opportunity’ are related to the specificities of the climate change and biodiversity regimes, the EU’s position in these regimes and the position of other key players. As set out in Table 1, the bigger the EU’s role as a key player and the more its position is conservative or moderate compared to other countries, the higher its ‘opportunity’.

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<sup>15</sup> Drieskens, *op. cit.*, 1541-1543; S. Keukeleire & T. Delreux, *The foreign policy of the European Union*, London, Palgrave Macmillan, 2014, 2<sup>nd</sup> edn., p. 228.

<sup>16</sup> C. Bretherton & J. Vogler, *The European Union as a global actor*, London, Routledge, 2006, 2<sup>nd</sup> edn., pp. 16-17.

<sup>17</sup> *Ibid.*

<sup>18</sup> See also S. Schunz, C. Damro & S. Gstöhl, “Analytical framework: Understanding and explaining EU external engagement”, in C. Damro, S. Gstöhl & S. Schunz (eds.), *The European Union’s evolving external engagement: Towards sectoral diplomacies?*, Abingdon, Routledge, forthcoming.

<sup>19</sup> *Ibid.*, pp. 12-61; see also J. Jupille & J.A. Caporaso, “States, agency and rules: The European Union in global environmental politics”, in C. Rhodes (ed.), *The European in the world community*, Boulder, Lynne Rienner, 1998, pp. 213-229.

<sup>20</sup> Bretherton & Vogler, *op. cit.*, p. 24.

Conversely, EU ‘opportunity’ is more limited the less the EU is a key player and the more its position is reformist.<sup>21</sup>

Table 1: Operationalising actorness

Variable	Level	Indicator
<b>Opportunity</b>	High (H)	EU position easy to defend (conservative or moderate compared to other countries) and the EU is a key player in the international regime.
	Medium (M)	EU has a moderate or conservative position that is easy to defend but is not a key player. EU has a difficult, reformist position but is a key player.
	Low (L)	EU has a difficult, reformist position and is not a key player.
<b>Presence</b>	High (H)	Internal EU legislation is progressive and has a broad scope, and the EU has an important share of the global market.
	Medium (M)	EU internal legislation is progressive, but the EU has only a limited share of the global market. Limited internal EU legislation exists or the legislation is comparable to other countries, but the EU has an important share of the global market.
	Low (L)	Limited internal EU legislation exists and the EU only has a limited share of the global market.
<b>Capability</b>	High (H)	Relevant and clear EU Treaty objectives and clear division of competences, and unified decision-making and external representation.
	Medium (M)	Relevant and clear EU Treaty objectives, but divided decision-making and/or external representation. No relevant EU Treaty objectives, but unified decision-making and external representation.
	Low (L)	No relevant EU Treaty objectives and divided decision-making and external representation.

Source: compiled by author, based on Bretherton & Vogler, *op. cit.*, pp. 12-61.

The second component of actorness is ‘presence’, which “conceptualizes the ability of the EU, by virtue of its existence, to exert influence beyond its borders”.<sup>22</sup> Thanks to its large market size, EU legislation can have extraterritorial effects. Other countries can look at the EU’s legislation and choose to align their own laws with the EU’s rules, based on a cost-benefit calculation or normative convictions. This allows companies to compete on their market without having to make large investments in order to comply with a different set of rules.<sup>23</sup> If the EU adopts more ambitious rules compared to other

<sup>21</sup> *Ibid.*, pp. 24-27.

<sup>22</sup> Bretherton & Vogler, *op. cit.*, p. 24.

<sup>23</sup> C. Damro, “Market power Europe”, *Journal of European Public Policy*, vol. 19, no. 5, 2012, p. 687.

countries, this can even lead to a so-called 'race to the top'. Foreign companies active on the EU market also have to follow EU rules, and they have to make investments in order to comply with EU rules. As a result, they may lobby other governments to adopt legislation that is similar to the higher EU standards. Consequently, they avoid the investments that would come with adapting to different standards on different markets.<sup>24</sup> The EU's 'presence' is therefore higher, the more extensive the EU's internal legislation and the more important the EU's share of the global market. Foreign actors are more likely to follow and learn from the EU's example, whether or not on normative grounds, if the EU has built up a certain expertise and legitimacy in the matter. Moreover, legislation is more likely to have extrajudicial effect, whether or not intended, if the EU holds an important share of the global market. As shown in Table 1, the more limited the EU's share of the global market or its internal legislation, the lower its 'presence' is.<sup>25</sup>

The third component of actorness is 'capability' which "refers to the internal context of EU external action [such as] the availability of policy instruments [...] and the Union's ability to utilize these instruments, in response to opportunity and/or to capitalize on presence".<sup>26</sup> This includes the nature of the EU's legal competence, which can be found in the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), as well as their predecessors. Also, the objectives written in the Treaties and other policy documents allow to derive what the EU seeks to achieve with its external action, as well as the decision-making procedures and external representation. As summarised in Table 1, the more relevant the EU's Treaty objectives are to the matter being discussed and the more unified the EU's external representation and decision-making, the higher the EU's 'capability'. Conversely, the EU's representation and decision-making process is divided and the less relevant EU Treaty objectives, the lower its 'capability'.<sup>27</sup>

The three variables are given equal weight when aggregated for determining the overall actorness of the EU. As such, the overall level of actorness reflects the level of the majority of the variables.

The Lisbon Treaty introduced several changes to the EU's institutional set-up, as reflected in the 'capability' variable. There can also be consequences for the EU's

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<sup>24</sup> K. Biedenkopf, "Policy diffusion", in J.-F. Morin (ed.), *Essential concepts of global environmental governance*, London, Routledge, 2015, pp. 152-153.

<sup>25</sup> Bretherton & Vogler, *op. cit.*, pp. 27-29.

<sup>26</sup> *Ibid.*, p. 24.

<sup>27</sup> Bretherton & Vogler, *op. cit.*, p. 29-35; Jupille & Caporaso, *op. cit.*, pp. 216-217.

'presence', considering the fact that the Lisbon Treaty was supposed to facilitate the adoption of internal rules. Indeed, if the EU's internal decision-making process is easier, then more legislation can be adopted, leading to a larger scope of applicable EU regulations and a higher chance of external effects. However, the implementation of the Lisbon Treaty does not have any influence on the international negotiation context. Nevertheless, (indirect) changes in 'capability' and 'presence' can of course affect the way in which the EU capitalises on 'opportunity'. Furthermore, the global institutional context can have an impact on the way the EU can make use of its 'capability'. For example, member states still represent the EU in the International Labour Organisation, even with regard to EU competences, as only states can become full members.<sup>28</sup> However, this is not the case in the field of MEA negotiations.

For the purposes of this paper, and as shown in Table 2, the dependent variable of the EU's effectiveness is defined as "the extent to which the EU reaches the main goals of its position in the results of international negotiations".<sup>29</sup> Effectiveness is thus understood as goal achievement. While actorness focuses on the input side of the EU's engagement on the international stage, effectiveness looks at the output, namely to what extent the EU is able to realise the policy objectives that it has set out in advance. For this reason, the EU's policy documents outlining its position on the negotiations will be compared to the final negotiation outcome. As shown in Table 2, the closer the final outcome of the negotiations to the EU's position, the higher the EU's effectiveness.<sup>30</sup>

As van Schaik argues, the EU's viewpoint as reflected in official, public documents indeed resembles its actual stance during the negotiations.<sup>31</sup> Due to the difficulty to agree internally on a common position between the member states and EU institutions, there is little room for derogation from the official mandate even at the height of the deliberations or when it would be appropriate from a strategic point of view. It does bring the advantage, however, that the EU's position is rather stable and that it can be easily identified through the use of publicly available information.

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<sup>28</sup> European Court of Justice, Opinion 2/91, *ILO Chemicals Convention*, 1993, ECR I-1063.

<sup>29</sup> L.G. van Schaik, *EU effectiveness and unity in multilateral negotiations: More than the sum of its parts?*, Basingstoke, Palgrave Macmillan, 2013, p. 35.

<sup>30</sup> Groen & Niemann, *op. cit.*, pp. 317-318.

<sup>31</sup> van Schaik, *op. cit.*, pp. 35-37.

Table 2: Operationalising effectiveness

Variable	Level	Indicator
Effectiveness	High (H)	The final outcome of the negotiations largely resembles the EU's position, with only minor concessions on the EU's side.
	Medium (M)	The final outcome of the negotiations resembles the EU's position on some points, but some major concessions have been made.
	Low (L)	The final outcome is very different from the EU's position.

Source: compiled by author, based on van Schaik, *op. cit.*, p. 35.

The following section deals with the pre-Lisbon negotiations in Cartagena and in Copenhagen.

### The pre-Lisbon cases of Cartagena and Copenhagen

Environmental management was introduced as a shared competence at the EU level by the Single European Act. With the Treaty of Amsterdam, environmental protection became an overarching policy objective to be integrated in all policy domains and with particular attention to the precautionary principle. This meant that the EU had to act based on the assumption that danger can exist if no sufficient scientific evidence was available regarding environmental risks. Internal legislation was adopted by a qualified majority in the Council, with the consent of the European Parliament. Following the European Court of Justice's so-called European Railroads Transport Agreement (ERTA) judgement, the EU has been deemed competent to act internationally if EU-level internal policy is already in place.<sup>32</sup>

Nevertheless, EU internal legislation is not yet in place in all environmental areas and the EU is not always competent to legislate, for instance regarding climate financing. As a result, MEA negotiations often involve(d) a mix of EU and member state competences, leading to 'mixed agreements'. In practice, decision-making in the Council regarding MEAs is thus often based on unanimity, with the European Parliament only having advisory powers. Theoretically, the Commission represented the EU externally regarding EU-level competences and the Council Presidency for national ones. In practice, a division between different types of competences was

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<sup>32</sup> Case 22/70, *Commission v. Council (ERTA)*, 1971, ECR 264; European Union, "Consolidated version of the Treaty establishing the European Community", *Official Journal of the European Union*, C340, 10 November 1997, arts. 6, 137, 174-176, 251, 300 (hereafter: TEC Amsterdam Treaty).

hardly possible, usually leading to the creation of an informal EU team consisting of Commission, Council Presidency and member-state officials.<sup>33</sup>

*The Cartagena Protocol: An effective EU despite internal division*

The Cartagena Protocol was negotiated around the turn of the century as part of the framework of the Convention on Biological Diversity (CBD) to deal with the use of genetically modified organisms (GMO). It aimed to balance economic interests with health and environmental concerns.<sup>34</sup> Many other frameworks also touch upon biosafety and GMOs, such as the Food and Agriculture Organisation (FAO) and the World Trade Organisation (WTO), but the CBD nevertheless remains the main overarching institutional set-up dealing with the issue.<sup>35</sup> Both the EU and its individual member states are parties to this Convention. The relationship between the Cartagena Protocol and the WTO framework was heavily debated between countries with an important GMO industry and developing countries, with the EU's position gradually moving towards the latter. The same cleavage existed regarding the scope of the agreement and the inclusion of the precautionary principle, where the EU backed the developing nations.<sup>36</sup> Together with the absence of the US as an official party, this resulted in a complex international set-up. Nevertheless, the EU was able to act as a bridge-builder, as a result of its intermediate position in the negotiations.<sup>37</sup> Consequently, the EU's 'opportunity' can be rated as high.

The Commission's efforts to harmonise biotechnology regulation only proved successful in connection with the internal market. The EU rules were based on the precautionary principle, that is, GMOs were considered dangerous until proven otherwise. Consequently, they were much stricter than the national rules they had replaced or the rules in place in other countries. EU GMO regulation was new but comprehensive. For example, it required companies to do research regarding

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<sup>33</sup> T. Delreux, "The EU in negotiations on the Cartagena Protocol on Biosafety", in J. Wouters, H. Bruyninckx, S. Basu & S. Schunz (eds.), *The European Union and multilateral governance: Assessing EU participation in United Nations human rights and environmental fora*, London, Palgrave Macmillan, 2012, pp. 222-223.

<sup>34</sup> A. Cosby & S. Burgiel, "The Cartagena Protocol on Biosafety: An analysis of results", *IISD Briefing Note*, Winnipeg, International Institute for Sustainable Development, 2000, pp. 3-9.

<sup>35</sup> K. Rosendal, "Global biodiversity governance", in R.S. Axelrod & S.D. VanDeveer (eds.), *The global environment: Institutions, law and policy*, Thousand Oaks, Sage, 2015, 4<sup>th</sup> edn., pp. 286-288.

<sup>36</sup> R. Falkner, "The political economy of 'normative power' Europe: EU environmental leadership in international biotechnology regulation", *Journal of European Public Policy*, vol. 14, no. 4, 2007, pp. 514-516.

<sup>37</sup> Cosby & Burgiel, *op. cit.*, pp. 3-9.

potentially harmful effects of their products, which could then be used by other countries as well. The EU's far-reaching GMO legislation served as a blueprint for several countries, particularly those willing to adopt the precautionary principle. However, the EU's well-developed internal legislation also had a significant downside. After adopting the precautionary principle internally, the EU could not ignore demands of developing countries for an international agreement based on the same principle.<sup>38</sup> This constraint was quite significant, as some EU member states were not in favour of including this principle in such an international agreement.<sup>39</sup> The EU's 'presence' can therefore be rated as medium.

Due to the mixed nature of the agreement, the Cartagena Protocol had to go through the national ratification procedure of every EU member state. Hence, unanimity was required among the EU member states, and disagreement in the Council initially led to a very vague negotiation mandate. However, after several food scandals and the installation of new governments in key member states like Germany, France and the United Kingdom, the positions converged significantly.<sup>40</sup> Additionally, as the negotiations progressed, the (symbolic) 'cost of no agreement' became relatively high. Consequently, a consensus in the Council was found rather easily in the final stages of the negotiations. The member states and particularly the Council Presidency usually took a leading role in negotiations within the CBD framework, but due to the existence of a trade component, the Commission wanted to be the sole negotiator. This disagreement at first led to an unworkable, formal negotiation arrangement. A list of topics discussed during the negotiations was drafted, and for each topic it was agreed whether the Commission or the Council Presidency would be the lead negotiator. However, once the member states' positions converged, the representation efforts moved towards a well-functioning, informal EU team consisting of Commission, Council Presidency and national experts.<sup>41</sup> Overall, the EU's 'capability' can therefore be rated as medium.

With high 'opportunity' and medium levels of 'presence' and 'capability', the EU's overall actorness with regard to the Cartagena Protocol can be gauged as medium. The main factors contributing to this assessment are the EU's far-reaching internal GMO legislation that served as a blueprint for other countries and the informal negotiating arrangement between the Commission, Council Presidency and member

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<sup>38</sup> Falkner, *op. cit.*, pp. 514-516.

<sup>39</sup> Delreux, "EU in negotiations on the Cartagena Protocol", *op. cit.*, pp. 222-227.

<sup>40</sup> *Ibid.*, pp. 224-225.

<sup>41</sup> *Ibid.*, pp. 219-224.

state experts. By contrast, the complicated internal decision-making process and the initially divergent opinions between member states constrained the EU's actorness.

The EU's effectiveness in the negotiations can be assessed as high because key EU positions such as the application of the Protocol to a wide scope of GMOs were reflected in the final outcome.<sup>42</sup> Delreux links this high level of effectiveness to the EU's increased level of actorness in the final round of the negotiations. Particularly the increased cohesion due to the convergence in member states' positions is seen as an important factor. However, while the EU's medium actorness certainly contributed to establishing the Union as an effective player, one should not forget that this level of actorness was not the result of institutional changes. Rather, it was caused by simple politics, such as government changes and the fallout of food scandals.<sup>43</sup> Moreover, domestic politics are not the only explanatory factor for the EU's high level of effectiveness. The EU managed to limit the scope of the negotiations to a policy that was already in place internally, meaning that the cost of agreeing to the treaty was relatively low.<sup>44</sup> The reason it could do so can be explained by the absence of the US as an official party, which made the EU an important negotiation partner, and by the EU's intermediate position between GMO producers and developing countries.<sup>45</sup> In this sense, the external context, as reflected in the 'opportunity' variable of actorness, provides more explanatory power than the variables focusing on the internal aspects of the EU, such as 'capability'.

#### *A divided EU side-lined during the Copenhagen climate negotiations*

The main goal at COP-15 in Copenhagen was to agree on a successor for the Kyoto Protocol, in order to reduce greenhouse gas (GHG) emissions after 2012 and to arrange for climate financing and adaptation measures. The EU envisaged an ambitious agreement and took on a reformist position, contrary to Brazil, South Africa, India and China ('BASIC') as well as the US. The BASIC countries wanted industrialised countries to take the lead, a principle that was followed in the Kyoto Protocol, while the US wanted emerging countries to also participate in the mitigation effort. Additionally, President Obama was constrained by domestic politics, leading the US

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<sup>42</sup> *Ibid.*, p. 222.

<sup>43</sup> *Ibid.*, pp. 222-225.

<sup>44</sup> E.R. DeSombre, "Domestic sources of U.S. unilateralism", in R.S. Axelrod & S.D. VanDeveer (eds.), *The global environment: Institutions, law and policy*, Thousand Oaks, Sage, 2015, 4<sup>th</sup> edn., p. 136.

<sup>45</sup> Cosby & Burgiel, *op. cit.*, pp. 3-9.

to refuse to take on a real leadership role.<sup>46</sup> Even though the global regime is relatively straightforward, with a clear focus on the UNFCCC, the EU's 'opportunity' was significantly hurt by its outlier and pro-reform position. The EU's 'opportunity' can therefore be rated as low.

The EU had strengthened its internal climate regulation ahead of COP-15 to address the credibility gap between its ambitious international rhetoric and its rather conservative internal legislation. An important measure was the Emission Trading System (ETS), which forced companies active on the EU market to consider their environmental impact. It served as an example for several countries seeking to implement their own carbon pricing system.<sup>47</sup> The EU also approved the 2020 targets, a comprehensive effort to reduce emissions that consisted of renewable energy, GHG emission reduction and energy efficiency targets. A long-term 2050 target was agreed upon, but not backed up by policy measures.<sup>48</sup> While these measures positively contributed to the EU's actorness, they fell short of the level of ambition of the EU's rhetoric, leading to a medium level of 'presence'.

No specific EU Treaty objectives on climate existed, but the precautionary principle required the EU to act based on the assumption that danger can exist if no sufficient scientific evidence was available regarding environmental risks, instead of waiting for full scientific evidence, which is the US approach.<sup>49</sup> Because climate negotiations involve both EU and member state competences, unanimity is required in the Council, with the European Parliament only being consulted.<sup>50</sup> This was a high threshold because issues such as climate finance and the distribution of GHG emission reduction efforts split the ambitious and reluctant member states. These cleavages resurfaced during the high-level political COP-segment. Individual EU heads of state and government took over the lead of the negotiations, not respecting the traditional dual representation system of the Commission and the Council Presidency. Bigger

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<sup>46</sup> W. Obergassel *et al.*, "Phoenix from the ashes – An analysis of the Paris Agreement to the United Nations Framework Convention on Climate Change", *Wuppertal Institute for Climate, Environment and Energy*, 1 March 2016, p. 8; L.G. van Schaik & S. Schunz, "Explaining EU activism and impact in global climate politics: Is the Union a norm- or interest-driven actor?", *Journal of Common Market Studies*, vol. 50, no. 1, 2012, pp. 181-182.

<sup>47</sup> D. Meadows, Y. Slingenberg & P. Zapfel, "EU ETS: Pricing carbon to drive cost-effective reductions across Europe", in J. Delbeke & P. Vis (eds.), *EU climate policy explained*, Abingdon, Routledge, 2015, p. 30; Schunz, *op. cit.*, p. 228.

<sup>48</sup> J. Delbeke & P. Vis, "EU climate leadership in a rapidly changing world", in J. Delbeke & P. Vis (eds.), *EU climate policy explained*, Abingdon, Routledge, 2015, pp. 18-21.

<sup>49</sup> DeSombre, *op. cit.*, pp. 138-143.

<sup>50</sup> Corthaut & Van Eeckhoutte, *op. cit.*, pp. 149-150; Schunz, *op. cit.*, pp. 196-198.

member states in particular started to defend their own interests, leading to a divided EU.<sup>51</sup> As a result, the EU's 'capability' can be rated as medium.

With a low level of 'opportunity' and medium levels of 'presence' and 'capability', the EU's actorness at COP-15 was only medium. The EU's internal legislation was well-developed and had clear external effects, but cleavages on important issues like climate finance were not solved in a sustainable way. This resulted in a lack of coherent EU positioning and representation during the final negotiations, when national interests started dominating as the talks became politicised.

The Copenhagen Agreement was much less ambitious than what the EU had aimed for, and this low level of goal achievement, or effectiveness, is generally attributed to a low level of actorness.<sup>52</sup> Nevertheless, other factors need to be taken into account, and the 'opportunity' variable actually provides the largest explanatory power. The EU was by far the most ambitious player among developed countries, while the US position was significantly held back by domestic opposition. For example, after a long discussion, the US had not managed to implement a domestic emission trading plan similar to the EU's ETS. Moreover, it was clear that the US would not agree to the inclusion of binding emission reduction targets in the agreement since it would not obtain the required two-third majority in the US Senate.<sup>53</sup> As a result, President Obama was unable to pressure the BASIC countries which were united in their desire to block an ambitious agreement.<sup>54</sup> The reluctance of the US and the opposition of the BASIC countries in Copenhagen created a very challenging external environment. Due to the disunity between its member states, the EU was not able to effectively respond to this. The divergence in member state positions, the lack of a clear mandate and the incoherent representation prevented the EU from adjusting its position in the search for compromises with third countries.

Overall, the two pre-Lisbon cases show that the EU was more successful in the biodiversity regime than in the one dealing with climate change because the international setting was more favourable in the former case. The EU's position was more moderate and the exclusion of the US from the negotiations made it a key player. The external factor, conceptualised in the 'opportunity' variable, indeed

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<sup>51</sup> Groen & Niemann, *op. cit.*, pp. 311-317.

<sup>52</sup> T. Delreux, "EU actorness, cohesiveness and effectiveness in environmental affairs", *Journal of European Public Policy*, vol. 21, no. 7, 2014, p. 1017; Groen & Niemann, *op. cit.*, pp. 311-317.

<sup>53</sup> DeSombre, *op. cit.*, pp. 138-143.

<sup>54</sup> Groen & Niemann, *op. cit.*, pp. 317-318.

seems to represent the crucial difference, as the internal context is largely the same for the two policy fields.

The two post-Lisbon cases, discussed in the following section for the same policy fields, show a similar pattern.

### **The post-Lisbon cases of Nagoya and Paris**

The Lisbon Treaty confirmed the EU's commitment to environmental protection, the precautionary principle and 'effective multilateralism' and required it to be particularly active in MEA negotiations.<sup>55</sup> As before, decision-making largely follows the ordinary legislative procedure.<sup>56</sup> More significant is the adoption of the ordinary legislative procedure for environment-related competences such as transport and energy. This will make EU regulation easier due to the lower threshold for passing legislation in the Council.<sup>57</sup> Following the ERTA principle, codified in article 3(2) TFEU, this can also have an impact on the external decision-making process.<sup>58</sup>

Major changes were made to the Treaty provisions regarding the EU's representation and the conclusion of international agreements. First, the European Parliament acquired the power to consent to international agreements, effectively becoming a veto player in MEA negotiations, which could also impact the negotiation process.<sup>59</sup> Second, explicit references to the Council Presidency in relation to the EU's external representation have been removed. Third, important changes include the new functions of the permanent President of the European Council and the High Representative (HR/VP) as well as the creation of the European External Action Service (EEAS). These reforms were expected to increase the cohesion in the EU's external representation and to positively contribute to the EU's actorness. For example, the transformation of the Commission Delegations abroad to EU Delegations under the auspices of the EEAS and the HR/VP might allow to better tie environmental issues to 'high politics', such as security, in a comprehensive diplomatic strategy.<sup>60</sup>

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<sup>55</sup> Corthaut & Van Eeckhoutte, *op. cit.*, pp. 146-148; European Union, "TFEU", *op. cit.*, arts. 6(1), 21.

<sup>56</sup> European Union, "TEU", *op. cit.*, art. 16.

<sup>57</sup> D. Benson & A. Jordan, "European Union environmental policy after the Lisbon Treaty: plus ça change, plus c'est la même chose?", *Environmental Politics*, vol. 19, no. 3, 2010, pp. 470-471.

<sup>58</sup> Corthaut & Van Eeckhoutte, *op. cit.*, pp. 149-151; European Union, "TFEU", *op. cit.*, arts. 191 & 3(2).

<sup>59</sup> Keukeleire & Delreux, *op. cit.*, pp. 85-88; European Union, "TFEU", *op. cit.*, arts. 218, 219 & 221.

<sup>60</sup> Benson & Jordan, *op. cit.*, pp. 471-472; Corthaut & Van Eeckhoutte, *op. cit.*, pp. 151-154; European Union, "TEU", *op. cit.*, art. 17(1).

*The Nagoya Protocol: Limited EU interest, but high effectiveness*

The 2010 Nagoya Protocol aims to address the discrepancy regarding the access and benefit of sharing genetic resources, which are mainly found in the South but largely used by companies in the North. Developing countries pushed for an ambitious, transparent and legally binding agreement covering a wide array of genetic resources, including those accessed in the past and derivatives that would have influenced international patent rules. Developed countries were opposed to these ideas and stressed the importance of economic freedom.<sup>61</sup> Despite some overlap with the WTO and the FAO activities, the CBD framework was the main platform for the negotiations.<sup>62</sup> This meant that the US did not participate, resulting in 40% of biotechnology patents not being covered.<sup>63</sup> This made the inclusion of the EU's share of 30% all the more important for the Protocol to have any impact, and the EU therefore became a key player.<sup>64</sup> Consequently, the EU actually benefitted from the complex global setting, and its 'opportunity' can thus be rated as high.

As mentioned above, the EU has an important share of the global market of biotechnology patents. However, its internal regulation was very limited and could therefore not have many extrajudicial effects. EU policy on genetic resources was mainly based on its strict GMO regulation and its patent legislation, with no laws specifically dealing with access and benefit sharing. The EU was thus not seen as a normative example in this area, and due to the limited legislation in place, there were few external effects.<sup>65</sup> As a consequence, the EU's 'presence' can be described as medium.

The Nagoya Protocol was adopted based on the EU's Treaty objective to pursue a "prudent and rational utilisation of natural resources", which only partly covers the scope of the Protocol.<sup>66</sup> The unanimity requirement that was the result of the mixed nature of the agreement was unproblematic for both the European Parliament and the Council because the EU's position in the negotiations was conservative. Gradually, the EU's position became more moderate in order to achieve a diplomatic victory. The representation effort was complicated at first when the

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<sup>61</sup> Oberthür & Rabitz, *op. cit.*, pp. 46-48.

<sup>62</sup> K. Raustiala & D.G. Victor, "The regime complex for plant genetic resources", *International Organization*, vol. 58, no. 2, 2004, pp. 283-284.

<sup>63</sup> B. van Beuzekom & A. Arundel, *OECD Biotechnology Statistics 2009*, Paris, Organisation for Economic Co-operation and Development, 2009, p. 71.

<sup>64</sup> Oberthür & Rabitz, *op. cit.*, p. 50.

<sup>65</sup> Raustiala & Victor, *op. cit.*, pp. 291-294.

<sup>66</sup> European Union, "TFEU", *op. cit.*, arts. 191, 192 and 218.

Commission tried to expand its negotiation mandate in conjunction with the discussion on the Minamata Convention,<sup>67</sup> but went more smoothly afterwards. The Commission was only allowed to negotiate on EU-affected competences, but this part was in practice rather extensive, as only the member state holding the Council Presidency took an interest in the negotiations.<sup>68</sup> Eventually, the negotiations caused limited problems for the EU, resulting in a medium 'capability'.

With a high level of 'opportunity', a medium 'presence' and a medium 'capability', the EU's overall actorness can be evaluated as medium. The main constraining factor was the lack of internal regulation. The regulation that did exist was not enough for the EU to differentiate itself from other industrialised countries and to set a normative example. Enabling factors were the EU's powerful position due to the absence of the US as well as a smooth decision-making process and representation due to the topic being non-controversial.

The outcome of the Nagoya negotiations largely reflected the EU's position, the only important concession being the inclusion of derivatives, leading to a high level of effectiveness. Additionally, the EU also gained the prestige of a diplomatic victory by being a key actor during the conference. Nevertheless, it should be noted that within the actorness framework, the 'opportunity' variable arguably provides the largest explanatory power. The EU's position was conservative compared to that of other countries, particularly developing countries, and therefore easier to defend. Moreover, the EU's importance during the negotiations was a direct consequence of the absence of the US. Without the American market share of 40% in patent applications, the EU represented about half of the market that could potentially still be covered by a possible agreement.<sup>69</sup> Also, the emerging economies were not in a strong position, as they had difficulties finding a balance between protecting their biodiversity and defending the interests of industries using genetic resources.<sup>70</sup> The high effectiveness of the EU was thus mainly the consequence of the non-participation of the US, which resulted in the Union's market share becoming key to the negotiations and allowed the EU to take on a more conservative position compared to other countries.

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<sup>67</sup> Corthaut & Van Eeckhoutte, *op. cit.*, pp. 157-160.

<sup>68</sup> Oberthür & Rabitz, *op. cit.*, pp. 51-52.

<sup>69</sup> Oberthür & Groen, "The effectiveness dimension of the EU's performance in international institutions", *op. cit.*, pp. 1326-1328.

<sup>70</sup> Access and Benefit-Sharing Clearing-House, *op. cit.*; "Global enforcement of the Nagoya Protocol in life sciences industries", *op. cit.*, p. 2.

### *The Paris Agreement: A united and effective EU*

Despite the increasing involvement of citizens' organisations and other international institutions such as the International Civil Aviation Organisation (ICAO), the UNFCCC is still the main framework in which global climate negotiations take place – as evidenced by the political and media attention for COP-21 in Paris in 2015. The cleavage created by the Kyoto Protocol between industrialised and developing countries was still present. However, since COP-15 in Copenhagen, several coalitions in favour of measures combatting climate change united developed and developing countries. For example, the Durban Coalition consisting of vulnerable states and small islands worked together with the EU to re-energise climate talks in the aftermath of COP-15.<sup>71</sup> In a 2014 bilateral Sino-American agreement, the US and China recognised the danger of climate change and the need to reduce GHG emissions. These agreements boosted the confidence of the negotiators and helped to create momentum ahead of COP-21.<sup>72</sup> Differences in positions still existed, with the EU being closer to developing countries concerning the level of GHG emission reduction and transparency, but more aligned with industrialised nations regarding climate finance and measures dealing with the effects of climate change. Moreover, the EU's proposed internal climate measures were relatively ambitious, but not sufficient to limit global warming to the often mentioned 2°C target. The US was opposed to legally binding reduction targets, due to domestic opposition, and China was hesitant to accept transparent review mechanisms.<sup>73</sup> Despite these differences, the level of trust was significantly higher than in Copenhagen and several coalitions between industrialised and developing countries had built clear momentum, contributing to high 'opportunity'.

Despite significant problems and reform attempts, the ETS was still seen as an example by other countries, contributing to the EU's 'presence'. The idea of creating a worldwide carbon market, mirroring or based on the ETS has been actively promoted by EU officials.<sup>74</sup> Furthermore, the EU also actively used its 'presence' through the ETS as a tool to advance the discussions in the ICAO to limit emissions from international

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<sup>71</sup> S. Oberthür, "Where to go from Paris? The European Union in climate geopolitics", *Global Affairs*, vol. 2, no. 2, 2016, pp. 121-122.

<sup>72</sup> S. Oberthür & L. Groen, "Explaining goal achievement in international negotiations: The EU and the Paris Agreement on climate change", *Journal of European Public Policy*, 2017, pp. 11-13, <http://dx.doi.org/10.1080/13501763.2017.1291708>.

<sup>73</sup> Obergassel *et al.*, *op. cit.*, p. 3.

<sup>74</sup> Meadows, Slingenberg & Zapfel, *op. cit.*, pp. 49-56.

aviation.<sup>75</sup> Additionally, it was largely on track to attain its 2020 targets, allowing it to back up its international rhetoric. Finally, the EU adopted concrete policy measures such as investments in electricity grid connectivity in order to operationalise its 2030, 2040 and 2050 (interim) targets. Even though the EU will have to significantly increase its efforts to attain these long-term targets, the adoption of these objectives had a positive influence on the EU's 'presence', as several countries saw this as a positive example.<sup>76</sup> Together with the other aspects, this resulted in a high level of EU 'presence'.

Even though combatting climate change is now explicitly mentioned as a Treaty objective, it remains a shared competence. Nevertheless, the unanimity requirement in the Council never proved problematic due to an early political package deal in the European Council. Also within the European Parliament there was broad support for the negotiations. This consensual decision-making led to a coherent representation, with a workable division of labour between the Council Presidency and the Commission. The Commission's outreach ahead of the Paris summit was complemented by high-level diplomacy by, among others, France and Germany. This joint effort on different levels culminated in the EU playing a key role in the creation of the High Ambition Coalition. This coalition united key players such as the EU, the US, Brazil and many African, Caribbean and Pacific states, and it proved to be the necessary breakthrough for the conclusion of the Paris Agreement.<sup>77</sup> Despite the extra hurdle that resulted from the complexity of the negotiations, the EU's position was rather coherent and the process of defending it went smoothly, meaning that the EU's 'capability' was high.

With high 'opportunity', 'presence' and 'capability', the EU's overall actorness was high during COP-21. Important cleavages still existed and somewhat limited the EU's opportunity, such as the one between the EU and developing countries versus the US regarding legally binding emission reduction targets, or between industrialised and developing countries regarding climate finance. However, this constraint was more

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<sup>75</sup> V.L. Birchfield, "Coercion with kid gloves? The European Union's role in shaping a global regulatory framework for aviation emissions", *Journal of European Public Policy*, vol. 22, no. 9, 2015, pp. 1282-1286.

<sup>76</sup> Delbeke & Vis, *op. cit.*, pp. 21-25; European Environment Agency, *Trends and projections in Europe 2015: Tracking progress towards Europe's climate and energy targets*, Luxemburg, European Publication Office, 2015, 4<sup>th</sup> edn., pp. 8-11.

<sup>77</sup> Oberthür & Groen, "Explaining goal achievement in international negotiations", *op. cit.*, pp. 11-13.

than compensated by the rather clear international structure, the EU's comprehensive internal legislation and the convergence of EU member state positions.

Whether or not the Paris Agreement is indeed a major breakthrough for the fight against climate change remains to be seen, but the negotiations are nevertheless considered to be a success for the EU. The final agreement includes most of the EU's positions, such as a transparent review mechanism, with concessions only with regard to the binding nature of GHG emission reduction targets. The 'opportunity' variable is again the most important factor to explain the high level of EU effectiveness. First, the EU's position at COP-21 became more moderate and therefore easier to defend in comparison to COP-15. Second, other key players had become more willing to conclude a global climate agreement, in particular the US and China after the 2014 Sino-American climate agreement. This led to a much more favourable international constellation for the EU. The role of the French COP Presidency should also not be underestimated. It was well aware of the EU's institutional set-up, and related problems, and managed to neutralise potential critics such as Poland by actively involving them in the negotiations.<sup>78</sup> The EU's success can thus largely be explained by the more favourable international conditions, rather than by the EU's internal politics.

The Nagoya Protocol and Paris negotiations confirm the findings of the pre-Lisbon cases, namely the predominance of the external context to explain the EU's effectiveness. The next section further develops the comparison between the four cases.

### **Was the Lisbon Treaty a game changer?**

As demonstrated by the quote regarding COP-15 at the beginning of this paper, former Commissioner for Climate Action Hedegaard saw 'singing from the same hymn sheet' as the solution to avoid another international conference where disunity would result in the EU being side-lined. By streamlining the EU's representation, this is exactly what the changes introduced by the Lisbon Treaty attempted to do. The following sections reflect on whether the Lisbon Treaty has indeed led to an increased actorness and effectiveness of the EU, and whether there are important differences between the fields of climate change and biodiversity.

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<sup>78</sup> Oberthür & Groen, "Explaining goal achievement in international negotiations", *op. cit.*, p. 8-11; Schunz, *op. cit.*, p. 308.

### *More actorness and effectiveness thanks to Lisbon?*

To what extent and how has the Lisbon Treaty strengthened the EU's actorness and effectiveness? The overview in Table 3 shows no clear change between the two time periods. The 'capability' and 'presence' variables are medium for all cases except for COP-21, and the overall actorness follows the same pattern.

Indeed, some of the changes by the Lisbon Treaty have had little effect in practice. The Lisbon Treaty included a specific reference to climate change as an external policy objective and several environment-related competences like transport and energy now use the ordinary legislative procedure.<sup>79</sup> This can result in an easier decision-making process and therefore in higher 'capability'. So far, however, the negotiations that have been conducted after the entry into force of the Lisbon Treaty have resulted in mixed agreements, and therefore they needed to be adopted by unanimity. This clearly makes the threshold for internal decision-making more difficult to reach. As a result, it limits the EU's 'capability'. This limitation is more important than the increase of power for the European Parliament, as the case studies show that the inclusion of the Parliament as an additional veto player has not had a significant impact on the EU's 'capability'. The case studies that were discussed proved to be non-controversial and the EU's position was broadly supported.

The score of all actorness variables was high for COP-21, as shown in Table 3 below. As discussed in the case studies, it was the good working relationship between the Council Presidency and the Commission, together with the high-level political compromise in the European Council, that mainly led to a high 'capability'. The high level of 'presence' was the result of the adoption of internal legislation that progressively corresponded to the EU's ambitious international rhetoric. The high scores for these actorness variables are thus the result of politics and incremental policy-making, not of the changes introduced by the Lisbon Treaty.

The changes regarding the EU's representation have also not had much impact in practice. While the Council Conclusions on climate diplomacy specifically mention the HR/VP as a key player when it comes to the coordination of the EU's climate efforts, this is not the case in practice.<sup>80</sup> The case studies show that the main roles are reserved for the Commission and the Council Presidency. Indeed, the representation of the EU still follows the same pattern as in the pre-Lisbon period. This is somewhat surprising, considering the absence of any explicit mentioning of the Council Presidency in the

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<sup>79</sup> Benson & Jordan, *op. cit.*, p. 472.

<sup>80</sup> Council of the European Union, "Council conclusions on climate diplomacy", 20 July 2015.

EU Treaties. This did not change under the Belgian Council Presidency, at the time of the Nagoya negotiations, although its ambition was to give the EEAS, the HR/VP and the European Council President ‘carte blanche’ and “to make sure that the working presidency no longer [had] anything to do with external relations by the end of the term”.<sup>81</sup> This ambition was not put into practice though, and the coherence of the EU’s representation – one of the criteria for ‘capability’ – therefore still depends on informal, *ad hoc* arrangements.

Table 3: Overview of EU actorness and effectiveness in MEA negotiations

Variables	Pre-Lisbon		Post-Lisbon	
	<i>Cartagena</i>	<i>COP-15</i>	<i>Nagoya</i>	<i>COP-21</i>
<i>Opportunity</i>	H	L	H	H
<i>Presence</i>	M	M	M	H
<i>Capability</i>	M	M	M	H
<b>Actorness</b>	<b>M</b>	<b>M</b>	<b>M</b>	<b>H</b>
<b>Effectiveness</b>	<b>H</b>	<b>L</b>	<b>H</b>	<b>H</b>

Source: compiled by author.

The Cartagena and Nagoya negotiations have shown that it is impossible to distinguish between member states’ national competences and EU competences, and that it is necessary for the Commission to involve national experts to avoid backlashes. As a consequence, the use of a workable EU team consisting of Commission and national experts continues to be important in order for the negotiations to be conducted smoothly. However, the changes introduced by the Lisbon Treaty did not have any impact on this practical working arrangement – and thus on the EU’s ‘capability’.

Based on a comparison of the two time periods, there is little evidence that the Lisbon Treaty has significantly strengthened the EU’s actorness in the field of MEA negotiations. The Council Presidency still represents the EU together with the Commission, and the decision-making process still requires unanimity among member states. The improvement in ‘capability’ that can be observed in Paris and Nagoya in comparison with Copenhagen and Cartagena was indeed the result of political

<sup>81</sup> A. Rettman, “Belgium outlines ideas on EU diplomatic appointments”, *EUObserver*, 20 May 2010.

considerations leading to policy convergence, and not so much of the Lisbon Treaty. In fact, the case studies show that the member states are usually able to overcome policy differences – with the notable exception of COP-15. This process is strengthened by the EU policy that is already in place internally, which then serves as a basis and helps to create a more coherent position in external negotiations. The slow and incremental process of everyday internal policy-making combined with *ad hoc* practical negotiation arrangements seem to be more important for external policy convergence than major Treaty changes.

The Lisbon Treaty has also not strengthened the EU's effectiveness. While Table 3 shows a higher effectiveness for the two post-Lisbon cases, the pre-Lisbon COP-15 case had a very low level of effectiveness. However, as discussed in the case studies, the variation of the effectiveness level largely depends on external factors, such as the position of other key players and the EU's relative importance for the global regime. All these factors are reflected in the 'opportunity' variable of actorness and Table 3 shows that there is a clear correlation with the levels of effectiveness. The Lisbon Treaty did not influence the global context or the position of other players, meaning that it had little impact on the EU's level of effectiveness.

#### *The EU's role in biodiversity versus climate change negotiations*

The comparative framework consisting of four case studies also allows for comparisons between the fields of biodiversity and climate change. The EU has been more influential in the field of biodiversity than it has been in climate change. Indeed, as Table 4 shows, the levels of effectiveness in the biodiversity regime have been high for both case studies. The pattern for both biodiversity case studies is identical, namely a combination of medium actorness and high effectiveness. The case studies from the climate change regime, however, show more variation, with both low and high levels of effectiveness and different scores for the actorness variables.

Table 4: Overview of EU actorness and effectiveness in MEA negotiations

Variables	Biodiversity		Climate change	
	<i>Cartagena</i>	<i>Nagoya</i>	<i>COP-15</i>	<i>COP-21</i>
<i>Opportunity</i>	H	H	L	H
<i>Presence</i>	M	M	M	H
<i>Capability</i>	M	M	M	H
<b>Actorness</b>	<b>M</b>	<b>M</b>	<b>M</b>	<b>H</b>
<b>Effectiveness</b>	<b>H</b>	<b>H</b>	<b>L</b>	<b>H</b>

Source: compiled by author.

As explained in the previous section, the largest explanatory power for the EU's effectiveness is provided by the 'opportunity' variable. This indeed essentially explains why the EU is more effective in the biodiversity than in the climate change regime. Two main reasons can be identified in this regard. First, the case studies have shown that the EU's position vis-à-vis other key players in climate change has been rather reformist, particularly at COP-15. Conversely, its viewpoints in the biodiversity negotiations were more conservative, particularly in the Nagoya case. This makes its position much more powerful. The stronger stance that comes with not being the 'demandeur' of an agreement is further strengthened by the international power constellation. As described earlier, the non-participation of the US made the EU a key partner for countries seeking an agreement during the Nagoya negotiations. Given that the US share of 40% of patent applications would not be covered by the Nagoya Protocol, the EU's 30% market share was essential for the final agreement to have a real impact. Together with the fact that the EU was able to somewhat adjust its positions in both Cartagena and Nagoya, also because the issues were less controversial internally, this resulted in a high level of goal achievement. The situation is very different in the climate change negotiations. The EU is among the main 'demandeurs' of international action, while its participation is not as essential anymore for an agreement as it used to be. Nevertheless, it remains to be seen what the situation will be when the US leaves the Paris Agreement, as announced by President Trump.<sup>82</sup>

<sup>82</sup> Office of the Press Secretary, "Statement by President Trump on the Paris Climate Accord", *The White House*, Washington, DC, 1 June 2017.

## **Conclusion: The Lisbon Treaty leading to more of the same**

Inspired by recent literature, this paper analysed to what extent and how the Lisbon Treaty had the expected positive influence on the EU's actorness and whether this had in turn affected the EU's effectiveness or goal achievement. In doing so, the paper aimed to understand whether and how the EU's (in)effectiveness in international negotiations is linked to its internal (dis)unity. Such a connection was, for example, made by former Climate Commissioner Hedegaard. In order to answer the question whether the Lisbon Treaty was really a game changer in the way the EU negotiates MEAs, a comparative case study of two pre- and two post-Lisbon cases was set up, for each period drawing on the examples of biodiversity and climate change.

This study found varying levels of actorness and effectiveness, namely medium actorness in the Cartagena and Nagoya negotiations paired with high effectiveness, while the same level of actorness led to the EU being side-lined in Copenhagen. The post-Lisbon case of the Paris Agreement resulted in high levels of actorness and effectiveness. However, there is insufficient evidence to conclude that the Lisbon Treaty has had a significant impact on the EU's actorness. Political considerations and incremental internal policy-making seem more important for the EU's 'capability' and 'presence' than the institutional changes implemented by the Lisbon Treaty.

Furthermore, there is little evidence for a direct link between the EU's internal legal and political context and its external effectiveness. To the contrary, the external context, such as the international power constellation and the EU's relative position in comparison with that of other countries, are much more important to explain the varying levels of EU goal achievement. As a consequence, one can conclude that the Lisbon Treaty had little effect on the EU's level of goal achievement. This conclusion fits within a more recent wave of literature, which considers external factors to be more important to explain varying levels of EU effectiveness than internal capabilities.

This also explains the difference in the EU's level of goal achievement in the field of climate change versus biodiversity negotiations. Even though the EU's internal climate policies during COP-15 and COP-21 were much better developed than its policies on genetic resources at the time of the Nagoya negotiations, the EU was arguably much more influential in the latter context. The EU's power in this policy domain can primarily be derived from the non-participation of the US, which made EU support an absolute necessity for an agreement to have a real impact. Moreover, its position was rather conservative and it was not a 'demandeur' of the negotiations, which resulted in the need for other countries to accommodate EU demands. Its

objectives were still moderate enough, however, for the negotiations to be successful. More than anything else, the 'opportunity' variable seems to be the main explanatory factor for effectiveness, while 'capability' and 'presence' are less important.

Considering the differences regarding the international biodiversity and climate change regimes, conclusions based on the analysis of climate summits cannot necessarily be generalised to all areas of MEA studies. Further research is needed on MEA negotiations other than climate change, so as to gain a better and more comprehensive picture of the EU's role in this field. For example, the ozone regime, global chemicals governance or international water governance could serve as additional case studies. These cases could also be used to evaluate the conclusions of this paper. More broadly speaking, future research using the concept of actorness in order to understand the EU's performance in external relations should give sufficient weight to the external context and thus the 'opportunity' variable. Only by including the external context can failures and successes of the EU in international negotiations be explained – and, based on that, recommendations be made to policy makers.

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