

Scaling Fortress Europe: how did the Eco-Lighthouse Foundation achieve EU recognition?

Anna Despard Asgard

University of Agder

ST 421

17.12.18

Scaling Fortress Europe: how did the Eco-Lighthouse Foundation achieve EU recognition?

1. Introduction

European integration has largely – the mess that is Brexit aside - moved forward since the 1990s. Countries belonging to the European Economic Area - affiliated states such as Norway - have largely adapted to EU rules and regulations. One instance of a direct application of EU into Norwegian law was the implementation of a new directive on public procurement, specifying which proofs of implemented environmental management were to be recognized as valid when submitting tenders. Directly translated and ready to be adapted as a Norwegian directive in January 2017, these few sentences of EU law were to have large effects on one of the environmental certification schemes which in Norway had to date been recognized in this context – the Eco-Lighthouse Foundation. With a new directive in place, recognition of the certificate would no longer be the case, threatening the existence of the Eco-Lighthouse as an environmental certification scheme and thereby the livelihood of its 20-odd employees, varying degrees of income for the 300-plus people affiliated with it as consultants and certifiers and the ability to compete in public procurement of the more than 5000 enterprises holding a valid Eco-Lighthouse certificate at the time.

In December 2017 the Norwegian Eco-Lighthouse Foundation achieved EU recognition as an environmental certification system on a par with the EU's own certification system EMAS. This was the culmination of a two-and-a-half-year long application process involving extensive rounds of questions, communication and documentation as well as several meetings in person between the Eco-Lighthouse (and sometimes the Environment Directorate in Oslo) in Kristiansand, Norway (where the Eco-Lighthouse is based) and the EU's Directorate-General of the Environment (DG ENV) in Brussels. For the Eco-Lighthouse, the process was at stages gruelling – the usefulness of the scheme for Norwegian enterprises and hence its very survival was at stake – whereas the application for the Brussels bureaucracy seemingly presented a theoretical and practical challenge in blazing new procedural trails and thereby showing that its system whereby enterprises can apply for recognition works, whilst aligning different national interests and harmonizing partly contradictory articles of EU law.

The very openness of the EU decision-making process to these contributions from outside, expert actors, the Eco-Lighthouse being exactly such an actor within the field of environmental certification, is one of the supposed hallmarks of multilevel administration. This highly decisive aspect of the application process and its outcome supports the relevance of using precisely this framework of organisational theory in explaining the case study.

The overall aim of this paper is to contribute to improving, as described by Bauer and Trondal (2015, 4) “understanding of how the supranational administrations function, how bureaucratic interactions occur horizontally and vertically among various political layers,

Anna Despard Asgard, 17.12.18

Scaling Fortress Europe: how did the Eco-Lighthouse Foundation achieve EU recognition?

how administrative structures across levels are developing, how precisely supranational administrative actors cultivate and use resources, and how national bureaucratic structures and actors adapt to and exploit respective constellations” (2015, 4)¹. A glimpse of the supposedly “fluid multilevel political system, the constituents of which have been forged by the varied paths taken in the past and which have accompanied diverse national traditions, institutional arrangements, cultures, and styles” (2015, 4)² may hopefully be obtained, although naturally the not to be forgotten fact that this paper relates to *one* instance of *one* organisation applying for recognition, means that it supplies limited grounds for wide generalisation and theorizing.

EU integration has, according to amongst others Egeberg (2006)³ and Bauer and Trondal (2009)⁴ led to a fusion of administration in the EU. Rather than compartmentalized national administrations maintaining their different national identities, working separately and communicating only through official channels, a merger of goals and identities between administrative bodies working within the same fields has occurred. This paper aims to contextualize the application process within multilevel administration and autonomous administrative evolution whereby EU institutions come to function efficiently and smoothly, gaining momentum of their own rather than operating solely as extended arms of the political leadership. The research question, is twofold: why did the Eco-Lighthouse application to the EU for recognition succeed, and can the framework of multilevel administration within organisational theory in any way explain the success of the application?

The paper will proceed by first providing a general theoretical framework, then the empirical background through a description of environmental certification in general and the Eco-Lighthouse and EMAS schemes specifically as well as a chronological run-through of the application process, going on to analysis and discussion before ultimately reaching a conclusion.

2. Theoretical framework

Organisational theory seeks to examine how the actual organisation of institutions and administration shapes process and decision-making (Kühn and Trondal, 2018, 2)⁵. Norwegian non-EU membership aside, the country is strongly integrated “through a dense web of institutionalized relations”, granting “the Norwegian central administration privileged access to most parts of the EU administration”, paving the way towards “deep administrative

¹ Bauer, M.W. and Trondal, J. (2015). The Handbook of the European Administrative System

² Bauer, M.W. and Trondal, J. (2015). The Handbook of the European Administrative System

³ Egeberg, M. (ed.) (2006). Multilevel Union Administration.

⁴ Egeberg, M. and Trondal, J. (2009). NATIONAL AGENCIES IN THE EUROPEAN ADMINISTRATIVE SPACE: GOVERNMENT DRIVEN, COMMISSION DRIVEN OR NETWORKED?

⁵ Kühn, N. and Trondal, J. (2018). European integration and the administrative state.

Scaling Fortress Europe: how did the Eco-Lighthouse Foundation achieve EU recognition?

integration". Lack of political integration may, counter-intuitively strengthen this tendency – mobilizing “an administrative bias in the core-executive of government” and furthering “integration by stealth” (Kühn and Trondal, 2018, 3). Indeed, one of the key complaints – applied to opposite purposes - of both pro- and anti-EU forces in Norway is that the country is more or less integrated in the EU anyway – “we pay but we have no say” being the lament of the pro-membership camp, the anti-EU campaigners presenting it as Norway being a vassal state in all but name, despite voting against membership with a narrow margin in the referenda of 1972 and 1994.

Assigning agency to public administration is a theoretical approach which assumes that the internal characteristics of the organisation help explain its workings and how it changes (Kühn and Trondal, 2018, 3). Based on empirical studies, this theoretical approach seeks to identify the effect of organisational structure on decision making – supporting the thesis that organisational factors are more than expressions of political symbolism (Kühn and Trondal, 2018, 3)⁶. How public administration is organised, then, shapes how public governance works (and presumably, can as a consequence be consciously applied in order to achieve certain outcomes - the exploration of which subject matter falls outside the scope of this paper).

Horizontal and specialization refers to dimensions of the framework of multilevel administration within organisational theory explaining division of tasks or portfolios “horizontally *within and between* organisations”, facilitating “sectoral allegiances and cooperation *across* levels of governance”. Vertical specialization describes how responsibility and labour is divided “*within and between* levels of authority”. Furthermore, according to Kühn and Trondal the latter implies that lower-ranking officials become “more eligible receivers of impulses from EU-level institutions and processes” due to their decoupling from political leadership and local perspective (Kühn and Trondal, 2018, 5-7)⁷. So where horizontal specialization deals with governance across countries and between hierarchies, often diagonally, vertical specialization describes the distribution of authority in and within hierarchies.

In the context of the Eco-Lighthouse Foundation’s application for recognition to the EU, horizontal specialization would refer to the fact that the application process progressed through communication between national institutions operating within the same subject field – the rather narrow one of environmental certification in this case. The fact that the process was initiated and at first proceeded between the Environment Directorate and the Directorate-General of the Environment, and subsequently migrated to occur along direct links between the Eco-Lighthouse and the DG ENV shows how agencies may find it more efficient to deal directly with each other, cross-cutting formal hierarchies. Vertical specialization aptly underpins theoretically such bypassing of the political channels or hierarchically higher-ranking officials, although it must be stressed that the communication channels which were established occurred with the full approval, under the supervision and

⁶ Kühn, N. and Trondal, J. (2018). European integration and the administrative state.

⁷ Kühn, N. and Trondal, J. (2018). European integration and the administrative state.

Scaling Fortress Europe: how did the Eco-Lighthouse Foundation achieve EU recognition?

in the interest of the Norwegian Environment directorate, not through subterfuge on the parts of the Eco-Lighthouse Foundation.

3. Environmental certification schemes – an overview

Broadly speaking, an environmental certification scheme consists of a means of implementing environmental management (making sure that the environmental aspects of an organisation's activities are addressed) in an organisation, a set of formal standards or criteria by which an external, third party (often licensed or accredited for this very purpose) checks whether environmental management has been implemented, and the issuing of proof, such as a certificate stating that this is the case.

The currently leading (and only) worldwide environmental certification scheme is ISO 14001, whereby enterprises themselves (or with the aid of an external consultant) identify their main environmental impact, come up with measures for improvement, and specify by which indicators this improvement should be measured. In Europe, the EU has come up with the eco-management and audit scheme (EMAS) which is fundamentally very much the same as ISO 14001, but also contains additional requirements, such as to submit an annual, predefined (EMAS regulation, 2009⁸) environmental report. Both ISO 14001 (International Organization for Standardization, 2018)⁹ and EMAS require annual or biannual certification by an external third party, accredited (approved for certification according to the ISO and/or EMAS schemes through an international standardized system of recognition, supervised by national accreditation bodies) auditors. In addition to these international and European standards, there are numerous national schemes all over the world and Europe-wide, one of which is the Norwegian Eco-Lighthouse. When undergoing Eco-Lighthouse certification enterprises implement predefined general and specific industry criteria to address their main environmental aspects. Certified enterprises also submit an annual climate and environmental report and are subject to triannual certification by a third-party licensed certifier, trained, approved and monitored by the Eco-Lighthouse Foundation, although the certifiers certify on behalf of the municipality in which the enterprise is situated, to maintain impartiality.

The ISO system is, according to Wikipedia, administered by an “international standard-setting body composed of representatives from various national standards organizations” (Wikipedia, 2018)¹⁰. To develop a standard within a field, “experts form a technical committee that is responsible for a specific subject area. They begin the process with the

⁸ EMAS regulation. (2009). REGULATION (EC) No 1221/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme ((EC) No 1221/2009). From <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32009R1221&from=EN>

⁹ International Organization for Standardization. ISO 14000 family - Environmental management. (2018, 14. Dec.). From <https://www.iso.org/iso-14001-environmental-management.html>

¹⁰ International Organization for Standardization. (Author unknown). In Wikipedia. Accessed 14. Dec. 2018 from https://en.wikipedia.org/wiki/International_Organization_for_Standardization

Scaling Fortress Europe: how did the Eco-Lighthouse Foundation achieve EU recognition?

development of a draft that meets a specific market need. This is then shared for commenting and further discussion” (International Organization for Standardization, 2018)¹¹. The process of developing a standard takes up to three years, and revision may take even longer. EMAS is managed by a special EU committee consisting of representatives from the environmental directorates of the member states. Here too revisions may take time, subject as they are to commission-level approval when ready after extensive discussion, negotiation and consultation.

As will be elaborated below, the Eco-Lighthouse is a non-profit foundation administered by the Eco-Lighthouse administration located in Kristiansand, Norway. With its 20-odd employees and a board consisting of representatives from national interest organisations such as the Confederation of Norwegian Enterprise, the Labour organisation and the Enterprise Federation of Norway, several counties and numerous municipalities, it is able to adjust reasonably quickly to changes in environmental law, regulation or expectation from the outside world in order to keep its criteria up-to-date and relevant, its system whereby enterprise are checked and certified all the while remaining stable.

Description of the Eco-Lighthouse

Eco-Lighthouse is Norway's most widely used certification scheme for enterprises seeking to document their environmental efforts and demonstrate social responsibility. Eco-Lighthouse enterprises work towards satisfying requirements and implementing environmental measures on a systematic and ongoing basis to create more environmentally friendly operations and a safer work environment. The Eco-Lighthouse Foundation offers industry-specific requirements for a range of different industries. Enterprises are certified subject to independent assessment and must undergo a recertification process every three years. They are also required to submit an annual climate and environmental report.

The certification process

When the enterprise is ready to be certified, the certifier is given access to all relevant documents pertaining to the enterprise through the bespoke Eco-Lighthouse web portal in order to prepare for certification. The Eco-Lighthouse web portal is an interactive tool which guides the certification process step by step. Access to the functions relevant to each role (consultant, enterprise, certifier etc.) is regulated through the web portal.

The certification meeting involves the certifier checking whether the general or specific industry criteria are fulfilled, the annual climate and environmental report (or reports, at recertification) as well as on-site inspection of the facilities and interviews with key staff. After the meeting, the certifier sums up the findings in the environmental statement, completed and submitted through the web portal. When all criteria are met, the enterprise is approved. Every certification is checked and rubber-stamped by the Eco-Lighthouse before the certificate is issued.

¹¹International Organization for Standardization. How we develop standards. (2018, 14. Dec.). From <https://www.iso.org/developing-standards.html>

Scaling Fortress Europe: how did the Eco-Lighthouse Foundation achieve EU recognition?

The annual climate and environmental report

As an integral part of the Eco-Lighthouse web portal, the annual climate and environmental report consists of general and specific environmental performance indicators. The report offers the enterprises an overview of their environmental impacts and their year-by-year progress. It also provides material for statistics showing how Eco-Lighthouse certified enterprises compare to their uncertified counterparts. The report helps make enterprises aware of the actual effects of the measures they implement, providing them with a valuable tool to monitor progress or regression and to showcase the efforts they make and the results they achieve to maintain their Eco-Lighthouse certification. A summary of the report containing key findings shall be made accessible by the enterprise to the general public, either on demand or through publication on the enterprise's web page.

Recertification

As a general rule, the Eco-Lighthouse issues certificates that are valid for three years. When six months remain before the certificate becomes invalid – meaning 2,5 years have passed since certification, the enterprise is advised through an automatically generated email to arrange a meeting with a certifier regarding recertification. If there have been substantial changes in the enterprise which entail a change of industry criteria, the enterprise will again need to hire an approved Eco-Lighthouse consultant or use their own trained and approved in-house consultant if it has one. Otherwise, the recertification process is identical to a first-time certification.

The Eco-Lighthouse certifiers

The environmental certifiers in the Eco-Lighthouse certification scheme receive instruction and training as certifiers after submitting their qualifications for approval by the Eco-Lighthouse administration. Some certifiers are self-employed or employed in the private sector; others work in municipalities or in county administrations. Quality control and improvement is practiced by the certifiers being made subject to individual observation by a third party and compulsory training.

Training is provided by the Eco-Lighthouse Foundation, and an approved certifier is given access to the Eco-Lighthouse web portal. If a certifier has established that an enterprise fulfils the industry criteria, all relevant documentation is checked by the Eco-Lighthouse administration. If everything is in order, the enterprise's certificate is issued (Eco-Lighthouse Foundation, 2018).¹² The enterprise can then use the certificate to demonstrate corporate social responsibility to customers, suppliers and other interested parties. The certificate is also valid in the context of public procurement, when submitting a tender where proof of a functioning environmental management system is required, which is easiest proved by submitting to certification. As of November 2018, more than 5700 Norwegian enterprises small and large, in both public and private sectors, are Eco-Lighthouse certified.

¹² Eco-Lighthouse Foundation. (2018, 14. Dec.) The Certification Scheme. From <http://www.eco-lighthouse.org/>

Scaling Fortress Europe: how did the Eco-Lighthouse Foundation achieve EU recognition?

Description of the Eco-Management and Audit Scheme (EMAS)

The Eco-Management and Audit Scheme (EMAS) is a management instrument developed by the European Commission for companies and other organisations. The scheme entails implementation of environmental management spurring evaluation, reporting, and improvement of environmental performance. EMAS is applicable worldwide and spans all economic and service sectors.

EMAS helps organisations find the right tools to improve their environmental performance and commit to evaluating and reducing their environmental impact. Participation is voluntary. Third party verification guarantees the independent nature of the registration process.

Organisations provide publicly available information on an organisation's environmental performance to achieve transparency both externally through the environmental statement and internally through employees' active involvement (EMAS, 2018).¹³

The EMAS scheme is Europe-wide, and recognized in the context of public procurement as specified in the directive on public procurement *Quality assurance standards and environmental management standards* Article 62.2:

Where contracting authorities require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain environmental management systems or standards, they shall refer to the Eco-Management and Audit Scheme (EMAS) of the Union or to other environmental management systems as recognised in accordance with Article 45 of Regulation (EC) No 1221/2009 or other environmental management standards based on the relevant European or international standards by accredited bodies. They shall recognise equivalent certificates from bodies established in other Member States. (Directive on public procurement, 2014).¹⁴

The initiative for and management of the scheme rests with the EMAS committee, consisting of representatives from the EU member and affiliated countries at directorate level. Thus, the Norwegian Environment Directorate is represented, but cannot vote. Where the Eco-Lighthouse *certifies* an enterprise, or location, EMAS *registers* a site, belonging to an organisation. As of November 2018, 9004 sites belonging to 3866 organisations are EMAS-registered.

4. Analysis: The Eco-Lighthouse EU application process:

The Environment Directorate (who supplies Norway's observer to the EMAS committee) notified the Eco-Lighthouse in the spring of 2015 that the scheme would need EU

¹³ EMAS. (2018, 14. Dec.). What is EMAS? From: http://ec.europa.eu/environment/emas/index_en.htm

¹⁴ Directive on public procurement. (2014). DIRECTIVE 2014/24/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 February 2014 on public procurement Quality assurance standards and environmental management standards (DIRECTIVE 2014/24/EU). From <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014L0024&from=EN>

Scaling Fortress Europe: how did the Eco-Lighthouse Foundation achieve EU recognition?

recognition to still be considered valid in the context of public procurement. The trigger for this would be § 16-7 (2) of the new directive on public procurement, (anskaffelsesforskriften)¹⁵ which was to come into effect in January 2017. As is frequently the case the directive was translated directly from EU law, in this case Article 62.2 of the EU directive on public procurement, as referred to above. Where the Norwegian authorities previously had been able to state that Eco-Lighthouse certification was recognized as documentation of implemented environmental management, the new directive now stated unequivocally that only the certification schemes of ISO 14001 (the international standard), the EU's own EMAS registration, or other schemes recognized by the EU in accordance with article 45 of the EMAS regulation, an EU regulation first adopted by the commission in 2001 and subsequently revised at various times (the most recent revisions are pending approval by the commission).¹⁶ would be considered valid proof of implemented environmental management.

Subsequently, and following instructions from the Environment directorate, the Eco-Lighthouse compiled a comparison document between the two schemes in order to apply for recognition. The EMAS scheme is managed by a committee consisting of representatives and observers from the various member and affiliated EU states. The Eco-Lighthouse, evolving organically from an initiative in the municipality of Kristiansand, has a much less formal history. Nevertheless, formalised procedures and descriptions of the principles of the foundation do exist, although not always as structured as the EMAS articles which were developed top-down and ratified by the EU, then to be put into practice. Thus, the comparison process consisting of matching the various EMAS articles to Eco-Lighthouse practices, standards and rules was no easy task, albeit instructive in its way.

The completed document was formally dispatched to the EMAS responsible official at the Directorate-General of the Environment in Brussels by the Environment Directorate together with a preliminary request for recognition, drafted by the Eco-Lighthouse. At this stage it had become clear that the Eco-Lighthouse advisor working on the application was bilingual and versed in a formal written style. This was to prove advantageous to the application process, and gradually most of the correspondence from the Directorate to the Directorate-General of the Environment (DG ENV) was written by the Eco-Lighthouse, to be forwarded with the Directorate as sender - an instance of external expertise being utilized at administrative level to the benefit of all parties.

Upon receipt of the request, the process had formally begun and several updated versions, as well as the actual application for recognition were to follow. Initially all correspondence between the Eco-Lighthouse and the DG ENV was routed through the directorate, but as time progressed and the Environment directorate came to see that the Eco-Lighthouse could

¹⁵ Anskaffelsesforskriften (2016). Forskrift om offentlige anskaffelser (anskaffelsesforskriften) (FOR-2016-08-12-974). From <https://lovdata.no/dokument/SF/forskrift/2016-08-12-974>

¹⁶ EMAS regulation. (2009). REGULATION (EC) No 1221/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme ((EC) No 1221/2009). From <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32009R1221&from=EN>

Scaling Fortress Europe: how did the Eco-Lighthouse Foundation achieve EU recognition?

handle the situation in a satisfactory manner communication was undertaken directly, for the purposes of simplicity and speed. The versions of the comparison document were frequently updated, as the DG ENV and its responsible official questioned and requested documentation of increasingly detailed points of the Norwegian scheme, all the while growing to understand it better. For the Norwegian party, the process was slightly skewed in the sense that extensive requests for documentation or explanation would come with a kindly put admonition to answer within a rather short time-frame, whereas queries from the Eco-Lighthouse could well go unanswered for a long time. This seemed natural enough in that the EU is a large, bureaucratic entity with a lot of work and responsibility on its hands, whereas the Eco-Lighthouse had the application as a top priority one of its advisors working more or less full time on the application only. It certainly drove home the vital importance of the success of the application to the Eco-Lighthouse, compared to the more routine nature of its processing by the EMAS organisation, as well as emphasising the inherent imbalances in structures of power between a large, intra- or supranational bureaucracy (experts differ on how to categorize the EU - this paper will not dwell on the subject) and a small non-governmental organisation.

Fully straightforward and routine for the directorate the processing of the application was, however not. Previous applications for recognition, submitted years earlier had foundered – perhaps on the sheer inapplicability of the relevant article or lack of resources on the part of previous applicants. Applications should, as specified above, be processed in accordance with the EMAS directive's Article 45, *Relationship with other environmental management systems* which states that "Member States may submit to the Commission a written request for recognition of existing environmental management systems, or parts thereof, that are certified in accordance with appropriate certification procedures recognised at national or regional level as complying with corresponding requirements of this Regulation"¹⁷.

The EMAS article in accordance with which application is submitted, is intended for schemes that wish to function as a stepping stone to EMAS registration. The fact that, in practice it comes into play as a consequence of being referred to in the context of public procurement, was presumably not apparent at the time of ratification. It is thereby given another meaning altogether – becoming the hurdle which schemes must clear in order to be relevant in the context of public procurement. The way in which the articles work together is not straightforward, and this caused some legal head-scratching. Fortunately, the matter was resolved early on, the details of which this paper will not enter into for reasons of brevity. Suffice to say that the application could proceed, having provided to the Norwegian applicants a clear example of the intricacy of EU law and regulation, its evolutionary nature, the potential cross-wiring of which threatened to baffle even its expert practitioners, as well as how fortunate the Eco-Lighthouse had been in being assigned a problem-solving and solutions-oriented official to handle the case. This further underlined how important

¹⁷ EMAS regulation. (2009). REGULATION (EC) No 1221/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme ((EC) No 1221/2009). From <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32009R1221&from=EN>

Scaling Fortress Europe: how did the Eco-Lighthouse Foundation achieve EU recognition?

individual factors can be in matters of supposedly impersonal bureaucratic processes, and how *the skilled bureaucrat* approaching the matter with an impartial and constructive mindset proved essential in resolving what might otherwise have caused the application to languish in legal limbo indefinitely, obstructed by obscure, mutually incompatible referencing of points in EU articles.

A more pungent matter was the fact that according to the EMAS regulation's article 45, the Eco-Lighthouse was in effect forced to apply for recognition to the very organisation with which it might hypothetically come into competition if it was recognized. EMAS registrations are few and far between in Norway – the number dwindled from eight in 2016 to five in 2018. The main countries where EMAS is used actively are Germany, Austria, Spain and Italy, the other EU member states having few registered enterprises and being hardly active at all in furthering the scheme, presumably for differing reasons and to the detriment of the important cause of minimizing environmental impact of enterprises – the EMAS scheme being a good tool in such regard. Early on in the application process, the Eco-Lighthouse advisors working on the comparison document balked at the inherent unfairness of the EMAS position afforded by the clause and the opportunity for monopolizing its position which this could entail. Fortunately, the application process proved to be a good example of bureaucratic decision-making which was scrupulous in nature and fair in judgement, thus putting to rest the Eco-Lighthouse fears that the commission officials in charge of both EMAS and the application at the same time would abuse their powers.

A source of insecurity and stress however as the days and months went by in processing and re-working the comparison document was the approaching deadline of January 1st, 2017 when the new directive on public procurement would come into effect in Norway. Potentially, this could overnight annul the valid documentation of thousands of Eco-Lighthouse certified enterprises in the context of their submitted offers for tenders in public procurement. At this stage, however, the communication established with the DG ENV was such that an understanding of the difficult situation in which the Eco-Lighthouse found itself was achieved, and following a letter to the directorate from the Norwegian Confederation of Enterprise (Næringslivets Hovedorganisasjon - NHO) which is one of the founders and a board member of the Eco-Lighthouse Foundation, a declaration (Schally, 2016) was obtained from the directorate-general of the DG ENV describing the Eco-Lighthouse as a “a well-structured, modern and fair scheme” and stating that the application for recognition which was currently being processed had every chance of being successful. Naturally the fact was underlined that there was no guarantee for this since the application process was not yet completed¹⁸. However, together with interdepartmental reassurances (from the Environment Directorate) that the Eco-Lighthouse application was well under way helped the Norwegian authorities (public procurement regulations are administered by the Department of Trade and Fisheries) decide that certified enterprises should not be

¹⁸ Schally, H. (2016) EMAS - Reply to Confederation of Norwegian Enterprise. Unpublished letter. Head of the International Agreements and Trade Unit at the Directorate-General of the Environment, Hugo-Maria Schally to the Confederation of Norwegian Enterprise concerning the Eco-Lighthouse Foundation. Directorate-General of the Environment, Brussels, 21.12.2016.

Scaling Fortress Europe: how did the Eco-Lighthouse Foundation achieve EU recognition?

immediately excluded from tenders upon the new directive coming into effect, but that by virtue of the application being in a state of process, their documentation should be considered valid until the application was completed.

This episode exemplified the extent to which the Eco-Lighthouse was supported throughout by the Environment Directorate, as well as by founding and board member organisations such as the Association of Norwegian Enterprise (VIRKE), the Confederation of Norwegian Enterprise (NHO) and the Norwegian Labour Organisation (LO), which all lobby actively, participate in expert groups and consultation processes and consequently carry some clout in the EU. Again, this support might not have been forthcoming had the Eco-Lighthouse not by this time shown that it was a scheme to be reckoned with in terms of seriousness and integrity, the advisors in charge having proved their diplomatic capabilities in terms of handling the linguistic and procedural aspects of the process in a professional manner.

During the course of 2017, the comparison document was distilled by its DG ENV responsible official into 13 elements of what an environmental management scheme should contain, these from now on being the criteria by which the Eco-Lighthouse was to be evaluated. The thirteenth and last of the criteria was licensing - the training, approval and monitoring of certifiers. EMAS operates with accredited certifiers (as does ISO 14001, the international standard). ISO and EMAS certifiers have to be competent and qualified for the industries in which they are to operate, approved by an organisation which has obtained accreditation authority from the national accreditation body - which in turn is monitored by an international accreditation body – all in accordance with strict ISO standards specifying procedures and regulations. The Eco-Lighthouse instead uses licensed certifiers, a system which is slightly less formal than that of accreditation, making Eco-Lighthouse certification more affordable than ISO or EMAS certification since there are more certifiers and they are spread out cross-country, saving time and emissions on travel. The main body of Eco-Lighthouse certified enterprises being of a size where they qualify for status as small by European standards, cost is a factor when considering certification and the Eco-Lighthouse was for this reason keen to hold on to its system of certification rather than introduce the multiple times more costly approach, which is one of using accredited certifiers only.

At the very beginning of the application process the system for assuring the quality of the certifiers was on the agenda. However, the fact that the Eco-Lighthouse operates with predetermined industry criteria (removing the need for a certifier to ascertain whether the environmental aspects identified are even the correct ones, before determining if they have been correctly addressed), the Eco-Lighthouse bespoke web portal which guides the certifier through a check-list approach and the individual control to which each certificate is submitted before being approved were after consideration deemed sufficient for the system to be approved in an Eco-Lighthouse context. Some further quality improvements were put into place immediately, such as a compulsory course in revision according to the ISO 19011 standard (the standard addressing how revision should be carried out), in an Eco-Lighthouse context, further strengthening the Eco-Lighthouse certification system, which benefited greatly from the evolving external perspective on itself it gained as the application

Anna Despard Asgard, 17.12.18

Scaling Fortress Europe: how did the Eco-Lighthouse Foundation achieve EU recognition?

proceeded. Eco-Lighthouse representatives were invited to the European Forum of Accreditation and Licensing Bodies (FALB) meeting in April of 2017 to explain the Eco-Lighthouse system to this advisory body which would then submit its opinion on the matter to the EMAS committee. Again, the Eco-Lighthouse benefited from taking part in such a forum, broadening its perspective in the subject fields of accreditation and licensing

In addition to three working meetings in Brussels between Eco-Lighthouse representatives and the responsible official from the DG ENV, the Eco-Lighthouse also by invitation attended the EMAS committee meeting in Malta in May 2017. Having understood the process to be in the final phase, the representatives looked forward to answering any supplementary questions and supplying clarifications were needed, in an atmosphere of friendly albeit thorough scrutiny. The meeting played out rather differently, as observers from external agencies affiliated with the EMAS system (providing consultation services and suchlike) treated the Eco-Lighthouse representatives to something of a cross-examination in a less than trusting atmosphere. To the Eco-Lighthouse representatives, it seemed as if the Eco-Lighthouse was regarded as a competitor, not a contributor or equally important tool in the fight to make enterprises more environmentally friendly thereby augmenting global environmental degradation and climate change, the matter of which is, according to scientists increasingly pressing.

In the wake of the meeting, what was now the annex to the suggested commission decision – the 13 points – was through official channels (the Environment Directorate) returned to the Eco-Lighthouse with several amendments of an unfavourable and even incorrect nature. This unexpected about-turn seemed to be occasioned by the very external agencies, although some of the issues raised by were indeed relevant and the Eco-Lighthouse naturally did not object to answering to or elaborating on any points of uncertainty. The pushback against recognition was inopportune, occurring on the eve of the Norwegian national summer holidays when most of the country is away for weeks on end (highlighting also cultural differences such as times of school holidays). Shocking though it was - the Eco-Lighthouse having believed recognition to be but a formality or two away – the advisors in charge swiftly rallied, collecting and compiling additional evidence backing the claims initially made and mobilising the Environment Directorate on the other.

A rather frankly worded letter from the Norwegian Directorate to the committee and the DG ENV was dispatched, questioning the turn the process had taken and, most importantly, whether this was in line with the impartiality one should expect from a EU committee. Unpleasant though this episode was for the Eco-Lighthouse, the spectre of sudden failure in the face of what was felt to be self-interested opposition served to highlight, after nearly two years of dogged work and constructive engagement, the otherwise unbiased professionalism of the DG bureaucracy, but perhaps also the darker side of how external expertise gaining traction in the administrative system can result in entrenchment of power and partiality in decision-making – the subject, perhaps of a paper other than this.

Fortunately, the additional documentation and the official response from the Norwegian authorities were sufficient to placate the situation and get the application process back on

Anna Despard Asgard, 17.12.18

Scaling Fortress Europe: how did the Eco-Lighthouse Foundation achieve EU recognition?

track. In order to pre-empt any situation of a similar kind, three representatives from the Eco-Lighthouse made a journey to Brussels accompanied with a representative from the Environment Directorate and the Norwegian Advisor for the Environment in Brussels to finalise the document. Interestingly, the advisor for the Environment was impressed at the good working relationship observed between the DG and the non-governmental organisation, supporting the impression that the application process was an instance of an external expert agency gaining traction within the formal trappings of the bureaucracy. From this point on only tweaks and wordings of the annex to the recognition were implemented before the committee proposal was put to commission decision, resulting in approval for the Eco-Lighthouse in December 2017¹⁹.

According to Egeberg, Gornitzka and Trondal, the “bounded rationality” of decision-makers necessitates simplification, which can be provided through organisation (Egeberg, Gornitzka and Trondal, 2016, 33)²⁰. This is a way of simplifying, in the words of Kühn and Trondal, “actors’ cognitive worlds by directing attention towards a selection of possible problems and solutions and ways to connect them”²¹ (2018, 5). This, in turn, creates a bias of governance, norms and incentives thereby shaping governance (2016, 33). The Directorate-General of the Environment is arranged according to sector, as defined in the same article (2016, 34). In its own words, The Directorate-General for Environment (DG ENV) is: “the European Commission department responsible for EU policy on the environment. It aims to protect, preserve and improve the environment for present and future generations, proposing and implementing policies that ensure a high level of environmental protection and preserve the quality of life of EU citizens. It also makes sure that Member States apply EU environmental law correctly and represents the European Union in environmental matters at international meetings”. (European Commission, 2018).²² Effectively, the expertise of the Eco-Lighthouse in the narrow subject field of environmental management was welcomed and used to good effect in the application process, perhaps as a result of the organisational structure which allowed it to be so.

The order of events did not give the Eco-Lighthouse much occasion to ascertain whether the Egeberg et al. article’s point of sectoral and supranational prevailing over national concerns (2016, 36) is valid or not. However, the described trumping of priorities and concerns did seem to be the case in the DG ENV itself as manifested by the appointed representative with which the applicants dealt, the episode wherein external agencies and observers to the

¹⁹ Recognition of the requirements of the Eco-Lighthouse environmental management system. (2017). COMMISSION IMPLEMENTING DECISION (EU) 2017/2286 of 6 December 2017 on the recognition of the requirements of the Eco-Lighthouse environmental management system as complying with the corresponding requirements of the eco-management and audit scheme (EMAS) in accordance with Article 45 of Regulation (EC) No 1221/2009 of the European Parliament and of the Council on the voluntary participation by organisations in a Community eco-management and audit scheme ((EU) 2017/2286). From: https://eur-lex.europa.eu/legal-content/EN/TXT/?toc=OJ:L:2017:328:TOC&uri=uriserv:OJ.L_.2017.328.01.0087.01.ENG

²⁰ Egeberg, M., Gornitzka, Å. and Trondal, J. (2016): Organization theory. In Ansell, C. and Torfing, J. (Ed.), Handbook on Theories of Governance (pp. 32-45). Cheltenham: Edward Elgar.

²¹ Kühn, N. and Trondal, J. (2018). European integration and the administrative state.

²² European Commission. (2018, Dec. 14th). Directorate-General for Environment. From: http://ec.europa.eu/dgs/environment/index_en.htm

Scaling Fortress Europe: how did the Eco-Lighthouse Foundation achieve EU recognition?

committee attempted to rebut the application and hereby promote a parallel agenda but subsequently being rebutted themselves and the application proceeding according to high standards of sectorial impartiality being a case in point.

The process – with its interactions between observers to the committee, full-blown members thereof and the bureaucracy may well constitute an example of how “new patterns of integration of public administration” (2015, 11) occurs. Alternatively, it can be seen as an instance of “how the EU shapes European public policy”, using “a perspective of the public administration as the core characteristics and elements of the EU’s emerging political system” as defined in the readings by Bauer and Trondal, (2015, 1). The episode in which external agencies temporarily almost stalled the application perhaps can be said to illuminate a darker side of the bureaucratic nature of the EU. Had the DG ENV not responded in an impartial manner or failed in warding off the threat to consistent behaviour as could perhaps have been the case - had the application been in less competent or more phlegmatic hands - there could well have been a result consistent with Trondal’s concern that “democratically unresponsive and anonymous bureaucrats de facto decide without proper political guidelines about issues that majorly affect national [...] redistributive choices of European societies (2015, 3)²³. Fortunately for the Eco-Lighthouse, the DG ENV, nudged as explained above by a well-worded official response from Eco-Lighthouse’s national directorate, operated perfectly well as an impartial organ, applying rules and interpreting the regulations, whereby the protests and obstructions by the aforesaid external actors were calmly dealt with and overcome.

An unsuccessful application would have rendered not only the Eco-Lighthouse useless to its certified enterprises, but also left those more than 5000 certified enterprises without valid means of participating in public tenders. Much, then rests on the individual within the machine and his or her ability to not only follow rules but interpret them correctly, process and speed things along in the right manner negotiating hurdles and obstacles along the way. In other words – the skilled bureaucrat is a vital ally and a crucial success factor, and hereby suggested as an excellent subject of research and a fascinating topic for an in-depth research paper other than this.

5. Discussion: Why did the Eco-Lighthouse succeed?

Certainly, the application process provided a display of elegance and skill when manoeuvring within the large EU bureaucracy, and as such the clicking away of the many silent gears and cogs of EU integration. The Eco-Lighthouse and EMAS schemes learnt from each other - the Eco-Lighthouse perhaps adapting itself the most, to meet the demands of EMAS requirements but also in the face of new understandings of how its scheme might be improved.

²³ Trondal, J. (2015). DET EUROPEISKE ADMINISTRATIVE SYSTEMET EN BEGREPSRAMME

Scaling Fortress Europe: how did the Eco-Lighthouse Foundation achieve EU recognition?

The good working relationship between the DG and the directorate, and between the DG and the Eco-Lighthouse, seems to exemplify the so-called “emergent executive order” proposed by Jarle Trondal²⁴ (2010, 5), where the “multidimensional repertoire of decision-making dynamics” available to the civil servant can be observed at play. The process fits neatly into Trondal’s description of a “departmental decision-making dynamic”, in which the individual in question is “guided by formal rules and procedures in everyday decision making [...] party-politically neutral, attaching identity towards their unit and division, and abiding by the administrative rules and proper procedures of their international bureaucracy” (2010, 6-7).

The application process seems to be an instance of the administration establishing a good working relationship with subnational actors such as the Environment Directorate of Norway and the Eco-Lighthouse. However, it must be stressed that the DG did not operate independently or at odds with the member states, but that rather a balance was achieved in which the goal of the Eco-Lighthouse (a successful application) seemed to coincide with that of the Directorate-General, in whose interest it was to prove that an application could succeed if the applicant met the criteria for approval. Emphasis on the overall, shared goal of boosting environmental management and certification in general was essential for the Eco-Lighthouse when meeting the committee, as a reminder that conflict or competition as to which scheme should be predominant (the question in itself hypothetical) would only serve to distract from tackling the very real real-world problems of climate change and environmental degradation that threaten our existence as a species.

Thus, factors of both administrative organisation such as the opportunity for external expert actors like the Eco-Lighthouse to establish communication directly with the appropriate DG, thus cross-cutting more formal channels of communication, and individual factors such as the skill and dexterity of the official responsible for processing the application were instrumental to the success of the application as well as resources in the Eco-Lighthouse such as language skills, time available and the backing of its relevant government body and its founding members.

6. Conclusion

This paper has explored why the Eco-Lighthouse application to the EU for recognition succeed, and whether the framework of multilevel administration applied to organisational theory in any way can explain the success of the application.

The application process and its conclusion do seem to be an instance of the EU at its best: rules-based, impartial, fair and orderly in its procedures, the professionalism and skill of its bureaucracy beyond reproach. However, there were also other factors at play, namely the resources available to the Eco-Lighthouse without which the organisation might not have managed to cope with the extensive workload, documentation requirements and

²⁴ Trondal, J. (2010). An emergent European executive order

Scaling Fortress Europe: how did the Eco-Lighthouse Foundation achieve EU recognition?

communication with EU officials in the DG ENV needed to succeed. Thus, both organisational and individual factors must be considered as having contributed to the successful outcome of Eco-Lighthouse's application to the EU for recognition.

Concerning the framework of multilevel administration and its applicability to the application process, it can be said that lines of communication were definitely established that cut across more formal channels, and that the Eco-Lighthouse was given access as an expert, outside actor. This direct link can be said to have been crucial to the progression of the application, thereby validating the claim that this framework within organisational theory can indeed be applied to explaining the success of the Eco-Lighthouse in scaling the bulwarks of bureaucracy and – crucially to its continued relevance in the context of public procurement - being granted recognition by the EU as an environmental management scheme.

Scaling Fortress Europe: how did the Eco-Lighthouse Foundation achieve EU recognition?

7. Readings:

Bauer, M.W. and Trondal, J. (2015). *The Handbook of the European Administrative System*. Basingstoke, UK: Palgrave Macmillan.

Egeberg, M., (ed.) (2006). *Multilevel Union Administration*. Basingstoke, UK: Palgrave Macmillan.

Egeberg, M., Gornitzka, Å. and Trondal, J. (2016): Organization theory. In Ansell, C. and Torfing, J. (Ed.), *Handbook on Theories of Governance* (pp. 32-45). Cheltenham: Edward Elgar.

Egeberg, M. and Trondal, J. (2009). NATIONAL AGENCIES IN THE EUROPEAN ADMINISTRATIVE SPACE: GOVERNMENT DRIVEN, COMMISSION DRIVEN OR NETWORKED? *Public Administration*, 2009, (Vol. 87, No. 4), 779–790. DOI: 10.1111/j.1467-9299.2009.01779.x

Kühn, N. and Trondal, J. (2018): European integration and the administrative state. A longitudinal study on self-reinforcing administrative bias. In *Journal of European Public Policy*, 2018. DOI: 10.1080/13501763.2018.1520913

Schally, H. (2016) EMAS - Reply to Confederation of Norwegian Enterprise. Unpublished letter. Head of the International Agreements and Trade Unit at the Directorate-General of the Environment, Hugo-Maria Schally to the Confederation of Norwegian Enterprise concerning the Eco-Lighthouse Foundation. Directorate-General of the Environment, Brussels, 21.12.2016.

Trondal, J. (2010). *An emergent European executive order*. Oxford, UK: Oxford University Press.

Trondal, J. (2015). DET EUROPEISKE ADMINISTRATIVE SYSTEMET EN BEGREPSRAMME *Norsk statsvitenskapelig tidsskrift nr 1, 2015, årgang 31, 29-49*.

Scaling Fortress Europe: how did the Eco-Lighthouse Foundation achieve EU recognition?

Trondal, J. (2012): On bureaucratic centre formation in government institutions. Lessons from the European commission. *International Review of Administrative Sciences*, 2012 (78), 425-445.

Anskaffelsesforskriften (2016). Forskrift om offentlige anskaffelser (anskaffelsesforskriften) (FOR-2016-08-12-974). From <https://lovdata.no/dokument/SF/forskrift/2016-08-12-974>

Directive on public procurement. (2014). DIRECTIVE 2014/24/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 February 2014 on public procurement Quality assurance standards and environmental management standards (DIRECTIVE 2014/24/EU). From <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014L0024&from=EN>

Eco-Lighthouse Foundation. (2018, 14. Dec.) The Certification Scheme. From <http://www.eco-lighthouse.org/>

EMAS. (2018, 14. Dec.). What is EMAS? From: http://ec.europa.eu/environment/emas/index_en.htm

EMAS regulation. (2009). REGULATION (EC) No 1221/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme ((EC) No 1221/2009). From <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32009R1221&from=EN>

European Commission. (2018, Dec. 14th). Directorate-General for Environment. From: http://ec.europa.eu/dgs/environment/index_en.htm

International Organization for Standardization. (2018, 14. Dec.). ISO 14000 family - Environmental management. From <https://www.iso.org/iso-14001-environmental-management.html>

International Organization for Standardization. (Author unknown). In Wikipedia. Accessed 14. Dec. 2018 from https://en.wikipedia.org/wiki/International_Organization_for_Standardization

International Organization for Standardization. (2018, 14. Dec.). How we develop standards. From <https://www.iso.org/developing-standards.html>

Scaling Fortress Europe: how did the Eco-Lighthouse Foundation achieve EU recognition?

Recognition of the requirements of the Eco-Lighthouse environmental management system. (2017). COMMISSION IMPLEMENTING DECISION (EU) 2017/2286 of 6 December 2017 on the recognition of the requirements of the Eco-Lighthouse environmental management system as complying with the corresponding requirements of the eco-management and audit scheme (EMAS) in accordance with Article 45 of Regulation (EC) No 1221/2009 of the European Parliament and of the Council on the voluntary participation by organisations in a Community eco-management and audit scheme ((EU) 2017/2286). From: https://eur-lex.europa.eu/legal-content/EN/TXT/?toc=OJ:L:2017:328:TOC&uri=uriserv:OJ.L_.2017.328.01.0087.01.ENG