

For almost half a century there was a fundamental contradiction at the heart of energy policy in Europe. While the early European Community was premised on the basic assumption that cooperation in the energy sector would reduce the capacity for each member state to wage war against another due to enhanced interdependence, the European founding treaties failed to provide a framework to facilitate the development of a common energy policy. This failure at the European level meant that energy policy remained the preserve of nation-states in the Community.

In recent years, however, energy policy in European Union (EU) has shifted from an entirely national matter to a supranational policy initiative. Indeed, at a time when the EU is struggling to develop a coherent strategy to tackle deep financial problems, efforts to enhance closer unity in the energy security arena and forge a coherent "single voice" approach in the energy sector when dealing with international partners, have gathered considerable momentum. EU energy policy today is based on an array of mechanisms and measures that aim to address the issues of energy security, climate change and economic competitiveness for the Union as a whole. The energy related provisions in the Lisbon Treaty have been central to this shift. This article proposes to assess the impact of the Lisbon Treaty energy provisions on European energy policy and place these developments in an historical context.

A legal and diplomatic foundation for future EU energy policy

The introduction of a specific chapter on energy in the Lisbon Treaty has provided a legal foundation for EU institutions to shape and drive an energy policy agenda that is responsive, but not beholden, to broader international events. In this way, the impact of the Lisbon Treaty on energy policy in the Union has been significant. While the chapter on energy provides a level of policy direction and legal certainty for the foreseeable future, it has also transformed the structural position of energy as a single vertical policy issue to a horizontal policy issue that cuts across foreign policy, environmental and climate change policy and competition. In turn, this has enabled a new diplomatic dimension to energy policy discussions to emerge.

Article 194 (1) of the Treaty on the Functioning of the European Union (TFEU) or Lisbon Treaty is the culmination of a long and indirect political process towards greater cooperation among EU member states on energy. The treaty specifies that the four main aims of energy policy in the EU are: to ensure the functioning of the energy market; to ensure the security of supply in the Union; to promote energy efficiency and energy saving, to develop new and renewable forms of energy; and to promote the interconnection of energy networks. Furthermore, according to article 122 (1) (TEFU), these objectives are to be executed in a spirit of solidarity. This solidarity clause tries to institutionalize the concept of enhanced European cooperation and preparedness on energy security related matters within the Union. At the same time however, this EU-level focus is weakened somewhat by the need for unanimous decision-making on certain energy related matters. Article 194 (2) and (3) of the Treaty stipulates that any proposed EU decisions to introduce a common system of energy taxation, or to promote the use of one energy technology over others, are subject to unanimous voting by member states – thus, effectively providing each member state with a veto on such proposals. Article 194 (2) and (3) of the Treaty stipulates that any proposed EU decisions to introduce a common system of energy taxation, or to promote the use of one energy technology over others, are subject to unanimous voting by member states – thus, effectively providing each member state with a veto on such proposals. The fact that the treaty promotes enhanced cooperation at the EU level, while at the same time reaffirming member states' rights, is recognition of the historical contradiction at the heart of EU energy policy where member states have tended to place their own national interests above that

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of the Union. The inclusion of these two contradictory elements is an effort to close this gap by establishing a political framework that promotes closer EU unity on broad energy issues (through qualified majority voting), but does not evade the central role of member states in the specifics of this process (through unanimous voting). Article 2 (C) in the Treaty clearly designates that energy is an area of shared responsibility.

This new shared competency has enabled the EU institutions to "speak with one voice" - both internally and externally - on energy related issues. The most recent example of this new responsibility has been the institutional efforts to define an internal energy policy agenda for the Union for the coming decades. Thus far, the EU has been extremely successful in utilizing its new legal imprimatur in the energy sector. Through the publication and legal implementation of the EU Climate Change and 3rd Energy "packages," the institutions of the EU have taken a firm grip on the broad energy policy agenda looking out to 2020 and 2050. These legislative "packages" of directives, regulations and communications have also been accompanied by a range of non-legislative energy strategies that attempt to define a narrative for energy policy development over the coming decades.

As well as introducing certainty on the future direction of energy policy in the EU, the Lisbon Treaty has also generated a shift in the structure of energy policy. Energy in the EU today is understood to cut across a range of other policy pillars including: foreign policy, environmental and climate change policy, and competition policy. This shift in perspective is important and underpins the logic of the horizontal "package approach" to cross-cutting policy issues in the EU. This new cross-cutting approach recognizes that energy policy is broader than just a requirement to supply energy. In fact, it accepts the idea that energy is related to the need to foster long-term relationships with key energy trading countries, the need to reduce carbon emissions and facilitate renewable integration, at the same time to provide energy at affordable rates to end-users throughout the Union. It also acknowledges the fact that the EU is stronger when it promotes these issues as a single unified block.

This new legal foundation for energy policy cooperation has also enabled the emergence of a new EU diplomatic dimension to the Union's external energy policy. Energy policy negotiations with third party countries outside the EU are no longer simply viewed as geo-strategic issues, but instead have become broader geo-diplomatic policy initiatives that encompass a cross-cutting policy perspective and include enhanced procedural mechanisms for energy discussions of mutual interest. Through the creation of an elected fixed-term president of the European Council and the formal attribution of legal personality to the EU, alongside the High Representative of the Union for Foreign Affairs and Security Policy, Lisbon has enhanced the EU's role on the international stage in a number of key areas including energy.

The EU has a range of long-established energy initiatives that work to promote cooperation with key energy producers including Russia, Norway, OPEC, the Gulf Cooperation Council, and with countries of Central Asia, as well as key transit countries like Ukraine and Turkey. The 2009 EU-US Energy Council, however, is a more recent incarnation of this new diplomatic dimension and creates a formal standing framework for joint consultations on strategic energy issues. The EU will be represented on this Energy Council by the Commissioners for External Relations, for Energy and for Science and Research, as well as the EU Presidency. A further sign of this emerging new diplomatic dimension to external energy policy can be seen by the recent call by member states for the EU Commission to negotiate an energy treaty with Caspian gas producers. The new powers conferred on the EU institutions by the Treaty offers a separate medium for the development of an EU-wide energy policy agenda. Without the Lisbon Treaty,

the EU would not have the necessary institutional and policy competences to do this effectively. The connection between energy use, climate change, environmental degradation and future economic growth is now discussed as a key part of the political agenda in the EU. Moreover, there is widespread agreement that these issues are bigger than any one member state and that it is only through joint action that sustainable solutions to these challenges can be developed. The Treaty has put in place a legal foundation for energy policy development for the future by offering a compromise that aims to resolve the historical contradiction between the perceived role of member states and EU institutions in energy policy development. The introduction of a specific chapter on energy in the Lisbon Treaty has provided a legal basis for EU institutions to shape and drive an energy policy agenda that is responsive to broader international events. To understand how EU energy policy development got to this point, however, it is worth offering a short historical overview of energy policy developments in Europe.

European energy policy development

Since the early days of European integration, cooperation on energy at the European level has been driven and shaped in large part by the response of member states to international events. Whether in reaction to geopolitical uncertainties in the aftermath of World War II, or in response to developments in the Middle East region during the 1970s, historically European energy policy has been caught between the willingness of member states to work together to solve or contain a specific challenge, and the idea at the national level that energy security was too important to leave to others. The inherent importance of energy to national economic growth ensured its position at the heart of strategic planning in individual capitols around the continent and thwarted progress towards greater intergovernmental cooperation. This position has evolved in recent years, however, and the introduction of the Lisbon Treaty means that a common approach to energy in the EU is finally emerging.

The first phase

The early stages of European integration coalesced around the issue of energy in order to restrain the capability of any one nation-state from dominating the energy sphere and hence war-making capabilities in Europe. In this context, the European Coal and Steel Community (ECSC) treaty, which signed in 1952, was in part designed to apply cross-jurisdictional control on the energy resources of its signatories. The great benefit of the ECSC was in the fact that it resolved the perennial coal and steel conflicts between France and Germany and thus paved the way to greater economic cooperation in general.

Even at the same time that the ECSC treaty was being negotiated and signed, however, it was recognized that coal was quickly losing its importance as the driver of economic growth, and by extension, military power. The use of atomic energy, which was expanding fast, was predicted to replace coal and oil at the center of the economy. It was in this context, that the European Atomic Energy Community (EURATOM) treaty was introduced in 1958 – a treaty that aimed to guarantee the safety and control of radioactive materials and promote the development of atomic energy for peaceful purposes. The early discussions on the EURATOM treaty took place during the 1955 inter-governmental conference (IGC) in Messina, Italy, at which governments issued a declaration on the need for more abundant energy at cheaper prices to be put at the disposal of the European economies. However, the Messina Declaration failed to address substantive political differences between member states on closer energy cooperation at the EU level.

Thus, in this early phase of European integration, the importance of energy cooperation as an

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engine of closer integration was recognized; however, political divisions between member states ensured that energy policy development would remain the purview of the member states and policy coordination would remain a distant goal. In this way, energy policy development in Europe remained very much a vertical policy issue that rarely strayed outside of a national focus on energy security. The limits of this narrow perspective were challenged in the early 1970s.

The second phase

Deep-seated divisions between EC member states on approaches to economic planning would have made it difficult for any common energy policy to emerge in the early 1970s; however, the October 1973 oil embargo shattered any prospect for joint action. At the time of the oil embargo, almost 63% of the EC's energy needs were imported from the Middle East – a situation that made the Community very vulnerable to geopolitical turmoil in world energy markets. The response to the embargo, however, further exasperated the fundamental divisions that existed in the Community over energy.

The oil embargo hit the Netherlands hard early in the crisis and together with Germany the Hague worked to develop a concerted EC response. Britain and France, determined to protect their perceived close relationship with Arab oil producing countries, stifled discussions on a common EC response to the crisis. European member states did agree to a declaration on energy policy at the Copenhagen summit meeting the following year; however, the contents of this declaration was more rethoric than substance, and produced very little concrete action.

The 1973 oil embargo against Western states brought the issue of energy security to the top of the political agenda in Europe and America. In particular, the oil crisis shattered the myth that Western nations were self-reliant when it came to energy and generated a situation whereby Western countries ended up blaming each other for the crisis.

The one positive outcome from the crisis was the creation in 1974 of the International Energy Agency (IEA). Established to monitor oil production and help deal with future disruptions to energy supplies, the IEA was a medium through which future discord among Western countries over energy could be remedied. While the IEA appeared to offer a unified channel to cooperate in the event of supply disruptions and encouraged the closer alignment of energy policies, in the EC it was largely seen as an American initiative and thus was further evidence of the unwillingness of member states to cooperate in the energy arena.

The third phase

The introduction of the Single European Act (1986), the Maastricht Treaty (1992) and the Amsterdam Treaty (1997), widened the focus of energy related matters from primarily security of supply issues to a focus on energy market deregulation, environmental protection and the need to tackle climate change. While this shift failed to initially generate a common approach to energy policy in the Community, it did help foster progress towards developing a common narrative and common regulatory approach to energy related matters. From a structural perspective, this broader focus helped shift energy from a single vertical policy issue to a cross-cutting horizontal policy initiative.

The most important reports that helped shape a common energy narrative during this period were the Green (1994) and White (1995) papers on Energy Policy for the Union and the publication of Towards a European Strategy for Security of Energy Supply in 2000. In an effort to fulfil the requirement to develop an internal energy market (IEM) in Europe, the EU Commission issued the 1st and 2nd Energy Package in 1996 and 2003 respectively. While these initiatives had limited success, the publication of directives that regulated an emerging emissions-trading sector, that promoted the use of renewable electricity and that encouraged the

use of biofuels in transport, all acted as building blocks towards a common policy in the energy sector absent a common legal foundation.

Against a backdrop of rising oil prices, national debates about climate change and the future of energy security, the EU Commission started to develop a common position on these important strategic issues in the early 2000s. Although the EU had legislated in the area of energy policy for many years, the concept of introducing a mandatory European energy policy was only approved at the meeting of the European Council on October 27, 2005 in London. Since then, and in anticipation of a more robust legal foundation, progress in the energy sector at the EU level has developed apace.

The approval by the European Council and European Parliament of the 2007 Climate Change and 3rd Energy "packages" is a good example of recent developments. This so-called "green package" includes targets to reduce greenhouse gas emissions by 20%, to increase energy efficiency by 20% and to ensure renewable energy accounts for 20% of final energy consumption by 2020. These "packages" have been supported by a range of other complementary mechanisms including the introduction of the Strategic Energy Technology (SET) plan to help develop new emerging technologies. The Internal Energy Market, which had remained largely aspirational, has also been given a firm legislative basis and additional impetus through the 3rd Energy Package. With the introduction of the 2007 "packages" the EU Commission has consolidated its position as the engine of future energy policy formulation in the Union.

The introduction of a specific chapter on energy in the 2009 Lisbon Treaty has helped to systematically shape, drive and strengthen these EU level initiatives and has also provided the legal framework for a common approach to energy to emerge. In addition, the legally recognized cross-cutting and horizontal nature of energy policy development in the Union has fostered a new common diplomatic dimension to external energy policy. Indeed, the 2011 EU Communication entitled: The EU Energy Policy: Engaging with Partners beyond Our Borders, is a recognition that the EU is over reliant on imported energy sources (60% of EU gas needs and over 80% of EU oil needs), and an attempt to resolve the historical conflict between efforts by the EU Commission to create a common EU position on fossil fuel imports and the sovereign member states who traditionally consider energy security as too important to leave to others. This Communication recognizes that to compete effectively in a global energy market it makes sense for the EU to consolidate its large internal energy market and act as a single block when negotiating energy import deals with third party countries. While the ability to "speak with one voice" will require enhanced coordination among EU member states, a clear and coherent strategy for relations with producing, transit and consumer countries is prerequisite to promote the EU's energy interests abroad. This Communication is an important step in this regard and places the EU Commission at the center of an emerging framework for EU foreign and diplomatic energy relations.

The recent EU Commission efforts to bring together strands of the EU's internal energy policy and common foreign and security policy – both areas, which historically, have been a source of discord among member states, is an important endeavour that will provide the foundation for a more unified energy policy in the years ahead.

Conclusion

This short article concludes that energy policy in the EU today is still evolving in response to global events; however, the introduction of the Lisbon Treaty provides a firm legal foundation that now enables the EU institutions to legislate on energy directly and not just in reaction to

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events. This new role is by design part of a shared competency with member states, but it has also positioned the institutions of the EU as key enablers of a common approach to a unified energy policy.

The shift towards closer unity in the energy sector has made considerable progress in recent years and the Lisbon Treaty energy provisions have helped to overcome the long-standing contradiction at the heart of EU integration. This contradiction failed to enable the development of a common understanding or framework for energy policy between member states in Europe despite the importance of energy interdependency to the early stages of EU integration. For decades, energy policy in Europe remained a single vertical policy issue. Today, however, EU energy policy is based on an array of mechanisms and measures that aim to address the issues of energy security, climate change and economic competitiveness for the EU as a whole, and has been transformed into a horizontal policy issue that cuts across a range of other important policy areas. In addition, Lisbon has given the EU a new imprimatur to develop a common approach to energy relations with third party countries.

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