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Taking Stock of EU Energy Policy: Progress, Problems, and Prospects

Vicki L. Birchfield and John S. Duffield

Energy has become an issue of integration and disintegration of the EU and perhaps will turn out to be the ultimate litmus test of political and economic unity in the EU.

Jacques de Jong and Coby van der Linde (2008)

This volume has brought together a broad range of expertise in energy policy and European integration to assess the current state of one of the most complex policy challenges facing the European Union today. European energy policy is a vexing subject to understand comprehensively due in part to its relatively nascent state, but also because of the multifaceted objectives and policy priorities. These include energy security, efficiency and economic competitiveness, and environmental sustainability, all of which encompass or impinge upon various dimensions of both the internal and external affairs of the European Union. The goals of this concluding chapter are to summarize briefly the key insights and findings of the individual chapters, to evaluate how much progress has actually been made toward the achievement of a common EU energy policy, and to identify the main problems that might hinder its further development. Synthesizing the analyses of the preceding chapters, we also seek to offer an overall assessment of why progress has been more substantial in some areas than in others and what the implications of this uneven development are for moving towards a truly coherent and effective common energy policy in Europe.

A. The Context

As acknowledged throughout this volume, energy in some ways has been at the heart of the European integration project from its very inception in the form of the European Coal and Steel Community (1952), which fostered economic and technical cooperation through the pooling and collective regulation of these two basic resources essential to the reconstruction of Europe after the destruction of World War Two. That a supranational authority was first put into action as early as the 1950s to monitor production and prices in the critical and strategic area of energy belies the reality that it took nearly six decades before a more comprehensive EU energy policy would begin to crystallize. Despite the creation of Euratom with the Rome Treaty of 1957 and subsequent attempts to mount a Community level approach to energy, sustained movement toward a common energy policy began only with the adoption in the late 1980s and early 1990s of the agenda to complete the internal market, as contained in the Single European Act and the Maastricht Treaty on European Union. Deepening integration was intended to increase efficiency in sectors that had been largely under national control, which still included most aspects of energy policy.

Earlier efforts to develop a common energy policy had mostly failed due to the diverse mixes of energy in member states and the range of national interests invested in them. In the 1990s, EU energy policy discussions were predicated on the twin assumptions that energy markets would remain or become ever more globalized and that a market oriented approach with Russia and other energy-

producing former Soviet bloc countries would be successful. Both of these assumptions turned out to be problematic. Instead, the attempted European Energy Charter and its associated treaty were frustrated by Russia's refusal to ratify, and the focus on an internal market strategy became increasingly problematic, as volatility in international energy markets resulted in a shift from a buyer's to a seller's market. Thus, rather than being driven by companies and market forces, energy policy discussions became increasingly dominated by national political interests (de Jong and van der Linde 2008, 2-3.) Global energy demand rose rapidly, particularly with the accelerated growth of emerging economies in China and India, while production capacity struggled to keep up. The lack of expected liberalization in Russia's gas markets also caused problems, as did the divergence of views within the EU regarding a strategic relationship with Russia (see Grätz, this volume). Furthermore, political instability in other supplier countries contributed to rising prices and fears about supply disruptions.

As a result of these developments, , national political concerns appeared to be trumping globalizing economic and European regional interests. Relations with Russia have become central in the EU's quest for a common energy policy, particularly given the recent membership of former communist countries with lingering fears towards Russia and greater exposure to security of supply concerns. Furthermore, many of these newer member states did not have the benefit of liberalizing their markets when supplies seemed abundant and prices were lower. Crisis management has arisen as another important issue to be addressed, along with external relations with supplier and transport countries, but it is exceedingly

difficult to arrive at a consensus in these areas. As many of the preceding chapters have elucidated, the EU is poorly equipped to play the usual governmental regulator role in energy, since it is not a state itself with a direct and decisive capacity to act and the member states that comprise it have such divergent interests and varying import dependencies.

Thus it has become increasingly evident that viewing energy policy primarily as an internal market issue is no longer adequate. Political concerns have moved to the forefront, with the tighter global market, the politicization of energy issues, and growing fears over security of supply taking precedence. And, it is precisely member states' varying levels of exposure to supply issues, differing energy mixes, and divergent views towards external relations (particularly with Russia) that make this critical policy area one for which it is ever difficult to reach consensus among 27 member states. Furthermore, the challenge of addressing all aspects of energy in one coherent policy – of combining environmental concerns with security of supply issues and internal market goals – is proving to be exceptionally difficult. The imperative to create an energy policy for the whole of the EU in the face of such obstacles has resulted in what Jacques de Jong and Coby van der Linde have aptly described as a “litmus test of economic and political integration in the EU” (2008, 3). Bearing this in mind, we now offer a brief overview of the key insights of the various chapters in this volume to gauge the status of such a litmus test at this point in EU energy policy development.

B. EU Energy Policies: Progress and Problems

The chapters in section one of the book examine recent developments in six key policy areas: market liberalization, external energy policy, EU energy relations with Russia, emissions trading, renewable energy, and energy efficiency. Each chapter seeks to identify the key proposals and actions taken by the EU and member states and to explain why such particular policies were proposed and what considerations motivated EU bodies and member states in both furthering and/or impeding the creation of a common policy in the specific area of concern. The chapters may loosely be grouped according to whether the specific areas analyzed deal with the internal or the external dimensions of the EU policy efforts. Emissions trading, renewable energy, efficiency, and market liberalization all fall under the general guise of the EU's internal policies, whereas relations with Russia and external energy policy issues such as security of supply are more bound up with the EU's foreign policies and external relations.

One common theme among the disparate chapters in this volume, however, is that this bifurcation of internal versus external policies is a considerable hindrance to the development of a more coherent energy policy. Many of the contributing authors have observed that this rigid conception and binary classification of internal versus external policy is actually quite misleading. Richard Youngs provides an explicit example of why this distinction is a rather dubious one:

EU competition laws condition foreign policy positions. For example, they have required non-EU oil producing countries to drop traditional 'destination clauses', through which they traditionally prevented a

buyer passing on surplus supplies to other states. Removing such provisions undermines the exclusivity of bilateral contracts. Supplies are better able to flow to where they are needed within the European Union. And national EU governments gain leverage over producer states. Europeanised internal rules are what provide foreign policy leverage and unity. European policy-makers have readily acknowledged that completing the internal market in energy is necessary for external influence and unity. **The rules and regulations of the internal market are defined as the key foundation to the EU's international projection in energy matters.** (Emphasis added. See Youngs page X, this volume.)

Nonetheless, as Youngs' analysis reveals, there is still a considerable degree of political maneuvering as member states pursue bilateral strategies that ultimately undermine the more "communautaire" approach. This problem is also pinpointed by Grätz in his chapter on the EU's relations with Russia. The challenge of a common energy policy towards Russia has been aggravated by the fundamentally different perceptions of and widely divergent foreign policies towards Russia held by the member states. Whereas the Commission and a few smaller and new member states from Central and Eastern Europe have been wary of relying heavily on Russia to meet their energy needs, some older member states such as Germany have preferred instead to endow energy policy with the broader goal of binding Russia closer to Europe by integrating their respective energy

sectors. Thus it would appear that the external dimensions of the EU's energy policy will continue to pose the most difficulty with respect to forging a more coherent and unified position with Russia and also with other suppliers and third countries.

Ironically, even in areas where specific policies appear to be clearly within the internal domain of EU policymaking, the external dimension is often directly implicated. We see this, for example, in Jørgen Wettestad's examination of the development of the EU Emissions and Trading System (ETS). While he acknowledges that insufficient time has passed to effectively and comprehensively evaluate this program, he does take stock of some preliminary progress and challenges. Among the achievements of the ETS, Wettestad points to the development of an unprecedented international marketplace for carbon emissions trading, the growth of important infrastructure to support and regulate the ETS, and the beginnings of change in the mindset of corporate leaders in regards to climate change issues. He also acknowledges several criticisms of the ETS, however, including charges of too many allowances in the initial stages, wide fluctuations in price, internal market anomalies benefiting energy producers, and external market anomalies involving carbon leakage. Overall, Wettestad assigns a 'mixed performance' to the ETS, citing the reservations and mixed reviews of non-state actors as well as member states and EU institutions. For the future, Wettestad sees prospects for a much more centralized ETS with tighter caps, less flexibility for member states, and more auctioning. Importantly, he also notes that the ETS came about not only as a direct response to climate change, but also in an effort to influence and encourage climate change action on the international level. Thus, once again we see how EU internal policies are often

motivated by external as well as internal factors and not easily interpreted or explained by a single theoretical framework, a point that was also made by Birchfield in her overview of EU institutions and policy making.

In an adjacent policy area, Jørgen Henningsen tackles issues related to energy efficiency. He argues that while there have been much many opportunities in this area – what he terms “low-hanging fruit,” especially with the entrance of new member states, and in spite of the fact that energy efficiency has been given a prominent place in the 20-20-20 scheme, there has been in fact little progress thus far, and energy efficiency has remained a secondary priority. This is the case, Henningsen asserts, because the EU has found it much easier to identify energy efficiency potential than to prescribe measures to improve it, as seen in the 2005 Green Paper on Energy Efficiency and the 2006 Energy Efficiency Action Plan, which merely restated previous measures or mentioned plans to review existing policies without advancing much of anything new. The lack of progress stems partially from the difficulty in addressing an issue that spans literally nearly all sectors of society, from appliances, buildings, energy production, and transportation, to the ETS, and the very different energy usage within member states. As a result of this enormous scope, a focused policy has been difficult to achieve and progress has been very limited. Furthermore, as Henningsen puts it, energy efficiency lacks the ‘glamour’ of other priorities, such as renewables and security of supply. Henningsen does regard progress as likely in the future, although he predicts that the same problems will persist and that many of the energy efficiency “low-hanging fruit” will remain to be picked due to the limitations of ETS, the lack of a legally binding efficiency target, and the greater sense of urgency surrounding other issues.

Similarly pessimistic, Måns Nilsson discusses the less than stellar development of renewable energy sources (RES) as well as the challenges and successes seen in attempts to promote a common RES policy on the European level. He asserts that RES policy has long been an area of member state dominance, with several states developing successful programs such as tradeable renewable electricity certificates (TREC) and feed-in tariffs (FIT). Not much progress has been made in harmonizing these efforts under the European umbrella, however, particularly before 2006, largely because of differences in member state interests. Recently, though, due to growing concerns over security of supply and stronger links to climate change, which has become an increasingly important consideration in European energy policy, RES policy has seen movement on the European stage, with the setting of binding national target levels. Nilsson asserts, however, that the EU is still far from having a real common RES policy. Furthermore, he argues that the future of RES is highly dependent upon the evolution of institutional relationships and agendas within the EU and does not view a true common RES policy as a step likely to be taken soon.

Underlying motivations for a more unified approach to energy policy at the European level is the implicit, but fundamental recognition that this sector is one that is inherently linked to the basic needs and welfare of society, yet also determinative of how competitive a domestic economy is. When that domestic economy is enmeshed in a larger regional economy like the EU, it is imperative that the energy systems not operate in isolation, but rather that national markets be regionally coordinated to tap the full efficiency potential as well as to ensure

consumer choice and lower prices—both of which are purported benefits of economic integration.

How has the EU fared in achieving the internal energy market? Eikeland's assessment is somewhat mixed. On the one hand, the Commission has been aggressive in its three policy packages replete with various regulations and directives designed to create free and fair markets for electricity and gas. On the other hand, the ultimate success of this legislation has been contingent on the proper transposition of these energy rules and regulations into the 27 national systems. Eikeland's study shows the gap between these two forces at work in EU policy making efforts. The European Commission has repeatedly, and as recently as 2009, had to initiate infringement procedures against many member states for deficiencies in their implementation of improperly implementing internal market provisions for both electricity and gas. Despite these setbacks, he also reveals that the Commission's benchmarking report for 2009 shows that most member states have finally transposed the legal provision guaranteeing all consumers the right to shift suppliers in the national electricity and gas markets, with just a few still lagging behind. So, the pattern of very mixed success seems to prevail, even in an area where the Commission has exercised clearer competence. A critical but often overlooked factor when assessing EU policy innovation is the extent to which member states actually follow through on the implementation front. It appears this will remain a key challenge in the area of energy policy.

C. National Perspectives: The Role of the Big Three

As we have seen, the sheer range of initiatives and the complexity of both the internal and external dimensions of energy policy make it difficult to offer definitive assessments of the EU's relative success in achieving a common energy policy. The picture becomes even more complicated once we begin addressing the specific positions and influence of the member states in either pushing a EU policy forward or inhibiting its further development. In no way intending to discount the significance of other member states, this volume nonetheless focuses on the experience and perspectives of the three most influential member states: Germany, France, and the United Kingdom. Although some chapters touch on the role of other member states and underscore the diverse interests and policy prerogatives underlying various aspects of energy policy as it gradually moves upward to the European level, the prime movers and resisters have arguably been the largest and most powerful states. Analyses like those presented by Sophie Meritet, Francis McGowan, and John Duffield and Kirsten Westphal sufficiently illustrate that energy policy formation at the EU level is still very much a member state driven enterprise, even though the intergovernmental restraints have been lessened with the Lisbon Treaty and the Commission has become increasingly proactive in promoting a common energy policy (Eikeland 2010).

Meritet's chapter closely examines the challenges in aligning national energy policies with EU energy policy goals. She provides a detailed account of the French situation, unique for its lack of natural fossil fuels, strong governmental role, longstanding movement towards energy independence, and emphasis on its nuclear program, and analyzes how the country navigates its relationship with EU energy policy. While France is a founding and powerful member of the EU with a significant voice in

EU policy, it has been considered a 'black sheep' in energy policy because of its unique situation, and thus it too has had to adjust its traditionally state-centric energy sector in order to comply with EU energy requirements and policy goals. While this requirement has presented challenges for both France and the EU, Meritet sees much commonality in the overarching goals of member states. All share a desire for environmental protection, reduced dependence on oil, the development of renewables to achieve diversity and security of supply with efficient market mechanisms, but national interests pose continual problems in achieving these EU level goals. Meritet points to the widespread acknowledgement of the need for a common EU energy policy throughout Europe and the development of stronger European foreign policy as promising indicators of future progress in this area. With these goals in mind, Meritet suggests that France itself may shift from a "black sheep" to a role model for future EU energy intensity, independence, and efficiency, if it can overcome its propensity towards heavy government intervention.

Similar to Meritet's chapter, McGowan highlights the uniqueness and specificity of the relationship of the United Kingdom with EU energy policy. Like France, the United Kingdom viewed itself as an exceptional case initially when it came to energy issues - France because of its unusually high use of nuclear power and large government control of the energy sector, and Britain because of its unique position as a net fossil fuel exporter. Over recent years, however, both countries have recognized the need for a stronger common European stance in this area, due to supply security concerns and increased awareness of climate change issues. McGowan details the shift in the British case, focusing on the importance of market-based solutions in the UK. Britain was initially hesitant, if not hostile, towards transferring authority to the EU in energy areas,

with the exception of market liberalization, which has traditionally been the area of EU integration most acceptable to Britain. However, as the UK has shifted from an energy producer to an energy consumer and has become increasingly concerned with climate issues, the country has grown more open to the idea of European involvement and cooperation within the energy sector and more willing to consider solutions other than those that are market based and dominated by liberalization. As a result, the UK has become an influential actor in energy policy making on the EU level.

In contrast to the British case, Duffield and Westphal remind us that Germany has been a much more consistent champion of EU integration generally, yet when it comes to energy, it displays a similar ambivalence. The areas in which it has traditionally opposed cooperation, however, are unique. It has tended to back policy initiatives concerning climate change, renewable sources of energy, and energy conservation, but it has resisted a number of others, such as the creation of a common external energy policy and the liberalization of the gas and electricity markets, towards which Britain has been more supportive. This chapter examines in detail the specific context of German energy policy, which has been consistently in favor of energy efficiency and renewables, and less so towards nuclear energy and market opening. German policy has been strongly influenced by the interests of a small number of powerful domestic energy companies, which dominate the internal market and retain very close ties with Russian suppliers. As a result, Germany has expressed rhetorical support for the internal energy market and a common external energy policy, but has been much more reluctant to back its words with actions. In other areas, however, Germany has backed EU measures because of strong societal support for renewable and action to improve energy efficiency, particularly

where it concerns climate change and the environment. Despite this record of mixed support for a common European energy policy, the authors do see some hope for future progress as a result of recent political developments in Germany.

D. Energy, Climate Change, and the Role of EU Institutions

The chapters in the third section of the book operate from a more macro perspective, addressing the role that the EU has played in promoting climate change policies, particularly as a global leader in pressing for stronger reductions of greenhouse gas emissions and sustainable energy policies leading up to the Copenhagen summit, and assessing the overall nature of EU institutions and policy making in the energy field. Both chapters attempt to situate the developments in EU energy policy in terms of the cross-cutting pressures and perspectives inevitably associated with policy making at multiple levels of governance—the global, regional, and national. Each chapter also confronts head on the challenges of policy making in an area where intergovernmental interests and institutional mechanisms coexist with supranational policy ambitions and community level competence and authority.

Arno Behrens and Christian Egenhofer offer an assessment of the EU's approach to combating climate change by first tracing how the European community will likely be impacted. They show that the consequences will in all probability vary considerably across regions, with Northern Europe likely to experience some positive effects and the Southern regions, already comparatively economically disadvantaged, very likely to be more negatively impacted and

perhaps even devastated by extreme weather patterns and rising temperatures. The authors provide a detailed summary of these projected impacts in order to contextualize more properly EU policy responses and to show that the EU is ultimately falling behind in constructing a more comprehensive and integrated approach to energy policy. In particular, they suggest that the EU needs a clearer strategy on how to address more effectively increasing transport emissions not only from rail and automobiles, but also aviation and maritime transport. At the global level, they argue that the EU needs to regain leadership and proffer options of both a 'soft' approach (e.g., the UN negotiation tracks) and within a 'hard' one (e.g., by introducing carbon border taxes).

While the focus on the EU actions in the climate change area demonstrate how the EU's rise as a global actor can help legitimize and shape its policy efforts, Birchfield's chapter shows how the EU institutional and policy making landscape itself has propelled a new policy dynamic within which each of the three core institutions can be seen to be championing specific aspects of the EU's overall energy policy goals. The Parliament appears to be the strongest advocate of a more ambitious approach to sustainable energy and fighting climate change, while the Commission, also proactive in this area, nonetheless tends to take a more market oriented approach consistent with its original competence to pursue economic integration through liberalization strategies, but also pushing regulatory processes upwards to the EU as opposed to national levels. The Council of Ministers, of course, is predictably more concerned with energy security and supply questions and related issues that go to the heart of national sovereignty, geostrategic interests and

independence in its foreign relations. Taken as a whole, we might then conclude that energy policy making at the EU level ultimately revolves around the classic push and pull of what the proper scope of action is for the supranational versus intergovernmental level, how individual member states are negotiating this question, and how the various EU institutions themselves are shaping the multi-level governance and policy parameters of an emerging, albeit fragmented and incomplete, common energy policy.

E. The Implications of the Lisbon Treaty and the Future Prospects for a Common European Energy Policy

After years of institutional impasse and intergovernmental negotiations, the Treaty of Lisbon finally entered into force on 1 December 2009. Characterized as the new institutional foundation for a more democratic, transparent and streamlined European Union, the Treaty provides the EU with a new legal basis and specific mechanisms to tackle complex policy challenges such as energy and the environment. It consists of amendments to the Union's two main treaties, Treaty on European Union (TEU) and Treaty establishing the European Community (TEC), with the latter being renamed as the Treaty on the Functioning of the European Union (TFEU). As the Birchfield chapter highlights, the Lisbon Treaty places the European Parliament more or less on an equal footing with the Council of the European Union (formerly the Council of Ministers) in deciding the vast majority of EU laws and subjects 40 new fields to the co-decision procedure. Key areas of increased European Parliament (EP) power include energy security. The Parliament's budgetary powers are also extended to the entirety of the EU budget. Although the main principles and objectives of EU environmental policy

remain largely unchanged, the Treaty explicitly reinforces the EU's commitment to sustainable development, the fight against climate change, and development of renewable energy sources.

Article 3.3 of the amended TEU states that the Union “shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment.” (Treaty of Lisbon, Article 3.3) The change of emphasis brought by the amendment underlines the different dimensions of sustainable development (economic, social, and environmental). The same article also introduces specific reference to the promotion of scientific and technological progress, which could also have implications for environmental protection. In its relations with the wider world, the EU shall uphold and promote its values and contribute to the “sustainable development of the Earth.” To this end, the Union will work towards the adoption of “international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources” (Art. 21.2 TEU). The Treaty also introduces a single legal personality for the European Union, enabling it to conclude international agreements and be formally represented in international organizations. Furthermore, the Treaty ensures consistency of EU policies on the global stage, by connecting the different strands of EU external action, such as diplomacy, security, trade, development, humanitarian aid and international negotiations. Of course, all of these legal changes must be proven through concrete measures and actions taken by the EU and then fully implemented at the national level, so only time will tell if the political will of the member states matches the

Treaty's aspirations.

Of particular relevance to the development of a common EU energy policy are those provisions specifically concerned with the subject. Article 4 of the TFEU formally establishes energy, for the first time, as an area in which competence is shared between the EU and member states. Article 194 of the TFEU goes on to elaborate four concrete aims for EU energy policy:

- (1) to ensure the functioning of the energy market;
- (2) to ensure the security of energy supplies;
- (3) to promote energy efficiency and energy saving and the development of new and renewable forms of energy; and
- (4) to promote the interconnection of energy networks.

Measures intended to achieve these aims may be established by the Parliament and the Council acting under the co-decision procedure. The Treaty nevertheless contains an important caveat that could significantly constrain the ability of the community institutions to forge a common energy policy. It formally confirms each member state's "right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply.." How and when this reservation of state sovereignty is invoked will do much to shape the future course of EU energy policy. At the same time, there are reasons to expect that this obstacle is not insuperable. To be sure, a connecting theme of many of the chapters of this volume is that, while some impressive strides have been made, many obstacles stand in the way of a more coherent and truly common energy policy in Europe. Nevertheless, as invoked in the Birchfield chapter, the father of European integration, Jean Monnet, surmised that

fundamental change and deeper integration would likely result not through incremental treaty changes or intergovernmental bargains but from profound crises and the solutions or responses put forward to deal with such crises,.

It remains to be seen whether the natural gas conflicts of 2006 and 2009 or the growing evidence of global environmental degradation and potential devastation caused by climate change constitute the sort of crises that will propel the EU and its member states into the kind of action that will be necessary to overcome the barriers of narrow national interests flowing from geopolitical and domestic economic concerns as well as traditional foreign policy strategies in securing national energy needs. But when Russia's gas deliveries through Ukraine were interrupted and some EU member states went weeks without power, thus invoking calls for solidarity and Community level action, the EU responded. Likewise, the global environmental crisis related to the effects of climate change or, for that matter, the crisis-like nature of the rapid depletion of fossil fuels coupled with instability and crisis in the global economic system have formed the backdrop for the EU's justification to take aggressive measures in pursuing greater energy efficiency and renewable, alternative and 'green' sources of energy. Thus, it could be argued that these various crises do indeed constitute a political call to action or the foundation upon which a common EU energy policy can be forged.

Yet, it is also well to acknowledge that even before the financial crisis of 2008, the incipient pressures of the 2009 UN conference on climate change, and the most recent Russian-Ukraine gas crisis, the EU had acted in an ambitious and progressive way in first articulating the 2006 Green Paper, adopting a comprehensive Action Plan in 2007, and then developing a detailed climate and

energy package in 2008, Even with its noted limitations, this approach seemed positioned only to expand and deepen. Many factors, ranging from the internal (e.g., member states' varying energy mixes, different economic structures, public attitudes) to the external (e.g., regional and global energy markets, relations with suppliers and transit countries) will shape the ways in which EU member states and EU institutions work in concert to establish policies that will be more effective, efficient and sustainable. Thus, the prospects for a future common energy policy within the EU will depend on both the degree to which energy issues in the 21st century are marked by crises and the institutional and economic logic of operating within a complex policy landscape (supranational, intergovernmental, and multi-level) that itself reflects the interdependencies of a policy area like that of energy and the environment.

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