

EU Energy Policy Integration – Stakeholders, Institutions and Issue-linkages

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Abstract

This study documents advances in EU energy policy integration in the period 2007–2009 as compared to the baseline situation, defined as transfer of competency over energy-policy decisions to the EU level. These advances are discussed in light of EU integration theory, with the issue-linking approach from international negotiation theory as cross-cutting approach. A clear conclusion is that intergovernmentalist theory cannot be refuted. In fact, observations underpin that this approach explains much of the changes observed. We saw clear indications of changes in preferences by key member state governments from the baseline situation, with clearer willingness for allowing EU level governance. Another conclusion is that the energy policy integration achieved cannot be understood without reference to EU-level institutions providing entrepreneurship so as to find equitable solutions for the member states. Supranational institutions, notably the European Commission, backed energy policy supranationalism more skillfully than what is observed in the baseline period. Hence, initial change in member-state preferences was a necessary but not sufficient condition for the stronger energy policy integration seen in the period. In order to investigate the broader legitimacy base among non-state stakeholders, the study applies the policy network approach. A main conclusion is that the preferences of major stakeholder networks were quite stable when compared to the baseline situation, although longer-term changes are observed. This said, we observed strong indications of shifts in opportunities of various stakeholder networks to influence Commission energy policy-making. A final conclusion is that the increments towards stronger EU integration were facilitated by the tactic of simultaneously negotiating different sub-policies, i.e. through issue-linking. The agreement reached thus represented higher ambitiousness than the baseline situation coupled with a stronger and broader legitimacy base. The study ends with a brief discussion of how robust the new-achieved legitimacy for EU energy policy integration really is, in light of deep economic crisis unfolding from 2007.

Key Words

European Union, energy policy, climate policy, integration theory, policy networks, issue-linking

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1 Introduction

The concept ‘energy policy integration’ is here defined *as the transfer of competency from the national to the EU level in decision-making over energy policy matters*. Energy policy is compounded by various sub-policies assessed in this study as basis for drawing conclusions on the overall integration of EU energy policy. At the extreme, full integration would entail total harmonization of all rules affecting supply and demand of energy in the EU, and the transfer to EU institutions of the right to propose, decide and control implementation and compliance with such rules. Today’s reality is far from such a situation.

The road to EU energy policy integration is strewn with failed efforts. Historically, what limited level of EU integration that was achieved in energy matters was provided through the application of Treaty-internal market and environmental policy decision rules, and to a lesser degree, Treaty rules adopted to promote trans-European networks. In 2007, energy policy was codified in the Treaty as a shared competency area of member states and the EU institutions – a step that marked the first decade of the 2000s as new period in member-state willingness to transfer powers to the EU level.

Also signifying stronger EU energy policy integration was a series of energy policy packages¹ proposed, negotiated and finally adopted between 2007 and 2009, aimed at extensive co-ordination of policies at the EU level. One decision in particular represented a leap in EU integration, as it directly constrained member-state opportunities to decide freely their national structure of energy supply – the binding targets adopted for all member states to source a specific share of energy from renewables, tabled as part of the Renewable Energy Directive agreed by the Council and Parliament in 2008.

Yet, this period also saw another puzzling change, with mitigation of climate change made the overarching goal for EU energy policy. To be sure, the new policies proposed were justified more broadly, but *reduction of climate gas emissions* now headed the priority list, framed as fully compatible with other key energy policy goals, security of supply and industrial competitiveness. In contrast, earlier energy policy papers from the Commission had mainly emphasized the potential conflicts between these three overarching energy policy goals.

This working paper analyses the shift towards greater ambitiousness in energy policy integration represented by the 2007–2009 policy packages. It asks two questions: *what caused this shift in pace of EU energy policy integration?* and *why was mitigation of climate change now singled out as priority goal?*

¹ A first energy policy package was proposed by DG TREN in January 2007. A new internal energy market package was proposed by DG TREN in September 2007, and in January 2008, DG TREN and DG ENV together proposed the energy and climate policy package.

The report investigates changes over time in ambitiousness and acceptance (legitimacy base) of policy integration: from a baseline situation, through the initiation stage of the new energy policy packages, the decision-making stage for specific energy legislation, to the follow-up stage represented by more recent energy policy proposals adopted by the Commission. We also briefly discuss if the legitimacy base for energy policy integration and for giving priority to fighting climate change appeared strong enough to keep up pace in EU energy policy integration after 2009.

The report develops an agent-based analytical framework based in EU integration theory with propositions linking the observed policy shift to changes in preferences or/and powers of specific EU energy policy stakeholders. We distinguish EU institutions (the EU Commission, the EU Council and the European Parliament) from other stakeholders: governments at the member-state level and non-governmental stakeholder groups (industries and ENGOs). Acknowledging the vital role of bargaining in EU politics, we add specific propositions deduced from negotiation theory, asking if specific entrepreneurial *issue linkages* were applied to create a broader legitimacy base for more ambitious integration of energy policy.

The report is organized in six chapters. Chapter 2 presents the analytical framework in greater detail, propositions to guide the empirical investigation, and methodology. Chapter 3 outlines historical efforts at energy policy integration in the EU: proposals, outcomes and a brief analysis of the modest success rate. Chapter 4 concentrates on the immediate processes leading up to the climate and energy policy packages in 2007 and 2008, and the negotiations prior to the final adoption of specific directives, with a brief analysis of the initiators, supporters and opponents. Chapter 5 inquires more deeply into who pursued the stronger ambitions for energy policy integration, who opposed such integration and what caused the successes/failures – the latter analysed through the lenses of EU integration theory and theory on issue-linkages. Chapter 6 concludes on the feasibility of the analytical framework for answering the questions posted above and looks at the road ahead by analysing EU energy policy developments after 2009.

2 Analytical framework, propositions and methodology

This study starts from the basic assumption that a trade-off exists between policy ambitiousness and legitimacy. Both ambitiousness and legitimacy can take on the values 'high' and 'low', leading to four potential pairs of the two variables:

- Ambitious energy policy integration based on high legitimacy
- Ambitious energy policy integration based on low legitimacy
- High legitimacy for and low ambitiousness in energy policy integration
- Low ambitiousness and low legitimacy

The first and last pairs would refer to stable situations and the two middle categories less so, at least for democratic policy-making systems. The instability of the second pair reflects the fact that ambitious but non-accepted policies may eventually fall apart in a later stage, when policies are to be implemented or followed up. The instability of the third pair, high legitimacy/low ambitiousness, simply indicates that policy-makers have not utilized a still-untapped potential for creating more ambitious policies.

2.1 EU integration theory

EU integration theories vary in their description of the EU as a polity – the range of stakeholders capable of influencing EU policy-making, and hence, the relevant scope of agents that could potentially veto ambitious policies. The major line of demarcation goes between the Liberal Intergovernmentalist (LI) and Supranationalist (SN) approaches (George, 2004). The former depicts EU integration as the product of the interests of sovereign member-state governments, and the majority coalition of these within the European Council (Hoffmann, 1964; 1966; Moravcsik, 1993). Matlary (1997) concluded that this framework can provide strong explanatory power for early efforts at EU energy policy integration. According to the LI perspective, the member-state governments constitute the legitimacy base for ambitious integration of EU energy policy.

The SN framework portrays the EU institutions as more autonomous, able to utilize the significant gaps in member-state control over the process of European integration in day-to-day policy-making (Pierson, 1998; Marks et al. 1996). Main inspiration for this framework came from early neo-functional studies predicting that the EU level would gradually gain in power, at the expense of member-state governments, through functional spillover from integration already underway in other sectors, with the establishment of European institutions sponsoring further integration, to which interest groups would turn their allegiance (Haas, 1958; Lindberg, 1963; Schmitter, 1970). While dismissing functionalist explanations, the SN position retained as important mechanisms the genuine autonomy of supranational institutions from member-state governments, and the pluralist understanding of national

and EU policy-making, with non-governmental agents engaged in intra-EU exchange capable of influencing processes and outcomes (Sandholtz and Zysman, 1989; Sandholtz and Stone Sweet, 1998). Typical factors constraining individual governments' full control over EU decision-making are: the use of qualified majority voting in the Council, a culture in the Council working against frequent use of the veto option, and abilities of supranational institutions, like the Commission and the Parliament, to exploit transnational networks of non-governmental agents to promote its own policy preferences within the 'domestic' politics of member states (Sandholtz and Stone Sweet, 1998; Marks, Hooghe, and Blank, 1996; Bache and George, 2006:34–5). More recently, the SN approach has amalgamated into the more comprehensive Multilevel Governance Approach (MLG) viewing EU policy making as a system of continuous negotiations among nested governments at several territorial tiers and supranational, national, regional, and local governments are enmeshed in territorially overarching policy networks (Marks, 1993: 392). Condoning earlier studies constraining full member state control over decision-making in EU institutions, the MLG approach also specifies a role for stakeholders operating at lower administrative governance levels (Marks, Hooghe and Blank, 1996; Bache and George, 2006:34). National interests would be defined via a pluralistic domestic process whereby sections of national or local governments, and non-state actors could form transnational alliances to influence the negotiating positions of national governments on EU matters (Bache and George, 2006:34).

Several studies specifically discuss how the power of the European Commission would stem from its agenda-setting role and provision of venues that define who gets involved and not in policy processes (Baumgartner and Jones, 1993; Daviter, 2009; Princen, 2009). These studies abandon the assumption of the EU Commission as a unitary actor with shared preferences and agreed-on goals and strategies across its internal services, providing instead a 'bureaucratic politics framework' for analysing EU policy-making and its effects (Trondal et al., 2009; Egeberg, 2006). Several studies point to how bureaucratic fragmentation within the EU Commission creates multiple venues for political actors to upload their preferred choices to the EU agenda (Peterson, 1992; 2004; Hull, 1993; Bache, George and Rhodes, 1996; Harcourt, 1998; Mörth 2000; Jachtenfuchs, 2001; Mazey and Richardson, 2001; Princen and Rhinard, 2006; Eikeland, 2011a). Harlapp, Metz & Rauh (2010) concludes that because the Commission's Directorates-General are diverse in mandates, administrative setup, resources and positions on policy problems, the given coordination structure would favour some actors over others, often those tightly connected to the DG having main responsibility over a policy field. Yet, the Commission has inter-service co-ordinating institutions that could counteract such bureaucratic fragmentation, notably in the hands of the Secretariat-General, the main inter-service coordinating DG, politically led by the Commission President.

Summing up, the SN-based approach depicts a broader scope of agents with a potential say in EU policy-making than the LI perspective, entailing also that ambitious integration of energy policy would

potentially need a broader legitimacy base: not only the member-state governments through the European Council, but also other EU institutions (the Commission and Parliament with relevant sub-units) and non-state stakeholders affected by EU energy policy integration.

2.2 Negotiation theory – issue-linking

Noting that the shifts in energy policy integration were associated with larger packages of policies presented and negotiated simultaneously in the period 2007–2009, this study borrows from international negotiation theory the concept of issue-linkages as an additional mechanism potentially part of the explanation for the shifts observed. Issue-linking would entail that issues are added, combined or linked when they are simultaneously discussed for joint settlement, while issues are subtracted when they are each considered in an effectively independent forum (Sebenius, 1983:287–288). Sebenius (1983:292) suggests that adding issues can yield joint gains that create or enhance the probabilities for a successfully negotiated outcome. Such agreement can result when unrelated but differently valued issues can be combined, where distributional obstacles can be overcome by adding issues as side-payments and where actual synergies among issues can be exploited by their combination (Sebenius, 1983:298; Oberthür and Gehring, 2006). A second and seemingly contradictory proposition is that adding issues can reduce the probabilities for a successfully negotiated outcome (Sebenius, 1983: 300). This could be the case when separate issues have no common ground for agreement or when the basis of any agreement can serve to destroy the combined common ground. Moreover, adding issues could make the negotiations more complex and cumbersome.

Issue-linking can be typified as a ‘tactic’ to move the trade-off between ambitiousness and legitimacy in international bargaining, in the sense that more parties could accept costs in deals around one issue if associated with gains around another issue. By looking at issues and policies that were combined and separated in the EU energy policy processes, we seek to gain a better understanding of whether and how issue-linking played a role. Issue linkages could appear in all stages of the policy cycle and be applied as tactic by all stakeholders, thus corresponding well with our agent-based analytical framework. The intergovernmentalist position would expect member state governments to mastermind issue-linkages as part of intergovernmental negotiations. The supranationalist position would expect EU institutions to take such entrepreneurial steps to ensure further policy integration for each of the issues linked. Noting the need for accept among groups targeted by energy policy measures, also non-governmental stakeholder groups (policy networks) would be potential initiators of issue-linkages.

2.3 Propositions to guide the analysis

Based on the LI perspective, we will suggest that the energy policy shifts of the period 2007–2009 reflect changes in the preferences of member state governments, in turn creating a new majority coalition (legitimacy base) in the European Council for stronger integration of energy policy, with climate change as the major goal. Other mechanisms that could have

brought about such a new majority base in the Council are the entry of new member states with differing preferences on energy policy integration and climate change, or changes in Council voting rules. The LI approach would view the EU energy policy executive, the European Commission, as a passive implementer of signals from the member state governments. Neither the European Parliament would be given any attention, despite its co-decision role in various matters of EU energy policy.

The SN perspective provides for various propositions, as it offers other stakeholders (notably other EU institutions and non-state stakeholders) a potentially decisive role in EU policy-making. Hence, one proposition would be that the energy policy shifts reflected changes in preferences for stronger integration of energy policy within decisive forums of the European Parliament. Yet, other propositions would be based in the role of the EU executive, the European Commission. Viewing the Commission first and foremost as a unitary agent, we propose that the changes observed in EU energy policy integration reflect stronger Commission determination and power towards national governments in the pursuit of a common EU energy policy. The SN perspective here allows for entrepreneurial action on part of the European Commission to move policy areas forward, e.g. through issue-linking as tactic for arriving at distributive outcomes with a broad legitimacy base.

When abandoning the assumption of the Commission as a unitary agent, focus is instead placed on the bureaucratic processes that involve the various Commission services set to watch over several functionally specialized policy areas interconnected with the energy policy area. A corresponding SN-derived proposition for a shift in EU energy policy integration would be better co-ordination between these services, boosting the Commission's collective potential for engineering ambitious energy policy packages that would appear acceptable for a greater number of stakeholders.

What then about the decision to put climate mitigation in as top priority goal for Community energy policy? We propose that this decision would reflect changes in preferences of the Commission energy policy lead department, DG TREN, either because climate change was now viewed as a more serious threat than before or because putting climate change first could augment the chances of stronger integration of energy policy more generally. Alternatively, the decision may reflect new power for other Commission services (DG Environment set to formulate climate policies) or a new hold on part of Commission inter-service co-ordinating institutions (e.g. the President of the Commission and the office of the Secretary-General) to integrate more strongly the areas of EU environment and energy policy.

Finally, since the SN approach provides *non-state actors* with a potentially independent role in EU policy making, capable of influencing policy outcomes through engagement in transnational collaborative *policy*

networks,² we propose that the energy policy shift observed in the period 2007–2009 stemmed from changes in influence of such policy networks. The control over important resources is viewed the main mechanism providing policy networks with influence on EU policy making, and particularly so in the preparatory phase of policy development within the Commission (Peterson, 1995). Several studies conclude that European trade associations, in themselves policy networks of national associations and/or major companies, enjoy particularly good access conditions to policy-making venues with the Commission because they control particularly valuable expert knowledge (Bouwen, 2002:382) and because their network structure makes them more representative than individual firms (Greenwood, 1997:4). An important factor conditioning such influence is, on the other hand, ability to organize the interests of individual members into a non-competitive format (Greenwood, 1997:18–20).

The explanatory power of the policy network approach follows from a comparative and dynamic logic – the capacity (resources) of agents within one network to influence EU policy must be seen in relation to competing agents' capacity. Applied to this study, we propose that the energy policy shift in the period 2007–2009 reflected shifts in preferences of agents within established policy networks, or better access conditions for policy networks advocating energy policy integration and climate change mitigation.

2.4 EU-external forces

Common to all the EU integration theories presented above is their emphasis on EU-internal factors and processes. However, also factors external to the EU may interact with EU policies – which is important to keep in mind since the energy policy packages were proposed and negotiated during times of increasing global concerns with the climate change problem and competition over global energy resources. Such externally-caused concerns could raise (or lower) the ambitiousness and legitimacy of stronger energy policy integration, depending on perceptions of the problem causing the concerns.

2.5 Methodology

The study focuses on EU energy policy change and applies complementary theories of EU integration to understand the change. Expectations are

² The policy network approach evolved from domestic and comparative politics aimed at understanding national policy-making after neo-liberal governance reforms caused fragmentation of public decision-making and increasing interdependence between state and non-state actors (Bache, 2008:21; Warleigh, 2006:88; Rhodes, 1997). The policy network literature variously analyses such networks as highly integrated policy communities (high interdependence, stable relationships, restricted membership, insulated from other networks) or more loosely integrated 'issue networks' (limited interdependence, open membership, less stable relationships, less insulated from other networks), with hypotheses set up linking characteristics of networks to the degree of influence on policy outcome (Bache, 2008:33). Yet other network scholars have focused on the normative and cognitive factors binding actors together to influence policy-making, typically the epistemic community (Haas, 1992) and advocacy coalition frameworks (Sabatier, 1998).

derived, with pattern matching used as analytical technique to compare expectations derived from various theories with observations made. The study additionally employs narratives describing the long-term evolution of EU energy policy, applying explanation building as a technique to capture complex relationships between factors impacting on policy change.

Several methodologies have been used for data gathering, including interviews, examination of policy documents, independent newsletter articles, and secondary academic studies. Consulted policy documents include policy papers of the Commission, the Parliament and the Council; and position papers provided by member-state governments, industry groups and environmental NGOs. The 25 interviewees include representatives of the European Commission, national government representatives to the European Union, industry groups, consultants, and environmental NGOs. This mixture of data and methods has been employed in order to validate the claims put forward by each individual data provider and to ensure that diverse viewpoints have been able to shed light on the topic studied.

3 Historical background and baseline

3.1 Early EU energy policy

In 1951 six European countries (Germany, France, Italy and the BeNeLux) established the European Coal and Steel Community (the ECSC Treaty), replacing wartime resource conflicts with co-operation to achieve an orderly supply and affordable access to coal, which supplied nearly 80% of Community energy in the early 1950s (Andoura, Hancher and van der Woude: 2010:7). A High Authority was given three legal instruments: decisions were binding in their entirety, recommendations only to aims but not policy tools, and options had no binding force (ibid.:8). This High Authority had the power to impose rules and set production quotas and prices, and its autonomy was ensured by funding through a Community levy and the freedom to borrow in the capital market. It had, however, no power to represent the Community internationally, reflecting the self-sufficiency in coal resources and thus, lack of perception of an international energy dimension (Andoura, Hancher and van der Woude: 2010:9).

In 1957, the Euratom Treaty was adopted to promote research and disseminate knowledge of nuclear energy for civil purposes and adopt rules for the protection against radiation/safety control. A Supply Agency was given quite extensive rights to regulate the nuclear power technology market but central intervention never became the preferred option for matching supply and demand (Andoura, Hancher and van der Woude: 2010:10). These supranational authorities became interlocutors for the interests of the coal and nuclear power industries.³ The policy agenda very much focused on technology development/productivity increases through R&D funding, and on protecting the European energy industries against imports of cheaper primary energy resources from abroad.⁴

The third pillar of early EC cooperation, the 1957 Treaty of Rome (EEC Treaty) did not include energy, again reflecting the predominance of coal already regulated under the ECSC Treaty (Andoura, Hancher and van der Woude: 2010:7). The 1965 Treaty of Brussels (the Merger Treaty) established the main EU institutions as we know them today. The Directorate-General for Energy (DG TREN) now became the main interlocutor for Europe's energy industries.

At this point, oil had surpassed coal as the most important fuel supply for the six Community member states (Duffield and Birchfield, 2011:3), and security of oil supply became an issue after turmoil in the oil-producing Arab world.⁵ In 1968, the Council adopted Directive 68/414/EEC obliging member states to maintain emergency stocks of oil and

³ Exemplifying this, the standing consultative committee under the ECSC High Authority enjoyed the right to attend all meetings of the European coal industry association CEPCEO, formally established in 1953 to co-ordinate the interests of member state coal mining industries.

⁴ Euracoal, June 2010. '60 years of voicing coal interests in Europe'

⁵ The Suez Crisis in 1956-57 and the 1967 Arab-Israeli war exposed the vulnerabilities to price and supply shocks (Andoura, Hancher, and van der Woude, 2010:18).

petroleum products corresponding to 65 days of consumption, and the Commission released its 'First Guidelines for a Community Energy Policy' to assure a better 'security-of-supply and to establish a common market in energy' (Commission of the European Communities, 1968). In 1972, the Commission raised the oil stocks to 90 days of consumption and adopted a communication calling for what it saw as necessary progress in community energy policy for the medium term (Commission of the European Communities, 1972). The Council subsequently adopted two Directives requiring the member states to inform the Commission about their hydrocarbon imports and investment projects in the oil, gas and electricity sectors.⁶ These were poorly implemented (Andoura, Hancher and van der Woude, 2010:19).

Arab countries' oil embargoes after the 1973 Yom Kippur war caused a surge in oil prices and costs to energy consumers. On the initiative of the USA, OECD established the International Energy Agency to co-ordinate measures in times of oil supply emergency, with all the EEC member states partnering in, now extended with the UK, Denmark and Austria. This new arena entailed less priority to further security of supply policy development at the EU level. Still, in 1977, the EEC adopted two security of supply Decisions: on the export of crude oil and petroleum products from one member state to another and on cutting back consumption of primary energy resources in the case of supply difficulties.⁷

Security of supply issues remained high on the EC energy agenda in the 1980s after the second oil price shock in the wake of the Iranian revolution in 1979, producing little more than new, non-binding guidelines for national energy policy development, however. In a Resolution of 9 June 1980, the Council formulated main guidelines aimed at greater consistency in national energy policies: to reduce the energy demand/GDP ratio; to reduce oil consumption and cover primary energy requirements for electricity production by means of solid fuels and nuclear energy; to encourage the use of renewable energy sources; and the pursuit of energy pricing policies geared to attaining Community energy objectives.⁸ In 1984, DG Energy proposed a European energy strategy to reduce oil dependency 'by all means at its disposal'.⁹ Two years later, A Council Resolution set new guidelines: maximize security of supply and reduce the risks of sudden fluctuations in energy prices through developing the Community's own energy resources under satisfactory economic conditions; diversify the Community's external sources of supply; improve the flexibility of energy systems and, inter alia, develop, as necessary, network link-ups; develop effective crisis

⁶ Regulation (EEC) No 1055/72 of the Council of 18 May 1972 on notifying the Commission of imports of crude oil and natural gas, and Regulation (EEC) No 1056/72 of the Council of 18 May 1972 on notifying the Commission of investment projects of interest to the Community in the petroleum, natural gas and electricity sectors.

⁷ Decision 77/186 EEC and Decision 77/706 EEC.

⁸ Resolution of 9 June 1980 concerning new lines of action by the Community in the field of energy saving

⁹ Commission of the European Communities (1984) Community energy strategy to 1990: considerable progress but there are still grounds for concern. Information Memo P-13/84, Brussels, February 1984.

measures, particularly in the oil sector; create a vigorous policy for energy savings and the rational use of energy, with diversification between the various forms of energy.¹⁰

Summing up, in response to the security of supply challenge, the European Community produced little more than resolutions on the rational use of and further development of the Community's energy resources. National governments guarded their autonomy to decide over a sector that was seen as strategically important to secure national industry and welfare growth. National energy supply was normally the task of public utilities with specific supply obligations (Padgett, 1992:55; Andoura, Hancher and van der Woude: 2010:18)). Member states rich in energy resources were particularly zealous defenders of their exclusive right in national resource management. Hence, while including the UK and Denmark into the Community in 1973 meant a stronger Community fossil energy resource base, it also made member-state interests more differentiated.

3.2 A widened scope for energy policy discussions – environmental problems

The 1970s saw the scope of Community energy policy discussions widened in response to local air pollution problems of energy use and supply with minimum fuel emission standards adopted in 1970.¹¹ In 1972, the Council asked the Commission to produce Environmental Action Plans and in 1973, a separate Directorate-General for the Environment was established for this task (Hey, 2005). In 1974, it produced a communication entitled 'Preliminary report on the problems of pollution and nuisances relating to energy production', but a 1975 Council Resolution settled that the member-state governments had the primary role in setting environmental standards in energy supply. A new initiative by the Commission in 1976 to limit the sulphur content of heavy fuel oil was withdrawn because of opposition from several member states.

By the early 1980s, acid rain had become a public issue, particularly in Germany, where public opinion was enflamed as the damage to the Black Forest became apparent and farmers began to worry about their livelihood (Lyons, 1992:64). In 1988, the EU adopted the Large Combustion Plant Directive (88/609/EEC) to control air pollution (SO₂ and NO_x) from the electricity industry. Germany was a driver with the government and industries lobbying for harmonization at the EU level to avoid distortions in competition from ambitious policies implemented nationally (Hey, 2005).

¹⁰ Council Resolution of 16 September 1986 concerning new Community energy policy objectives for 1995 and convergence of the policies of the Member States.

¹¹ The EC adopted Directive 70/220/EEC to limit car petrol engine emissions of carbon monoxide and unburnt hydrocarbons. Standards were strengthened several times in the 1970s and 80s.

3.3 A new policy agenda – the internal energy market

Plunge in oil prices in 1986 meant that security of supply slipped down the policy agenda in the member states (Lyons, 1992), and end-user energy costs now assumed greater attention (Padgett, 1992:57). In 1985, the Council adopted the Single European Act (in operation from 1987), aimed at revitalizing trade in the Community and to create a 'Single Market' by 1992 through harmonization of national laws and policy discrepancies. The Act adopted institutional reforms that included a more collaborative legislative process, later known as the cooperation procedure, giving the European Parliament a new say in legislation processes and introducing more qualified majority voting in the Council. The Council could still overrule a rejection of a proposed law by the Parliament if adopting a proposal unanimously.

The Single European Act marked a turning point in the elaboration of also greater energy policy integration even though the energy sectors were initially excluded. In 1986, a Council Resolution signalled that a new market-oriented approach should constitute the principal mechanism for securing energy supply in the Community (Hancher, 1990:238; Padgett, 1992:56). This was broadly supported by major energy-intensive industries as a means to make energy supply more efficient, to align and cut energy prices across the region, and hence, to increase global competitiveness of European industry.

In 1987, the Council approved a Commission proposal to 'draw up an inventory of barriers to the Internal Energy Market and to submit proposals for their elimination' (Padgett, 1992:57). The 1988 Communication 'The Internal Energy Market' proposed a fourfold action plan to remove obstacles by: the application of the broader Single Market objectives (harmonization of taxation and technical standards, and the opening up of public procurement); application of the provisions of Community law relating to the free movement of goods, competition, state monopolies, and state aid; the harmonization of environmental and safety standards; the creation of instruments to bring about the harmonization of cost-price structures in the member states, and the integration of energy infrastructures (Padgett, 1992:57; Lyons, 1992:7; Smeers, 1993:25).

The communication concluded that existing Community law and general single market provisions would be sufficient for removing barriers to competition in the downstream oil, coal and nuclear industries save for reduced levels of state subsidies for the latter two. For the downstream gas and electricity and upstream oil and gas industries, specific directives were regarded as necessary, since the structures and practices of these sectors deviated considerably from the internal market logic (Eikeland, 2004; Lyons 1994: 6–7).

The Commission right away submitted proposals for new legislation. A draft Directive on transparent and non-discriminating public procurement procedures applying to the water, energy and transport sectors was

proposed in 1988 and adopted by the Council in 1990.¹² In 1989, the Commission submitted a *package* of proposals: a draft directive on the transparency of gas and electricity prices (COM (89) 332); draft directives on the transit of gas (COM (89) 334 and electricity (COM (89) 336) aimed at establishing common transit rights across the Community's energy networks; and a draft regulation on the notification of investment projects in the petroleum, natural gas and electricity sectors (COM (89) 335) that would oblige member states to communicate project planning details to the Commission with a view to co-ordination of energy investments (Padgett, 1992).

The former proposal left untouched the question of making transparent national energy cost structures, important to identify hidden state aids. It also deferred to the principle of commercial confidentiality by exempting transparency for large-scale, individually negotiated contracts between utilities and industrial electricity users. Removing these contentious issues implied that the directive passed Council approval relatively easy (Padgett, 1992:58). The directive on transparency of planned energy investments was, however, not approved by the Council (Padgett, 1992). The draft electricity and gas directives proposed market access only for national grid operators (existing vertically integrated utilities) as a first stage initiative towards the establishment of a full 'common carrier' system for gas and electricity with full 'third party access', i.e. that any consumer could purchase energy from any supplier, regardless of ownership of the intermediary grid structures (Lyons, 1992:8). This reflected widespread opposition in the Council to a full common carrier system. The Council approved by qualified majority the electricity transit directive in 1990 and the natural gas transit directive in 1991, the latter with Germany and the Netherlands voting against. Additional early stage internal market policies adopted was a directive to safeguard transparency and non-discrimination in national licencing of hydrocarbon projects.¹³

To be sure, the Commission acknowledged that application of EU competition rules (then article 85 and 86 EEC) against the utilities could have dismantled dominant market positions more swiftly. It also acknowledged that specific gas and electricity directives could have been formulated unilaterally by the Commission based on Article 90 (3) EEC rather than through the cooperation procedure. However, many member-state governments and the European Parliament were deeply sceptical to the internal energy market idea, and stronger Commission force was simply not acceptable (Padgett, 1992:61; Eising, 2002). Also DG Energy supported the political negotiation procedure while other parts of the Commission were less convinced. Padgett (1992:60) quotes a DG Energy official interviewed in 1989 saying: *'The Commission is not trying to implement the single market through the law – well some parts of the Commission may want to do this – but in DG XVII we prefer to find political solutions'*

¹² Council Directive 90/531/EEC of 17 September 1990 on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors.

¹³ Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons.

This ‘some parts of the Commission’ points to DG Competition who was a strong advocate of using competition rules and Article 90 for a faster break-up of monopoly structures (Eising, 2002). In fact, DG Competition initiated proceedings against gas and electricity import/export monopolies and sent letters to member state governments asking them to justify their national monopolies, warning that the Commission would act aggressively in order to achieve a single market in energy (Lyons, 1992:23).¹⁴ It also started applying Treaty State Aid rules to press member states, notably Germany and Spain, to cut down aid to the coal industries. In the mineral oils sector, pressure was applied to Spain, Portugal and Greece to liberalize markets dominated by protected state monopolies, the latter two taken to the Court of Justice over their failure to comply (Padgett, 1992:59).

Intense lobbying of commissioners by national governments, energy industries and the European Parliament, however, sent clear signals to DG Competition to keep its hands off the internal energy market. And, in 1994, the European Court of Justice formalized this lesser role of DG Competition with its rulings in the so-called Almelo case of Dutch electricity distributors asking for dismantling the exclusive import and export rights granted to the generators (Lyons, 1998:34). The ECJ found that Articles 85 and 86 of EU competition rules had been breached, but that Article 90-2 offered the companies opportunities for derogation if operating under public service obligations. DG Competition was therefore unwillingly constrained in playing any active role in EU energy market policies. This applied also to application of Treaty State Aid rules, where the Commission finally opted for a bargained run-down of state aid to coal. To be sure, the Commission continued to remind European politicians that an option existed under EC Treaty rules, used to put pressure on member state governments for implementing internal energy market legislation (Eikeland, 2004; Lyons, 1992:24).

3.4 Failure for a wider energy policy strategy and package

DG Energy in parallel sought to develop also a broader energy policy package aimed at harmonizing environmental protection and security of supply standards, viewed as *essential* for completing the internal energy market (Commission of the European Communities, 1988). Not all member states were convinced that the internal market would contribute to security of supply, however, and voiced concerns that competition and dismantling of state aids could have the opposite effect (Lyons, 1992:42).

DG Energy now proposed several measures for the EU to gain leverage in security of supply policies. A proposal to give the Commission a stronger say in international negotiations over petroleum stocks within the IEA framework gave meagre results, and another proposal to include energy in a new chapter in the reformed Treaty (Maastricht Treaty) was blocked by an alliance in the Council that included the UK, Germany and

¹⁴ DG Competition became inspired by a March 1991 judgement by the European Court of Justice (ECJ) upholding that the Commission could use such procedures to force greater competition in the telecommunications sector (Lyons, 1992:13).

the Netherlands (Lyons, 1992:43). The Maastricht Treaty, nevertheless, came to include as new Community task in developing trans-European networks viewed as crucial to realizing the internal market. In line with the principle of subsidiarity, however, the Community was not given exclusive competence for developing, financing or building energy infrastructure, and beyond providing seed money for planning, the main responsibility was maintained with the member states.

Concerning harmonization of environmental standards, the Commission in May 1992 proposed a new EU-level energy/carbon tax aimed at reducing the demand for energy (security of supply element) and supporting the uptake of low-carbon energy sources. The proposal, adopted by the Community taxation service, was strongly supported by DG Energy and DG Environment. For DG Environment, the tax was regarded a pilot for its new environmental policy approach, to adopt instruments that supported the completion of the Internal Market (Hey, 2005).¹⁵ Through the new approach, DG Environment highlighted win-win situations for both environmental and economic objectives. This line of reasoning found wide support within the Commission, reflected in the concurrent 1993 White Paper on Growth, Competitiveness and Employment adopted after dense co-operation between all the services of the Delors Commission (Commission of the European Communities, 1993a). This White Paper proposed a new economic development model for Europe based on the shift in the relative prices of labour and energy that would both create employment and improve the efficiency of resource uses (Hingel, 2001; Hey 2005).

However, several member states were not convinced, fearing for the international competitiveness of their industries. Upon the initiative of Germany and UK, a high-level expert group – the Molitor Group – was established, mandated to scrutinize and propose cutbacks of regulations imposing excessive costs on the industrial sector (Commission of the European Communities, 1995a). This ‘international competitiveness’ agenda brought a new approach to environmental regulation focusing on procedural requirements, framework directives, voluntary agreements and self-regulatory information and management tools, providing greater flexibility and leeway to the member states than harmonization of taxes at the EU level (Commission of the European Communities, 1996a). Hey (2005) notes various reasons for this general roll-back of environmental policies: a too optimistic Commission on the willingness of member

¹⁵ DG Environment’s Third Environmental Action Plan (1982–1987) acknowledged the potential risks and benefits of environmental policies to the Internal Market, with environmental emissions standards needed to be harmonised to avoid distortions to industry competitiveness. The Fourth EAP (1987–1992) continued the focus on economics of European environmental policies, assuming harmony between the objectives of the internal market and environmental protection (Hey, 2005). It marked a further paradigmatic change towards integrated and sector approaches to environmental policy. For the first time, environmental protection was framed by the Commission not as an additive activity, but integrated within the whole production process of different economic sectors. And, it announced due evaluation of new, incentive based instruments, such as taxes, subsidies or tradable emission permits to accomplish the new approach (Hey, 2005). The fifth EAP (1992–1999) fully promoted the use of market-oriented environmental policy instruments (Hey, 2005).

states to follow the new paradigmatic changes and resultant European integration; the pending economic crisis and difficulties in ratifying the Maastricht Treaty; resistance from both governments and interest groups – especially those who would have to bear the costs of such a new approach; and a complete change in the preference structure in one of the potential leaders of EU environmental policies – Germany – because of economic problems of reunification, making unemployment a primary concern there. Difficulty in getting the Energy/CO₂ tax proposal approved by the Council was just a symptom of the problem of implementing the larger ‘paradigmatic change’ in environmental policy-making (Hey, 2005). A harmonized tax would have been difficult to adopt anyway after the Maastricht Treaty, which opened for Council qualified majority voting in environmental policies exempted this rule for fiscal measures.

3.5 Fragmented and piecemeal energy policy development

DG Energy still kept afloat the idea of a greater package of co-ordinated energy policies and opened in 1993 a debate on Community goals and guidelines. Responses were summed up in the 1995 Green Paper ‘For a European Union Energy Policy’ (Commission of the European Communities, 1995b). All the Community institutions commented positively on adopting new broader energy policy guidelines. The Council opted for a rapid completion of the internal energy market, to bolster security of supply through diversification in supply, focus on rational use of energy in all sectors and on research and technological development, and finally, that energy and environmental policies needed to be considered in an *integrated manner*.¹⁶ The Council now included ministers from Sweden, Finland and Austria after their accession to the Community in January 1995. All these countries had highly environmentally-aware publics, which led the Commission to conclude that in many cases their accession also helped general Community standards to increase (Commission of the European Communities, 1998a). In addition, Sweden and Finland had been frontrunners in implementing national market trade-based reforms of their energy sectors.

The European Parliament endorsed liberalization of the energy market but stressed that greater priority should be given to environmental goals through policies on energy efficiency, energy savings and the promotion of renewable energies. The Economic and Social Committee and the Committee of the Regions focused on social and economic cohesion and policies that would favour employment as important guidelines for future Community energy policies. The contributing energy producing and consuming industries, trade unions and environmental associations demonstrated a wide range of views. The Green Paper stated that satisfying all interested parties on all preferences would be impossible.

The 1995 Green Paper picked out three key objectives for member states to consider in energy policy implementation that came to form the

¹⁶ Council Resolution of 23 November 1995 on the Green Paper For a European Union Energy Policy’

foundation also for later EU energy policy papers: economic competitiveness; security of energy supply; and environmental protection. DG Energy admitted that weighing the goals would be necessary and that policies could be contradictory as to reaching all of them. As to securing physical energy supply, DG Energy stated that urgent short-term action was no longer needed but that longer-term action would be required to contain growing Community energy dependence and risk of economic shocks due to higher priced energy, primarily in the form of improving the situation for nuclear power and a technological push to develop renewables and clean solid fuel technologies.

As to ‘competitiveness’ and ‘environmental protection’, DG Energy stated that the two goals should be approached in a complementary manner. It maintained market integration to be the central determining factor in the Community's energy policy and fiscal harmonization (EU-level tax harmonization) as necessary for the proper working of the internal market. Market integration would, according to DG Energy, increase exposure to competitive forces and significantly contribute to overall Community competitiveness, referring back to the conclusions of the Commission's 1993 White Paper on Growth, Competitiveness and Employment that the pursuit of competitiveness and environmental protection should not create any major tensions. Regarding climate change specifically, the Green Paper pointed to the need for curbing rising energy consumption and switching to non-fossil electricity, essentially nuclear and renewable electric power as solutions to reduce Community CO₂ emissions in line with international commitments.¹⁷

DG Energy's number one priority was now to complete the adoption of directives for the internal market in electricity and gas, pending since 1992 (Commission of the European Communities, 1992). These draft directives called for third party access rights (TPA) to infrastructure for a limited number of high volume gas and electricity consumers: abolishing exclusive rights in electricity generation and construction of gas and electricity networks; unbundling of accounting and management systems for vertically integrated network companies (accounting and organizational unbundling); and transparency provisions granting eligible customers the right to network services on terms made explicit ex-ante (regulated access) instead of only case-by-case negotiated access for each consumer (Lyons, 1992:8). Initially, the governments of Belgium, France, Greece, Italy, the Netherlands, and Spain were all strong opponents of third-party access. Germany, Denmark and Luxemburg were sceptical, and the UK and Ireland the only true supporters (Eising, 2002: 93).

¹⁷ Besides the three main objectives, the Green Paper also catered to the comments of the Economic and Social Committee and the Committee of the Regions, stating the importance of energy for the quality of life and for the creation of jobs, making promotion of solidarity and cohesion between regions a fourth important objective for a Community energy policy: at the supply side the development of energy infrastructures that would facilitate the access of energy products to the remote and less-developed regions of the Community; at the demand side to encourage energy consumers through their local authorities to develop a more active role.

The European Parliament was marked by deep party-political cleavages: the largest group, the Socialists, were against, and the European People's party in favour, but abstained when it the matter was to go the vote (Eising, 2002:93). The Parliament's Energy Committee in its first reading proposed the further energy market liberalization be postponed until greater harmonization of environmental regulations and taxes had been achieved, viewing such harmonization as a precondition for a free and fair market (Commission of the European Communities, 1993b). It next asked for a clear definition of public service obligations that could justify derogations from the general rules of the directive and a range of other changes that would strongly limit competition.¹⁸

In 1993, the Commission adopted a new proposal with amendments (Commission of the European Communities, 1993). DG Energy dismissed most of the parliamentary amendments, such as the conditional link between further liberalization and prior harmonization of environmental regulations/taxation; that only large industrial consumers and not the major distribution companies should be granted market access; and to exclude distribution companies from liberalization. It accepted keeping the negotiated access model as an option, to make greater reference to public service obligations, and to drop demands for mandatory *organizational* unbundling of vertically integrated network companies.

Despite these amendments, new rounds of negotiations followed before the Council and the Parliament agreed to the Electricity Directive in 1996 and the Gas Directive in 1998. France and Germany remained the strongest opponents of market liberalization (Eising, 2002:94). The UK and Ireland had now been joined by the Nordic countries Denmark, Sweden and Finland (the latter two members from 1995) pressing for a more far-reaching solution, but finally accepting a watered-down Electricity Directive. The final 1996 Electricity Directive granted large consumers and distribution companies the right to free market contracting. In a compromise to ensure reciprocity, the Directive demanded a minimum share of power consumption to be open for free contracting, amounting to 25% in 1997 (all consumers using more than 40 GWh per year), 28% in 2000 (consumers exceeding 20 GWh) and 32% in 2003 (consumer threshold 9 GWh). The 1998 Gas Directive left open for the member states to decide on the pace of the reforms (Stern, 1998).

The directives offered only a general framework for energy market liberalization, failing to harmonize national procedures. Member states could opt for either a system of regulated third-party access or the less transparent negotiated-access model. They could choose a single-buyer

¹⁸ The Parliament proposed to oblige the Member States to create an industry-dominated control body to assist national authorities in implementing the directive; to keep local distribution companies as monopoly businesses and require free access only to the transmission networks; to skip mandatory regulated access to networks and keep the negotiated access model as an option; to allow only large industrial consumers and not electricity distributors free access; and to skip mandatory management unbundling of transmission networks.

system (a compromise option brought in by France) in which one single firm would still control imports of energy into its area, advocated to ensure that governments still had the powers to induce public service obligations (PSOs) on firms. The directive provided for explicit deviation from general rules to give priority access to the grid for generators of electricity based on renewable energy sources (Article 8 (3)) and indigenous primary sources of energy (Article 8 (4)).

The lack of consensus on gas and electricity market regulation interacted strongly with parallel efforts in creating a new EU foreign energy policy. In 1990, Dutch Prime Minister Ruud Lubbers proposed a foreign energy policy plan for the EU based on exporting the free-market principles under development in the EU eastwards to Eastern Europe and the Soviet space. The Lubbers plan was to spur transition to a market economy, to guarantee property rights for foreign investors and increase possibilities to regulate transportation, market access, and constant access to all hydrocarbon reserves (Grätz, 2011:64). The Commission worked out a proposal for an Energy Charter Treaty that postulated free access to known and future energy resources and to their extraction, as well as a free energy market along the lines planned for the Community internal market (Grätz, 2011:65). The proposal was initially approved by Russian diplomats, but negotiations were delayed because of disunity on approaches to regulatory policy in the EU (Grätz, 2011:66). The proposal for mandatory third-party access to export and transit pipelines was strongly supported by the UK but dismissed by France and other member states. France and Norway resisted the mandatory national treatment principle of foreign investors (Grätz, 2011:66). While initially promoted by the Russian government, the Energy Charter Treaty was more and more seen as an infringement on sovereignty by the Duma, supported by Gazprom, with failed ratification as result (Grätz, 2011:67).

A priority for DG Energy in the second half of the 1990s was developing an EU policy to promote the uptake of renewables and to make this policy compatible with the intentions of the internal energy market. The only Community policy existing was a 40 million ECU ALTENER market support programme adopted in 1991 aimed at delivering on the indicative goals to increase the share of renewables from 4% in 1991 to 8% by 2005; tripling the production of renewable electricity; and secure a 5% market share of biofuels in total transport fuels consumption. In March 1994, Energy Commissioner Abel Matutes organized a conference to discuss an EU action plan for renewables, producing the Declaration of Madrid of 18 March 1994 that proposed sourcing 15% of EU energy from renewables by 2010. The 1995 Green Paper announced that a renewable energy strategy would be developed.

In 1996, Energy Commissioner Christos Papoutsis adopted a Green Paper suggesting the target of 12% renewables by 2010 (representing a doubling of the share from below 6% to 12% of gross inland consumption (Commission of the European Communities, 1996b). The target was justified in all the three energy policy goals formulated. The Green Paper suggested renewable energy technologies to be a key to future economic prosperity and competitiveness for Europe with expansion of home creating enormous growth potentials in international markets,

referring back to the 1993 Delors Commission White Paper on Growth, Competitiveness and Employment. It further stated that renewables could contribute to stabilize European energy costs, being indigenous resources unaffected by the price fluctuations on imported fuels (ibid.: 23).

The Green Paper documented major variation in renewables shares among the member states, pointing to the three new accession countries, Sweden, Finland and Austria as differing cases with relatively large shares.¹⁹ It further pointed to major differences in national goals for further growth in renewable energy and in member state resource potentials to justify accomplishing the Community 2010 objective through *differentiated goals* for the member states. The Green Paper recognized the principle of subsidiarity but also the need for cooperation at the Community level and promised to establish a Commission Inter-Service Group on Promotion of Renewables, responding to a European Parliament Resolution call for better internal Commission co-ordination of renewable energy policy development.

Concerning co-ordination with the parallel internal energy market process, the Green Paper stated that the adopted Electricity Directive had given transmission system operators the right to ensure priority access for renewables and that market-oriented support instruments would be needed not to distort competition. Acknowledging earlier failed energy taxation efforts, DG Energy now instead proposed tradable 'renewable energy credits' as an alternative market-compatible instrument that would apply to all utilities, be competitively neutral and cost efficient. Still, the Commission upheld fiscal harmonization as the preferred option for internalizing external costs, to ensure a correct functioning of the internal market and a more rapid introduction of renewables.

The European Parliament's response was to uphold the higher 15% goal set by the 1994 Madrid Declaration. It endorsed differentiated targets for the member states and agreed on further harmonization of taxes and environmental standards. Still, the Parliament called for a different financial support system to prevent disadvantages for renewables in the internal electricity market, proposing free nondiscriminatory access to the grid combined with a minimum utility payment for electricity supplied from renewable energies. It also called for a broader scope of measures to promote renewables: through a buildings directive (e.g. retrofitting buildings with solar panels), to increase the Community support budget to the level used for nuclear research, to develop a strategy for the use of agricultural and forestry biomass and an export strategy for renewable energy technologies. It even called for the constitution of a new Treaty for the promotion of renewable energy sources. The strong support for renewable energy in the European Parliament was now reinforced by a new stakeholder forum for renewable energy, EUFORES, established in

¹⁹ In 1994, the shares for renewable energy in national gross energy consumption were around 24% for Austria and Sweden and 19.3% for Finland. Except for Portugal with a share of 17.5%, all other countries had small or negligible shares. Five countries figured with shares of around 6–7%, six countries with shares in the 0–2% range.

1995 to co-ordinate national and EU-level parliamentarians as well as external stakeholders in the promotion of the use of renewable energy.

In the follow-up 1997 White Paper and Action Plan, DG Energy maintained the 12% target, and promised a proposal to promote and facilitate fair access for renewables in the electricity market (indicating increasing the share of renewables from 14.3% to 23.5% by 2010), (Commission of the European Communities, 1997). It also promised initiatives to promote biofuels for transport, heat and electricity and for the use of renewable energy sources in buildings. It upheld from the Green Paper, a quest for harmonization of energy taxes and national support schemes in order not to distort competition in the newly created internal market for electricity. However, as noted by Lauber (2007), DG Energy now also presented thoughts that contrasted with a purely market-driven approach to price-setting, stating that the price to be paid to a generator from renewable sources should at least equal the avoided cost of electricity in the retail market plus a premium reflecting the renewables' social and environmental benefits.

The Energy Council now supported the 12% target and the strategy to be based on harmonization of standards, appropriate regulatory measures to stimulate the market, investment aid in appropriate cases, and support for renewables in the Fifth Framework Programme for Research, Technological Development and Demonstration, without any commitments to resources, national targets or legal bindingness. This passive stance was criticized by the European Parliament and environmental groups, but also European environment ministers and the EU environment commissioner, Ritt Bjerregaard.²⁰

DG Energy now put in new efforts to ensure harmonization of national support schemes for renewables, and of national energy taxation, the latter in co-operation with DG Taxation, which in 1997 adopted a proposal for minimum taxation of energy products. In 1998, it devoted the first follow-up report on the 1996 Electricity Directive to the need for harmonization of national systems to promote the use of renewables (Eikeland, 2004).²¹ And, when starting drafting the promised RES directive, the Commission insisted on a harmonized system of quotas and tradable certificates.

This was fully in line with signals given by the Energy Council but at odds with signals given by the members of the European Parliament (MEPs), where the Green Group in particular voiced concerns that the new liberal electricity market would damage the competitiveness of renewables (Lauber, 2007). In 1998, the Parliament's Committee on Research, Technological Development and Energy presented a report

²⁰ ENDS Europe, 20 July, EU ministerial focuses on renewable energy.

²¹ Here, the Commission illustrated its concerns that non-harmonised schemes would result in trade distortions with an example. Given a country paying state aid to renewables (X) and another operating a system of green certificates (Y), '[i]f producers from X were permitted by country Y to issue and sell green certificates in Y, they may receive double support. Producers in Y selling in X would, on the other hand, receive not support whatsoever' (Commission of the European Communities, 1998b).

drafted by the German MEP Linkohr on request of the Parliament's President, outlining an alternative legislative proposal for an EU-level feed-in tariff system (Lauber, 2007). This system was modelled on the system adopted by Germany back in 1991, obliging grid owners to purchase power produced by renewables at a minimum guaranteed price set by the government. It had brought about rapid diffusion of renewable electricity, and was strongly supported by national producers of renewables.²² The German utilities, on the other hand, did not approve the system, and had on several occasions asked the National Constitutional Court to annul the law.²³ The German utilities got the European Commission Competition service as an ally, advising Germany in 1996 to modify the system since it broke with Community state aid guidelines, contested by the German Government. And when the major German utility PreussenElektra brought the national system in for evaluation by the European Court of Justice in 1998,²⁴ DG Competition joined in the case pleading the Court to expand the concept of state aid to situations where no specific state resources were involved (Lauber, 2007). In July 1998, Competition Commissioner Karel van Miert sent a new letter to the German Finance Ministry claiming the German renewables support scheme to be at odds with the liberalization of EU's internal electricity market.²⁵ DG Competition's distaste for national support to renewable energy became reflected also in the new guidelines for state aid now under preparation and finally adopted by the Commission early 2001. These were quite restrictive as to the level of aid that could be given to renewable energy sources, quite the opposite of the generous support in certain member states (Flåm, 2008).

Whereas the Energy Council had earlier tilted towards supporting a harmonized support system, this changed after German elections in the fall of 1998 brought a new red/green government of the Social Democratic Party and Green Party to power putting more energy into defence of its national feed-in tariff system (Lauber, 2007). With a new strong voice in the Council against any mandatory market-based system, the political situation for DG Energy's work on the Renewable Electricity Directive was altered and early 1999 it shelved its draft proposal and instead forwarded a working paper, 'Electricity from renewable energy sources and the internal electricity market' (European Commission 1999), canvassing 'options' for boosting renewable energy and setting rules for support schemes. At the press conference, Energy Commissioner Christos Papoutsis asked the Energy Council and the Parliament if they really wanted a new directive or rather skip it and promote renewables based on EU Treaty internal market and state aid rules.²⁶ The working paper upheld earlier Commission assessments that variation in support

²² ENDS Europe, 9 February 1999. 'Plan for EU renewable energy law shelved'.

²³ ENDS Europe, 20 November 1998 'German renewable energy support debated'.

²⁴ PreussenElektra filed a case against electricity distributor Schleswig, to which PreussenElektra held majority ownership. The former company had invoiced the latter for additional expenses connected to payment of feed-in tariffs to producers of renewable energy.

²⁵ ENDS Europe 20 November 1998 'German renewable energy support debated'.

²⁶ European Commission, Press conference 13 April, 1999, Brussels, Commission adopts working paper on electricity from renewable energy sources and the internal market.

mechanisms across the member states would likely result in distortions of trade and competition (Lauber, 2007).

The Energy Council concluded that it still wanted a distinct Community-level renewable electricity framework, but now emphasized strongly the subsidiarity principle regarding choice of support mechanisms for renewable energy. The Council emphasized that the framework should recognize the difference in technological maturity of various types of renewables and their degree of competitiveness with conventional energy sources, as well as differing national circumstances. It also acknowledged that market-based instruments in general would provide the best way to reduce costs quickly relative to other energy sources, and that increasing trade between producers and consumers in the internal electricity market could contribute to the expansion of the share of electricity produced from renewables.²⁷

Based on these not fully consistent conclusions, the Commission went on to draft a new RES-E Directive, retaining the proposal for a fully-harmonized single market quota scheme but with a transition period for its introduction. Again, the majority of the member state governments failed to approve the draft. When Loyola de Palacio took over as Commissioner for Energy and Transport (DG TREN) in the new Commission led by Romano Prodi in 1999, she formulated first one more draft along the lines of her predecessor, again attracting opposition, before turning around in a new draft early 2000 that would allow member states to continue their national support schemes (Lauber, 2007). The front fighters against tradable certificates had now won the battle – the German government supported by Spain, the renewable energy industry and environmental NGOs.²⁸ Commissioner de Palacio pragmatically admitted that the Commission had insufficient experience to decide for one particular system of support and instead put into the directive that the Commission should report on the pros and cons of each type of scheme in 2005, before returning with a proposal for further harmonization. 10 May 2000, the final proposal was adopted by the European Commission, setting the target of increasing the share of renewably generated electricity from 14% to 22% by 2010, and non-binding indicative national targets. The draft included a provision, however, that targets would be made mandatory, should progress towards the EU target be poor. It also proposed mandating renewably-generated power priority access to electricity grids, and certification of green energy schemes to provide a guarantee that electricity sold actually came from renewables.

With a harmonized EU-level support scheme taken out, negotiations with the Council and Parliament now centred on the differentiated individual targets set for the member states, based on targets already set nationally for around half of them, and stricter targets for the rest.²⁹ Negotiations ended with three member states getting reduced commitments: Portugal, Finland, and the Netherlands. Four additional members accepted the

²⁷ Conclusions of Energy Council meeting 11 May 1999

²⁸ ENDS Europe, 'De Palacio outlines EU renewable energy plan', 10 April 2000.

²⁹ ENDS Europe, 10 May 2000, 'EU renewable energy support directive proposed'.

target only they managed to get clauses included. Hydropower-dependent Austria and Sweden made the target dependent on the level of precipitation. Italy stated 22% more realistic than the set 25% and also Luxembourg put in various conditions for the country to reach its target of 5.7%.³⁰

The Energy Council additionally deleted the provision proposed that targets would be made mandatory if progress towards the EU target proved to be slow, and discarded the proposal to mandate renewably-generated power priority access to electricity grids, leaving this up to national discretion. The Commission proposal to mandate certification of green energy schemes to provide a guarantee that electricity sold actually came from renewables (Guarantees of Origin) was adopted only after the Commission pointed out that the provision served only the purpose of asserting the electricity sold and not as a step towards a tradable instrument (Nilsson, Nilsson and Ericsson, 2009). The European Parliament did not succeed in making the targets binding for the member states (with sanctions, should targets not be achieved) apparently optimistic that this could still be accepted by the Council because the number of EU governments in favour of binding targets was growing – with Germany the latest convert.³¹

Summing up, DG TREN did not come through in efforts to ensure a renewable energy policy coherent with its parallel work of internal energy market integration. DG Competition became a close ally in these efforts, but was side-stepped by the ECJ court ruling of 13 March 2001 in the *PreussenElektra* case settling that the German feed-in tariff system should not be considered illegal state aid, and that it would be compatible with the electricity market directive because of its clause allowing derogations in cases of public service obligations.

As noted above, also DG Environment had embarked on a strategy advocating internal market-compatible policy instruments in the 1990s. Towards the end of the decade, DG Environment hired in a group of economists specifically focusing on the use of market-compatible instruments for the new Community climate policy, established after the member-state governments agreed that the EU could take on joint EU commitments under the Kyoto Protocol in 1997 (8% reduction target to 2008–2012 from the 1990 level) and in 1998 agreed on an internal burden-sharing scheme to facilitate joint implementation of the commitments. With the demise of the harmonized CO₂/energy tax fresh in mind, attention was given to an alternative system of tradable CO₂ emission permits (Skjærseth and Wettestad, 2008). In its 2000 Green Paper on GHG emissions trading, DG Environment thus stated that: *a coherent and co-ordinated framework for implementing emissions trading covering all member states would provide the best guarantee for a smooth functioning internal emissions market as compared to a set of*

³⁰ DIRECTIVE 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market.

³¹ ENDS Europe, 4 December 2000, 'EU governments to reach renewables deal'.

uncoordinated national emissions trading schemes.... The development of the internal market has been one of the driving forces behind the EU's recent development, and this should be taken into consideration when creating new markets.... The Commission believes that a Community approach is necessary to ensure competition is not distorted within the internal market (Commission of the European Communities, 2000a).

3.6 EU energy policy 2000–2005

At the start of the new decade, signs of low productivity and stagnation of industrial growth came up as key concerns among the EU leaders. The Lisbon European Council of March 2000 thus agreed on a new industrial growth and competitiveness strategy for the European Union, rooted in the plan adopted in 1993 by the Delors Commission (see also section 3.4 and 3.5 above). The goal set for this new Lisbon Strategy was for the EU 'to become the most competitive and dynamic knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion' by 2010. The list of associated actions included removal of barriers to trade and competition in the European Union, the energy market included. Implementation should, according to the Council conclusions, be facilitated through a new 'open method of coordination' to include: fixing guidelines combined with specific timetables for the short, medium and long terms; establishing quantitative and qualitative indicators and benchmarks as a means of comparing best practice; periodic monitoring, evaluation and peer review organized as mutual learning processes. These procedures became eagerly implemented by DG TREN.

The Prodi Commission elaborated the Lisbon Strategy along several dimensions. One was the Better Regulation Plan launched in 2002, based on two Commission communications from 2001. One of these settled principles of 'good governance': openness, participation, accountability, effectiveness and coherence, a culture of consultation and dialogue, including stakeholder consultation in the preparation of policy proposals (Commission of the European Communities, 2001a). The other communication referred to a dual objective: 'improving the practices and current provisions of regulatory activity, throughout the legislative cycle', and 'simplifying existing legislation, in both qualitative and quantitative terms' (Commission of the European Communities, 2001b). In 2002, the Commission followed up with a White Paper proposing the introduction of Impact Assessments (IA), linked to this plan and the parallel EU Sustainable Development Strategy also adopted in 2001 on request of the Gothenburg European Council. Implemented in 2003, this IA system replaced former sectoral assessments and introduced the aim of a balanced and comprehensive assessment of economic, social and environmental impacts of new Commission policy proposals. The new IA guidelines required all items included in the Commission's Legislative and Work Programme to undergo a 'Preliminary Impact Assessment' with the College of Commissioners to decide whether the proposal would result in substantial impacts on a specific sector or interested party, and if so, to undergo an 'Extended Impact Assessment'. The key objectives of IAs were: to improve the quality of commission proposals, to provide an effective aid to decision-making, and to serve as a valuable communi-

cation tool. This included gathering data and input from relevant sources, carefully assessing the likely economic, social and environmental consequences of policy proposals, examining relevant policy alternatives, and basing proposals on objective evidence; to make obligatory external stakeholder consultations and internal Commission service co-ordination and exchange.

The return of security of energy supply concerns

The new focus on industrial growth and competitiveness was now reinforced by geopolitical events causing rapid increases in oil prices, and hence, gas and electricity prices: the 9/11 terror attacks in the USA, followed by the Iraq War, as well as the rising demands for oil from China and other emerging growth economies.³² With the EU's own oil and gas resources in decline, combined with rising oil and gas import dependency (further aggravated after the 2000 Nice Summit had opened the EU up to new applicant countries from Eastern Europe), DG TREN in November 2000 adopted the Green Paper 'Towards a European strategy for the security of energy supply' (Commission of the European Communities, 2000b). In line with the Lisbon Agenda, these events were viewed not primarily as threats to physical security of supply but first and foremost as a risk that high energy prices would curtail economic growth and industrial competitiveness.

The Green Paper expressed deep concern with lack of resources and instruments at the EU level to manage security of supply risks. It drew the lines back to the ECSC and Euratom Treaties and lamented that member states had chosen not to lay the foundations of a common energy policy in the Treaty establishing the European Economic Community and subsequent Treaties with the result that energy problems had been approached only through the mechanism of the internal market, or from the angle of harmonization of environmental policy or taxation. The Green Paper even pointed to additional limits introduced by the Maastricht Treaty. While the oil stocks of the 1970s had been adopted by qualified majority under the Treaty of Rome (Article 103), such decisions now needed unanimity under Maastricht Treaty Article 100. The Green Paper saw this limitation as particularly problematic: member state interdependencies had grown, in turn caused by climate change and the creation of the internal energy market casing energy policy decisions in one member state inevitably having repercussions on others as well.

The Green Paper rhetorically asked stakeholders to discuss a series of principal questions, including: whether higher import dependencies should be seen as essentially an economic or a geopolitical threat, and, what energy sources, solutions and instruments should be adopted at the Community level given the limited room for manoeuvre due to member state unwillingness to transfer power to the Community level. DG TREN's own answer was that it saw the best chance for adopting a Community security of supply policy through i) a joint approach towards supplier countries, ii) to focus attention on financial aid for renewable

³² Brent Blend average prices jumped from \$17.88/bbl in 1999 to \$28.39/bbl in 2000.

sources of energy to diversify supply, and iii) to develop a determined policy of demand management, the latter also viewed as the only way of meeting the challenge of climate change (Commission of the European Communities, 2000b: 46).

An accompanying 'Technical Report' incorporated a broader discussion about the consistency of the goals adopted for EU energy policy. It concluded: *'The internal market in electricity ... has had two opposing effects related to security of supply. First, it has improved the overall efficiency of the energy system and created a market for more energy saving electrotechnologies.... Second, however, it has made investments, which require large capital input or which have long pay back periods less attractive. Investment in research, particularly basic research, and development of new energy technologies may be put at risk. An additional issue is the impact of competition. If this brings prices down, as appears to be the case, demand could rise as a result.... This combination of factors could work to the disadvantage of supply security and consequently lead to price rises or even interruptions in supply, as has been seen in parts of the US market.'* (Commission of the European Communities, 2000c: 21).

Similarly, the report acknowledged that: *'The evidence of climate change and the demands of sustainable development greatly restrict the possible options in the supply security debate. Yet secure energy supplies and sustainable development share similar aims: reducing energy intensity, improving energy efficiency and increasing clean, indigenous and renewable energy sources simultaneously serve environmental and energy supply objectives'*. (ibid.).

In its summary of the consultations, DG TREN heralded the process for having 'revived energy policy discussions unprecedented in 30 years' and stimulated equivalent discussions in the US (preparation of the Bush energy plan), Japan and Russia. According to DG TREN, the consultations revealed strong unanimous support for a stronger demand policy, and to put combating global warming as priority for supply policies, notably through the further promotion of new renewable energy sources and analysis of the contribution of nuclear energy in the middle term, although a polarized view on the longer-term future of nuclear power was clearly seen in the consultations. The Commission additionally concluded the consultations to have provided stronger support for the build-up of strategic stocks and to foresee new import routes for oil and gas (Commission of the European Communities, 2002).

DG TREN followed up with new energy policy proposals responding to both the security of supply and climate change concerns, some of them long in the pipeline (see below). DG TREN also adopted new draft directives in 2002 for joint and co-ordinated increases in oil and gas stocks, the harmonization of national security of supply standards, and to vest more power over oil and gas crises management within a new Community agency. These proposals were, however, not accepted. Early 2004, the Parliament backed the Council in settling the principle that security of supply standards would be set nationally and that oil and gas stocks would continue as matters of national responsibility.

Major black-outs in European electricity systems in the summer of 2003 fanned the Commission to propose additional security of supply legislation: directives aimed at ensuring coordination between Member states in case of major disruptions of natural gas and electricity supply. One of these was adopted in 2004, providing for a formal coordination group to monitor security of supply and ensure coordination between member states in case of major disruption of gas supplies³³ A directive to safeguard security of supply and infrastructure investments in electricity was finally adopted early 2006.³⁴ The Directive aimed at ensuring the proper functioning of the EU internal market for electricity, an adequate level of interconnection between member states, an adequate level of generation capacity and balance between supply and demand.

Higher attention to the climate change problem

The EU climate policy discussions post 2000 largely revolved around achieving the Kyoto Protocol targets and setting new post-Kyoto targets. In March 2000, DG Environment set up the European Climate Change Programme (ECCP), bringing together national experts, NGOs and industry to identify and quantify 'common and coordinated policies and measures'.³⁵ Its first published report in 2001 stated optimistically that the EU could meet its Kyoto Protocol commitments twice over through cost-effective emission reduction measures (with costs under Euros 20 per tonne). It listed eight energy and climate policy options already at advanced stages of preparation that could account for over two-thirds of the bloc's commitment: directives to promote renewables, including biofuels in transport, to encourage energy efficient buildings and to establish an emissions trading system.

A March 2000 Green Paper had outlined specific design proposals for an emissions trading system that included an implicit recommendation for the cap of allowances to be determined at the EU level (Skjærseth and Wettestad, 2008). This was abandoned in the proposal adopted by DG Environment in October 2001, proposing instead decentralized national allocation, in line with the wishes of the member state governments. While debating the proposal, the European Environment Agency 2000 Greenhouse Gas Inventory (published in April 2002) showed an increase in emissions and deviation from the distance-to-target indicator needed for the EU to achieve its Kyoto commitments, prompting Environment Commissioner Wallström to urge for higher efforts in getting adopted new EU-coordinated policy proposals. July 2003, the final ET Directive was agreed and formally adopted by the Council, maintaining intact the main shape and content of the 2001 proposal (Skjærseth and Wettestad, 2008).

³³ Council Directive 2004/67/EC of 26 April 2004 concerning measures to safeguard security of natural gas supply. The directive defined 'major disruption' as meaning at least 20% of EU imports or if a Member State indicates to the Commission the occurrence of an event which cannot be adequately managed with national measures.

³⁴ Directive 2005/89/EC of the European Parliament and of the Council of 18 January 2006 to safeguard Security of Supply and Infrastructure investments in electricity.

³⁵ ENDS Europe, 8 March 2003, 'Commission unveils EU climate strategy'.

Support for more ambitious long-term climate policies now came from various member-state governments. Early in 2003, the UK Prime Minister Tony Blair unveiled promises for a 60% cut in UK CO₂ emissions by 2050, sending a clear signal into the debate started on post-Kyoto policies. Blair compared climate change as a threat to global security on a par with weapons of mass destruction, and stressed that the potential of technological development would enable transition to ‘a truly low-carbon economy’ without causing the sort of economic damage feared by countries like the USA.³⁶ Supported by Swedish PM Göran Persson in a joint letter to the EU’s Greek presidency, Blair urged all other EU countries to take on similar long-term commitments and ‘start delivering concrete outputs’, calling for national renewable energy targets and EU-wide policies for energy efficiency, infrastructure for alternative road fuels, environmental classification of cars and lorries, the phase-out of environmentally harmful subsidies, and a reform of EU funding of environmental technologies (ibid.).

Environment Commissioner Wallström followed up at the joint Energy and Environment meeting in July 2003 proposing a long-term EU renewable energy strategy: to set a 25% target for renewables in total energy consumption by 2020. This goal was supported by the German environment minister Jürgen Trittin, who also called for an international agreement to limit any rise in average world temperatures to no more 2°C.

By late 2003, a split was apparent among member states and also between various services of the European Commission on EU climate policies. Several European capitals voiced concerns that the Kyoto Protocol commitments would add costs to industry and seriously threaten European competitiveness. In a communiqué approved by EU heads of government in Brussels 12 December 2003, Spain and the EU’s presidency Italy tried unsuccessfully to insert a text explicitly identifying the Kyoto protocol as a problem for European business. The final text went in the same direction but much more cryptically, following a fight back by member states including France, Denmark and Sweden as well as the European Commission.

Backing this concern over costs was Energy Commissioner Loyola de Palacio – herself Spanish and a political ally of then Spanish Prime Minister José-María Aznar. Commission de Palacio openly questioned the wisdom of implementing the Kyoto Protocol at all if Russia did not ratify. Commission President Romano Prodi immediately rebuffed such a ‘plan B’.³⁷ Environment Commissioner Wallström struck back, fiercely criticizing de Palacio and the Spanish government for ‘undermining’ Europe’s commitment to the Kyoto protocol, stating in a 30 January 2004 press briefing: *‘If Loyola has a personal view – which I think she has – she should make a distinction between it and the EU view.’* *‘Repeated discussions’ on Kyoto within the Commission had yielded ‘overwhelming*

³⁶ ENDS Europe, ‘UK urges EU toward 60% CO₂ emissions cut’, 24 February 2003’.

³⁷ ENDS Europe, 17 December 2003. ‘Prodi tries to hold the line on Kyoto protocol’.

support', she added.³⁸ In early February 2004, the French and German environment ministers came out with a joint support for new clout in EU climate policy: to get the EU ETS adopted, to impose efficiency standards on new cars (120 gCO₂/km), and set EU target of 20% renewables by 2020, the latter waged by European renewable energy interests, lower than that proposed by Environment Commissioner Wallström in June 2003.

Yet, Energy Commissioner de Palacio still harboured doubts as to EU Commission Kyoto Protocol commitments. She was quoted in a *Financial Times* interview as stating: '*We should look at other ways of achieving our goal – to reduce emissions – while maintaining the competitiveness of our industry.*'³⁹ Again President Prodi had to intervene to assure that the Commission 'strongly rejects all calls to change its position concerning the ratification of the Kyoto Protocol and its full implementation by the European Union'.⁴⁰ Commissioner de Palacio's view was, however, strongly backed by Europe's main business association UNICE.

At their spring 2004 summit, the EU Heads of State reaffirmed their commitment to the Kyoto targets and opened the door to launching a debate on post-2012 targets.⁴¹ Italy was politically isolated in its continued push for competitiveness safeguards like those demanded by UNICE.

While the Environment Commissioner and environmental ministers now called for long-term targets also for renewable energy, DG TREN in a May 2004 communication stated that no long-term targets would be proposed before 2007 because of various obstacles, including 'technical and practical limits' on renewables' 'cost-effective availability' (Commission of the European Communities, 2004). The communication concluded that extended impact analysis would be needed before setting long-term targets. The bulk of the communication evaluated progress towards the existing 2010 targets already set, believed to be missed due to meagre performance by the member states. The communication promised a coordinated biomass plan by the end of 2005 and new proposals to increase the use of biofuels, but dismissing targets for renewable heat as impractical.

Energy policy outputs in response to the joint security of supply/climate change agenda

DG TREN justified three parallel energy policy proposals in the early 2000s as responses to the combined security of supply/climate change problems: the promotion of biofuels, energy efficiency and energy taxation, all based in White Papers submitted back in 1997. In 2001, DG TREN proposed a Biofuels Directive that, like the RES Directive, set quantitative targets for 2010, but in contrast, suggested a flat rate for all

³⁸ENDS Europe, 30 January 2004. 'Wallström attacks Kyoto protocol doubters'.

³⁹Financial Times, 'Energy chief challenges EU stance on Kyoto', February 26, 2004.

⁴⁰Financial Times, 'Prodi stands by EU Kyoto policy', February 27, 2004.

⁴¹ENDS Europe, 26 March 2004, 'Competitiveness worries dominate EU summit'.

the member states (2% biofuels in total transport fuels consumption by 2005; 5.75% by 2010). The Directive was made part of a package that included also an Action Plan on alternative transport fuels proposing a longer-term 2020 goal of 20% for biofuels in total transport fuels consumption, and a revised Energy Product Taxation Directive pending since 1997. The latter proposed that member states should be allowed a reduction in excise duties on biofuels by up to 50%, or full de-taxation of the fraction blended in ordinary fuels and for biofuels in captive fleets. The long-term Action plan was supported by the farming lobby but strongly opposed by environmental NGOs, claiming the goal to set European biodiversity and wildlife at risk by encouraging high-intensity non-food farming on traditional set-aside land, with fewer controls on pesticide application and concerns over air quality due to claimed higher exhaust emissions. The *European Environmental Bureau (EEB)* called for dropping the plan entirely, seeing the motivation behind the plan solely to be aid for agricultural restructuring. Even the climate change potential was questioned since biofuels production would be dependent on the input of fossil fuels.⁴²

The oil industry lobby group *EUROPIA* claimed the proposal ‘premature’ as the science was not yet worked through and because it gave the industry no flexibility whatsoever to meet the targets.⁴³ The oil lobby was neither happy with the biofuels tax exemption proposal – actually tabled first time in the early 1990s by French Tax Commissioner Christiane Scrivener as part of the energy/climate tax scheme then proposed, mirroring policies already adopted in France, who had taken a European lead role in biofuels investments (Eikeland, 2005).⁴⁴ The oil industry fought also this French tax exemption scheme, filed for investigation by the ECJ by British Petroleum, viewing it a competitive threat to its own petro-based ethanol production. The European Commission joined France as counterpart to BP in the case. In 2001, while drafting the Energy Tax Directive, the Court decided in favour of BP, prompting an immediate appeal by France and the European Commission. Early 2002, the Court annulled the 2001 decision⁴⁵, paving the way for EU-level action. In 2002, however, tax exemptions for biofuels were made a bargaining chip when the European finance ministers debated the Energy Product Tax Directive.⁴⁶ Now, the French minister called for differential taxes for petrol and diesel to support its road haulage industry, making the UK threaten to reject exemptions for biofuels unless France decided to moderate its position.⁴⁷

While DG TREN’s proposal opted for mandatory targets for biofuels, EU energy ministers only agreed on *indicative and optional* targets.⁴⁸ The

⁴² ENDS Europe, 18 September 2001, ‘Tough road ahead for EU biofuels plan’.

⁴³ ENDS Europe, 8 November 2001, ‘EU biofuels support package published’

⁴⁴ The leading role of France was moreover reflected in the fact that it was chosen to head the first EU Commission-initiated EU Forum on Biofuels, held in the French city of Tours in May 1994.

⁴⁵ ENDS Europe, 9 January 2002, ‘French biofuels aid back on road to EU approval’.

⁴⁶ ENDS Europe, 5 June 2002, ‘New setbacks for EU energy tax plan’.

⁴⁷ Ibid.

⁴⁸ ENDS Europe, 10 June 2002, ‘Ministers clip wings of biofuel package’.

Industry and Energy Committee of the European Parliament still voted for binding targets, passing this opinion to the full assembly.⁴⁹ In a move to influence the Parliament, the Council of Finance Ministers agreed unanimously to accept tax exemptions for biofuels, even opening for a 100% duty relief⁵⁰, but threatened to scrap these if the Parliament did not drop demands for binding targets in the Biofuels Directive.⁵¹ Its energy committee admitted defeat and dropped demands for binding targets out of fear that the Council would drop tax exemptions for biofuels.⁵² The numerous compromises required to win the unanimous backing of the fifteen EU states for the Energy Tax Directive had, however, trimmed it of any near-term consequences for national tax levels.⁵³ In light of earlier strong opposition, however, and the fact that unanimity voting was required, the Energy Tax Directive represented a clear acceptance of stronger energy policy integration, and established a framework that could facilitate future upwards adjustments of tax levels.

As to *energy efficiency policy* outputs, promised as a priority areas by DG TREN in the 2000 Green Paper, the EU adopted in 2002 the Energy Performance of Buildings Directive and in 2003, the CHP Directive, aimed at creating demand for more energy efficient heat- and power-supply technology. The former had been requested by the Parliament when debating the 1997 White Paper on Renewable Energy and the latter had pended from the 1997 White Paper on CHP. Late 2003, the Commission tabled proposals for directives on energy end-use efficiency and energy services as well as eco-design directive to provide the framework for later efficiency standards for all energy-consuming products in the Community. Like the directives for the promotion of renewables, the energy efficiency directives put no legal binding quantitative energy savings targets on the member states.

New internal energy market policy efforts

At the end of the 1990s, the European Commission established informal forums (the Florence Forum and the Madrid Forum) for extended stakeholder involvement in discussing harmonization needs for national rules regulating allocation of access to interconnections and thus trade in energy across the member states. Included were representatives of the Commission, national regulatory authorities, member state governments, transmission system operators, traders, consumers, network users, and power exchanges. These forums represented broader stakeholder involvement than the working group system applied earlier in the 1990s. In parallel, the Commission published follow-up reports on the Gas and Electricity Directives in 1999 and 2000, identifying technical and national legal specification obstacles to cross-border trade, pointing to

⁴⁹ ENDS Europe, 19 June 2002, 'MEPs insist on binding EU biofuels target'.

⁵⁰ ENDS Europe, 21 June 2002, 'States agree free-for-all on biofuel support'.

⁵¹ ENDS Europe, 19 November 2002, 'Council confirms non-binding EU biofuel targets'.

⁵² ENDS Europe, 24 February 2003, 'MEPs admit defeat on EU biofuel promotion'.

⁵³ The many exemptions allowed in the tax regime led EU Internal Market and Taxation Commissioner Frits Bolkestein to compare it to a Gruyere cheese, 'too many holes' (Christiansen and Hasselknippe, 2003).

major variation in transmission prices, congestion management systems and outright lack of transmission capacity.

Also in parallel, DG TREN started applying the benchmark tools adopted as part of the new open method of co-ordination of the Lisbon Strategy to compare member state performance in implementing the directives and in removing additional barriers to the internal energy market. Also benchmarked were indicators of competition, such as price levels and rate of consumer switches of suppliers. The first benchmarking report published 2001 concluded that the process of creating a level playing field internal market in energy had run into serious problems, due to asymmetry in implementation of legislation and obstacles to cross-border trade.⁵⁴ The concerns were no less worrying when the 2003 benchmarking report identified a continued high degree of market concentration in gas and electricity industries in many member states.

This documentation gave the Commission ammunition to target individual member states, and to elaborate more in-depth community level regulation to save the internal market project from falling apart, a diagnosis condoned by the 2001 Gothenburg European Council, asking the Commission to prepare a second package of internal energy market measures. On this basis, DG TREN came up with a package of proposals for amended Electricity and Gas Directives and two new regulations to create a framework for identifying and acting on harmonization of factors constraining access to cross-border infrastructure and cross-border trade (such as rules for inter-TSO compensation, national transmission tariffs and on allocation of cross-border interconnection capacity).

The package was finally adopted by the Council in June 2003. The amended directives required full electricity and gas market opening for non-household consumers by July 2004 and for all consumers by July 2007.⁵⁵ To prevent discrimination by TSOs in transmission system access issues, the directives mandated organizational separation of units operating transmission activities from those operating generation and supply activities (legal unbundling). The Commission surely wanted to see full ownership unbundling, supported also by strong voices in the European Parliament, but failed to include this in the proposal due to great opposition by many member states. The directives additionally instructed the member states to set up national regulatory agencies with well-defined functions and greater transparency was called for in that the directives mandated publication of network tariffs by the TSOs (regulated

⁵⁴ The report showed that some member states had not adapted national legislation to the directives. Several countries showed little progress in the rate at which customers were entitled to switch suppliers. For several countries, failure in ensuring fair access to transmission and distribution networks was recorded. Moreover, the reports showed that some member states had not even set deadlines for full market opening. Implementation 'failures' and asymmetries were generally greater for the Gas Directive than for the Electricity Directive.

⁵⁵ Directive 2003/54/EC of the European Parliament and the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC, and Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC.

access) instead of case-by-case negotiations. The two Regulations aimed at harmonizing rules for cross-border interconnections and trade sought to formalize and strengthen the work carried out in the Florence and Madrid Forums, establishing a EU-level committee of member state regulatory authorities, the European Regulators' Group for Electricity and Gas (EREG), to discuss and agree on guidelines for further harmonization.⁵⁶

Also tied to the internal energy market process, the EU adopted in 2002 Regulation 1407/2002 aimed at gearing up the phase-out of coal subsidies that had been started back in the early 1990s. The Regulation stated that: the amount of aid to the coal industry 'shall follow a downward trend so as to result in a significant reduction'. Still, the Regulation specified no clear time table for implementation of such reduction.

Energy infrastructure policies

As noted above, the Maastricht Treaty had provided for a Trans-European Network mechanism, in 1996 codified through a Regulation adopting Guidelines for the Community co-financing of feasibility studies for new gas and electricity supply infrastructure. Very limited funding had, however, been made available. In parallel with reform work on the internal energy market directives, the Commission also brought up reform of energy infrastructure policies for discussion. The two policy fields were viewed as strongly interconnected. Lack of cross-border interconnectors was viewed as an important obstacle to realize trade and competition in the internal energy market. The Commission adopted a Communication on 20 December 2001 that proposed the target of minimum 10% interconnection capacity from each member state and revised TEN-Energy guidelines that would concentrate financial aid available to 12 priority projects of European interest, identified as essential for completing the internal market (Commission of the European Communities, 2001c).

The Barcelona Council in 2002 endorsed the 10% target; and, after discussions in the European Parliament and the Council, the EU in June 2003 decided on the new guidelines.⁵⁷ These set better working of the internal market as the core criterion for support, but identified also security of supply, integration of renewable energy, enlargement and the integration of ultra-peripheral regions as additional criteria for determining Community support.

The serious electricity blackouts during summer 2003 in several European electricity systems led DG TREN to return immediately with a new and even more comprehensive proposal to speed up investments

⁵⁶ Regulation (EC) No 1228/2003 of the European Parliament and of the Council on conditions for access to the network for cross-border exchanges in electricity, and Regulation (EC) No 1775/2005 of the European Parliament and of the Council of 28 September 2005 on conditions for access to the natural gas transmission networks.

⁵⁷ DECISION No 1229/2003/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2003 laying down a series of guidelines for trans-European energy networks and repealing Decision No 1254/96/EC.

in energy infrastructure, as part of a 10 December 2003 policy package (Commission of the European Communities, 2003). Here, DG TREN proposed the adoption of new guidelines to the upcoming enlargement of 10 new member states and to attribute a Declaration of European Interest and designate a coordinator for cross-border priority projects, to accelerate their preparation and facilitate their way through lengthy national authorization procedures.

New efforts to include energy as a chapter in the EU Treaty – the drafting of a new constitution

The plan to let in new eastern European countries into the Community at the start of the decade called for institutional change to prevent reducing the efficiency of EU decision-making and loss of momentum in EU integration. The Declaration from the Laeken European Council of 2001 included the idea of a new Constitution for the Community: with, among other things, rewritten voting rules for the Council and clarified demarcation of roles for EU institutions and member state governments. The EU leaders also decided to convene a Convention to prepare this work for the next Intergovernmental Conference, to be chaired by former French President Valéry Giscard d'Estaing and composed of members of the national parliaments of each member and applicant state, the national governments, the European Parliament and the European Commission. A first draft Constitution, to replace existing treaties, was prepared by the European Commission under the code the 'Penelope Project' and backed by President Prodi. With policy energy so politicized, it was not included in the first draft, specifically highlighted by the Commission.⁵⁸

Yet, with the concurrent political momentum building up for energy and climate change issues, the Convention managed to get energy policy included after protracted negotiations in the Intergovernmental Conference during the Italian presidency in 2003 (Duff, Andrew, 2006, Plan B: How to rescue the European Constitution, Notre Europe Studies and Research N°52, Brussels: Notre Europe The Article III-256. The new Article III-256 essentially put energy in as a policy area of shared competency, still protecting 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'. And, a special Council law, decided by unanimity and excluding co-decision with the Parliament, would still be needed for deciding on Community-wide fiscal measures in the energy sector. According to Duff (2006) the British Government was the most vehement opponent of the energy article. In the end, however, all member state governments accepted the new legal basis for energy policy decisions at the Community level when settled in June 2004.

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(http://ec.europa.eu/economy_finance/emu_history/documents/treaties/Penelope%20pdf_en.pdf).

Still, the Constitution needed ratification by EU member state parliaments, prompting new opportunities for sceptics wishing to derail the plans with demands for popular vote through referendums. When first France, and next, the Dutch referendums late Spring 2005 ended with clear opposition to the Constitution, the EU had to abandon this idea and instead redraft new decision rules in the guise of a new Treaty. The energy article remained intact in this process, with a new solidarity clause added.

3.7 Summary – the baseline ‘ambitiousness situation’ for EU energy policy integration

Summing up on energy policy integration efforts at the start of the 2000s, higher attention to industrial competitiveness, climate change and security of supply gave new impetus and brought about decisions on proposals long in the pipeline as well as new proposals. In terms of actual integration, however, the new energy legislation marked only modest transfer of decision power to the EU level. Most directives established were framework directives; the targets set were only non-binding; and legislation generally failed to harmonize national policy instruments.

The long-term presentation above showed substantial initial energy policy integration in the Community through the ESCS Treaty, reflected new will between World War II enemy states to avoid future conflicts over resources. Yet, energy policy was not included in the EC Treaty. This entailed that decisions beyond those relating to coal and nuclear power needed full unanimous support in the Council, a serious obstacle to further policy integration. This legacy reflected that coal by far the dominating primary energy source used by member states when the initial Community treaties were drafted and adopted.

Efforts to include energy in the Treaty were repeatedly turned down by the member states fearing Community-level interference with how they derived value from national resources. Typical of the situation was the recurrent failure to adopt policies for joint management of fossil fuels emergency stocks because of opposition from the resource-rich member states. Even resource-poor member states, however, guarded their right to freely govern national energy industries, underpinned by a deeply rooted political understanding of these industries as strategically too important to allow Community interference.

On the other hand, concerns with transboundary pollution from energy generation generated new request for policy integration in the form of stricter and more harmonized regulations of emissions. Emissions in one country caused environmental damages in another country, and the member states also feared that costly national emissions control could damage industrial competitiveness unless trading partners were subject to similar regulations. The adoption of the Large Combustion Plant Directive of 1988 marked a breakthrough for the idea of stronger environmental policy integration at the Community level as a solution to maintain level-playing field competition in the energy industry.

In the late 1980s, EU leaders decided to revitalize trade and internal market integration to improve international competitiveness for European industries, adopting the Single European Act that opened for policy harmonization in new areas. Energy eventually became included as an internal market project after pressure from European energy-intensive industries, seeing an open and competitive energy market as a road to lower energy prices and improved international competitiveness. Now, also climate change concerns appeared on the agenda with CO₂ emissions from the combustion of fossil fuels a main cause of the problem. The concurrent combination market de-regulation to reduce prices appeared in contradiction with countering climate change, for which several member states picked up internalization of external costs through taxation as a solution. The European Commission picked up the idea, acknowledging that environmental taxes, if harmonized across the member states, could be an instrument providing price incentives for market agents to solve environmental problems that gave minimal regulatory distortion of competition for industries across the Community.

Energy policy integration efforts throughout the 1990s thus focussed strongly on the establishment of an internal energy market with fair competition and free access for all producers and consumers and on the adoption of harmonized climate policies. The two issues were strongly linked functionally. Harmonization of regulatory costs was viewed a prerequisite for level playing field competition in the internal market. Revisions of the Treaty in the early 1990s (Maastricht Treaty) made an important contribution towards such harmonization, in that qualified majority voting was introduced for environmental policies. However, policies with fiscal components remained excluded from majority voting, entailing continued poor opportunities for getting adopted harmonized energy/environmental taxes.

The decade saw cumbersome negotiations over Community energy policy and failure for the proposed EU-harmonized CO₂/energy tax, leading the Commission to open a broad energy policy debate that was summed up in a 1995 White Paper as three goals for guiding further Community policy development: to ensure competitive energy prices (linked to the process of establishing competition in the internal energy market), to mitigate environmental effects, and to improve the security of supply situation.

Towards the end of the 1990s, EU leaders finally adopted framework directives establishing the internal market in electricity and gas – by far missing out the institutional changes deemed necessary by the Commission to create level playing field competition and market access for all. Reacting on the dual climate change/security of supply challenge, the Commission published White Papers on the promotion of renewable energy and energy efficiency through co-generation of heat and electricity. Not giving up the issue of tax harmonization, the Commission re-introduced a proposal for minimum taxes on energy products. Acknowledging the poor accept for Community-based taxation, however, the Commission now also proposed alternative environmental policy instruments viewed as compatible with the internal energy market process. DG Energy proposed Community-wide trade in renewable

electricity certificates as an instrument to assist the introduction of renewables in the internal electricity market at lowest possible cost. DG Environment proposed a Community-wide emissions trading system as main EU climate policy instrument to provide incentives for cost-efficient reductions of CO₂ emissions. In climate change policies, stronger EU integration was ensured also through a Community-wide commitment under the Kyoto Protocol and a burden-sharing agreement on emissions reductions between the member states.

The Council accepted non-binding quantitative and differentiated member state targets for shares of renewable energy, electricity and biofuels in the late 1990s/early 2000s. It dismissed, on the other hand, the idea of a Community-wide market-based instrument to support renewables. The result was incoherent policies, with failed harmonization of renewable energy support systems worsening the 'level playing field' competition situation in the internal energy market. Integration failures stemmed also from poor implementation of internal market legislation in the member states, documented by benchmarking reports submitted by the Commission in the early 2000s.

At this point, the EU Council's main concern was with the aggravated international competitiveness situation for European industries, caused by rapidly rising international oil prices and resource rivalry caused by growth in low-cost emerging economies. The Council agreed on a new strategy to counter this tendency: the Lisbon Strategy. Accomplishing trade and competition in the internal energy market became closely linked to this strategy, and EU Council in 2003 accepted revision of existing directives to speed up the market integration process. Stronger concerns about damaging climate change/and international commitments taken under the Kyoto Protocol were other factors that brought new momentum to EU energy policy integration. Hence, the first five-year period of the 2000 saw speed-up in the adoption of energy policy proposals long in the pipeline and a series of new proposals aimed at tackling climate change and security of supply.

Looking at the specific policy outcomes of the period, we thus observe a modest movement towards greater energy policy integration at the start of the 2000s, not in the sense of strict harmonization of national policies at the EU level but by the creation of frameworks that could facilitate the process of further harmonization at a later point in time, if wished so by the member states. DG Environment proposed, and the EU Council finally adopted, a directive introducing tradable emissions allowances as primary climate policy instrument in the European Union. This policy instrument was, in line with CO₂ taxes and green certificates, principally viewed as compatible with governance model chosen for creating the internal energy market. The EU ETS decentralized to the national level the decision on total volume of allowances and their allocation between various industry groups, potentially aggravating non-level playing field competition conditions in the internal energy market. The new Energy Product Tax Directive imposed only insignificant minimum standards and a number of exemptions and transition periods, entailing a very meagre level of immediate harmonization. As noted, renewable energy and energy efficiency legislation imposed only indicative goals for the

member states and harmonization of policy measures was not accomplished. Various Commission initiatives to strengthen EU-level security-of-supply policies were simply voted down. As a result, EU energy policies stood out as weak and highly fragmented, in the sense that the effect of various policies would potentially be neutralization of the effect opted for by other pieces of policies.

3.8 Why such meagre energy policy integration? – summing up on the legitimacy base at the start of the 2000s

In accordance with the analytical approach taken in this study, we expect the mixed but still meagre energy policy integration achieved by 2005 to reflect a poor legitimacy base for such integration: among the member state governments, in the European Parliament or among salient policy networks of non-governmental stakeholders. Moreover, we would expect to observe bureaucratic fragmentation within the EU executive, the Commission, to have robbed this institution of the full potential to co-ordinate policies in ways that could increase the acceptance of stronger EU energy policy integration.

Member state acceptance of EU energy policy integration

The long-term approach taken above shows that member state government support of ambitious EU energy policy integration actually dwindled when the Community became enlarged with new member states and the first post-war enthusiasm disappeared. The focus shifted towards protection of national resources and modes of organizing energy supply. When the UK entered the Community in 1973, it jealously guarded against efforts to include energy in the Treaty and Community oil stock policies that might interfere with national resource management and the economic values of the resources.

On the other hand, the UK came to play a pro-integration role in internal energy market policies, being a frontrunner in neo-liberal inspired economic reforms at home and eager to spread the British model of splitting up monopoly structures, institute competition between companies and free access to the market. In this policy sub-field, subject to qualified majority decisions in the Council, other member states formed coalitions preventing smooth progress, with Germany and France in the lead (Eikeland, 2011a). Incremental changes in progress seen at the start of the 2000s reflected a movement in preferences among several member state governments, which on their own initiative had now started national market reforms exceeding the minimum requirement of EU law. Evidence for this is the increasing number of member states that by now had introduced full ownership unbundling between national transmission and production units, exceeding the requirement of EU legislation to guarantee only organizational separation (Eikeland, 2011b).

Concerning the harmonization of energy/ CO₂ taxes, in need of Council unanimity voting, the constellation of opposing member states shifted. The group of countries supporting such taxes became larger, however, after the EU enlargement in 1994 to Nordic countries, frontrunners in environmental taxation at the national level. When the Energy Tax

Directive was discussed in the early 2000s, Spain and France appeared most instrumental to water down legislation by securing opportunities for exemptions (Hasselknippe and Christiansen, 2003).

Concerning renewables and energy efficiency policies, binding goals would contradict member state control over the national energy supply structure, the main argument used against including energy as a competency area in the EU Treaty. Still, when voting on the RES Directive in the early 2000s, leakages from Council deliberations showed that the number of member states that opted for binding targets was just close to securing a majority. Again, the Nordic bloc of countries, frontrunners in renewable energy at the national level, sought to upload their preferences at the EU level. Moreover, changes in preferences around the turn of the century in several member states towards support of binding targets reflected that national support systems had led to rapid expansion in renewable energy. The typical example is Germany, which had seen strong growth in the share of renewables after implementing a feed-in tariffs system in the 1990s. Concerning the Biofuels Directive, on the other hand, few member state governments supported binding targets.

Concerning full harmonization of national support schemes for renewables at the EU level, we observed that the Energy Council voiced initial cautious support that dwindled when the German government took on its leadership role in fighting the proposed tradable green certificate system. Germany, and other countries seeing the highest growth rates in renewable energy in the 1990s had employed various feed-in tariff systems. The Commission finally gave in, accepting differentiated national systems despite distortions made to the internal energy market, to avoid undermining the entire renewable electricity directive from getting adopted.

For energy efficiency directives specifically, the Energy Council systematically reduced the clout of Commission proposals, opting for as much leeway as possible for decisions to be taken at the national level. The CHP Directive, for example, was adopted unanimously without any quantitative targets. The EU energy ministers also weakened significantly the original Commission 2001 proposal for the directive to improve energy efficiency in buildings, extending deadlines for introduction of energy performance certificates, softening proposed requirements of regular inspections, excluding parts of the building stock, and reducing the clout in minimum efficiency standards for renovated buildings.⁵⁹

Looking at member state positions in parallel climate policy negotiations on establishing a Community system of tradable emissions allowances, initial support and opposition very much parallel those seen in the internal energy market process and the debate on tradable green electricity certificates. Germany and France were initial sceptics to the system, while the UK fronted support together with the Nordic Countries and the Netherlands (Skjærseth and Wettestad, 2008). The UK had already developed such a market-compatible system at the national level.

⁵⁹ ENDS Europe, 5 December 2001, 'Ministers neuter EU building efficiency drive'.

Denmark followed suit and the Netherlands had plans to do so (Skjærseth and Wettestad, 2008). In line with UK's general euroscepticism, however, the country initially opted for the EU ETS to be non-binding. The final outcome, decided through the environmental policy procedure of majority voting in the Council, represented a pragmatic compromise, resulting in a decentralized system giving member states the power to decide what industries should be included and the allocation of allowances between the various industries.

EU energy policy integration efforts before 2005 were initially negotiated among six member states enlarged to a group of 9 in 1973, 12 in the 1980s and 15 by 1995. In 2004, the EU gained 10 new East European member states, with new views on EU energy policy integration. We return below to what this meant for the legitimacy base of later efforts in EU energy policy integration.

The position of the European Parliament

For the European Parliament, some features appeared quite stable during the 1990s and into the 2000s, a strong support for acting on climate change and security of supply concerns at the EU level and to make renewable energy and energy efficiency key measures. The European Parliament opted for more ambitious and binding targets for renewables (biofuels included) to be set at the EU level and for far stronger energy efficiency efforts. Exemplifying the latter, the Parliament opted for the EU 2003 CHP directive to follow up on the 1997 Commission-proposed target for doubling the share of co-generation to at least 18% of total electricity by 2012, now abandoned by the Commission, and to grant electricity produced through CHP priority access to the grid, none of which was accepted by the Council.⁶⁰

Concerning internal energy market policies, the majority among MEPs shifted during the 1990s from a sceptical to a supportive position. The sceptical position in the early 1990s, shared broadly among European stakeholders, was fear that free market principles would undermine environmental standards and be a threat to vulnerable customers. The Parliament was instrumental in suggesting safeguards to such concerns to be included in the internal market directives. When debating the second liberalization package adopted in 2003, it fully backed the package, again after securing amendments focusing on consumer protection and a continued right for member states to regulate prices to vulnerable consumers (Eikeland, 2008). MEPs across the political spectrum supported the Commission package when it was discussed in the ITRE Committee in 2002. A strong voice in favour came from the rapporteur, representing the Greens, Claude Turmes: 'This is a test case which will establish the direction in which we want to take the new electricity market – forwards to greater transparency or backwards to the days where national incumbents dominated the market. A fundamental part of a truly transparent European market is ownership unbundling of the transmission system. We must have the full separation of transmission from other parts

⁶⁰ ENDS Europe, 14 May 2003, 'European parliament plenary round-up'.

of the energy network. Without this, cross-sector subsidies and unfair competition will never end; this is an essential part of the reform package.’ A notable exception from the united backing of the second liberalization package was the agreement across political party lines of the French representatives, who voiced strong warnings against the effect on public service obligations.

Concerning energy taxation, the Parliament backed the 2003 Energy Tax Directive but called for a reduction in the Directive's many exemptions. None of its suggestions were accepted by EU governments, however. Yet, on several other energy proposals, the Parliament did not support the Commission's plans for ambitious EU-level integration. Most notably, this applied to the plans for mandating member states to implement a common EU-level market-based support system for renewable energy, on the argument that national feed-in tariff systems had so far proven more effective to ensure the diffusion of renewables. While this might indicate environmental ambitiousness, other energy policy positions of the Parliament were quite the opposite – as when it backed the system of further member-state coal subsidies because of security-of-supply considerations, or when supporting member-state control of security of supply stocks of oil and gas.

Non-governmental stakeholders

What positions then did important non-state stakeholder groups hold on EU energy policy integration? As already noted, we may crudely distinguish three major groups of stakeholders: energy producers, energy consumers and environmental NGOs. The former group is strongly heterogeneous, working to promote their specific energy carriers (electricity, gas, heat) and fuels (coal, nuclear, natural gas, oil, renewables, etc.) in the competition with other energy solutions. In essence, these industries would like to see high energy prices, but not at a level that would destroy demand for their products as compared to substitutes. Energy consumers could be divided roughly into two categories: energy-intensive industries (where energy accounts for a large share of total factor costs) and others (other industries, service companies and households). This group would essentially promote policies that lower their costs (lower energy prices) and maintain stable supply conditions. Environmental NGOs are heterogeneous as well with groups focusing most attention to specific environmental problems (climate, preservation of lands and habitats). Environmental groups would essentially promote less use of energy (energy savings, energy efficiencies) and therefore high energy prices, and energy carriers/sources with the lowest possible impacts on various environmental qualities.

This heterogeneity in interests entailed varied positions on the different aspects of EU energy policy integration, with some overall patterns still discernible. In internal energy market policies, major energy consumer associations were strong lobby groups in favour of a joint internal energy market, hoping for competition and freedom to choose suppliers to press energy prices down and improve their international competitiveness. Contrary to this, most major utilities in Europe were initially sceptics to dismantling their monopoly situation and to the creation of independent

grid operations. As more and more countries adopted such free-market conditions in the late 1990s, however, a number of utilities started to utilize new opportunities for internationalization (gain market shares across national borders), noting stronger support of the internal energy market, and surely so, to harmonize regulatory environmental standards across the member states so as to ensure level playing field competition in the market. Still, with major variation evolving as to degree of unbundling vertically integrated utilities, the European trade association Eurelectric had problems formulating a joint position vis-à-vis the European Commission.

Environmental NGOs initially shared the fear that competition would lower energy prices, increase competition and thus environmental impacts. A shift is observed, however, after national support schemes prompted the emergence of independent renewable-based generators that claimed access problems to the market. In the early 2000s, more and more environmental NGOs opted for rules at the EU level to remove barriers to entry in the internal market, a position shared with the lobby groups representing the renewable energy industry.

As to renewable energy policies, energy producers evolved with differing positions, reflecting their differing commercial interests. The traditional utilities first and foremost sought to protect their existing assets, based in traditional large-scale nuclear, coal and gas-based power, arguing against any binding goals for renewable energy in the European Union. As more and more member states initiated more ambitious support systems, some utilities alike became involved, resulting in a less united position evolving at the industry level. The major energy consuming industries on their side warned against specific goals for renewables, fearing high production costs to ultimately increase energy prices and worsen competitiveness. The energy-intensive industries had traditionally enjoyed relatively low prices on long-term contracts based in base-load coal and nuclear power.

The new emerging renewable energy producers naturally supported binding goals for renewable energy but did not embrace harmonization of national support schemes, arguing that a common green certificate system would destroy the excellent incentives created in countries with generous feed-in tariff systems. The latter generally gave support to a number of technologies and predictable returns on investments (a fixed rate of support) while a certificate system would make support levels less predictable, according to the industry. Moreover, a certificate system would benefit the major companies with organizational capabilities in trading, and not the smaller independent producers. Environmental NGOs were in general strong supporters of binding goals for renewables and supported the renewable energy producers in opposition to a common EU renewable energy certificate system. However, on binding goals for biofuels, the environmental NGOs took a different position from the European biofuels producers, warning that such goals could threaten global food production, biodiversity and even have poor effects on the climate change problem.

As to EU energy efficiency policies, producers, consumers and NGOs alike generally evolved with the view that measures to save energy should be given a high priority in the fight against climate change, being viewed as cost-effective and foreclosing need for investments in additional production capacities.

In parallel climate policy discussions, the energy producers were initially split on EU taking a leading role and on the adoption of the EU ETS as main instrument. The European electricity trade association Eurelectric in the end managed to convince sceptic members that they would gain from the system if getting accept for free allocation of allowances (Eikeland, forthcoming 2013). The renewable energy producers supported the system, benefiting investments in low-carbon solutions. The petroleum industry was split; some companies were strong supporters and others reluctant (Skjærseth, forthcoming 2013). The energy-intensive industries were far more sceptic, fearing unilateral EU action to aggravate their international competitiveness, which was already under pressure.

The Commission's ability to co-ordinate policies

In line with expectations for an institution established to represent a European view, the Commission regularly pushed for stronger energy policy integration. It did not, however, act on its full potential as a unitary agent. The division of labour within the Commission gave exclusive powers for various services to prepare and propose legislation impacting on energy production and consumption. As an example, in internal energy market policies, DG Competition had a latent stake through its control over competition policy instruments. Regulation of environmental impacts of energy production vests a stake with DG Environment. Other examples include energy taxation policies (DG Taxation); bioenergy policies, giving DG Agriculture a stake as the interlocutor of European farming industries, important bioenergy feedstock producers; and finally, with energy a salient input factor for European energy-intensive industries, DG Enterprise and Industry evolved with a stake as interlocutor of these industries' interests in EU energy policy making. At the Commission level, the Secretary-General and the President constitute main institutions responsible for inter-service co-ordination, i.e. to ensure that the different services co-operate in policy development to produce integrated and consistent policies.

Looking at EU energy policy development in the 1990s, DG Energy pursued competitiveness of European industries as top priority goal, to be implemented by the set-up of an internal energy market with trade and competition pressing down energy prices in Europe. This priority gave also DG Competition a potential important complementary policy role. However, the two Commission services disagreed on the pace and procedures to follow, with DG Competition losing out to DG Energy, the latter opting for a more step-wise approach to ensure the broadest possible stakeholder acceptance. DG Energy, interlocutor for European energy-industry interests, acknowledged the technical challenges of designing a market system and need for knowledge inputs from these interests. DG Competition, sharing the similar long-term vision, was thus bypassed in the process (Eikeland, 2011a).

Climate change mitigation through the promotion of renewable energy evolved as another goal for DG Energy, to be balanced, however, against the competitiveness goal. This led DG Energy to press strongly for EU-level support schemes for renewables that could minimize impact on prices and thus costs to the industry. Harmonization of taxes and a green certificate system were DG Energy's first choices, aimed at giving incentives for choosing the least costly renewable energy alternatives. Similar preferences evolved for DG Environment, the principal department in EU climate policy development, opting for policy instruments that would be compatible with level playing field internal market competition. DG Environment embarked on a CO₂ emissions system as the preferred choice, acknowledging earlier failures in getting adopted a harmonized CO₂/energy tax.

In the early 2000s, DG Transport and Energy (DG TREN), then headed by Commissioner de Palacio clearly subordinated fighting climate change, and made international competitiveness and internal energy market policies the core energy policy goals. As noted, this priority had in no small part been requested by the EU member-state governments, adopting a new Lisbon strategy for industrial growth and job creation in Europe. De Palacio actively argued for disconnecting the EU from the Kyoto commitments and held back efforts to set more long-term goals for renewables. Instead, DG Environment Commissioner Wallström now took on the role as spokeswoman for long-term renewable energy targets at the EU level. Disagreements between the two were displayed in public, necessitating the intervention of Commission President Prodi. De Palacio was also criticized for dragging her feet in the development of energy efficiency policies, by the Parliament, environmental NGOs and even the EU Presidency. When Belgium held EU presidency autumn 2001, Energy Minister Deleuze strongly criticized her for postponing adoption of energy efficiency legislation, accusing her of awaiting the Spanish presidency for instead amassing stronger support of nuclear power as EU's major security of supply measure (Deleuze urges rapid EU energy-saving measures, ENDS Europe, Monday 1 October 2001).

All in all, we note substantial lack of policy co-ordination between the various units of the EU bureaucracy in the early 2000s. In fact, there are signs of poorer co-ordination at this stage than what had been the case in the early 1990s. Then, the Delors Commission had united major parts of the bureaucracy in the development of its 1993 White Paper on Growth, Competitiveness and Employment. This White Paper proposed a new economic development model for Europe based on the shift in the relative prices of labour and energy that would both create employment and improve the efficiency of resource uses. An important premise was, however, that harmonized taxes would be implemented as overarching policy measure. With accepted problems evolving for such a general measure to co-ordinate achievement of policy goals, DG Energy reverted to more fragmented policy development. DG TREN dragged its feet in proposing policies integrating the full range of energy policy goals it was entrusted to watch over. At the Commission level, policy co-ordination was poor between DG TREN and other Commission services, and the atmosphere characterized by internal quarrelling rather than co-operation.

This lack of co-ordinated and balanced policy development was acknowledged by EU leaders as a more general problem when deciding for EU governance reforms at the start of the decade. Central measures adopted, such as the new Impact Assessment System, aimed at ensuring more extensive intra-Commission co-ordination to develop better and more balanced policy proposals. In the course of the first years of the new decade, the Commission services started to implement these new governance guidelines, with varying success, however.

4 Initiation of energy policy packages 2005–2008

Despite the higher pace recorded in adoption of single EU energy policy directives at the start of the 2000s, this did not represent any substantial will to transfer decision-making powers from the national to the EU level. Extensive member-state implementation failures add to this conclusion, with major deficiencies observed across the various energy policy sub-fields: the internal energy market directives, the RES and Biofuels Directives.

In the middle of the decade, however, greater will for co-ordinating energy policies at the EU level was expressed by key EU-15 member-state governments – most notably the British, previously seen as the strongest sceptics of transferring political power to the EU level in energy affairs. On the other hand, challenges lay ahead with 10 East European countries that joined the EU as of 1 May 2004. These new member states had distinct energy structures and policies that were less attuned to the policies already adopted in the EU.

Also the external impetus to EU energy policy discussions gained further momentum as international oil prices continued its steep upward trend, with average 2005 prices \$54.50 up 89% from 2003, fanning concerns already held over European industrial competitiveness. Even concerns over the security of physical energy supply was evoked early 2006 when Russian Gazprom shut down its gas supply to Ukraine. Since vital gas infrastructure connecting Russia and the EU passed over Ukrainian territory, also EU countries felt a reduction in the volumes supplied in early January 2006.

4.1 The Barroso Commission

In 2004, the European Council chose José Manuel Barroso, the candidate of the election winner centre-right European People's Party Group (EPP), as new President of the European Commission. In line with signals from the European Council meeting in March 2004, President Barroso promised revitalization of the Lisbon Strategy as a top priority for his presidency.

President Barroso started his term experiencing considerable opposition in the European Parliament for his initial college of Commissioners-elect, nominated by the member state governments. This included the Hungarian Energy Commission-elect Lázló Kovács, challenged for lacking expertise on energy policy. In a major reshuffle, candidates were withdrawn and others moved to new services.⁶¹ Latvia replaced their

⁶¹ The Dutch Commissioner-designate, Neelie Kroes, nominated to the competition portfolio, was criticized for potential conflicts of interests relating to past and present business relationships. Similar critique hit the Danish Agricultural Commissioner-designate, Mariann Fischer-Boel. Latvian Commissioner-elect, Ingrida Udre, was criticised for funding irregularities within her party, and Italian Justice Commissioner-elect Rocco Buttiglione for a number of remarks about homosexuality and the role of women which were considered unacceptable since his policy portfolio included responsibility for anti-discrimination policy (Cini, Michelle, 2005). Kroes and Fischer-Boel prevailed in their

nominated person with Andris Piebalgs, who was now appointed Energy Commissioner. Unlike Kovács, Piebalgs got strong backing in the Parliament when stressing the importance of the environment in energy policy and a cautious position on nuclear power, outlining a broad list of priority issues including achievement of a true internal market, energy efficiency, renewable energy, investments in technology, safety and security of nuclear power, energy crisis mechanisms and development of external energy policy relations.

The Parliament also expressed concern as to whether the Greek Environment Commissioner-elect Stavros Dimas, a former Wall Street lawyer and industry minister, actually signalled lower commitment to environmental issues in favour of promoting economic competitiveness.⁶² In his hearing late September 2004, Dimas acknowledged that the political climate was ‘difficult’ for environmental policy but that he aimed to explode the ‘deeply rooted myth’ of a necessary trade-off between economy and environmental protection by designing environmental legislation that would boost innovation. Dimas presented four main priorities for his term in office: climate change, biodiversity, public health and sustainability.

When presenting his strategy and work plan for 2005–2009, President Barroso added solidarity and security as key overarching policy guidelines, specified to include development of the environmental dimension and security of energy supply. In a speech in March 2005, he elaborated his intentions of matching the Lisbon Strategy with a reviewed EU Sustainable Development Strategy to form the key elements in what he called ‘a new partnership for prosperity, solidarity and security’.

Partnership’ signalled intentions of greater involvement of citizens, NGOs, businesses, trade unions and others in the policy process – to go on with governance reforms already started by the Prodi Commission. As noted above, this had included the Better Regulation Agenda and the introduction of a new Impact Assessments (IA) System aimed at higher quality of Commission policy proposals to be secured by broader involvement of external stakeholders and improved communication internally between the various Commission services. Evaluations showed, however, that the initial IAs had lacked quality, with mixed results for the various Commission services, DG Environment and DG TREN included (Renda, 2006:65). In response, the Barroso Commission already in 2005 adopted new IA guidelines, of which securing better co-ordination internally was to be achieved through the establishment of Inter-Service Steering Groups. To oversee administrative implementation of better inter-service co-ordination, Barroso appointed Catherine Day as new

positions. Italy replaced Buttiglione with Franco Frattini. Latvia withdrew the candidature of Udre and nominated instead Andris Piebalgs. Barroso moved Hungarian Kovacs to the position of Taxation Commissioner and designated Piebalgs to the position as Commissioner for Energy and Transport.

⁶² The chair of the Environment Committee, representing the conservative EPP-ED group, commented that the signals given by Barroso to put the Lisbon Strategy on top of the agenda should not entail primacy of economic over environment policy.

Secretary-General of the Commission, moved from her post as General-Director of DG Environment.

When outlining the strategic priorities for *his* post, Energy Commissioner Piebalgs in an intervention at the EURACOAL Executive Meeting in January 2005 promised to balance competitiveness, sustainable development and security of supply. He set *energy efficiency* as first priority on a six-point list of measures that included proper functioning of the internal energy market, promoting renewable energy, developing EU's external energy policy relations, creating a better linkage between energy and the environment, adopting new environment and research policies, and strengthening nuclear safety and security. He framed the next five years as a 'watershed period' for EU energy policy in light of growth in energy demand from China and India with likely continued higher oil, gas and coal prices. For the coal industry specifically, he promised a Coal Partnership to focus on the three priorities: reducing emissions from existing power stations, facilitating the development and market penetration of new, highly efficient, coal-fired power stations, and to take a European lead in developing new technologies for CO₂ capture and storage (CCS).⁶³

In June 2005 Commissioner Piebalgs followed up, launching a policy debate on energy efficiency and guiding through energy-efficiency policy initiatives pending from the Prodi Commission since 2003.⁶⁴ This led the European Council in December 2005 to adopt the Energy End-Use Efficiency and Energy Services Directive, requesting member states to achieve 1% annual energy savings in the retail, supply and distribution of electricity, natural gas, urban heating, and other energy products, including transport fuels. While the target was only made indicative, the Directive demanded regular national action plans to be submitted and approved by the Commission every three years in the period 2008–2016. Acting on security of supply legislation pending since 2003, the Council adopted Directive 2005/89/EC (on the mutual assistance in the case of supply crises) to safeguard security of electricity supply and infrastructure investment. The directive called for cross-border cooperation between transmission system operators but failed to demand any EU-level collective handling of supply disruptions.

In line with the new guidelines for inter-service co-ordination, DG TREN in June 2005 joined forces with DG Competition in the launch of inquiries on the state of competition in the gas and electricity sectors. A preliminary 2006 report concluded that poor access to energy infrastructure in many member states had caused unnecessary high energy prices and loss of welfare opportunities for European energy consumers. Vertically integrated energy producers had constrained competition through discrimination of others in the use of infrastructure and held back on new infrastructure investments, causing problems for independent producers of electricity and heat. The report saw this as a

⁶³ Commissioner Piebalgs Intervention at the EURACOAL Executive Meeting, Brussels, 24 January 2005, retrieved at <http://www.vgb.org/vgbmultimedia/News/piebalgs.pdf>.

⁶⁴ EurActiv, EU opens wide-ranging debate on energy savings, 23 June 2005.

barrier also to producers of indigenous renewable energy and hence, to the alleviation of climate change and security of supply concerns in the European Union.

This new higher profile of DG Competition on the energy policy scene reflected strongly the priority focus on the Lisbon Strategy. In her speech to the European Parliament, 28 September 2004, the new Competition Commissioner Neelie Kroes highlighted the energy sector as crucial to the internal market and the Lisbon agenda, given its knock-on effects for many other economic activities, and that more should be done to remove obstacles to competition in this sector, a conclusion also made back in 2000 when the Lisbon Strategy was adopted. In her speech, Kroes promised more vigorous application of existing antitrust regulation, and to use the Commission's increased powers to conduct sector-wide investigations in order to determine how markets could function better in the interests of competition and the consumer, stating the consumers the principals for her work. The co-operation between DG TREN and DG Competition on the sector inquiry, strongly endorsed by its two commissioners, Neelie Kroes and Andris Piebalgs, started what was to become a new era of far more extensive co-operation between the two Commission services (Eikeland, 2008, 2011a).

In her speech, Kroes also pledged to follow up on the Better Regulation Agenda by reviewing existing state aid regulations and adopt it to the new Lisbon Agenda. In June 2005, DG Competition adopted a Communication on a new State Aid Action Plan, announcing also a review of the existing guidelines for Environmental State Aid running until 2007 (Commission of the European Communities, 2005).

4.2 New energy political signals at the Hampton Court Summit 2005

When the EU leaders met for their informal Autumn Summit at Hampton Court in London 17 October 2005, the main posts on the agenda were the fate of the EU Constitution after the Dutch and French populations had voted no in spring 2005 referendums, the problems of getting a new budget decided after negotiations failed in Nice, and how EU countries should remain competitive, yet preserve their social model, in a globalized world. Also energy policy became an important part of the meeting, which concluded that greater efforts should be made at the EU level. The host of the meeting, PM Tony Blair summed up the meeting stating that: *'There is a lot more we can do however, and it is important too that energy policy is something that we work on together as a European Union, given the fact that according to the European Commission, over the next few years we will start to import round about 90% of our oil and gas needs in Europe.'*⁶⁵

When asked by a journalist, who noted Britain's historical reluctance toward developing a European energy policy, what or who had led him to

⁶⁵ Press conference minutes, EU informal Summit, 27 October 2005, Hampton Court, London.

change his mind so suddenly, Blair responded: *'But why has Britain always opposed any idea of a common European energy policy? Because we feared that what would happen is the European Commission would go in and start regulating North Sea oil platforms, and causing difficulties for us and all the rest of it. If that was a European common energy policy, it wouldn't be worth having. What is worth having, however, is how do we improve the competitiveness and the efficiency of European business, how do we reduce prices for consumers, and things like how we get the best interconnection on the European grid – that is absolutely the type of thing that we should be looking at.'*⁶⁶

4.3 Long-term climate policy signals

In parallel, EU politicians debated whether the EU should take a lead role in international long-term climate policy development or not. In late 2004, outgoing environment commissioner Margot Wallström stressed that the EU should 'lead by example' as a necessary step to include poorer countries in a future global climate change deal.⁶⁷ Industry lobby group UNICE warned against EU unilateral setting of stricter emissions targets, presenting research showing that the Kyoto Protocol could hit the EU economy far more than predicted by the European Commission.⁶⁸ The final 2004 Environment Council meeting 20 December reaffirmed the commitment to substantial EU future cuts in greenhouse gas emissions, referring to the norm adopted in EU policy to keep global atmospheric greenhouse gas concentrations below 550 parts per million (CO₂ equivalent), and research suggesting that concentrations should be stabilized 'well below' this threshold. The Ministers concluded that this would need global GHG emissions cuts 'of at least 15% and perhaps as much as 50% by 2050, compared with 1990 levels, and even deeper cuts for the EU and other industrialized countries.'⁶⁹

Late January 2005, the new Environment Commissioner *Stavros Dimas* stated environmental policy and eco-innovation as important parts of the Commission's revitalized Lisbon strategy, promising to follow up on the Environmental Technology Action Plan (ETAP) adopted by the Prodi Commission early 2004, in turn based on the 2001 Gothenburg European Council decision to complement the Lisbon Strategy with a Strategy for Sustainable Development.⁷⁰ On long-term climate policies, on the other hand, Commissioner *Dimas* in February sent out a more conflicting signal, stating that the EU should await the outcome of further international talks before deciding on any quantitative goals for a long-term GHG emission reduction targets.⁷¹ Harsh comments came from

⁶⁶ Press conference minutes, EU informal Summit, 27 October 2005, Hampton Court, London.

⁶⁷ ENDS Europe, 17 November 2004, 'Future climate change policy talks gear up'.

⁶⁸ ENDS Europe, 18 November 2004, 'Cost of Kyoto "five times above EU estimate".'

⁶⁹ ENDS Europe, 21 December 2004, 'Ministers talk tough on climate challenge'.

⁷⁰ ENDS Europe, 28 January 2005, 'Dimas comes out fighting for EU green policies'.

⁷¹ ENDS Europe, 9 February 2005, 'EU shows caution on future climate targets'.

green campaigners, denoting it a ‘laggard’s proposal’.⁷² *UNICE*, on the other hand, applauded the approach.⁷³

The Environmental Council meeting in March 2005 denounced Commission Dimas’ strategy, however, stating that all developed countries must be asked to cut their greenhouse gas emissions by up to four-fifths within half a century, with 15–30% cuts by 2020 and 60–80% by 2050 to be considered. This Resolution was agreed by all 25 environmental ministers.⁷⁴ At the European Council meeting in March, the EU leaders backed the 2020 15–30% reduction target but dropped deciding on targets for the longer term, still holding that global temperatures should be stabilized at no more than 2°C above pre-industrial levels. The European Council backed also the re-launch of the EU’s Lisbon strategy, calling for urgent action on the ETAP.⁷⁵

The European Parliament praised EU governments for setting the 15–30% target for 2020 while criticizing their rejection of longer-term goals and its Environment Committee adopted an opinion in April calling for 20% of the bloc’s renewable energy to be sourced by renewables by 2020.⁷⁶ At the EUFORES (European Forum for Renewable Energy Sources) meeting in Edinburgh in October 2005, climate change and energy policies became strongly linked when a group of MEPs and parliamentarians from more than 20 European countries called on the EU to develop a combined strategy for the two with stricter and binding targets. The Edinburgh Declaration called for 100% energy consumption from renewable energy sources in the future with a first step mandatory 25% target by 2020, combined with energy efficiency measures. Concerning renewable electricity specifically, the Edinburgh Declaration called for sourcing all EU electricity from renewable sources by 2070 and 33% by 2020. The Parliamentarians also agreed that renewable heating and cooling would need a specific directive and that a far higher share of the energy research budget should be allocated to renewable energy and energy efficiency than the current 8.2% in the OECD countries.⁷⁷ The European Parliament’s Environment Committee now worked on a resolution calling for transformation of energy, transport and building systems in Europe through a crash programme similar to America’s Apollo space programme of the 1960s to curb greenhouse gas emissions. The vision set out for Europe was to become the most energy efficient economy in the world by setting targets to cut energy intensity by 2.5 to 3% per year, slash average new car CO₂ emissions to 80–100 g/km ‘in the medium term’, enforced through the emissions trading system that should also include aviation emissions and be shifted to benchmarking or auctioning of allowances.⁷⁸

⁷² *ibid.*

⁷³ ENDS Europe, 28 February 2005, ‘EU argues over tactics for post-Kyoto talks’.

⁷⁴ ENDS Europe, 10 March 2005, ‘EU ministers put gas targets back on the table’.

⁷⁵ ENDS Europe, 23 March 2005, ‘EU leaders back 2020 greenhouse gas target’.

⁷⁶ ENDS Europe, 13 May 2005, ‘MEPs talk tough on future climate change rules’.

⁷⁷ ENDS Europe, 11 October 2005, ‘Euro-MPs urge intense push on renewables’.

⁷⁸ ENDS Europe, ‘MEPs urge stronger EU climate policies’, 12 October 2005.

4.3 The European Commission response to the new political signals

The European Commission used these new political signals actively as justification for new energy and climate policy initiatives. To ensure that new policy proposals would be aligned with the Lisbon Strategy, Barroso late December 2005 established the High Level Group on Competitiveness, Energy and Environment to provide co-ordinated advice. Four Commissioners were appointed as co-chairs: Andris Piebalgs of DG TREN, Neelie Kroes of DG Competition, Stavros Dimas of DG Environment and Günther Verheugen of DG Enterprise and Industry, the latter hosting the group secretariat. Members included also national ministers, MEPs, representatives of industry, environmental NGOs, major consumers, trade unions and regulators. The first meeting of the group in February 2006 agreed upon the creation of four ad hoc expert groups to discuss: 'The functioning of the electricity and gas markets', 'The EU emission trading scheme', 'Competitiveness and access to cost-effective energy inputs for energy intensive industries', and 'Energy efficiency' – themes viewed as strongly integrated and where DG TREN, DG Environment and DG Competition had the powers to launch new legislative proposals.

Environment Commissioner Stavros Dimas now had listened to his critics and embarked on support of an EU climate strategy setting unilateral long-term targets in front larger international commitments. To prepare such a strategy, DG Environment in October 2005 launched the ECCP II programme (European Climate Change Programme) with working groups mandated to review policies adopted under ECCP I, and to deal with additional potential measures: policy development and legislation on aviation, road transport, CCS and climate adaptation.

Stronger integration of energy and climate policies was now clearly signalled by Commission President Jose Manuel Barroso. When presenting the Commission work programme for 2006 he promised a package of EU climate change and sustainable energy policies that would include: bringing aviation into the EU carbon emission trading scheme; an action plan on energy efficiency; a communication taking stock of the EU voluntary agreement on new car CO₂ emissions and proposing further steps; a communication on clean coal technologies, aimed at stimulating technology development and opening the door to CCS; a communication on future prospects for biofuels, proposing policies beyond 2010; a Green Paper on adaptation to climate change; and finally, a Green Paper proposing a full Strategic Energy Review for the Community. The latter, under development of DG TREN, was now framed as the first measure to be developed under the DG Environment-initiated ECCP II programme.

For Energy Commissioner Piebalgs, the signals given at Hampton Court became interpreted as a new acceptance of broader and deeper EU energy policy integration, to be outlined in the promised Communication on A Strategic Energy Review. In early January 2006, sudden external events gave more impetus to this process, with the peaking of a dispute between Russian gas supplier Gazprom and Ukrainian state-controlled Naftogaz Ukrainy that led Russia to cut off gas supply – also affecting supplies to

the Community.⁷⁹ While a preliminary agreement between the two countries was soon reached and supply restored, the event fanned mistrust already there concerning the reliability of Russia as gas supplier and the vulnerability of the European energy system.

This event was picked up several member state governments to consolidate support for a more comprehensive EU energy policy, such as when UKs PM Tony Blair in a February speech stated: *'Energy is becoming an instrument of leverage and in some cases, intimidation the world over. Yet as President Chirac said recently, we in Europe have no clear common policy to define our own needs and interests. Let us get one. Get a functioning internal market in place; complete a common EU infrastructure and make energy policy a priority in external relations'* (Duff, 2006:24).

Early March 2006, DG TREN adopted the much announced Green Paper on a Strategic Energy Review, putting up as priority to create better coherence between the member states and consistency between policy measures dealing with the three main EU energy policy objectives (Commission of the European Communities, 2006a). As overarching principle, the Green Paper opted for a minimum level of the overall EU energy mix to come from secure and low-carbon energy sources, and requested stakeholder responses in six defined areas:

- Completion of the internal gas and electricity markets was set as number one priority. Specific measures listed to achieve this aim included: a true European Grid with improved interconnection capacities and a united grid code, new EU-level bodies to coordinate national energy regulators and network operators' planning of interconnections and harmonization of grid codes, a new framework to stimulate investments in infrastructure, and more effective unbundling of infrastructure and supply operation.
- A second point on security of supply and solidarity between the member states, proposed a review of Community oil and gas stock legislation, a new European Energy Supply Observatory, measures to enhancing transparency of national security of energy supply measures, and common security standards to be developed by new EU-level co-ordinating bodies.
- A third point called for a real Community-wide debate on various energy sources, their costs and contributions to climate change and to fulfilment of EUs three main energy policy objectives.
- A fourth point called for dealing with climate change in a manner compatible with the Lisbon objectives, setting up the options: 1) to prioritize energy efficiency through a goal of saving 20% of the energy by 2020; achieved through efficiency campaigns, stimulation of investments, energy efficiency efforts in transport, a Europe-wide 'white certificates' trading system, better information on the energy

⁷⁹ The dispute over gas supplies, prices and debts involved also politicians from both countries. Russia cut off gas supply to Ukraine, which answered by diverting gas bound to the European Union from transit pipelines crossing Ukrainian territory.

performance of appliances, vehicles, and industrial equipment, and possibly, minimum performance standards, 2) to adopt a long-term roadmap for renewable energy sources, including renewed effort to meet existing targets and setting new targets beyond 2010; a new Community Directive on heating and cooling; a detailed plan to stabilize and gradually reduce the EU's dependence on imported oil; and initiatives to bring clean and renewable energy sources closer to markets. No quantitative targets for renewables beyond 2010 was suggested, rather that 50% of EU energy should come from low-carbon sources by 2025, nuclear energy included.

- The fifth priority was to develop a Strategic Energy Technology Plan, building on European technology platforms and with the option of joint technology initiatives or joint undertakings to develop leading markets for energy innovation.
- The final point called for a common external energy policy – to speak with one voice at both national and Community levels. To this end the Commission proposed: identifying European infrastructure project priorities; developing a pan-European Energy Community Treaty; a new energy partnership with Russia; a new Community mechanism to enable rapid and co-ordinated reaction to emergency external energy supply situations; deepening energy relations with major producers and consumers; and an international agreement on energy efficiency.

4.4 Stakeholder responses to the Green Paper

The comprehensive approach was apparently backed by most member state energy ministers. Some environment ministers were more critical, notably German Sigmar Gabriel lamenting the strong focus on energy security issues at the expense of renewable energy and climate policy, and for failing to propose targets for renewables beyond 2010 or for climate gas emissions beyond 2020. He also criticized excessive spending by the EU on what he termed 'outdated' nuclear power and not enough on renewables. The European Council in March 2006 condoned the Green Paper's call for an integrated and coherent EU-level energy strategy: It also backed the principle of a minimum level of the energy mix to come from low-carbon energy sources, supporting a longer-term roadmap and for the EU to consider raising the RES target to 15% and biofuels target to 8% by 2015. As noted, the Green Paper had not included such quantitative targets specifically for renewable energy.

A major half-year consultation process followed (24 March 2006 until 24 September 2006) involving member-state governments, the European Council, the European Parliament, citizens, and various civil society stakeholder groups from industry, labour market players, NGOs and consumer organizations. In all, 1680 responses were received. 1516 of these came via a web questionnaire (1287 from individuals and 234 from various organizations/stakeholders). Most of these originated in Germany, France and the United Kingdom, and with only 97 responses coming in from the new member states.

Another 164 written contributions came in from member states and Romania (18), public authorities (18), NGOs (22), trade associations and individual companies (91), INGOs (10) and individuals (5). Two public hearings were made, one convened by the European Parliament and one by the Commission.⁸⁰ In addition, the Commission convened five energy forums of stakeholders on a regular basis that discussed the Green Paper extensively: European Forum of Energy and Transport; Sustainable Energy Forum (Amsterdam) 25 and 26 April 2006; Gas Regulatory Forum (Madrid) 18 and 19 May 2006; Electricity Regulatory Forum (Florence) 7 and 8 September 2006; and Fossil Fuels Forum (Berlin), 9 October 2006). Finally, the High Level Group on Competitiveness, Energy and the Environment was an active respondent, as were the European Economic and Social Committee and the Committee of the Regions (*ibid.*).

Looking more closely at the member state government written responses, a general positive tone to further EU energy policy integration can be noted, conditioned on the continued rights of member states to determine the structure of this own energy mix, in line with the text already put into the failed draft Constitution. However, the written responses gave unequal focus to various aspects of further energy policy integration, and we also note clear warnings against specific aspects of integration.

*The UK government response*⁸¹

The UK government submitted the most comprehensive response paper with an overall positive tone to further EU energy policy integration, calling for maintaining the momentum built up at Hampton Court and the March European Council's determination to tackle the challenges of climate change and import dependency, stating the risk to the climate caused by consumption of hydrocarbons to be beyond doubt.

The UK stated that competitive markets would be a prerequisite to underpin other policy initiatives, urging the Commission to ensure implementation of existing unbundling provisions and to move towards ownership unbundling should these efforts fail. The UK further supported better co-ordination between member states on regulation of cross-border trade and investments, but dismissed the idea of new EU-level institutions: a European energy regulator, a European Centre for Energy

⁸⁰ On 12 September 2006 hearings in the European Parliament consisted of two panel debates (Panel 1: What needs to change to encourage 1 trillion euros of investment in Europe's single energy market? Panel 2: What is missing from the Energy Green Paper?). On 22 September 2006, a public hearing convened by the Commission gathered 450 participants. Also this hearing had two panels (Panel 1: What should Europe's essential energy vision be in the coming decades in order to achieve our three core objectives of sustainability, competitiveness and security of supply, and what do we need to do to achieve it?; Panel 2: What needs to be done to ensure that the internal electricity and gas markets rapidly develop to guarantee that they work to benefit EU citizens to their fullest potential, as consumers and as employees of energy consuming companies?).

⁸¹ The British government position paper 'UK Government Response to the EU Energy Green paper', retrieved at Commission web site http://ec.europa.eu/energy/strategies/consultations/2006_09_24_gp_energy_en.htm

Networks, a European grid code, or an Energy Supply Observatory prescribing where infrastructure should be built.

The paper was lukewarm on the need for new emergency oil and gas stock mechanisms, and instead called for continued lead by IEA. Although stating a nation's energy mix as a matter of subsidiarity, the UK supported the development of an overall strategic objective to be based on an EU-wide energy mix benchmarking assessment.

UK further supported the EU Emissions Trading Scheme as the most effective market-based instrument for delivering more climate friendly energy production and urged for long term objectives and reshaping the scheme to include the aviation sector. It acknowledged energy efficiency as the cheapest, cleanest and safest way to simultaneously addressing energy, environmental and competitive objectives, but was contradictory as to setting EU targets, stating first that: 'The UK does not believe that further targets for energy efficiency are warranted at present beyond those recently adopted under the Energy End Use Efficiency and Services Directive' (adopted by the Council in April 2006 setting a 9% indicative target for energy savings by member states within the next nine-year period), and adding: 'the UK believes that there should be significant commitment from all member states to achieving our energy efficiency goal, to reach a 20% reduction in energy consumption by 2020 across the EU, and to make this goal part of the forthcoming Energy Efficiency Plan'. This certainly reflected that the UK was not prepared for any *binding* energy efficiency targets. The UK supported new voluntary agreements with the car industry to further fuel efficiency standards and backed information measure to increase consumer knowledge about energy-using product efficiency performance.

Regarding renewable energy, the paper stated that: 'the UK is not convinced that additional targets on fuels, electricity and heating will contribute to achieving the overall goal in the most cost-effective way, but this is being looked at as part of the UK's Energy Review currently underway'. Still, it ascertained commitment to the need for providing long-term certainty to investors but made it clear that if the UK was to consider a new 15% target by 2015, the existing system with individual targets for member states should be abandoned and a flat rate introduced for all. The paper further voiced scepticisms concerning the need for a new Directive on Heating and Cooling, but supported policies to support biofuels as a mode of diversifying away from oil in the transport sector, conditional upon sustainability criteria developed that would take full account of environmental and social as well as economic factors.

The UK welcomed the proposal to establish a Strategic Energy Technology Plan with strong focus on energy efficient technology and clean energy technology and the various modes of funding targeted technology initiatives. Finally, the UK broadly supported a stronger common external energy policy and the development of a pan-European Energy Community.

*The German government response*⁸²

The German government paper promised to give priority under its presidency to the announced Commission energy package to be adopted early 2007. It endorsed full internal energy market integration, including non-discriminatory access to infrastructure, as well as policies to boost the construction of new infrastructure and new generation capacity. Germany preferred ensuring full implementation of the second internal energy market package and would await the results of the Energy Sector Inquiry before contemplating further measures.

The German paper supported the proposed energy efficiency measures, including the 20% objective set for 2020. Much emphasis was put on renewable energy policies. The paper urged the Commission to secure member-state implementation of the renewable electricity directive and to come up with new goals for 2020 connected to the promised long-term plan for renewable energy. It suggested targets to be binding on and not only indicative for the member states. It also called for more ambitious biofuels goals, 8% for 2015 and 12.5% for 2020. Germany additionally supported joint guidelines for renewable heating and cooling but maintained that the use of support instruments should be decided at the national level in line with that adopted for renewable electricity. Germany supported the idea of a Strategic Energy Technology Plan and set a list of priority areas: clean coal and gas technologies; energy optimal buildings; various renewable energy platforms; fuel cells and hydrogen; electricity infrastructure and storage; nuclear safety; fusion energy. Finally, Germany in broad terms supported a new external energy policy for Europe.

*The French government response*⁸³

Also the French government supported broadly the proposed European strategy and most of the specific points. France highlighted that main priorities should be to conduct a supply/demand analysis for the future at the European level and a cost-benefit analysis for each energy source to contribute to achieving the three energy policy objectives. It also called for a mechanism for joint action in the case of an energy crisis with a high-level group at the EU level and the establishment of a priority interconnection plan and facilitation of authorization procedures to speed up investments. In contrast to the UK paper, the French government supported several of the proposals for new EU-level institutions (such as the Energy Observatory) and the establishment of a European grid code. However, it also held that stronger co-ordination should be sought

⁸² The German Federal Government: position paper "Energiepolitik für Europa" während der deutschen EU-Präsidentschaft in 1. Hj. 2007, dated 15.09.06, retrieved at Commission web site

http://ec.europa.eu/energy/strategies/consultations/2006_09_24_gp_energy_en.htm

⁸³ Réponse des autorités françaises à la consultation publique de la Commission européenne concernant les propositions du Livre vert sur une stratégie européenne pour une énergie sûre, compétitive et durable, retrieved at Commission web site
http://ec.europa.eu/energy/strategies/consultations/2006_09_24_gp_energy_en.htm

between national regulators before taking steps to establish a European regulator. Also in contrast to the UK paper, France deemed a new internal energy market package as unnecessary and warned against ownership unbundling, in line with the position taken back in 2003. France supported an integrated energy and climate policy and for the EU to go hand in hand with other developed economies to take on GHG reduction targets of 15–30% by 2020. It also supported revision of the EU ETS to ensure harmonization of allowance allocation methods. It supported strongly the energy efficiency proposals without specifically mentioning the 20% savings objective set by the Commission. Concerning renewable energy, France stated support for the proposals and included also other zero-carbon energy sources. France specifically called for more ambitious biofuels targets, claiming the country on time to achieve the target for 2010 set in 2003. France also supported adopting a new heat and cooling directive and the development of a strategy to boost CCS in several industrial processes, applauding also the establishment of a European Strategic Energy Technology Plan. In broad terms, France also supported greater efforts in joint EU external energy relations, including the extension to new countries of a pan-European Energy Community.

Other member states

Other written statements came from the governments of Austria, Sweden, Belgium, the Netherlands and Ireland as well as the new member states of Slovenia, Poland, Hungary, the Czech Republic, Lithuania and Estonia. The new member states highlighted that security of supply issues should be given a priority in further energy policy-making. In its position paper, Poland stated: *'the issue of energy security should be dominant over the remaining two pillars and that the measures taken by one Member State to improve energy security should improve energy security of the whole European Union without undermining it in another Member State'*.⁸⁴ It also stated that *'liberalizing the internal market before diversifying supply sources may result in the monopolization of the market by external suppliers and, consequently, threaten energy security and impede the establishment of a transparent and fully competitive market. And thus, the order of the two – the diversification of natural gas supply sources and the liberalization of the market – is significant. According to Poland, the former should precede the latter.'*⁸⁵

Hungary stated in its position paper: *'Besides emphasizing the importance of the other two pillars, it must be noted, that the security of supply shall get more attention and emphasis in the future'*.⁸⁶ Hungary also stressed: *'The present principle that Member States are responsible for their own security of energy supply alone is not sufficient any*

⁸⁴ The standpoint of the Government of the Republic of Poland on the Green Paper: A European Strategy for Sustainable, Competitive and Secure Energy COM (2006) 105, 29 October 2006., retrieved at Commission web site: http://ec.europa.eu/energy/strategies/consultations/2006_09_24_gp_energy_en.htm.

⁸⁵ Ibid.

⁸⁶ Standpoint of Hungary on the Green Paper on a European Strategy for Sustainable, Competitive and Secure Energy, retrieved at Commission web site: http://ec.europa.eu/energy/strategies/consultations/2006_09_24_gp_energy_en.htm

more'⁸⁷. The Slovenian government emphasized that 'Slovenia as a small country could greatly benefit from a common energy policy, since its negotiating power towards third countries and large enterprises would markedly increase'.⁸⁸ The Estonian position paper joined in, stating: 'We consider it essential that the European Union's starting point should be the need to connect peripheral energy markets with the rest of the internal market'.⁸⁹

Otherwise, the written responses varied as to issues addressed and positions taken. Poland stressed the need for common regulations of cross-border trade but also that 'market liberalization and new interconnections' would make the EU market more open and vulnerable to penetration by non-EU companies, and that external energy suppliers therefore should adopt norms specified in the European Energy Charter and the Transit Protocol'. Concerning new EU-level organizational structures, Poland feared that these might be unadjusted to the needs of a developing European energy market and become an additional administrative burden. Hungary, on the other hand, endorsed new institutional structures (European Centre for Energy Networks, a European Regulator and a European Energy Supply Observatory) but was sceptical about a European grid code. Estonia supported the creation of a European Energy Supply Observatory but not a European energy regulator, a European Centre for Energy Networks and a European network code. Slovenia supported monitoring of demand and supply patterns but not a new EU institution for this purpose. It stated that already existing legislation would be sufficient to finalize the internal energy market, and that establishment of a European regulator would not be necessary.

Concerning investments in infrastructure, Poland supported a list of priority interconnections and a strengthened EU budget to support for these and also national energy transit networks. The Estonian government voiced scepticism concerning the creation of a single trans-European energy network (especially the electricity grid), justified by existing non-synchronized electricity systems, making the subsidiarity principle most suitable in these areas. Estonia still supported drawing up priorities for new infrastructure, at the same time voicing concerns with the environmental impacts of the planned North European Gas Pipeline crossing the Baltic Sea region. Hungary endorsed the construction of interconnectors and the insufficiency of the TEN Energy framework to provide funding for investments. Slovenia supported the development of a Trans-European Energy Network and interconnection plan and a European grid

⁸⁷ Ibid.

⁸⁸ Position of the Republic of Slovenia on the Green Paper "A European Strategy for Sustainable, Competitive and Secure Energy", retrieved at Commission web site:

http://ec.europa.eu/energy/strategies/consultations/2006_09_24_gp_energy_en.htm.

⁸⁹ Position paper – Estonia's view on the European Commission's Green Paper "A European Strategy for Sustainable, Competitive and Secure Energy", retrieved at Commission web site:

http://ec.europa.eu/energy/strategies/consultations/2006_09_24_gp_energy_en.htm

code to be prepared by more formalized associations of gas and electricity transmission companies.

Concerning greater integration of energy and climate policies, Estonia supported the Commission's plan to analyse the effect of trading in GHG emissions on the energy sector and on energy prices, emphasizing the need to create Community principles for the allocation of national emissions. Slovenia supported the EU ETS to include additional industries and greenhouse gases. Concerning energy efficiency, the Estonian Government called for initiatives by member states to be dominant and warned against any joint white certificate system. Slovenia supported the Commission's action plan on energy efficiency and the objective of 20% increase in energy efficiency by 2020.

Concerning renewable energy, Poland called for equal competition rules for new investments in renewable energy technologies with those based on conventional energy resources. Estonia condoned a Roadmap for the post-2010 period without quantitative goals and deadlines for the member states, leaving the final competency on these issues to the member states. Hungary emphasized that promotion of renewable energy should ensure the availability of back-up capacity, in order to maintain the reliability and security of the network, warning against rapid investments in wind power generation capacities without appropriate grid reinforcements. It condoned a long-term Roadmap and possible new targets after 2010 should to be based on a reasonable compromise; taking into account the technical, economic, and cost aspects of various RES technologies. Slovenia held that the European energy market was not sufficiently effective to generate investments and that legislation for the construction of energy facilities should be facilitated at the European level, stressing, however, that low energy prices should be an EU energy policy objective, to boost industrial competitiveness. Slovenia supported the Commission's plans to support the use of renewables in the area of biofuels, electricity and heat.

Concerning the greater energy mix debate, Hungary stated that 'open debate is necessary about the questions of future role of nuclear energy and coal, without discrimination and prejudices'. Slovenia endorsed this debate to allow also a transparent and objective debate on the future role of nuclear energy, taking into account the problems of nuclear waste and safety.

Estonia and Slovenia supported new gas storage regulation and the development of energy crisis mechanisms at the EU level. Slovenia called for rethinking EU's approach to emergency oil and gas stocks to not exclude non-EU member states but also producer and transit countries. They also endorsed establishing a Strategic Energy Technology Plan with adequate EU funding.

Concerning the development of a common external energy policy, Hungary stressed the highest priority to ensure a balanced dialogue with and treat Russia as an equal partner, pointing to the agreement between Hungarian MOL and Russian Gazprom to analyse the feasibility of the extension of the Blue Stream pipeline from Turkey to Hungary, making

Hungary a gas hub for Europe, constituting a new transport line for Russian gas and avoiding Ukraine. The Slovenian government emphasized the Nabucco gas pipeline project, and stated it essential that a coherent European external energy policy be established through energy partnerships with producers, transit countries and other international actors, underlining the importance of setting up the Energy Community in South East Europe. The Benelux position paper was fully concentrated on this issue. It called for a policy that increases the interest producer countries have in a steadily growing EU demand for their energy, while at the same increasing producers' dependence on the EU (mutual dependence to foster predictability and stability). The EU should help producer countries to benefit from security of demand, to create the framework in which long term contracts with suppliers outside the EU are possible, assisting them with the technical know-how required for exploiting difficult fields etc.

Response from non-state stakeholders⁹⁰

Among the massive number of stakeholder responses, we here highlight only a few individual written contributions representing the two major stakeholder groups 'energy producers' and 'energy consumers'. Brussels-based environmental NGOs and trade associations for renewable energy industries did not figure on the list of written contributions as these organizations gave responses through the questionnaire and stakeholder forums.

Eurelectric welcomed better balancing of energy policy objectives. It called for full implementation of the 2003 Electricity Directive rather than any consideration of amendments. It endorsed more efficient regulatory processes at European and regional level before deciding on whether national regulators through ERGEG or a European regulator could do this best. It approved better co-ordination between TSOs in the regional sphere before embarking on an all-EU institution but stated full harmonization of technical rules set out in national grid codes to likely be unnecessary. Eurelectric supported investments in priority inter-connections to be based on economic considerations and streamlining authorization procedures. Regarding the future energy mix, Eurelectric underscored that primary energy and technology options should not be limited through political decisions, disagreeing that prescriptions should be set for a minimum level of low-carbon and secure energy. As to environmental issues, Eurelectric called for a global approach to tackle climate change while maintaining Europe's competitiveness. It called for a longer-term horizon for the EU ETS to be a driver of low-carbon technology, stating a firm belief in market-based mechanisms. It still recognized that a separate market for renewables might be needed in the beginning to eventually become part of the internal energy market with market-based support systems to be prioritized and harmonized. As to security of supply, Eurelectric maintained existing stocks and IEA arrangements as sufficient and that no new measures should be allowed to

⁹⁰ Position papers were retrieved from Commission web site:
http://ec.europa.eu/energy/strategies/consultations/2006_09_24_gp_energy_en.htm

interfere with the workings of the market. Eurelectric called for greater prominence of the role of nuclear energy in reducing dependency on important fossil fuels and tackling climate change. Eurelectric welcomed a Strategic Energy Technology Plan and better co-ordination of national external energy policies.

Looking at the major energy consumers, the Alliance of Energy-Intensive Industries gave major emphasis to completing the internal energy market, stating it crucial for the Strategic Review to recognize that 'one of the most important objectives of the internal energy market is to promote the competitiveness of EU industry'. It stated that the Energy Inquiry of DG Competition had seen that there are currently no properly functioning electricity markets in the EU with electricity prices increasing as a consequence, with pass through of EU ETS allowance prices seen as another major cause. Moderation of the EU ETS was thus stated necessary; to use the ETS review to address the pass through of opportunity costs by electricity producers, develop allocation methods that promote good practice and address the indirect impact of the scheme on electricity prices and competitiveness. The position paper also stated that a 3rd legislative internal energy market package to be adopted without delay, ensuring the removal of all barriers to free competition in the electricity and gas markets, with ownership unbundling included, independence of national regulators and mechanisms to ensure more inter-connectors. Existing incentive schemes for renewable energy sources were seen as distorting the power market, put pressure on grid costs and putting grid security at risk, all adding costs for the base-load consumers. Renewables should thus be supported when the source is cost-efficient compared to other CO₂ reduction measures, with support only to the types of renewables that can be commercially useable after a transition period, to avoid base-load customers to pay for the balancing costs of peak-load renewables.

Responses from the standing forums of energy policy stakeholders

In its summary report on the public consultations, the Commission analysed the responses from the five standing forums of stakeholders (Commission of the European Communities, 2006c). The European Forum of Energy and Transport; composed of high level representatives from a large range of energy and transport sectors highlighted the need for a properly functioning market to improve industrial competitiveness, but endorsed also in general terms broader EU energy policy development for the six priority points presented by the Green Paper. It also highlighted the failure of the Green Paper to consider the role of society in accepting and developing the common strategy for energy policy.

The Gas Regulatory Forum presented its views on aspects relevant for security of gas supply and the proper functioning of the internal market for gas. The participants, which are national regulatory authorities, member states, the European Commission, transmission system operators, gas suppliers and traders, consumers, network users, and gas exchanges, stressed the need for rapid progress in implementing the existing Gas Directive and application of the Regulation on conditions for access to the natural gas transmission networks.

The Electricity Regulatory Forum discussed not only internal energy market issues but the broad range of issues presented in the Green Paper. It highlighted as urgent issues for further action to demarcate the role and powers of regulators and transmission system operations at national and EU levels, to deal with market dominance, issues relating to transparency and distortions arising from allocation of emission in order to prevent the market model from failing. The participants, which are national regulatory authorities, member states, European Commission, transmission system operators, electricity traders, consumers, network users, and power exchanges, advocated a high level of consistency of energy regulation by the European Union and across member states, the removal of all regulatory gaps and cross border enforcement of common rules as far as possible through the strengthening and further development of existing structures and initiatives, with new bodies only to be considered where these are demonstrated to deliver real benefits. The energy-intensive industries in particular stressed the need for effective unbundling of TSO operations, market integration, and correction of the EU ETS' impacts on the power prices to provide the industries access to energy at competitive prices on a long term basis.

The Fossil Fuels Forum, which includes corporations, industry associations, member-state administrations and European civil society, called for policies to facilitate an early development and commercial take-up of technological solutions, integrating the achievements of clean coal technologies with the processes for capture and storage of CO₂ (CCS). All newly built coal-fired power plants should anticipate the arrival of new technologies and be built as 'capture-ready', allowing for retrofitting with CCS at later stages. By 2015, joint efforts should result in a number of large-scale demonstration projects in Europe and in third countries, and once low/zero-emission technologies are commercially feasible, as expected by 2020, no new power plants should be built without CCS elements. As to further oil production and consumption, the Forum called for efficient and rational patterns of oil consumption, a stable regulatory framework for gas, infrastructure development, and the need for the European Union to develop the capacity to speak with one voice vis-à-vis major gas supplying countries.

Finally, the Sustainable Energy Forum included representatives from member states, the European Parliament, the European Commission, industry and other stakeholders in the fields of renewable energy sources and energy efficiency. All participants agreed on a new directive to increase the use of renewable energy sources in heating and cooling. While most participants agreed that some form of EU targets for renewable energy would be necessary to give regulatory stability, the representatives of Eurochambers and the Council of European Energy Regulators strongly disagreed with such an approach, stressing possible market distortions and overcompensation risks.

*Response from the European Parliament*⁹¹

The Parliament Committee on Industry, Research and Energy (ITRE) debated the Green Paper based on the report prepared by the rapporteur Eluned Morgan. The report welcomed the strategy in the context of Europe's radically new security of supply context, and as far as possible secure affordable energy from indigenous resources, whilst protecting the environment and combating climate change. The report called for a 30% binding CO₂ target for 2020 and indicative 2050 targets along the lines of the 2 C° degree target and extension and revision of the EU ETS. To create a stable framework for investments, the report called for at least 20% energy efficiency improvements and 25% share of renewables in 2020, with binding sector targets for renewables. An indicative target for renewables of 50% by 2040 should be adopted. The report endorsed a strategy for the pooling of national research budgets at EU level, beyond the Seventh Framework Programme. The report further called for a strategy for biofuels while also recognizing the medium-term importance of fossil fuels combined with CCS. The report insisted that by 2020, there should be ten large scale functioning demonstration plants in the EU. It noted nuclear energy power as a controversial area with any decision on its development will remain the responsibility of the member states. The report also endorsed mechanisms for the EU to speak with one voice to third countries, and to take very seriously the possible deficit in gas supplies from Russia after 2010 due to the lack of investment.

The report asked the member states to recognize that the current model of the EU energy market is not working and that the new energy reality would require also non-market solutions, in the form of a clear political framework to establish a high degree of energy independence, long-term stability, efficiency, environmental sensitivity and security of supply. In all, 560 tabled amendments to the report came in from seven European Parliamentary Committees, all strongly supporting the main objectives set and the concept of a common and coherent energy policy for Europe, however. The common policy should, however, include a strategic external component with a broader global approach, in acknowledgement of the fact that whatever Europe is doing to mitigate climate change will be rather meaningless if developing countries – in particular large and rapidly growing economies such as China and India – do not get actively involved in efforts to curb GHG emissions.

The final December 2006 resolution of the Parliament thus maintained call for the targets: 30% CO₂ reduction by 2020 and 60–80% by 2050; 25% of primary energy production from renewables by 2020 and a road map to reach 50% by 2040; energy efficiency improvements of 20% by 2020. The nuclear lobby pushes for the Parliament to instead set a target for 60% of Europe's electricity from 'non-carbon emitting technologies', defeated in the discussions, however, settling the principle that only the individual member states should decide for themselves whether to include nuclear power in the energy mix or not.

⁹¹ This information is based on the Commission summary report, Commission of the European Communities, 2006c.

*Response from the High-level Group on Competitiveness, Energy and the Environment*⁹²

The High-Level Group on Competitiveness, Energy and the Environment emphasized the need to create a more competitive environment for electricity and gas supply through specific focus on implementing the second package, effective unbundling, new rules on transparency and higher EU-level activity in pursuing violations of the competition law. It also warned that the current tendencies of regional market development should be seen as nothing but a first step towards a single European market. The Group welcomed enhancing better co-ordination at the EU level of national regulatory authorities and national transmission system operators, including for investment in interconnections. In order to reduce uncertainty, the Group called for the EU to provide a long term vision related to the regulatory environment, key environmental issues and energy mix choices. It endorsed the 20% target for energy efficiency and a list of cost-effective priorities for energy efficiency measures at the EU level, including full implementation of the CHP Directive, the promotion of energy services and standards for energy products, including in transportation.

The High Level Group further called for immediately improving the EU ETS to provide incentives for investment in low carbon technologies, to have limited impact on the competitiveness of energy intensive industries competing on global markets and to be an attractive 'docking station' for schemes in other big emitting countries after 2012. It recommended that the EU sets itself a CO₂ reduction target for the energy sector for the longer term, with concrete intermediate targets. It also stressed the need to devote a sizeable amount of RTD towards low carbon technologies, with CCS as example.

*Responses to the Commission's questionnaire*⁹³

Responses to the questionnaire indicate some clear patterns in favour of stronger EU policies on renewable energy. The questionnaire attracted 1516 responses (1282 from citizens and 234 from various organizations/stakeholders), most of them from Germany, the UK and France, with poor representativeness of countries accessing in 2004 (only 94 responses).

Respondents were asked to select among multiple-choice answers to 17 questions on six themes. When asked about what measures would be important to achieve the goal of a genuine single market, 41% answered harmonized grid access conditions (European Grid code), reinforced unbundling (39.7%), to create a European Energy Regulator (38.2%), reinforced powers and independence of national regulatory authorities (22.2%) and finally to create a body of transmission system operators at EU level (15.6%).

⁹² This information is based on the Commission summary report, Commission of the European Communities, 2006c.

⁹³ This information is based on the Commission summary report, Commission of the European Communities, 2006c.

When asked about what the Community could do to prevent energy supply crises, 56.7% of the respondents opted for the development of smart electricity networks, demand management and distributed energy generation. Around a third of the respondents preferred i) the establishment of a European observatory mechanism to identify likely shortfalls in supply and infrastructure at an early stage, ii) enhanced TSO co-operation to develop common security and reliability standards, and iii) enhance dialogue with major energy suppliers/consumers. Fewer opted for EU legislation on gas stocks (22.8%); and Community review of legislation on oil stocks attracted little enthusiasm (10.8%).

On the question what the EU should do to ensure diversification of energy supply, renewables (76.3%) and energy efficiency (62.9%) were clearly favoured. Only 11.9% of the respondents favoured more use of nuclear energy. This tendency was clear also regarding the question how a common European energy strategy could best address climate change, balanced against other objectives. 68% of the respondents opted for consolidating Europe's position on efficiency and renewables, 50% agreed that Europe should be kept at the forefront of energy technology, 40% wanted policies to focus on widest possible international actions, and 25% were for consolidation of the Emissions Trading Scheme. When asked about how to further development of clean and renewable energy sources in the EU, 61% opted for a long-term action plan with targets and around 50% for incentives at the Community level, including stronger R&D efforts within a Strategic European Energy Technology Plan. Only 22.4% opted for further development of the EU Emissions Trading Scheme, while more than 40% stressed that investments should be reinforced at the member-state level.

When asked about which topics/technologies should be included in a Strategic Energy Technology Plan, the responses were clearly in favour of solar, wind and second-generation biomass, with few respondents enthusiastic about CCS, clean coal and enhanced oil recovery.

(1) Solar.....	67.0%
(2) Wind.....	61.7%
(3) Second generation biomass.....	55.8%
(4) Tidal and wave.....	44.5%
(5) Fuel cells and hydrogen.....	44.1%
(6) Smart electricity networks.....	41.0%
(7) CO ₂ Capture and Storage (CCS).....	24.3%
(8) Disposal of nuclear waste.....	20.6%
(9) Clean Coal (non-CCS).....	12.3%
(10) OTHER.....	10.9%
(11) Enhanced Oil Recovery.....	6.5%

Also when asked about priorities for EU external energy relations, climate change, energy efficiency and renewable energy sources came in on top (70.9%) – far ahead of developing new partnerships with neighbouring countries (25.9%), with producer countries (20.9%), Russia specifically (18%), or other consumer nations of the world (16.6%).

The questionnaire also showed nearly 80% of respondents opting for a new, common energy policy to be adopted at the EU level and for making energy issues the core of the Lisbon process to create growth and jobs. As to balancing the key energy policy objectives, 72% of the respondents put ‘sustainability’ as top priority objective, around 40% ‘security of supply’ and 23% ‘competitiveness’.

4.5 Towards the Commission 2007 energy and climate package

Key EU member state governments now also intervened at several occasions urging for a more ambitious EU climate policy. At a joint meeting in September 2006, the German and French environment ministers called for a 30% cut in greenhouse gas emissions by 2020, the top end of the target already endorsed by the EU leaders. In October, UK PM Blair and Dutch PM Balkenende sent a letter to their European colleagues, calling for urgent action on climate change, arguing that the world had reached a ‘catastrophic tipping point’ with a window of only 10–15 years to avoid ‘serious consequences’ for the economy and people’s safety. The UK Government in particular now played an important role in changing the climate change discourse from a sole focus on costs of mitigation towards including the costs of neglecting the problem. On 30 October 2006, the UK Government-commissioned Stern Review was made public, concluding that the benefits of strong, early action on climate change would far outweigh the costs of not acting.⁹⁴

In mid-November, Commission President Barroso stated that fighting climate change would be among the Commission’s top policy priorities for 2007, picking out energy and climate as the first key areas to be addressed in Commission policy-making, with proposals for a first ever ‘strategic energy review for Europe’; a review of the EU’s carbon emission trading system and a Commission paper on the EU position for a global post-2012 successor to the Kyoto Protocol.

Yet, different signals were now sent out by Enterprise Commissioner Günther Verheugen. In a circular to colleagues, he warned against overly-quick moves in climate change policies, proposing a twin-track approach to long-term GHG emission targets: modest unilateral commitments to show willingness; backed by more ambitious targets that Europe would be willing to take on in concert with other emitters. Realistic reduction goals for 2020 should be set at 15%, the lower end of the scale already

⁹⁴The review evaluated the overall costs of climate change to be equivalent of losing at least 5% of global gross domestic product (GDP) each year, now and forever. The review had been Commissioned mid-2005 by the British Chancellor of the Exchequer and was led by Sir Nicholas Stern of London School of Economics, prepared by a team of economists at HM Treasury with independent academics involved as consultants.

endorsed by the EU leaders. The circular supported reinforcement and extension of the EU ETS to include harmonized emission allowance allocation rules; to add private cars to the scheme; to make the scheme truly global; but also for a special framework for energy-intensive industries exposed to international competition in order to avoid relocation to other world regions. It also called for an ambitious industrial policy to assist market introduction of environmental technologies, rethinking the approach to renewable energies by setting a binding EU-level target to 'create a truly internal market for renewables in the EU' while avoiding targets for individual technologies and link existing renewables promotion schemes such as green and white certificates to the EU ETS 'to ensure coherence'. The circular further urged the EU to keep open all energy options and put pressure on completing the EU internal energy market.

The Environment Council in Brussels 18 December showed broad but not united support for the 30% target. Ministers from the UK, Germany, Italy and Sweden were among the supporters while ministers from Hungary, Slovakia and Poland warned against the EU making a 'hasty declaration of commitment' before other developed and developing countries signalled their willingness to do likewise. These countries also emphasized that any future EU target should be differentiated among the member states to take account of the varying growth potential and emissions.

10 January 2007, the Commission presented its much announced 'Strategic Energy Review' together with a package of measures termed as 'a new Energy Policy for Europe'. The Review set the three energy policy objectives somewhat reframed (combating climate change, limiting the EU's external vulnerability to imported hydrocarbons, and promoting growth and jobs, thereby providing secure and affordable energy to consumers). The goal set as priority, however, was to kick-start international negotiations to reduce developed countries' GHG with 30% reduction by 2020 and 60–80% by 2050 by setting an unconditional goal for the EU to reduce its emissions of GHG by at least 20% by 2020.⁹⁵ The energy review further stated this goal fully compatible with security of supply since the proposed policies would stimulate energy efficiency and cleaner, locally produced energy instead of imported price-volatile oil and gas. It stated the coal compatible with international competitiveness since a more competitive internal energy market would stimulate technological innovation and jobs. An annexed table to the review indicated the superiority of some renewables to oil and gas in terms of not only reducing import dependencies and greenhouse gas emissions but also future projected electricity generation costs (Commission of the European Communities, 2007a).

The completed energy sector inquiry was an associated document with the package. The inquiry concluded that European gas and electricity markets remained national in scope and had maintained a high level of

⁹⁵ These goals formed central part of the associated Communication "Limiting Climate Change to 2°C – Policy Options for the EU and the world for 2020 and beyond" developed by the environment service of the Commission.

concentration and scope for exercising market power (Commission of the European Communities, 2006b). Lack of access to infrastructure was highlighted as a major barrier to free competition, causing, together with higher primary fuel costs and environmental obligations, significant rises in gas and electricity wholesale prices (Ibid.). The review elaborated in detail on vertical integration between network and supply interests as a mechanism causing negative repercussions for market entry and incentives to invest in networks, despite of the existing legal unbundling provisions. Vertically integrated operators of the networks were suspected of favouring access to their own affiliates (discrimination) and holding back investments on the basis of own supply interests. Vertical integration of generation/import and supply activities had reduced incentives to trade on wholesale markets and thus, a lack of liquidity in these markets, in turn an entry barrier. The review also added lack interconnection capacities and lack of transparency, reliability and timeliness of information on network availability as major barriers.

The associated Action Plan proposed three pillars of new measures. The first pillar included a third internal energy market package with 'ownership unbundling of network and production assets' at top with an Independent System Operator (ISO) model as a 'fallback position'. The ISO model would allow joint ownership but with returns on network operations regulated, and the operation, maintenance and development of networks to be decided outside the vertically integrated owner structure. Also proposed was harmonizing the levels of powers and independence of national energy regulators from industry and governments and strengthening the regulatory functions at the EU level, in acknowledgement that ERGEG, based on voluntary co-operation between national regulators, had not provided effective governance for progress on harmonizing standards needed to increase cross-border trade and prevent blackouts. Instead, the Commission proposed mandatory co-operation between national TSOs within an EU-level TSO association, to be made binding by a new EU-level agency of national regulators co-operating for a European perspective, with possibilities for review by the Commission in matters of cross-border infrastructure. Harmonized minimum standards for transparency of information from TSOs and generators constituted another part of the proposal.

Under this first pillar, the Commission also proposed measures to bolster planning and approval of priority Trans-European gas and electricity networks to deliver on the 10% minimum interconnection level target set in 2002; the set-up of a new Office of the Energy Observatory to monitor the demand/supply balance in Europe; the development of an Energy Customers' Charter to ensure Public Service Obligations; establishing a solidarity mechanism to assist vulnerable import-dependent member states and other EU-level measures aimed at improving security of supply.

For a second pillar, the associated 'Renewable Energy Roadmap' proposed a *binding* target of 20% of EUs overall energy mix to be sourced from renewable energy by 2020 and a separate minimum target of 10% for biofuels together with mandatory progress reports for the member states. Also part of this pillar was a Communication on a Strategic Energy

Technology Plan (SET Plan) to identify those technologies for which the European Union as a whole should mobilize resources in order to initiate large-scale projects beyond the capacity of any single country. Examples included bio-refineries, sustainable coal and gas technologies, fuel cells and hydrogen and Generation IV nuclear fission. As to funding the SET Plan, the Communication proposed a 50% increase in the Seventh Framework programme and 100% increase of the Intelligent Energy-Europe Programme as initial steps. A separate communication on CCS was included as part of this pillar. Concerning nuclear power, the Strategic Energy Review underlined national sovereignty in decisions but recommended that any decommissioning must be offset by other low-carbon energy sources in order to achieve the targets set in the package. A nuclear power illustrative program with potential future scenarios for nuclear power was associated with the package.

The third pillar included energy efficiency measures, with the Action Plan for Energy Efficiency (EEAP), adopted already in October 2006, now framed as an integrated part of the package. The EEAP outlined policies and measures needed to reach the energy savings potential of over 20% of the EU's annual primary energy consumption by 2020 (meaning 13% less energy use in 2020 and saving around 780 tonnes of CO₂ per year). Ten priority actions in six areas were formulated, among them acceleration of fuel efficient vehicles for transport; tougher standards and better labelling of appliances; improved energy performance of the EU's existing buildings and improved efficiency of heat and electricity generation, transmission and distribution, as well as a new international agreement on energy efficiency.

The Strategic Energy Review finally promised to continue the development of a common EU foreign energy policy to ensure that the Union would speak with one voice and to develop solidarity mechanisms to deal with internal security-of-supply crises.

Attending the launch of the Strategic Energy Review and larger package were Commission President Barroso and the energy and environment commissioners, signalling high political priority and the internal agreement reached on flagging climate change as overriding goal for energy policy. In a separate launch of the energy sector inquiry, the Competition Commissioner Kroes pointed to new in-depth market knowledge providing the basis for a new era with targeted investigation of individual firms. Signalling the new co-operation with DG TREN, Commissioner Kroes stated that competition policy would go hand in hand with a strengthening of the regulatory framework to move ahead on market liberalization.

4.6 Brief analysis of the 2007 energy policy package

As compared to views forwarded in the consultations on the 2006 Green Paper, the 2007 package represented a compromise balancing of stakeholder interests. Putting climate mitigation in as top EU energy policy goal was certainly not appealing to all the member states, indeed not so for many of the new ones having high shares of coal in their energy mix, fearing regulatory measures to stump economic growth rates needed to

catch up with the living standards of western Europe. On the other hand, key EU-15 countries had given climate policies high priority, including the UK, Germany and France, and the Parliament majority was very much in favour. Also the responses to the questionnaire showed that many civil society organizations had put climate change and sustainability on top of what EU energy policy should give priority to. The 20% emissions reduction goal represented a compromise for the 15–30% objective that had long been discussed by member state governments and EU institutions. The environment commissioner had proposed 30% and the enterprise commissioner 15%. The European Parliament had broadly supported 30%.

Nor did all the member states agree on the 20% target for renewable energy and 10% for biofuels, or the proposal to make these targets binding. Even DG TREN had not included specific targets for renewables in the 2006 Green Paper, supporting rather the idea of a 50% target for low-carbon energy, nuclear power included. Some member states, among them Estonia, had explicitly called for not setting new quantitative goals and deadlines. Again, most of the ‘old’ member states, on the other hand, had formulated support of new goals beyond 2010, referring mostly to 2015 as end-date with 15% for renewables and 8% for biofuels as possible goals put forward by the UK, again reflecting proposals long pending in the Community. And indeed, the respondents to the DG TREN questionnaire put renewable energy on the absolute top of priorities for future EU energy policy. As noted above, the 20% goal had been out for long, called for by the French and German environment ministers in February 2004. Environment Minister Margot Wallström had proposed a 25% goal in 2003, then neglected by DG TREN’s Loyola de Palacio, announcing that any long-term roadmap for renewable energy would not be proposed before 2007. In the 2006 consultations, the European Parliament insisted on setting a 25% binding goal for 2020 and a 50% goal for 2040. The only member-state position paper clearly requesting binding targets was that of Germany, which proposed 2020 as end point for a future Roadmap, and specified a target of 12.5% for biofuels. Also the French position paper underscored the need for a higher level of ambition in EU biofuels policy, endorsed also by the UK which, however, made such ambitions conditional on sustainability criteria adopted for biofuels. Expectations in the media were a 14–15% target for 2020, according to Commission officials, as leaked to the press.

4.7 The first reactions to the energy policy package

The immediate reactions to the package were mixed. Green groups called for re-installing the 30% emissions reduction target, while the German Environment Minister Sigmar Gabriel now accepted the new target. Strong support came from the British government, calling it ‘the opening of an intense six-month window of opportunity’ that could lead to radical policies being agreed by not only the EU but also the G8 nations. Industry groups expressed concerns over the risk for EU competitiveness, but main EU employers’ association UNICE and chemical industry association CEFIC nevertheless welcomed the plan to put pressure on market opening. Green energy producer trade body EREC criticized the

abandoning of specific goals for renewable electricity, heating and cooling.

Political groups in the European Parliament were divided when voting for a response in mid-February. The main centre-right EPP and UEN groups supported the proposal while the Socialists, the main centre-left group, as well as the smaller Green Party, called for re-installing the 30% goal. Political groups were divided also over the renewable energy target. The EPP supported the plan, whereas the Socialists and Greens called for a higher target of 25 per cent by 2020. Shortly before voting on a common position, consensus was reached on the target but also to go on opposing the deletion of binding sector-wise renewables targets in favour a single all-renewables target.

The Environmental Council backed the package although some environmental ministers still pushed for 30% GHG reduction goal (Sweden, Denmark) and others maintained they wanted to scrap unilateral targets (Poland and Hungary). Disagreement between EU leaders before the Council of Minister meeting in Brussels in March 2007 concerned first and foremost the target for renewables. France appeared as a leading opponent of making the target binding, alongside several of the bloc's newer member states, making the unanimous agreement for only an indicative target the most likely outcome. The binding target for biofuels and cuts in climate gas emissions appeared less problematic. Lobbying intensified. Business Europe opted for only a *non-binding* renewable energy target, urged for a target of 40% for nuclear electricity, and called for special measures to protect energy-intensive consumers from the rise in energy prices that would follow from investments in renewables. A wide range of groups called for rejection of binding targets for biofuels, including ENGOs BirdLife International and T& E, claiming it would result in 'major environmental and social problems', adding that 'as an absolute minimum' EU countries should support the mandatory certification of biofuels accounting for not only their greenhouse gas balance, but also their impact on other environmental factors such as biodiversity and freshwater supplies. Also a coalition of renewable resource-using industries, ranging from food and forest to the oleochemicals industry warned against higher and binding targets for biofuels, claiming resource competition to be devastating for them. Europe's biotechnology industry trade association EUROPABIO argued on the other hand that Europe would have enough land to grow bioenergy crops if assisted by biotechnology helping to deliver more efficient second-generation biofuels.

The European Council decided on the climate and energy package 9 March 2007, endorsing the binding target to cut GHG by at least 20% by 2020, accomplished through differentiated national targets, a 30% target should all industrialized countries follow suit, and collective cuts of 60–80% by developed countries by 2050. The Council also endorsed a review the EU ETS as key climate policy instrument with a view to increasing transparency and strengthening and broadening the scope of the scheme. It also endorsed making the 20% targets for renewable energy and 10% biofuels for the transport sector binding, providing that a fair and equitable share was found between member states, taking into

account differing national circumstances, starting points and potentials. The 10% target was made conditional on production being sustainable, second-generation biofuels being available and that the fuel quality directive could be successfully amended. The EU leaders still called for sector-specific targets and legislation for renewable electricity, heating and cooling, however. They also recognized the contribution of nuclear energy to meeting energy security and climate change concerns, seen as a concession to France and other pro-nuclear countries to win their support for the binding goal on renewables. A non-binding commitment to reduce the EU's energy consumption by 20 per cent compared to projections for 2020 through improvements in energy efficiency was endorsed, as well as the establishment of a European Strategic Energy Technology Plan, and the development of an effective international energy policy.

The Council further endorsed the Action Plan for 2007–2009 to accomplish the goals, including a third internal energy market package. It was, however, less clear on the specific proposal of full ownership unbundling of energy suppliers and transmission network operators, asking for the upcoming Energy Council in June to elaborate on this. The Council sufficed to ask the Commission to elaborate measures for an 'effective separation of supply and production activities from network operations (unbundling), affirming that the first step would be to ensure timely and full implementation in letter and in spirit of existing legislation. On the other hand, the Council supported new EU-level cooperation mechanisms for national regulators and TSOs to work on cross-border issues and system operation, while building on the cooperative arrangements among TSOs already in place (Jevnaker, 2012:56).

4.8 Policy proposals based on the 2007 package and Council decision

The European Council decisions in March spurred hectic activity in the Commission to deliver on the Action Plan. Different units of DG TREN became engaged in developing different pieces of new legislation and co-ordination efforts within DG TREN and between DG TREN and other relevant Commission services increased.

A new internal energy market package

The first priority of DG TREN was drafting a new package of internal energy market measures. The sector inquiry conducted jointly by DG Competition and DG TREN had convinced Commissioner Kroes of the former that a new package of policies would be needed. In contrast, most of the many 2006 Green Paper responses from member state governments and the energy industries opted for focus on only on full implementation of the second package. Commissioner Kroes was instrumental in convincing Commissioner Piebalgs of DG Energy to go ahead with new legislation (Eikeland, 2011a). Based on the joint work already carried out under inquiry, DG Competition staff was now brought in to co-draft the new package, representing something particular in the life of the Commission, traditionally bound by the high-level agreement that DGs do not interfere in each other's policy domains (Eikeland, 2011b). DG

Competition came to put its mark on the co-drafted proposal, pushing hard for mandatory ‘ownership unbundling’, with an alternative ISO model secured as a fallback position, more in line with the incremental consensus-seeking procedure preferred by DG TREN. DG Competition also insisted on toning down ‘regionalization’ in the text, signalling only a step-wise arrival at full internal market integration, an opinion that had been forwarded also by the High Level Group. The step-wise procedure had been promoted by the electricity supply industry and supported by DG TREN back in 2003. DG Competition feared such a procedure to aggravate regional cartelization. The new and closer relationship between DG TREN and DG Competition included both the administrative level and the two commissioners. The agreement reached across the two services gave the new proposal a solid anchoring in the Commission already before it was turned over to other services for consultation. Also backing the new more radical steps for market integration was Secretary-General of the Commission, Catherine Day (Eikeland, 2008).

Yet, the Energy Council meeting early June 2007 showed that a blocking minority would reject full ownership unbundling as a mandatory measure (Eikeland, 2011a). Chair of the meeting, German Economics Minister Michael Glos, specifically asked the Commission to take notice of the suggestions coming out of the meeting when elaborating its new proposal (Eikeland, 2008). Commissioner Piebalgs, attending the meeting together with Commissioner Kroes, admitted that this would make it very difficult for the Commission to put together a new energy liberalization law.

Despite these signals, the Commission kept ‘ownership unbundling’ as the preferred mandated option when launching its 19 September 2007 proposal, retaining the ‘Independent System Operator’ as a fallback option. After pressure from Poland, the proposal also included a new ‘reciprocity clause’, specifying that ownership unbundling would also apply for third-country companies opting for take-over of transmission systems in the Community. The clause signalled to Gazprom and other non-EU energy companies that they would be subject to the same rules as EU entities. The clause also stated clearly that third country entities would only be permitted to acquire distribution networks within in the EU if they offered *all* EU entities similar rights to invest in their home countries. As such, the clause also signalled Commission intentions of pursuing the principle of ‘speak with one voice’ in international energy relations.

The new internal energy market package acted on the broader list of measures discussed in 2006 and 2007, presented as five pieces of legislation: new electricity and gas directives, new regulations for facilitating cross-border trade in electricity and natural gas; and a separate regulation proposing the establishment of a new EU-level Agency for the Co-operation of Energy Regulators (ACER), (Commission of the European Communities, 2007b, 2007c, 2007d, 2007e, 2007f). The Commission proposed measures to ensure real independence of national regulators through the set-up of agencies outside the control of national ministries. Through the new regulations, the Commission proposed replacing former voluntary co-operation between national TSOs and regulators for harmonizing management of cross-border infrastructure

capacity with mandatory co-operation within a new European Network for Transmission System Operators (EnTSO) and for national regulators, within ACER. The new harmonized practices, denoted codes, would be developed by EnTSO, to be accepted by ACER, and then made binding through comitology. EnTSO would also be responsible for making ten-year plans for new cross-border infrastructure. In essence, the new EU-level organizations and the new procedure put stronger pressure on national TSOs and regulators to speed up work in removing barriers to cross-border trade in natural gas and electricity. It set timetables for this work and included a clause transferring competency to the European Commission for code development should these new organizations not comply with their mandates.

The Strategic Energy Technology Plan

In parallel, DG TREN and DG Research staff started joint preparation of a Strategic Energy Technology Plan, presenting a communication on 22 November 2007 (Commission of the European Communities, 2007g). In essence, the Communication proposed co-ordination of research planning through a European Community Steering Group to be chaired by the Commission and composed of high-level government member-state representatives. The mandate of this Steering Group would be to conceive coordination of policies and programmes, to make resources available for new strategic energy technologies, and to monitor and review planning progress. To accelerate the development and market introduction processes of new technologies, the Commission proposed European Industrial Initiatives to mobilize resources and target technologies for collective handling the scale of the investments needed and tackling barriers and risks involved. Based on prior consultation, the Commission proposed six priority initiatives: *European Wind Initiative*: focus on large turbines and large systems validation and demonstration relevant to on-shore and off-shore applications; *Solar Europe Initiative*: focus on large-scale demonstration for photovoltaics and concentrated solar power; *Bio-energy Europe Initiative*: focus on 'next generation' biofuels within the context of an overall bio-energy use strategy; *European CO₂ capture, transport and storage initiative*: focus on the whole system requirements, including efficiency, safety and public acceptance, to prove the viability of zero emission fossil fuel power plants at industrial scale; *European electricity grid initiative*: focus on the development of the smart electricity system, including storage, and on the creation of a European Centre to implement a research programme for the European transmission network; and a *Sustainable nuclear fission initiative*: focus on the development of Generation-IV technologies.

The climate and energy package

DG TREN's unit for renewable energy started work on delivering on the 20% renewable energy target that, according to the Council decision, should set individual targets for the member states. Considerable differences in opinion now surfaced on how such targets should be set. DG TREN's unit of regulatory policy & promotion of renewable energy first drafted a scheme that would base targets on national resource potentials and allow the member states to continue using national feed-in

tariff systems to accomplish their targets, claiming these would create superior predictability for revenues and investment stability, seen by the higher rate of renewables added in countries with such systems (Nilsson, Nilsson and Ericsson, 2009). This view was strongly opposed by DG TREN's Internal Market Unit, who favoured flexible trading mechanisms because these were regarded more compatible with the internal energy market logic, but this unit was initially not linked up with the renewable energy policy development process.⁹⁶

Some member state energy ministers were staggered by the idea of targets based on resource potentials, acknowledging this would entail large differences in national targets without any consideration of total costs for the EU.⁹⁷ Pressure for more a flexible trade-based system was particularly strong from member states lacking own resources, such as Malta and Luxembourg, and also the UK, Italy, the Netherlands, Sweden and Denmark opted strongly for a system more compatible with the internal market (Toke, 2008; Nilsson, Nilsson, and Ericsson, 2009). Then General-Director of DG TREN, Philip Lowe, intervened to stop the draft and rewrite it based on a simpler model with flat rates and flexibility for the member states to co-operate on achieving the targets, a view also shared by Deputy Head of DG TREN's cabinet, Christopher Jones, active when DG Energy had drafted the green certificate scheme proposal in the 1990s.⁹⁸ With DG Environment already experienced in drafting another flexible trade-based instrument, the EU ETS, Jones asked its key architect, Director of Climate Change Jos Delbeke, for advice. He recommended bringing in assistance from Peter Vis, who had been a key co-developer of the EU ETS scheme and now was working in DG TREN's Economic Analysis and Climate Change Unit. Vis was appointed Member of the DG TREN Cabinet with responsibility for renewable energy and interaction with climate change policies. Under his leadership, DG TREN started re-drafting the Directive, based on a model of flat targets for the member states with a 'burden-sharing' compensation for the poorest member states, strongly demanded by some of the Eastern European countries because of lower economic ability to support renewables. A trade-based certificate system was proposed to facilitate trade between the member states so as to minimize total costs. Further, it was proposed that 'guarantees of origin', the verification papers adopted in 2001 for control that electricity accounted as 'renewable' would actually be so, should be developed into tradable certificates (Toke, 2008:3). The group of senior-ranking Commission bureaucrats supporting this trade-based scheme included also Secretary-General Catherine Day, instrumental in persuading Commissioner Piebalgs. A trade-based solution was also supported also by DG Competition, and with DG Environment largely positive (Nilsson, Nilsson and Ericsson, 2009). DG Enterprise was another supporter, viewing a trade-based system important to minimize costs and impacts on energy tariffs.

⁹⁶ Interview with Peter Vis, DG CLIMA, Head of Cabinet, 15 September 2011

⁹⁷ Interview with Peter Vis, DG CLIMA, Head of Cabinet, 15 September 2011

⁹⁸ Interview with Jesse Scott, Head of Unit Environment & Sustainable Development Policy, Eurelectric, 26 April, 2012

The disagreements within DG TREN provided strong incentives for lobbying (Nilsson, Nilsson and Ericsson, 2009). Most critical to a harmonized trade-based instrument were member-state governments with well-established feed-in tariffs at home, fronted by Germany and Spain. The renewable energy associations EREC and EREF and the most important environmental NGOs joined in on the anti-GO trading side, forming ad hoc lobby coalitions with industrial actors and national governments (ibid.). The lobbyists most strongly in favour of GO trading were businesses concerned with trade itself and the major power producers (Nilsson, Nilsson, and Ericsson, 2009). Despite of this, the power producer trade association EURELECTRIC had difficulties forming a strong united position, representing diverging interests in terms of power technologies and nationalities, thus forwarding a rather nuanced view at the end of Commission preparations that would ensure an open choice between FIT systems and GO trading (Toke, 2008). Similar difficulties were recorded for Business Europe, which first took a clear pro-GO trading stance and later modified this position because of opposition from some of its members (Nilsson, Nilsson and Ericsson, 2009). Among the energy intensive industries, the pulp and paper industry association CEPI was alone in focusing lobby resources on the RES Directive, taking a clear anti-GO trading position for fears that this would favour the use of bioenergy and thus increasing costs for their biomass input due to competing demand (ibid.).

Thus, late December 2007 a draft version marked a first compromise between the two views. It stated that the member states could opt out of trade in guarantees of origin only if achieving a set of interim targets set up. If failing to reach these interim targets, the member states could not hinder trade in guarantees of origin between persons within the Community (Toke, 2008). This caused new lobbying, with Spain and Germany, backed by Latvia and Council President Slovenia writing to Commissioner Piebalg on 15 January 2008, saying the proposal threatened their renewable energy systems, convincing DG TREN to include a full opt-out clause in order to reduce the level of controversy in subsequent deliberations with the Council and Parliament. The final proposal thus did not include any mandatory use of trading mechanisms at the company level but instead specified a series of flexible mechanisms that member states could employ to assist in achieving national targets. The targets settled for individual member states were split in two elements. With the share of renewables in the Community around 6.5%, another 13.5% would be needed to achieve the 20% goal for 2020, all member states were given a flat 5.5% rate, with the remaining gap shared and allocated according to GDP/capita. To compensate rich Denmark and Sweden for early action, these two countries were given a discount. Specific sector targets were not proposed, giving the member states flexibility as to what sectors should invest in renewables so as to reach the overall national target.

As noted, Secretary-General Catherine Day was central in the group of Commission people persuading DG TREN to develop a flexible solution for renewable energy, compatible with the internal energy market package developed by the service's internal market unit. As key responsible for inter-Commission co-ordination, she also became instru-

mental in convincing Energy Commissioner Piebalgs that DG TREN and DG Environment should work closely together to co-ordinate policy development in a larger climate and energy package. DG Environment had been tasked with developing policies to attain the 20% reduction in greenhouse gases, of which revision of the EU ETS should be a key part of the solution. Both this and the renewable energy goals had been adopted by the European Council on the condition that differentiated national targets should be set to reflect an equitable burden-sharing. With such similar mandates, DG TREN and DG Environment acknowledged that a package solution would increase opportunities for finding acceptable burden-sharing arrangements.⁹⁹ DG Environment certainly acknowledged that letting the EU ETS sectors bear the total burden of a 20% cut in GHG emissions would not be a popular option for European industries subject to competition from outside the EU, to spur strong opposition also among the member state governments, Eastern European members in particular. Strong up-front co-ordination would serve also other purposes. With agreement reached between both directorates, and the Secretary-General, the proposed policies would stand firmer also in internal deliberations of the full Commission, where e.g. Enterprise Commissioner Verheugen had earlier voiced scepticism of overly-ambitious EU climate targets. And with a larger package of solutions, there would be opportunities for all stakeholders getting something on the way that would make individual policies more acceptable.¹⁰⁰ In their further work in preparing a package of policies, DG TREN and DG Environment staff now co-ordinated joint modelling to find equitable solutions regarding differentiated national targets for emissions reductions and renewables, specifying also the burden to be carried by the ETS and non-ETS sectors, in order to arrive at the binding targets set for GHG gas emissions reductions and renewables. Equitable solutions were the focal point, never optimization.¹⁰¹ This was the first time the two Commission services conducted such joint modelling work. The choice of not including also national targets on energy efficiency into the equation, despite the overall non-binding EU goals of 20% savings agreed by the Council as part of the package, had different reasons. The member states had never showed any actual will for binding national energy efficiency targets, and model technicalities would have left the model exercise more complex.¹⁰² On the other hand, various modes of allocating emissions allowances, i.e. auctioning or free allocation, was made part of the total equation.

Yet, the Council had also decided for a 10% binding share for biofuels in total transport fuels consumption by 2020 that was not part of the model

⁹⁹ Interviews with Stefaan Vergote, DG CLIMA, Head of Unit Strategy and Economic Assessment and Tom van Ierland, DG CLIMA, Policy Officer, Economic assessment of climate policies in Unit Strategy and Economic Assessment, 14 September 2011.

¹⁰⁰ Interview with Tom van Ierland, DG CLIMA, Policy Officer, Economic assessment of climate policies in Unit Strategy and Economic Assessment, 14 September 2011.

¹⁰¹ Interview with Tom van Ierland, DG CLIMA, Policy Officer, Economic assessment of climate policies in Unit Strategy and Economic Assessment, 14 September 2011.

¹⁰² Interviews with Stefaan Vergote, DG CLIMA, Head of Unit Strategy and Economic Assessment, 14 September 2011 and Peter Vis, DG CLIMA, Head of Cabinet, 15 September 2011.

work since a flat rate was already decided for the member states here. This target was, however, made conditional upon production of biofuels being sustainable and second-generation biofuels commercially available, signalling a stake for DG Environment also in the process of preparing this part of the Renewable Energy Directive. Also DG Agriculture became part of the preparation team (Müngersdorff, 2009). DG Agriculture had been an active promoter of reforming the Common Agricultural Policy with incentives provided for European farmers to establish production of biofuels as a new business opportunity and a firm supporter of the 2003 Biofuels Directive (Eikeland, 2005).

DG TREN staff early acknowledged that second generation biofuels were still commercially non-mature and thus decided for flexibility to let also other renewables count against the 10% target. Still, adopting sustainability criteria for biofuels evolved as cumbersome work with life-cycle assessment needed to evaluate actual climate emissions and land-use changes associated with the range of feedstocks from various geographical regions.

In this drafting process, DG TREN and DG Agriculture constituted an alliance against DG Environment, the latter more sensitive to demands from environmental scientists and NGOs to scrap the goal and to put in broad and strict standards to ensure that the biofuels chosen would actually reduce greenhouse gases and not lead to destruction of ecosystems and loss biodiversity (Müngersdorff, 2009). The two former opted for the high share for biofuels and as few restrictions as possible. With science on the consequences of biofuels developing in parallel, DG Environment opted for putting a review clause into the directive, while DG Agriculture and DG TREN held this to create uncertainty for investors (Müngersdorff, 2009). Again, internal Commission disagreement opened for massive lobbying (Nilsson, Nilsson, and Ericsson, 2009). An alliance of the pulp and paper industry and environmental NGOs co-operated to reduce the biofuel targets and enhancing the sustainability criteria (Nilsson, Nilsson and Ericsson, 2009). Farming industry association Copa-Cogena and the biofuels production organizations lobbied for as few restrictions as possible. In the end, DG Energy set as a requirement that biofuels should at least reduce CHG emissions with 35% compared to conventional fuels as well as broader sustainability criteria in order to account against the 10% target.

In parallel, DG Environment proceeded with developing *its* parts of the package under lobbying pressure, the reformed EU ETS Directive, effort-sharing targets for the member states for CO₂ reductions in non-EU ETS sectors based on GDP/capita, and a CCS Directive that would require the member states establish conditions needed for environmentally safe underground storage of carbon.

The main changes to the reformed EU ETS for the post-2012 period were: one EU-wide cap on the number of emission allowances instead of 27 national caps, to decrease along a linear trend line of 1.74%, also beyond the end of the third trading period (2013–2020); full auctioning of allowances for the power industry: harmonized rules, to be further developed by comitology to govern free allocation to non-power

producing industries; gradual phase-in of auctioning also for these industries; redistribution of some rights to auction allowances from high to low per capita member states to strengthen the financial capacity of investing in climate friendly technologies; the inclusion of new industries (e.g. aluminium and ammonia producers) and gases (nitrous oxide and perfluorocarbons); and the right for member states to exclude small installations from the scope of the system, provided they were subject to equivalent emission reduction measures. It further proposed pre-allocation of parts of the proceeds from the auctioning of allowances to a range of activities: to reduce greenhouse gas emissions, to adapt to the impacts of climate change, to fund research and development for reducing emissions and adapting, to develop renewable energies and CCS, to support Energy Efficiency and Renewable Energy Funds, for measures to avoid deforestation and facilitate adaptation in developing countries, and for addressing social aspects such as possible increases in electricity prices in lower and middle incomes. An associated communication announced that the commission would come up with further proposals during 2008 for project funding of early demonstration of sustainable power generation from fossil fuels.

Also in parallel, DG Competition continued the process of revising the guidelines for State Aid, the Environmental State Aid Guidelines included. The Commission decided that these new environmental state aid guidelines should be made part of the energy and climate package, signalling that stakeholders would have additional flexibility in accomplishing their climate and renewable energy targets.¹⁰³ As noted, the existing 2001 Guidelines had been quite restrictive concerning support to renewable energy, and all the member state governments pointed out in the consultations that wider support should be allowed. For DG Competition, the fact that joint climate and renewable energy goals were had now been adopted at the EU level, changed its conceived mandate. From a predominantly 'negative' view that state aid would counteract the objective of the Treaty, DG Competition now embarked on a positive approach, starting to ask member state experts what state aid instruments could be needed to accommodate the newly set community environmental objectives.

President Barroso and Commissioners Piebalgs, Dimas and Kroes jointly presented the new package of energy and climate policy proposals on 23 January 2008.¹⁰⁴ During the press briefings, Commissioner Kroes

¹⁰³ Interview with Brigitta Renner-Loquentz, DG COMP, Head of Unit State aids, 26 April 2012.

¹⁰⁴ The core proposals of the package were for a directive on promoting renewable energy sources (Commission of the European Communities, 2008a), for a decision on targets for reductions by Member States of greenhouse gas emissions from the sectors not currently subject to allowances (Commission of the European Communities, 2008b), for amendment to the European Union Greenhouse Gas Emission Trading Scheme (Commission of the European Communities 2008c), for a directive on carbon capture and storage (CCS) below ground (Commission of the European Communities, 2008d), and a communication on demonstrating CCS (Commission of the European Communities, 2008e). Associated with the package, the Commission adopted a communication assessing the 2006 energy efficiency plans (Commission of the European Communities,

emphasized that the forthcoming Guidelines would guarantee that member states could support the production of renewable energy and energy efficient cogeneration by granting operating aid covering the full difference between production costs and market price, and would provide legal certainty as to the emissions trading scheme and open for possibilities to consider state aid for CCS. The Guidelines did not require co-decision with the Council and Parliament.

4.9 Deciding on EU energy and climate policies – deliberations in the Council and the Parliament

The internal energy market package

The internal energy market package was presented already in September 2007 and got first attention by the Energy Council and Parliament. Not surprisingly, the most controversial part was the proposal of the Electricity and Gas Directives for mandatory ownership unbundling of transmission and production/supply activities. The Parliament plenary had backed such ownership unbundling already in June 2007 when debating the Strategic Energy Review. The vote was based on a report prepared by ITRE Committee Alejo Vidal-Quadras, lashing out against efforts by certain governments, such as France and Germany, to create ‘national energy champions’ as a form of protectionism (Eikeland, 2008). The vote showed, however, a major group of MEPs against ownership unbundling, with various political groups split on the issue along national lines: this meant that the outcome would still be uncertain when the Parliament moved from this ‘trial voting’ to the real decision situation.

Several member-state governments, on the other hand, did not accept mandatory ownership unbundling or even the fallback ISO model that would transfer management control over networks to an operator not sharing any shareholders with the parent company. During 2008, a group of eight member-state governments, led by Germany and France, offered a third alternative, the Independent Transmission Operator (ITO) model, that would retain joint ownership of transmission networks and production/supply but with various mechanisms put in to prevent misuse of such joint ownership: supervision by a national regulator and restriction on top management to move freely between a company’s production and transmission wings (Eikeland, 2011b:24).

In a tactic manoeuvre to move member-state positions, DG Competition now utilized its latent powers to investigate energy companies for breaches of Community competition rules: companies allegedly using long-term contracts as a possible way of misusing their dominating position (Distrigaz, EdF and Suez-Electrabel); and companies manipulating wholesale and balancing markets. DG Competition proceeded to prepare cases for the ECJ, the one against German E.ON becoming the most highly profiled. DG Competition presented these companies with deals that would reduce fines for infringement of EU competition rules in

2008f) and announced new Community Guidelines on State Aid for Environmental Protection to come.

return for selling off their network businesses, in turn weakening their incentives to lobby member-state governments and providing leeway for other national forces to convince the governments to alter their stance on ownership unbundling (Eikeland, 2011a). In February 2008, E.ON struck a deal with DG Competition to offer 'ownership unbundling' in return for dropping the case (Economist, 2008). However, this did not change the position of the German government. State secretary of the German Ministry of Industry and Technology, Peter Hintze commented on the deal: 'It's very astounding. The timing coincidence of these events ... It's a very questionable game' (Guardian, 2008).

June 2008, the Energy Council agreed on most elements of the package but the unbundling provisions and the third country 'reciprocity clause' were still controversial and only agreed on in October. In the negotiations, the ITO model prevailed. However, following pressure from other EU member states, including the Netherlands and Spain, the vertically integrated 'national champions' would not be allowed to buy up grid companies in other member states where full unbundling had been introduced. The third-country reciprocity clause proposal was watered down in the sense that it would not require third countries to offer similar rights at home for all EU member states, only a bilateral agreement with the specific EU country home to the investment.

Other parts of the internal energy market package caused less controversy among the member state governments, but attracted attention by other stakeholders. The proposals of the Electricity and Gas Regulations on a new procedure for harmonization of network codes gave a new EU-level TSO-organization the task to prepare these. The European association of national regulators, CEER, expressed concerns with the new power of the TSOs and too little regulatory oversight proposed for the Agency of regulators (ACER). It suggested that the regulators should first make binding framework guidelines as political documents on the problems meant for the network codes to resolve and that deadlines should be specified for this task (Jevnaker, 2012). Eurelectric teamed up with national regulators to lobby the European Parliament for stronger regulatory oversight (Jevnaker, 2012). TSOs were sceptical to a strong ACER, and became supported by the Commission, referring to case law (the Meroni case) restraining powers in organizational bodies parallel to the Commission without basing this in the Treaties. The Commission thus declared a stronger ACER as legally unviable, reluctantly accepted by the Parliament. However, the Parliament set ambitious deadlines for non-binding guideline development, which the Commission accepted even though it viewed them as unrealistic (Jevnaker, 2012). The Council agreed to the new procedures without much discussion (Jevnaker, 2012). Also other parts of the internal market package passed the Parliament and Council without major changes. On 9 January 2009, the Council adopted by unanimity common positions on the five texts; and in March, the European Parliament and the Czech Presidency reached a compromise, adopted by the European Parliament in April.

The energy and climate package

In parallel, negotiations started on the Energy and Climate Package. The Energy Council of February 2008 welcomed the package and the Renewable Energy Directive in particular, the part for which the ministers of energy had primary competency. While most disagreements on the Renewable Energy Directive had been sorted out in the drafting period, the debate in the Energy Council showed, however, that several ministers feared that the national renewables targets were too ambitious and that the directive therefore should allow for maximum flexibility: in intermediate targets and in underlining the importance of trade in guarantees of origin. Yet, with the opposition to the latter so strong, the Energy Council concluded that trade in GOs should not, however, hinder individual member states the flexibility to continue their current national support schemes. As to the revised Guidelines on State Aid for Environmental Protection, the Energy Council remarked that these should reinforce flexibility for supporting renewable energy, with a need to ensure continuation after expiration of the guidelines in 2014. The Council also noted the contribution of energy efficiency as an essential flexibility provision to reach the renewable energy targets, acknowledging that reductions in energy consumption would facilitate implementation of the renewable energy targets.

As to biofuels, the Energy Council broadly supported ambitious sustainability criteria but that these should not diminish the competitiveness of European industry or lead to trade barriers since import of biofuels would be necessary to achieve the target. Several delegations indicated that sustainability criteria should apply to all forms of biomass and, to ensure consistency between criteria adopted for the Renewable Energy Directive and the parallel Fuel Quality Directive proposed by the transport section of DG TREN to reduce CO₂ emissions from transport fuels.

The Environment Council focused primarily on the parts of the package under its competency: the EU ETS, the effort sharing decision and the CCS Directive. As to the former, the issue of full auctioning of allowances for the energy sector caused dissent. Most delegations accepted a full auctioning rate, but based on scepticism from some Eastern European member states with large shares of coal in electricity generation and poor integration with the larger EU market, the ministers admitted justification of derogations of limited duration and extent. As to pre-allocation of auctioning revenues, some member states saw this as an exclusive national competence but that voluntary commitments could be considered. On the other hand, the Council signalled willingness to supplement private sector funding with national and Community financing of CCS specifically. To avoid the risk of carbon leakage (i.e. relocation of energy-intensive undertakings outside the EU) the Council acknowledged the need for arrangements for sectors most exposed to world competition. The Council stated a clear will to strike a deal with the European Parliament by the end of 2008.¹⁰⁵

¹⁰⁵ Council of the European Union, Press Release 2898th Council Meeting, Environment Luxembourg, 20 October 2008, retrieved at:

However, in a move that surprised many, the French Presidency decided to go against the normal full co-decision procedure and let the December 2008 European Council decide by unanimity the legislative proposal and sort out disagreements in a more rapid single round of trilogue talks (Skjærseth and Wettestad, 2010). With the European Council meeting thus taking place before the plenary reading planned by the Parliament, the latter did not demand any radical changes when at 17 December 2008 endorsing the deal struck by the European Council meeting 11/12 December 2008. The Council conclusions reflected the final compromises reached between member states Heads of States. While finally confirming the quantitative 20% CO₂ reduction target, and extension of the ETS, the final agreement still included significant derogations from the core principles proposed by the Commission and voted by the Environment Committee of the European Parliament that full auctioning of emissions allowances under the ETS should be the rule from 2013. These included derogations from the principle of 100% auctioning for heavy industries, even those not exposed to the risk of carbon leakage, and fossil-fuel dependent power sectors in Eastern Europe. Instead, the Council applied the less stringent requirement of a 70% auctioning rate by 2020 in industrial sectors not exposed to the risk of carbon leakage, starting from 20% in 2013 and with a view to reaching 100% in 2027. For poorer member states with a GDP per capita lower than 50% of the average GDP in the EU and those dependent of fossil fuels for power generation (where 30% of electricity is produced from a single fossil fuel), the Council decided for transitional free allocations to the electricity sector not exceeding 70% of the relevant emissions in 2013 with 100% auctioning to be in place by 2020. member states taking advantage of the provision would need to submit national plans aimed at investments in modernizing their electricity infrastructure, and the energy companies will have to report annually in publicly available reports on implementation of their investment plans. The Council conclusions made special provision for sectors considered to be exposed to the risk of carbon leakage: these would receive 100% free allowances at the level of a benchmark set for the best available technology in the relevant sector.

For the non-ETS sectors, the Council conclusions on the Effort Sharing Decision allowed for extensive use of clean development mechanism (CDM) and joint implementation credits. The Council rejected an automatic adjustment of the CO₂ reduction target from 20% to 30% upon conclusion of a broader international agreement on climate change, and any proportionate adjustment for the ETS and non-ETS sectors in that respect.

The conclusions also purported to allow, in an extraordinary provision introduced in the final negotiations, the use of auctioning revenues from emissions trading as State Aid for construction of efficient power stations, including new energy power plants that are ready for CCS (member states may support up to 15% of the total costs of the investment for a new installation that is CCS-ready but with no actual require-

ment for implementing CCS technology). This entailed that the European Council strictly went beyond its legal competencies under the Treaty rules, making revision of state aid guidelines a matter of exclusive Community competence. The proposed provision was referred to as a 'Commission declaration', reflecting an intention by the European Commission to follow up in a later stage of new state aid rules for new CCS-ready power plants. In a similar move to get final accept for the emissions trading directive, the European Commission had to declare that it would come back with new guidelines for compensation to European industries of indirect costs incurred upon them from higher electricity tariffs caused by emissions trading.

As to the Renewable Energy Directive, the European Council had since 2007 endorsed the binding goals for renewable energy and biofuels and these passed the negotiations with only few remarks. The controversial issue of a joint EU-level support scheme in the form of trading in guarantees of origin had, as noted above, already been cleared away when the Commission presented its final draft. Yet, biofuels, and in particular sustainability criteria and the GHG savings threshold caused heated debate between the member states. Three different blocks became discernible: countries with very ambitious ecological policy goals such as Denmark, Germany, and to some extent Sweden; countries with relatively high natural potential for energy crops cultivation, like Poland, Austria, Spain and France; and countries that did not yet have a clear national biofuel policy or national biofuel industry, comprising many of the new member states (Müngersdorff, 2009:28). As to the sustainability criteria, some member states, particularly Germany was pushing to include such criteria for all forms of bioenergy, not just biofuels, but this position was not shared by the Council majority (Müngersdorff, 2009:31). Otherwise, the Council endorsed the Commission proposal with slightly extended environmental sustainability criteria. Some countries claimed willingness to include social criteria, such as ILO working right standards, while others, particularly the Netherlands and the UK, insisted on cautiousness in order to ensure compatibility with WTO regulations (Müngersdorff, 2009:31). In the end, the Council agreed to extend the monitoring and reporting requirements for biofuel suppliers on these issues. Another intensely debated issue was concerned with whether or not third countries would benefit more from the scheme than biofuels producers in EU member states subject to environmental regulations under the Common Agricultural Policy (CAP). Poland headed the group of countries opting for subjecting also external producers to CAP-related regulations, not taken into account in the final position of the Council. As to the required GHG emission saving rate compared to conventional transport fuels, countries like Poland and Spain worried about the 35% rate proposed by the Commission while a majority of countries opted for a two-step approach starting with 35% and increasing to 50% by 2015. In the end, Poland accepted a second step, but with date postponed to 2017. (Müngersdorff, 2009:33). Müngersdorff (2009) concludes that France, Germany, Spain, Poland, and the UK were the most decisive forces affecting the Council position. Germany and Spain had particularly strong weight, housing significant national biofuels industries. The main role played by the UK was consistently trying to tighten sustainability standards for biofuels and renewable energy more generally.

Despite being sidelined by the decision to hasten European summit discussions, the Parliament voted overwhelmingly in favour of the energy and climate change 'package'. While strong voices wanted to limit handing out too many free emissions allowances, the Parliament saw moderation as necessary to reach an agreement within the time left before parliamentary elections and appointment of a new Commission.¹⁰⁶

As to the Renewable Energy Directive, the European Parliament did play a crucial role in guaranteeing opportunities for opt-out from GO trading, although this had been mostly settled already in the final draft of the Commission. As to biofuels, specifically, MEPs proposed many amendments, with initial strong disagreements within the ITRE Committee that were sorted out in hastened compromises because of the short deadline. The 10% target for biofuels was particularly controversial, with ITRE rapporteur Claude Turmes, representing the Greens, initially opting for scrapping the target, causing harsh reactions by the ITRE Committee majority (Müngersdorff, 2009). In accordance with the procedural rules of the Parliament known as 'Enhanced Cooperation between Committees', Turmes decided to leave work on the sustainability criteria for biofuels to the Environment Committee, because the content touched the competencies of this committee. Rumour held that Turmes pushed for such 'outsourcing' because he thought the Environment Committee would come up with stricter sustainability criteria than his own ITRE Committee (Müngersdorff, 2009). The co-operation did not function, however, since several ITRE members still saw the issue as their turf (*ibid.*). Yet, also the ITRE Committee agreed to propose a strengthening of the sustainability criteria, and for including the social dimension into the criteria and tightening the emissions reductions levels for biofuels to count against the 10% target. As to the latter, the Committee proposed a two-level track, the former with the level set at 45% from the start and rising to 60% from 1 January 2015, stricter than the position taken by the European Council (Müngersdorff, 2009). The procedure chosen by the French Presidency to pass the energy & climate package through *unanimity* at the European Council level enhanced the possibilities for individual member states to affect the outcome while worsening the chances of the Parliament. Still, the European Parliament managed to get some of its amendments through into the final directive: a substantial review clause instructing the Commission to further assess the minimum GHG emissions saving threshold applicable from 2017 onwards, possibilities for reaching the target with sustainable biofuel production, the impact of increased biofuels production on availability and prices of foodstuff, and to let the review clause apply not only to the biofuels target but the overall 20% renewable energy target (Müngersdorff, 2009). As to the sustainability criteria and GHG emission threshold, the compromise represented primarily the position of the Council.

¹⁰⁶ EurActiv, 18 December 2008, Mixed reactions as Parliament approves EU climate deal, <http://www.euractiv.com/climate-change/mixed-reactions-parliament-appro-news-221016>).

The SET Plan

The Energy Council February 2008 also discussed the Communication on the SET Plan, endorsing voluntary industrial initiatives in the form of public–private partnerships or joint programming between the member states as proposed by the Commission, with careful account of existing initiatives and their various stages of development. It also noted that further Industrial Initiatives could be necessary such as connected to marine energy, energy storage and energy efficiency, underscoring that the mention of a particular initiative would not automatically lead to funding over Community budgets. The Energy Council also asked for a Steering Group of high level government representatives from each member state to co-ordinate the further process of providing funding for EU-level energy RDD&D, and to develop, where appropriate, covenants between government, industry and researchers for different types of energy-producing and energy-saving technologies, supportive of the achievement of the overarching and binding energy and climate change goals agreed by the Spring 2007 European Council. The Council asked the Commission to immediately prepare a Communication on financing low carbon technologies, including how to use relevant Community Programmes in support of the goals of the SET Plan, and to prepare open-access European energy technology information and knowledge management system.¹⁰⁷

¹⁰⁷ Council of the European Communities, Press Release, 2854th Council meeting Transport, Telecommunications and Energy, Brussels, 28 February 2008, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/trans/99115.pdf.

5 Analysing shifts in energy policy integration in the period 2007–2009

The period 2007–2009 saw extensive energy policy activity in the European Union. Based on the 2006 Green Paper, the Commission early 2007 adopted a new Strategic Energy Review and Action Plan for stronger and comprehensive energy policy integration. During 2007 and 2008, the Commission delivered the first parts of this Action Plan in the form of two packages of proposals – a package of policies to complete the internal energy market and a package that integrated EU energy and climate policies, putting up reduction of GHG emissions as the overarching energy policy goal. After negotiations in the Council and the Parliament, the EU in 2009 adopted a series of new directives, regulations and decisions that shifted competency considerably from the national to the EU level in energy policy matters. This transfer of competency was manifested differently for the various pieces of legislation: e.g. in the form of: binding targets for the national energy mix (20% renewables, 10% specifically for the transport sector by 2020) and national GHG emissions reductions, adoption of new procedures for energy planning and policy-making at the EU level, harmonization at the EU level of climate policy instruments affecting the energy system (the EU ETS and provisions in the ETS, and some parts of the internal energy market directives). Below, this new pace in energy policy integration at the EU level, and the parallel integration of energy and climate policies, will be analysed based on the series of propositions set out in chapter 2.

Based on the *Liberal Intergovernmentalist* perspective, we proposed that the energy policy shifts would reflect changes in the preferences of member state governments, and thus, a new majority coalition (legitimacy base) in the European Council for stronger energy policy integration with climate change set as major goal. We added the possibility that preferences could have been stable but that entry of new member states with differing preferences on energy policy integration and climate change could have provided for new Council majorities.

Based on the *Supranationalist* perspective, we proposed that the shift would reflect changes within EU institutions. As co-decider of EU energy policy integration, we proposed that the shift would reflect new preferences of the European Parliament. As executive of EU policies, we next proposed that the shift would reflect stronger Commission determination and power towards national governments in the pursuit of a common EU energy policy. Moreover, abandoning the assumption of the Commission as a unitary agent, we proposed that the shift would reflect new modes of co-ordination between these services, increasing the Commission collective potential for engineering ambitious energy policy packages that would appear acceptable for a greater number of stakeholders.

As to the decision of DG TREN to put climate mitigation in as top priority goal for Community energy policy, we proposed this to reflect changes in DG TREN preferences, either because climate change was now viewed as a more serious threat than before or because putting

climate change first could augment the chance of stronger energy policy integration more generally. Alternatively, we proposed that this decision would reflect new power for other Commission services (DG Environment set to formulate climate policies) or a new hold on part of Commission inter-service co-ordinating institutions (e.g. the President of the Commission and the office of the Secretary-General) to integrate more strongly the EU environment and energy policy areas.

Finally, responding to the Supranationalist approach's provision of non-state actors with independent roles in EU policy making, we proposed that the energy policy shift stemmed from shifts in preferences of agents within established policy networks or better access conditions to EU policy-making for policy networks advocating energy policy integration and climate change mitigation. Here, we noted the explanatory power of the policy network approach to follow from a comparative and dynamic logic – the capacity (resources) of agents within one network to influence EU policy must be seen in relation to competing agents' capacity.

5.1 The intergovernmentalist interpretation – change in member state preferences

Our study gives strong support to an Intergovernmentalist interpretation of the policy shifts observed. This may be a very obvious conclusion, given that member state governments according to EU Treaty rules have the very final say in EU-level decisions, through deliberations and voting in the Council of Ministers. Changes in member state preferences for energy policy integration, and climate/energy policy integration specifically, are clearly observed when comparing the situation immediately prior to the period 2007–2009 with the baseline situation documented in chapter three.

Recalling the baseline situation

The baseline situation evolved historically from the European Coal and Steel Community Treaty that had transferred substantial competency to the EU level. Since coal was then the dominating source of energy supply, however, the six initial member states did not provide for a more general EC energy policy competency under the EEC Treaty adopted in 1957. This deficiency put serious strains on further energy policy integration after the Community energy mix evolved with coal no longer the dominant source of supply. Governments of member states rich in own resources of oil and gas, with the UK entering the Community in 1973 a typical example, was instrumental in curtailing efforts at an effective oil and gas supply security policy at the EU level. Security of energy supply was persistently settled by the Council as an exclusive national competency. Whereas the initial six member states went far in establishing an EU-level security of supply policy in the area of coal supply, Council willingness to transfer power to the EU level in security of supply matters linked to petroleum products declined after the UK entered the Community.

Also willingness to transfer regulatory competency to the EU level in policies aimed at mitigating environmental externalities of energy supply

changed over time, but in the opposite direction of security of supply matters. After nearly two decades of little progress, the member state governments in 1988 agreed on emissions standards under the Large Combustion Plant Directive. We observe a particularly strong support from the government of Germany, strongly affected by the acid rain problem, advocating the idea of harmonized standards at the EU level in order to prevent competitive disadvantages for industries because of differing standards between the member states. Unlike energy policy proper, the member states brought environmental policies into the Treaty in the early 1990s, changing voting rules in the Council from unanimity to qualified majority, facilitating further policy integration. Exception was made for policy instruments with fiscal elements, such as environmental taxes, that would still need unanimity voting in the Council. This stronger willingness reflected at least partly change in the composition of the Council, with the bloc of member states having adopted ambitious environmental policies at home gaining strength after Sweden, Finland and Austria joined the Community in 1994.

Yet, concerning climate change, an environmental externality of energy supply gaining momentum in the late 1980s, the member states curtailed ambitious action at the EU level. Several member states adopted national GHG emission reduction targets and requested policy co-ordination at the EU level to avoid distortion of competition if industries were to be regulated differently across the member states. A CO₂ tax had been implemented in some member states and was also proposed harmonized at the EU level, with no chance of full agreement in the Council, however, because of strong opposition from major member states like the UK, Germany and France. Germany, facing major challenges of industrial restructuring after unification in 1991, now abandoned the leadership role taken in EU acid rain policy development. Accomplishments in EU climate policy integration in the latter half of the 1990s included the agreement to co-ordinate international Kyoto Protocol negotiations and a burden-sharing agreement to achieve the joint commitments taken under this Protocol. In 2003, the member states agreed to a new EU-level regulatory framework directive setting up a joint scheme for trade in emissions allowances. The directive retained the right for member states themselves to set the total cap for emissions and for how the cap should be allocated among various industries, limiting EU-level harmonization.

A clear message sent from many member-state governments when discussing whether to include energy into the Treaty or not was for the EU to keep its hands off national choices of energy mix and organizational structures. This attitude certainly impacted on the slow progress observed in specific energy policy discussions throughout the 1990s.

Hence, when European institutions, supported by some member state governments in the mid-1990s requested an EU-level mechanism to increase the share of renewable energy in the EU energy mix to contain rising energy imports and fight climate change, the member state governments could only agree on indicative non-binding goals, reflecting major differences in access to renewable energy resources and in ambitiousness in policies already adopted at the national level. The

enlargement in 1994 strengthened the bloc of member states opting for more ambitious EU-level policies, with all the accession countries Sweden, Finland and Austria rich in resources and already having major shares of renewables in their energy mix. Denmark and Germany joined in the request for binding targets for renewables. Both countries had already adopted ambitious renewable energy policies at the domestic level. Still, the Council majority only agreed on non-binding targets for renewable electricity and biofuels in transport when adopting directives at the start of the decade. In the area of energy efficiency, several directives were adopted, none of them imposing any binding targets on the member states.

Besides security of supply and environmental externalities, industrial competitiveness concerns evolved as the third major driver of EU energy policy integration. Such concerns were evoked whenever international oil prices made jumps because of events impacting on the international oil market. In the late 1980s, the member states adopted the Single European Act, as a general EU-level framework aimed at spurring productivity and cost reductions in European industries by means of extended trade and competition in the internal market, by removal of regulatory barriers to these aims and the harmonization of national regulatory schemes to ensure level playing field competitive conditions for industries across the member states.

Eventually, also a single market in energy became part of the internal market process, aimed at pressing down energy costs for European industries through removal of barriers to trade and competition. A free market in energy would require fundamental organizational restructuring of energy supply in the member states, something the majority of member states were sceptical of, with only limited market integration accomplished during the 1990s. The 1996 Electricity Directive and 1998 Gas Directive provided a first step market opening for a limited number of industrial electricity and gas customers, failing to harmonize national standards to secure transparency of market information and non-discriminating access to infrastructure. As opposed to its role of holding back energy policy integration in other areas, the UK now became a key proponent of EU energy market integration, pioneering such market-based regulatory change at the domestic level. In 1994, Sweden and Finland joined the Community and became allies with the UK, reflecting domestic market-based regulatory changes on the way also in these countries. At the other end of the scale, France and Germany held back integration, not ready for dismantling their dominant vertically integrated energy monopolies.

In the early 2000s, international events caused new sharp oil price hikes, bringing international competitiveness concerns to the very top of the EU policy agenda. A Commission Green Paper adopted in the year 2000 pointed to such high oil prices as a new stable fact because of higher demand from emerging economies such as China and India. Adding to the concerns were reports pointing to poor productivity in key European industries as compared to competitors in other parts of the world. The member state governments agreed on a strategy aimed at boosting the competitiveness of existing industries through removal of barriers to trade

and competition and create new industries to compete globally in order to maintain economic growth in Europe: the Lisbon Strategy. Connected to the strategy was removing remaining barriers to trade and competition in the internal energy market. In 2003, the EU leaders agreed on revised internal energy market directives in which they accepted new short-term deadlines for full market opening and more harmonization of transparency measures to avoid discrimination in infrastructure access conditions.

This period notes also several other signs of preferences turning in favour of stronger energy policy integration at the EU level, including: a growing number of member states opting for EU-level renewable energy policies with binding targets for the member states; the fact that energy was eventually accepted included in the draft of the new Constitution, that the member states agreed on a Directive harmonizing minimum energy product tax levels, although at a very low level; and a greater pace in adoption of new directives for the promotion of energy efficiency measures, although with only non-binding commitments. Qualifying these signs, however, are Commission reports showing very variable implementation of the new energy legislation by the member states (Eikeland, 2008).

With limited energy policy integration the main baseline situation, another clear pattern suggested by the background chapter is that EU energy policy was fragmented, in the sense that efforts at policy development dealing with one energy-related challenge was poorly coordinated with policy development responding to other challenges. The EU executive, the Commission, acknowledged this already early in the 1990s, noting that harmonization of taxes and other national environmental policies would be needed not to counteract policies aimed at creating level playing field competition in the internal energy market. The Commission again stressed this argument in the late 1990s when again asking member-state governments to harmonize their energy/environmental taxes at the EU level and to adopt an EU-level renewable electricity certificate system whereby market agents would decide on the type and location of investments in renewables. These efforts stranded, however, with Germany frontrunning opposition to an EU-level market-based support scheme. The Commission again discussed coherency problems in its 2000 Security of Supply Green Paper, lamenting the failure of member states to provide policy instruments for the EU level that could contribute to greater policy coherence.

Shift in member state positions on EU energy policy integration

From around 2005, entirely new signals were given by several member states in favour of stronger EU energy policy integration generally, as to create a more forceful EU climate policy, and as to ensure greater coherency between EU energy and climate policies. This is most evidently epitomized by the position of Britain, who had formerly been the guarantor against transferring power to the EU level in energy policy decisions, apart from those aimed at creating a level playing field internal energy market. The new position taken by the UK, forwarded by the PM at that time, Tony Blair, must be understood against the background of

dwindling British oil and gas resources, making the country more dependent on energy imports and evoking a new understanding of security of supply vulnerabilities. At the Hampton Court informal summit of EU leaders in 2005, where all EU leaders stood behind call for stronger EU energy policy integration, Blair explained his new more positive position by the increasing import dependency of oil and gas as opposed to the country's former negative position that had been evoked by fears that the European Commission would go in and start regulating North Sea oil platforms. The governmental response papers to the European Commission 2006 Strategic Energy Review Green Paper showed massive positive response to firmer energy policy co-ordination at the EU level.

In parallel we note strong support among the 'old' member states as to elevate mitigation of climate change as a top priority for EU energy policy, in turn reflecting far more ambitious goals set at the national level by several member states. Again, a conspicuous shift is seen in the UK when the UK Prime Minister Tony Blair already in 2003 promised a 60% cut in UK CO₂ emissions by 2050, supported also by the Swedish Prime Minister. The Council of Environment Ministers in March 2005 stated that all developed countries must be asked to cut their greenhouse gas emissions by up to four-fifths within half a century, with 15–30% cuts by 2020 and 60–80% by 2050 to be considered. The European Council meeting in March 2005 backed this 2020 goal but dropped deciding on targets for the longer term. The responses to the 2006 Commission Strategic Energy Review Green Paper showed considerable support for making climate change the overall goal for EU energy policy, supported also by Germany and France. Again, UK PM Tony Blair played a facilitating role when together with Dutch PM Balkenende sent letters to their colleagues urging action to avoid a catastrophic tipping point for the world's climate, and when commissioning the Stern Review that received much attention with its positive conclusion that the costs of early action on climate change would far outweigh the costs of not acting.

From the position papers on the 2006 Strategic Energy Review Green Paper, we can see that the trend remained stable: many of the old member states supported making climate change mitigation the priority goal for a new EU energy policy and revising the emissions trading system with new sectors and harmonized allocation methods as a key climate policy instrument. On the other hand, position papers submitted by many of the new Eastern European member states revealed that climate change was not the top priority for their urge for a stronger European energy policy. A number of Eastern European countries supported the EU ETS system, however, but also that the Commission should analyse the effect of trading in GHG emissions on the energy sector and on energy prices. Instead, many eastern European countries set security of supply as the most pressing priority. None stated this more clearly than Poland, urging for energy security to dominate the other two pillars in a common EU energy policy. The basic premise behind this priority was fear of Russian influence over EU policy due to its dominant position as the major exporter of natural gas to the European Union, epitomized by the Gazprom–Naftogaz conflict early 2006 that had cut off supply during cold winter days. As a buffer to their mighty neighbour to the east, most

of these countries urged for an EU energy policy to focus on alternative channels of gas supply, better East–West energy system interconnection, and for policies to keep open any energy mix option that would favour the use of domestic energy sources, coal included.

And, looking more closely into the various positions taken on the range of specific energy policy options of the Green Paper, we observe also broader disparities in priorities. The UK, in line with its long-term pursued priority, maintained that competitive markets would be a prerequisite to underpin other policy initiatives, urging the Commission to ensure implementation of existing unbundling provisions and to move towards ownership unbundling should these efforts fail. France deemed new internal energy market measures as unnecessary. Poland stated that liberalizing the internal market before diversifying supply sources could result in the monopolization of the market by external suppliers (Gazprom) and threaten energy security and impede the establishment of a transparent and fully competitive market, and thus, that diversification of natural gas supply sources should precede further liberalization. Some member states agreed on the need for new EU-level energy market governance institutions while others believed this to create unnecessary bureaucracy. While the UK still dismissed the need for new emergency oil and gas stock mechanisms, several eastern European countries put these up among the priorities. As to new EU-level policies setting long-term targets for deployment of renewable energy, only Germany forwarded the position that such targets should be made binding on the member states, while some Eastern European countries dismissed any long-term renewable energy targets at all. Poland was not negative but forwarded the view that any support mechanism for renewables should be equalled by similar support to indigenous coal. France stated support for renewable energy but stated that all zero-carbon energy sources should be included in an EU-level energy policy, in line with the proposal submitted by the Commission in the Green Paper. A clear demand by member-state governments was, however, that the energy mix should remain a matter of subsidiarity.

The member states endorsed energy efficiency measures as the cleanest and safest way to address energy, environmental and competition objectives, but positions were mixed as to whether the EU should set any quantitative targets. All member states endorsed the idea of co-ordinating energy R&D resources in a Strategic Energy Technology Plan and a general positive tone was forwarded for the idea of speaking with one voice in EU external energy relations.

In January 2007, the European Commission adopted the Strategic Energy Review, proposing the binding 20-20-20 goals for 2020 (20% share of renewables in total EU energy consumption with a separate 10% target for transport biofuels, 20% reduction in total CO₂ emissions, and 20% improvement of energy efficiency compared to business-as-usual). If followed up by other developed countries, the Commission proposed to set the 2020 CO₂ reduction goal at 30%. For the long term, 60–80% cut in emissions by 2050 was proposed. A proposed action plan retained all items on the long list of policy measures for discussion in the 2006 Green Paper and included: a third internal energy market package with

'ownership unbundling of network and production assets' at top, stronger independence of national regulators, new EU-level governance structures to develop harmonized practices for operation of and investments in new cross-border electricity and gas infrastructure. It also included the Strategic Energy Technology Plan (SET Plan), to keep nuclear power decisions as a national competency, and a long list of energy efficiency measures, including acceleration of fuel efficient vehicles for transport; tougher standards and better labelling of appliances; improved energy performance of the EU's existing buildings and improved efficiency of heat and electricity generation, transmission and distribution. The Strategic Energy Review finally proposed development of a common EU foreign energy policy and to develop solidarity mechanisms to deal with internal security-of-supply crises.

The European Council two month later endorsed the proposed quantitative targets for 2020 and to make these binding on the member states, except for the energy efficiency target. The Council also agreed to go ahead with a new internal energy market package and endorsed strengthening and broadening the scope of the EU ETS scheme. This agreement is puzzling on the background of the position papers to the 2006 Green Paper recently submitted showing significantly diverging positions on a great number of energy policy issues. Some had endorsed making climate change the overarching goal for EU energy policy and others not, some had proposed new binding long-term targets for renewables and others opting for no new post-2010 targets. Many had rejected a new internal energy market package and others, notably the UK, had proposed moving towards full ownership unbundling and stated that competitive markets would be a prerequisite to underpin other policy initiatives. As such, the Council agreement represented a compromise. The broad scope of policies proposed changed would give all member states opportunities to win through with their specific priorities. As an example, to win support from France and other pro-nuclear member states for the binding goals on renewables, the Council had to endorse the contribution that nuclear energy would have to meeting energy security and climate change concerns.

However, the agreement was not set in stone. The Council attached various conditions to be given attention in the development of more specific legislative proposals. It would accept binding targets for renewables on the condition that a fair and equitable share was found between member states, taking into account differing national circumstances, starting points and potentials. The 10% target for biofuels was made conditional on production being sustainable, second-generation biofuels being available and that the fuel quality directive could be successfully amended. The 30% CO₂ reduction goals for 2020 were made conditional on other developed countries making similar commitments.

And, disagreements emerged when specific policies were proposed in 2007 and 2008. The Council was deeply split on the internal energy market package proposed in September 2007. Eight member states rejected the Commission proposal for full ownership unbundling of transmission and commercial activities. Germany and France headed this

group that included also the ministers from Austria, Greece and Luxembourg as well as those of the new EU members the Czech Republic, the Baltic states, Slovakia and Hungary (Eikeland, 2011b). These countries still hosted vertically integrated energy groups and lagged behind in implementing previously adopted internal market policies (Eikeland, 2008). Germany and France had fronted opposition to ownership unbundling also in 2003, then even arguing against ‘legal organisational unbundling’ (Eikeland, 2011b). The group of supporting countries, headed by the UK, had grown from 2003. Six member states had voluntarily implemented ownership unbundling in 2003, increasing to thirteen in 2007 (Eikeland, 2011b). While five of the new eastern European countries became instrumental for securing a blocking vote in the Council, Poland came out in support after securing the inclusion of a third country clause, that would have entailed mandatory ownership unbundling also for Gazprom and other foreign companies.

As to the energy & climate policy package, the Council accepted the EU level and specific national CO₂ reduction and renewable energy targets proposed, but several member states were concerned with the ambitiousness of the targets. The Council therefore voiced great satisfaction with the composition of the package in the form of a series of flexibility provisions, i.e. that energy savings would facilitate achievement of the renewable energy targets, that revision of environmental state aid guidelines would allow new forms of governmental support, and that the Renewable Energy Directive opened for co-operation between member states to achieve targets.

Disagreements materialized most notably on the early draft proposal for a mandatory market-based renewable energy certificate system. These were mostly sorted out in the drafting phase, with Germany and Spain heading a group that managed to get the proposal removed from the final draft directive. In later negotiations, the strongest disagreements concerned principles for allocating allowances under the revised emissions trading system and on sustainability criteria for biofuels under the Renewable Energy Directive. As to the former, the Council accepted Eastern European countries’ continued free allocation of parts of the allowances to the electric power industry in a transition period and a host of other derogations to shield energy-intensive industries subject to international competition, watering out the EU ETS as compared to that proposed by the Commission. As to biofuels, the Council mostly accepted the Commission proposal for sustainability criteria but actually put in a new higher threshold for GHG savings needed for biofuels to be counted against the 10% target. Again, Poland headed a group of countries with significant domestic resource potentials for biofuel production unsuccessfully sought to water out the scheme established to ascertain that biofuels sold in the European market would actually contribute to significant reduction of GHG emissions.

Summing up, we proposed that the energy policy shifts would reflect changes in the preferences of member state governments, and thus, a new majority coalition (legitimacy base) in the European Council for stronger energy policy integration with climate change set as major goal. We added the possibility that preferences could have been stable but that

entry of new member states with differing preferences on energy policy integration and climate change could have provided for new Council majorities. We observe shifts in preferences among key member states, epitomized by the UK, which softened its former position as hard-liner against transferring political power to the EU level in energy matters. We also observe strong demands from many member states for giving priority to the goal of fighting climate change in new EU energy policies, and this was accepted by the Council in 2007 when formulating binding targets for reduction of CO₂ and increase in share of renewables. However, we also observed that some of the new, poorer, member states clearly opted for EU energy policy to give priority to other goals than fighting climate change, entailing that the 2007 Council agreement was not necessarily a stable situation, unless proper burden-sharing solutions were found in follow-up policies. The Council's late 2008 acceptance of the energy and climate package of policies with re-statement of the binding targets indicates that such solutions were found. The European Commission played an important role in this respect, as discussed below.

5.2 The supranationalist interpretation – the role of EU institutions

The Commission

As the EU executive, the European Commission has the prerogative to formally prepare and propose new EU legislation. We postulated that the new energy policy integration in the 2007–2009 period reflected Commission entrepreneurship in co-ordinating policy instruments so as to increase the scope for compromises that could secure acceptance by energy policy stakeholders.

The baseline situation showed that the European Council saw fragmented policy development as a general problem for the EU and thus demanded, as part of the Better Regulation Agenda of the Lisbon Strategy, that the Commission should communicate internally and with external stakeholders to develop more balanced legislative proposals to consider European Union industrial competitiveness. The Prodi Commission took some initial steps through the adoption of new impact assessment procedures.

In EU energy policy making specifically, DG TREN, the Commission's energy policy executive, operated in relative isolation from other services with control over energy policy-relevant competencies, such as DG Competition and DG Environment. DG Competition had historically been politically sidelined from using its arsenal of policy instruments to ensure competition in the internal energy market. The relation to DG Environment was characterized by quarrelling and mistrust, certainly so under the Prodi Commission from 1999–2004, where Energy Commissioner de Palacio came in open conflict with Environment Commissioner Wallström over EU climate policy goals and long-term renewable energy policies.

In 2005, the new Barroso Commission took a series of steps aimed at improving the communication and co-ordination of policy development

between the various services. New Inter-Service Steering Groups were established, and to oversee administrative implementation of better inter-service co-ordination, Barroso appointed Catherine Day as new Secretary-General of the Commission, moving her from the post as General-Director of DG Environment. Day became instrumental in forging new co-operation between DG Energy and other Commission services after member-state governments and the European Council signalled new willingness for more ambitious EU-level energy and climate change policies. To ensure that policy development in these fields would be compatible with the Lisbon Strategy goal of improved competitiveness, President Barroso established the High-Level Group on Competitiveness, Energy and Environment, with four commissioners as co-chairs: Andris Piebalgs of DG TREN, Neelie Kroes of DG Competition, Stavros Dimas of DG Environment and Günther Verheugen of DG Enterprise and Industry, the latter hosting the group secretariat. Members included also external stakeholders: national ministers, MEPs, representatives of industry, environmental NGOs, major consumers, trade unions and regulators. In a series of meetings with specific expert groups, the High-Level Group came up with a list of options for making energy and climate policies compatible with European industrial competitiveness. The focus on the Lisbon Strategy and competitiveness marked a new course in energy market policy for DG Competition, sidelined from the internal energy market process in the 1990s (Eikeland, 2011b).

Reflecting the new closer inter-service co-operation, DG TREN in 2005 joined forces with DG Competition in the launch of inquiries on the state of competition in the gas and electricity sectors. This initiated an era of close co-operation between the two Commission services that came to include co-drafting of the new internal energy market policy package, as against the traditional mode of policy-formulation in Brussels. DG Competition convinced DG TREN to go for full ownership unbundling even though this was highly controversial. In parallel, DG Competition pursued a strategy to press the major European vertically integrated energy companies to go for voluntary ownership unbundling, and through this, to possibly change the position of governments in their home countries.

DG TREN also started to co-operate more closely with DG Environment when drafting the energy & climate package. The former had responsibility for drafting the renewable energy directive and the latter drafted the emissions trading directive, the Effort-Sharing Decision, and the CCS Directive. For the first time ever, staff from the two services engaged in joint modelling work to investigate on the mandate given by the Council, to find equitable solutions for the member states in achieving the climate and renewable energy targets set. The output came in the form of individual member state targets for share of renewable energy and CO₂ emissions reductions under the ESD, as well as the relative share of the climate target to be taken by the ETS and non-ETS sectors. This proved a success in that most of the burden-sharing solution presented was not contested by the Council.

Yet, also DG Competition played an important role through its contemporary revisions of Guidelines for Environmental State Aid, framed in by

the Commission as part of the energy & climate package. The revisions proposed by DG Competition would allow member states higher levels of and more forms of state support to renewables and CHP, providing greater flexibility in achieving the targets adopted. The Council acknowledged this flexibility created as important for their acceptance of the energy and climate package. All in all, DG Competition now presented a different view on environmental state aid from what it had done in earlier rounds of state aid revisions. Historically, DG Competition had had a very negative view on state aid as distorting competition, aid for environmental investments included. This time, DG Competition took a far more positive view on environmental state aid, emphasizing its role in correcting other already existing distortions that would be difficult hard to deal with, such as national subsidies to traditional energy sources. The fact that binding targets for emissions reductions and renewable had now been adopted at the EU level played an important role for this change of view, and the fact that the EU took on the role as global leader in mitigation, with state aid now viewed as a legitimate instrument for balancing potential imbalances this would create for European industries vis-à-vis their competitors outside Europe.

When deciding on the energy and climate package, the European Council went far in instructing DG Competition to allow even more extensive state aid than that already decided on. In the final round of negotiations, the Council accepted the revised EU ETS under the condition that DG Competition would come up with new guidelines allowing more generous support to CCS-ready power plants and for the member states to be allowed to compensate their industries for additional costs caused by higher electricity tariffs due to the ETS. DG Competition promised to follow up on this.

The stronger co-ordination observed among the three DGs prevailed at both administrative and political levels. It was sanctioned by the top Commission administrative leader, Catherine Day, who played an instrumental role in forging co-operation, and by the three political leaders: Neelie Kroes of DG Competition, Stavros Dimas of DG Environment and Andris Piebalgs of DG TREN. While reaching a broad and balanced agreement was important first and foremost for securing external support by member state and stakeholders, the commissioners also knew that strong anchoring in the most relevant services and at the top administrative level would facilitate later discussions in the full Commission. As noted, there were strong voices within the Commission for less ambitious GHG reduction targets, notably Commissioner Verheugen in DG Enterprise and Industry. A broad agreement reached during the drafting stage entailed less room of manoeuvre for alternative proposals.

This said, internal Commission disagreements still came to the surface, as when the units of DG TREN were not united in formulating the principles for a common renewable energy policy. Two factions appeared, one based in the unit having main responsibility for drafting the Renewable Energy Directive, and the other in a greater alliance of senior bureaucrats in DG TREN, DG Environment and DG Competition, supported also by Secretary-General Catherine Day. The essence of the disagreement was

whether the Commission should continue its policy line insisting on scrapping existing national feed-in tariff support schemes for renewable energy in favour of a fully harmonized EU-level tradable certificate system. The Unit responsible for formulating the new Renewable Energy Directive opted for continued freedom for member states to choose support systems, acknowledging that those who had opted for generous national feed-in tariff systems had also superior implementation of the Renewable Electricity Directive from 2003. The other faction, supported by the Internal Market Unit of DG TREN, acknowledged that national support systems put national politicians at the centre of deciding on the level of support, on what technologies to support and on what agents to benefit with support, counteracting the internal energy market idea of leaving market agents to choose based on a joint EU-level price signal. As such, the former group wanted more flexibility for national governments while the latter group preferred to give more leeway to EU market agents. Essentially the position of the two groups conformed with differing ideational views held more broadly by member-state governments and non-state stakeholders on the limitation of markets and policies respectively in solving salient problems connected to energy supply.

Other more specific disagreements concerned first and foremost sustainability criteria for biofuels, where DG TREN and DG Agriculture teamed up against DG Environment in making the criteria not too restrictive on biofuel suppliers, showing that other goals than fighting climate change were indeed implicit in Commission policy formation.

To sum up, we proposed that the shift observed in pace of EU energy policy integration reflected stronger Commission determination and power towards national governments in the pursuit of a common EU energy policy. This is clearly observed, not least through the new role that DG Competition came to play, now realizing latent powers under the Treaty for pressing the member states to open their energy markets.

Moreover, abandoning the assumption of the Commission as a unitary agent, we proposed that the shift in pace of integration reflected new modes of co-ordination between various Commission services, increasing the collective potential for engineering ambitious energy policy packages that would appear acceptable for a greater number of stakeholders. Again, this proposition is strongly supported by the empirical material, showing how the Commission energy, competition and environment services managed to cooperate far more extensively in co-ordination of policy instruments than what was seen in the baseline period.

As to the decision of DG TREN to put climate mitigation in as top priority goal for Community energy policy, we proposed that this reflected changes in DG TREN preferences – either because climate change was now viewed as a more serious threat than before, or because putting climate change first could augment the chances of stronger energy policy integration more generally. Alternatively, we proposed that this decision reflected new power for other Commission services (DG Environment set to formulate climate policies) or a new hold on part of Commission inter-service co-ordinating institutions (e.g. the President of

the Commission and the office of the Secretary-General) to integrate more strongly the EU environment and energy policy areas.

Here, we can draw no clear conclusions, as the data collected could support several propositions. The interpretation that DG TREN had changed preferences and now saw climate change as the most important issue to deal with at the European level is supported by the far more proactive rhetoric of Commissioner Piebalgs than his predecessor Commissioner de Palacio, who in the early 2000s argued against EU international leadership in GHG emission reductions. Acknowledging that DG TREN has the member states' Ministries of Energy as primary principals, and the observation that most EU ministers of energy gave had now elevated climate change as the most important issue to deal with, supported also by many Heads of States, further supports the proposition that putting in climate change as top EU energy policy priority reflected DG TREN real worries about climate change.

However, our study finds support also for the proposition that staff of DG Environment and the Office of the Secretary-General played stronger roles in EU energy policy processes than in the baseline situation. The new Secretary-General from 2005, Catherine Day, left her position as top administrative leader of DG Environment, and data indicates that she came to play an important role in convincing the commissioner of energy that stronger co-ordination of energy and climate policies would benefit EU integration opportunities in both policy areas.

Hence, the proposition that DG TREN put climate change in as top priority simply as a potential strategic game changer for further energy policy integration cannot be refuted. Consultations of the 2006 Green Paper on the Strategic Energy Review showed strong and quite broad, although not unanimous, demand for more integrating climate change and energy policies and also for more ambitious EU policies in one energy policy sub-field particularly, that of renewable energy. The motives for the latter were diverse. In addition to mitigation of climate change, indigenous renewable energy was now promoted more strongly as a response to security of supply concerns elevated on the agenda by the early 2006 Gazprom gas supply disruptions. We also observe that strong opposition to some other low-carbon solutions, notably nuclear power, made more ambitious renewable energy policies more acceptable by comparison. Whereas DG TREN had not proposed any binding EU-level target for renewable energy specifically in the 2006 Green Paper, but instead a target for low-carbon energy as a whole, this was indeed proposed as part of the January 2007 Communication launching the Strategic Energy Review, alongside the binding overarching GHG emissions reduction target.

The Commission thus had reason to believe that such binding targets would be accepted by the member states, and this also materialized immediately thereafter through first Energy Council and then European Council endorsement. Moreover, the Commission also had reason to believe that if such ambitious binding targets for renewables were adopted, implementation would bring about demand for new infrastructure investments and for solutions that would minimize the

additional large total costs, in turn, demand for greater efforts in functionally related energy sub-policies. Hence, putting in climate change as overarching goal benefitted a stronger integration of EU renewable energy policy, giving the Commission opportunities to gain stronger direct control over the development of the EU energy mix. This contrasted the long historical record of member states voting down EU policies that would interfere with rights to freely choose the national energy mix. Yet, with ambitious and binding renewable energy targets adopted, this could spill over into greater acceptance of stronger integration of also other energy sub-policies. Indeed, we observe that DG TREN utilized the binding renewable energy goals to advocate parallel adoption of ambitious internal energy market policies, claiming that full and non-discriminatory access for independent producers of renewables was prerequisite for achieving the binding targets. After 2009, the ambitious and binding renewable energy targets were vigorously applied by DG TREN to advocate stronger EU integration in energy infrastructure policies, and indeed, to get member states to step up their efforts in completing the EU internal energy market. Yet, another observation that supports the proposition that climate change mitigation was simply accepted as overarching goal by DG TREN for strategic reasons is its role in the negotiations on the Renewable Energy Directive, seeking to hold back on the ambitiousness of the GHG emission savings threshold.

The Parliament

We see no major shifts in preferences of the European Parliament from the baseline situation that would explain the shift observed in energy policy integration. Already in the baseline period, it had evolved as a strong supporter of EU energy policy integration, with some exceptions that remained stable also when discussing the two energy policy packages in the period 2006–2009. Most conspicuously, the Parliament emerged in the 1990s as an advocate of environmental restructuring of the energy sector in Europe, voting for binding and ambitious targets for renewable energy and energy efficiency. Its position on the internal energy market changed from an initial sceptic in the early 1990s to clear support for far-reaching measures before the second internal energy market package was adopted in 2003. Yet, the Parliament was clear on its overall priorities, and lobbied for inclusion of provisions in the internal market directive that would allow derogation from general rules if needed for environmental protection and security of supply. Hence, upfront adoption of the 2001 Renewable Electricity Directive, the Parliament argued for limiting EU policy integration through insisting against an EU-level green certificate support mechanism for renewables, claiming national feed-in systems to create more predictable investment conditions and hence, superior in bring renewables into the market.

This long-term priority of the Parliament was maintained also in the period 2006–2009, entailing that policy positions were not always in line with those of the Commission. The Parliament upheld its calls for more ambitious binding targets for GHG emissions reductions, renewables and energy efficiency that those proposed by the Commission. It also argued for a more ambitious greenhouse gas savings threshold for biofuels and

stricter sustainability standards. On the other hand, the Parliament kept on opposing EU-level harmonization of a certificate-based support system for renewables. As to the third internal energy market package, it voted very much in line with the Commission proposal, arguing for full ownership unbundling and more extensive EU-level co-ordination through a new regulatory agency at this level. The Parliament was instrumental in proposing timetables for when the new EU-level forums ENTSO-E and ACER were to finalize their work on new harmonized grid codes.

To sum up, the stronger EU-level energy policy integration and decision to put climate change on top of energy policy priorities can very limitedly be traced to shifts in European Parliament preferences, since it had held such preferences also in the baseline period. Another factor contributing to the conclusion that the Parliament did not have a heavily decisive role was the procedure chosen by the French Presidency for dealing with the energy and climate package, getting it passed through unanimity at the European Council, enhanced the possibilities for individual member states to affect the outcome while worsening the chances of the Parliament.

5.3 The role of non-state actor policy networks

To what extent do the shifts in energy policy integration reflect altered preferences by key non-state stakeholder networks or their abilities to influence EU policy-makers?

Upfront, we can group the large number of policy networks working to influence Brussels energy politics in three: supplier and consumer networks, and environmental NGOs, the latter lobbying to minimize negative environmental externalities of energy supply and consumption. Coal and nuclear energy Euro-federations became important stakeholders already under the ECSC and Euratom Treaties. Today, these businesses are represented in Brussels by EURACOAL and FORATOM. National electric power industry associations have co-operated at the European level through UNIPEDE, established in 1925. In 1989, UNIPEDE merged with EURELECTRIC to lobby the new internal energy market initiatives.¹⁰⁸ Petroleum sector associations are currently sharing a common ‘House of Petroleum’ to ease co-ordination.¹⁰⁹ Renewable energy producers are represented by a number of associations that in 2000 created EREC (the European Renewable Energy Council) as an umbrella organization of 15 associations in a ‘Renewable Energy House’, representing wind power producers, the solar PV industry, the biomass

¹⁰⁸ The electricity/heat supply sectors also include the association of European transmission system operators ETSO established in 1999 and transformed into ENTSO-E in 2008; EFET, representing energy traders and Euroheat & Power as well as COGEN representing district heat and CHP generators in Brussels.

¹⁰⁹ These include Europia (downstream operators), AEGPL (LNG suppliers), OGP (the International Association of Oil & Gas upstream producers formed in 1974 to lobby international regulators); EUROGAS (gas supply association formed in 1990 to lobby the internal gas market) and CONCAWE (a centre of experts providing technical advice to the other organisations).

energy industry, small hydropower producers, the wave power industry and the heat pump industry.

Representing the industrial energy consumers, a large number of specialized industry associations have long existed together with the cross-industry association IFIEC-Europe (the International Federation of Industrial Energy Consumers).¹¹⁰ In 2004, a number of these associations established the Alliance of Energy-Intensive Industries to stand united in energy and environment policy processes in Brussels, reflecting that the sector associations were regarded considerably understaffed to exercise effective influence alone. Cross-cutting all energy-producing and consuming industries, *BUSINESSEUROPE* (formerly *UNICE*), *Eurochambres* and *UEAPME* (Small and Medium-sized Enterprises) play into relevant policy processes.

Two relevant industry-based stakeholder networks have been founded on the specific initiative of the European Parliament, the European Energy Forum (EEF) in the early 1980s and *EUFORES* in 1995. MEPs on committees responsible for energy policy legislation are active members. The list of EEF stakeholders (indirect members) include all Brussels-based energy sector trade organizations in traditional energy sources (coal, oil and gas, electricity, nuclear power), major energy supply companies and technology supply companies as well as trade associations representing the major energy-intensive industries). Associate members of *EUFORES* include all major Brussels-based renewable energy trade organizations.

Representing the environmental movement, the number of *ENGOS* represented in Brussels has increased over the years. Today, the ten major *ENGOS* coordinate joint responses and recommendations to EU decision-makers.¹¹¹

DG Energy is the main venue for seeking influence on the formation of new energy policies, being the Commission service responsible for policy development in this area. When established in the 1960s after a merger of the existing supranational bodies under the *ECSC* and *Euratom* Treaties, *DG Energy* became the interlocutor of European energy suppliers. The decision to create an internal market in electricity and gas in the early 1990s gave new networks a strong influence, such as the electricity and gas supplier network organizations *Eurelectric* and *Eurogas* formed specifically to influence EU internal energy market rules. The Commission's energy service, on its side, depended on the suppliers' technical knowledge in designing well-functioning electricity and gas

¹¹⁰ Among the most important we find *CEFIC* (the chemical industry, constituting the largest single sectoral lobby group administration in Brussels), *EUROMETAUX* (metal industry), *CEMBUREAU* (cement industry), *CPIV* (glass industry), *EULA* (lime industry), *Ceram-Unie* (ceramics industry), *Euro Chlor* (chlor-alkali industry) and *EUROFER* (iron and steel industries).

¹¹¹ These are *European Environmental Bureau*, *BirdLife International European Division*, *Climate Action Network Europe*, *European Federation for Transport and Environment (T&E)*, *Friends of the Earth Europe*, *Friends of Nature International*, *Greenpeace European Unit*, *WWF European Policy Office*, *Health and Environment Alliance (HEAL)*, and *CEE Bankwatch Network*.

supply markets, and on testing the legitimacy of new proposals on organizations that noted high representativeness of European companies.

Taking first the supplier networks, we observe clear changes over the long run in preferences concerning EU energy policy integration, with the position taken by Eurelectric a good example. European electric utilities opposed from the start policies that would dismantle monopoly structures in electricity and gas supply, but many shifted position when more and more member states opened their markets in the late 1990s and early 2000s with ownership unbundling of transmission and production/supply included. The utilities now saw universal market opening/market design as beneficial for opportunities to expand business opportunities outside their traditional home markets. Upfront the revision of internal energy market policies in 2007, however, a group of utilities still enjoyed protection against ownership splitting in their home markets and opposed EU policy in the field eager to fight for their protected position. Lack of unity entailed that Eurelectric was unable to formulate a united position despite many members actually supporting radical ownership unbundling.

As to making mitigation of climate change the overriding goal for EU energy policy, this was strongly supported by Eurelectric as was continuing with a revised EU-level harmonized emissions trading system as main climate policy instrument. Eurelectric member had gained windfall profits from the system and Eurelectric had on its own initiative started major scenario work for how energy supply in Europe could become carbon neutral by 2050, concluding that that this should be done through the electrification of new sectors, giving the industry new opportunities for growth.

As to renewable energy policies, Eurelectric came out in support of EU-level targets, but no specific sector targets, to ensure greatest possible flexibility for member state implementation. Eurelectric emphasized, however, that binding targets should not undermine the EU ETS. We observe a lack of unity on the issue of a mandatory EU-level tradable certificate system to promote renewable energy, although Eurelectric came out with cautious support in its position paper of GO trading. Whereas most major utilities saw clear interest in such a certificate system that would generate a uniform level of support across the EU and put them in a good position to make money on trade in the new market, some utilities already benefited from generous feed-in tariffs in their home market, and were less eager to replace such stable and predictable support with a more fluctuating situation created by variation in supply and demand in the certificate market.

As opposed to lack of unity in Eurelectric on support systems for renewable energy, the network organizations representing *independent* producers of renewable energy was united in demand for scrapping a mandatory certificate system and for not demanding full EU harmonization of renewable energy support systems. These networks, representing smaller companies with few resources available for commercial activities in asset trade and more vulnerable to fluctuating revenues than the major utilities, preferred stable feed-in tariff systems that would create predictable revenues. National feed-in tariff systems had proven

essential for the massive growth observed in this industry in the early 2000s. As noted above, these groups had particularly strong influence on the European Parliament through the regular communication within the EUFORES network that emerged from 1995. They had good access to and were listened to by the DG TREN unit responsible for drafting the new Renewable Energy Directive, teaming up with the larger EUFORES network to make their voice heard. The renewable energy industry networks supported radical energy market opening, ownership unbundling included, and priority access for renewable energy to the grid, as opposed to Eurelectric.

The petroleum industry networks alike supported stronger EU energy policy integration and were supportive of giving climate change priority as energy policy goal. Strong support was also given for a revised EU-level emissions trading system a change from the baseline situation. Their support was conditioned, however, on the oil industry being counted as an energy-intensive industry with access to free allocation of allowances under the benchmarking system (Skjærseth, forthcoming 2013). On internal energy market integration, we observe a similar position taken by Eurogas as that of Eurelectric, generally supportive of an EU-level market system but opposed to radical ownership unbundling. As to renewable energy policies, Eurogas accepted that within the overall aim of CO₂ reduction, short-term measures to support the development of renewables would be appropriate but that once the new technologies were established and the true value of carbon was more certain, that the energy mix should be primarily determined by the market, rather than by specific or binding targets. As to the 10% EU-level biofuels target specifically the petroleum industry, through its refining industry association Europia was sceptical, claiming that biofuels would not contribute a lot to reducing climate change and opting for only non-binding renewable energy targets. Europia supported EU-level sustainability criteria for biofuels.

The lack of unity between Europe's major utilities as to the proposal of ownership unbundling differed from that observed for networks of major *energy-intensive industries*. The energy-intensive industries took steps to more closely co-ordinate lobbyism on EU energy and climate policies in 2004 when establishing the Alliance of Energy-Intensive Industries. This network stood united behind the demand for radical energy market opening, ownership unbundling included. This position represented no change in preferences, however, since energy-intensive industries had been among the strongest supporters of radical energy market liberalization right from the start, with a competitive market to drive down energy prices seen as essential for international competitiveness. Upfront the third internal energy market package proposal, DG Competition evolved as a new important interlocutor for these energy-intensive industries in addition to the traditional interlocutor DG Enterprise and Industry. Competition Commissioner Kroes, for her part, made a clear point in her first speech that her main constituency would be European consumers. From 2005, onwards, energy-intensive industries met in various venues with its interlocutors in the Commission. They constituted a core part of the High-level Group on Competitiveness, Energy and the Environment established in 2005, and managed to win the support of this group for new radical policies to liberalize the energy

markets and for including provisions into the revised directive on emissions trading that would give them derogations from the main principles so as to counteract carbon leakage. When co-working on the sector inquiry from 2005, DG Competition and DG TREN needed information on the functioning of the electricity market, with DG Competition officials invited to sit in on companies' trading floors, letting them observe directly market manipulation by the suppliers. DG Competition had formerly been known as not strongly engaged in networking in energy matters, partly because it had a limited role in this policy field and partly because it cherished being perceived as independent from special interests. Yet, this new direct involvement with the industry ushered in new learning in DG Competition about internal energy market flaws and new determination to pursue more radical market opening, including the use of Treaty competition rules to force restructuring of European industries.

The Alliance of Energy-Intensive Industries got their voice through in communication with the Commission, surely also reflecting that the Lisbon Strategy, aimed at strengthening European industrial competitiveness, had been chosen as overarching policy agenda by President Barroso. The alliance still did not succeed in changing the position of the Energy Council on ownership unbundling, and it did not succeed in reducing the ambitiousness of the climate target, where it teamed up with its traditional interlocutor DG Enterprise to lower the target. It was more successful in lobbying derogations for the energy-intensive industries from the main principles adopted for the EU emissions trading system, where the DG Environment sought to hold back new measures that would hollow out incentives to reduce GHG emissions. The European Council late 2008 concluded that adoption of system was made conditional on a range of derogations for the energy-intensive industries.

Environmental NGOs generally opted for more ambitious binding targets for GHG reductions, energy efficiency and renewable energy, but not specific binding targets for biofuels, on which they joined in with the petroleum industry claiming biofuels to not bring down GHG emissions. Environmental NGOs teamed with the renewable energy industry calling for radical energy market opening, claiming vertically integrated companies to prevent access to the grid for independent producers of renewable electricity.

Summing up, we observe wide support among EU non-state stakeholders for more extensive EU-integration of energy markets and energy policies upfront the period 2007–2009 and a gradual shift from the baseline period. Energy consumers pushed hard for new radical policies to finalize the internal energy market, supported also by renewable energy suppliers, environmental NGOs and many major electricity and gas utilities, although Eurelectric and Eurogas failed to embark on support for radical ownership unbundling because of dissent among its members. As to integration of climate goals into EU energy policy, we observe wide support among the stakeholder groups. Broad support was also observed for revision of and stronger EU-level co-ordination for the emissions trading system, and we also observe a shift towards stronger support for

most stakeholders. Yet, the networks of energy consuming industries still voiced scepticism, warning against too ambitious unilateral EU climate targets and accepting the EU ETS only with derogations for energy-intensive industries subject to international competition.

Looking into specific parts of the new EU-level energy policy, the stakeholder networks developed position papers for those parts seen as most relevant for their activities. As to the Renewable Energy Directive, ambitious EU-level renewable energy targets were strongly supported by the networks of renewable industry associations and environmental NGOs, opting also for specific sector targets. Eurogas did not support *binding* targets for renewables while Eurelectric was in support. Both organizations stressed, however, that they preferred market-selection to political target-setting, with carbon prices established under the EU ETS to guide the choice of low-carbon solutions. Eurelectric supported trade in guarantees of origin at the EU level to be part of the Renewable Energy Directive. Yet, the networks of renewable energy producers and environmental NGOs supported sector targets and warned strongly against such extensive EU integration of also specific support instruments, arguing that the member states should be allowed to freely choose. As to biofuels, the farming industry lobby came out with strong support. The industry also opted for EU-level sustainability criteria but that these should be set at a level that would give as few constraints as possible on the industry. Environmental NGOs, on the other hand, opted for scrapping the binding goal for biofuels and for strict sustainability standards, in line with the petroleum industry, claiming that biofuels would not contribute a lot to reducing climate change and opting for only non-binding renewable energy targets.

Above, we asked if the shift in pace of EU energy policy integration and decision to put mitigation of climate change in as priority goal reflected changes in preferences among non-state stakeholders or shift in relative leverage for the networks to influence EU policy development. We clearly observe a stronger general drive for EU energy market and policy integration as compared to the baseline situation and that many stakeholder networks accepted giving climate change a higher priority among EU energy policy goals. Still, as to the specific energy policy proposals, we observe considerable lack of unity, within specific networks and across different networks.

As to leverage on the Brussels energy policy bureaucracy, we note that major energy supplier networks historically enjoyed good access to the Commission through DG Energy as interlocutor. We observe strengthening of the leverage of networks of independent producers of renewable energy and energy-intensive industries upfront Commission proposals for new energy and climate policies in 2007–2008 as compared to the baseline situation. Renewable energy producer networks exerted strong influence on the European Parliament and were instrumental in lobbying governments. Energy-intensive industry networks effectively lobbied member-state governments and got their views through in the European Council.

5.4 Issue-linking

The EU integration theory-based analysis above has focused on changes in actor preferences and their opportunities to influence policy processes as major factors explaining changes/stabilities in EU energy policy integration. Yet, acknowledging the large number of stakeholders with *potential* veto power in matters of EU policy integration, the analytical framework also included a cross-cutting proposition that changes in negotiation tactics had taken place in the form of new types of issue-linking (simultaneous discussion of different issues for joint settlement) to yield joint gains that enhanced the probabilities for a successfully negotiated outcome. The main theoretical argument supporting such a tactic is that combining issues for joint settlement can overcome distributional obstacles through side-payments and create synergies that would induce a larger number of stakeholders to accept the costs associated with policy change in one area if gains were experienced in another area, thus moving the earlier ambitiousness/legitimacy trade-off point in EU energy policy.

Our study finds multiple examples of issue-linkages in the energy policy processes taking place in the period 2007–2009, at various stages of the policy cycle and applied by stakeholders at several levels: EU institutions, the member state and non-state actors. Issue-linking was frequently applied as a rhetorical instrument. This was notably used when the European Commission argued for a package of policies claimed to entail a new consistency between EU energy policy goals, thus appealing broadly to stakeholders that all would be better off, despite giving different weight to the various energy policy goals. We also observed how the High-Level Group on Competitiveness, Energy and the Environment in conclusions from its meetings brought up a number of policy issues that, if acted upon, could contribute to counteract the concerns of the energy-intensive industries that the EU ETS would destroy their international competitiveness, such as fixing the internal energy market and allow long-term contracts. We also note the recurrent rhetorical linkage made between internal energy market and renewable energy policies, with forceful policies to accomplish the former viewed as a prerequisite for achieving high shares for renewables in the energy system. Several state governments and non-state stakeholders joined the Commission in pointing to such issue-linkages.

However, issue-linking went beyond rhetoric, as noted in the Commission processes of drafting the combination of policies that formed the January 2008 energy & climate package. Commission staff from several services here co-operated closely to fine-tune policy instruments so as to avoid too-high costs for achieving the ambitious climate and renewable energy targets set for the various groups of member states and non-state stakeholders. In this fine-tuning, the EU ETS was designed to cause a not too high carbon price in order to please carbon and energy-intensive industry groups, member state targets for GHG reductions in non-ETS sectors and share of renewables were set to redistribute costs from poor to rich member states, and new rules allowing more generous state support was promised so as to increase the flexibility of member states in achieving the targets. As to the biofuels

target more specifically, we observed how linkages were made to also other policy areas, notably the Common Agricultural Policy (CAP), with proposals for directing non-EU biofuels producers similar CAP requirements as EU farmers in order not to distort competition in the supply of biofuels. When discussing GHG emissions savings threshold and sustainability criteria for biofuels specifically, different services of the Commission had different positions, with a compromise reached that would also pay attention to European farmers and the biofuel supply industry.

We also observed Commission efforts at linking more closely internal energy market and renewable energy policies, promising the member states lower costs in reaching the target for renewables if accepting a harmonized support system that would not distort competition in the internal market. Here, the Commission failed in its efforts, however.

Looking more closely at discussions in the European Council, we first of all observe great satisfaction with the package procedure – that several proposals were up for simultaneous discussion enabling greater flexibility in reaching the climate and renewable energy targets set. The Council even conditioned its final decision on parts of the energy and climate package on further development of other parts of the package, as when acceptance of the EU ETS was made conditional on DG COMP coming up with new guidelines on state aid for compensating indirect costs of allowance trading and for allowing derogation from the general principles in the case of CCS investments.

To sum up, the issue-linkage approach fits well as cross-cutting approach to EU integration theory, all the time we observe this tactic used by EU institutions, member-state governments, and non-state stakeholders alike. This said, observations also point out that great many energy issues were not strongly linked in the process, despite their close functional relationship. As noted at the outset, theory proposed that adding issues can reduce the probabilities for a successfully negotiated outcome when separate issues have no common ground for agreement, when the basis of any agreement can serve to destroy the combined common ground, or when adding issues would render the negotiations more complex and cumbersome.

As noted, the issues of completing the internal energy market became only weakly linked to the issue of harmonizing renewable energy support in Council negotiations, despite the fact parts of the Commission had upfront emphasized their close relationships. We observe that any common ground for agreement on the two issues had historically been absent, and continued to be so also in the period 2007–2009.

6 Main conclusions and road ahead for EU energy policy integration

This study has documented actual advances in EU energy policy integration in the period 2007–2009 as compared to the baseline situation, defined as transfer of competency over energy-policy decisions to the EU level. This materialized first and foremost as energy being included in the new Lisbon Treaty in 2007, giving EU shared competency for this policy field. Yet, it also includes the decision to bind member states to source a minimum amount of total energy consumption from renewables, reducing the opportunities of member states to freely decide the structure of their own national energy supply. To a lesser degree, it includes the establishment of new institutions and procedures at the EU level to co-ordinate efforts at dismantling barriers to cross-border trade in energy and for co-ordination at the EU level of national/regional plans for infrastructure development. Also other energy policy sub-fields saw EU policies adopted at the EU level with less substantial reduction in member state freedom to decide at the national level. Yet another observation to be explained is the 2007 decision to recognize climate change as top priority goal for EU energy policy development.

The study has discussed these advances in light of EU integration theory, with the issue-linking approach from international negotiation theory as cross-cutting approach. A clear conclusion from the study is that inter-governmentalist theory cannot be refuted. In fact, observations underpin that this approach explains much of the changes observed. We saw clear indications of changes in preferences by key member state governments from the baseline situation, with clearer willingness for allowing EU level governance. Epitomizing this change is the British government who changed its former role as guarantor against EU-level interference with national energy policy affairs to a supporter for stronger integration. As to putting climate change up as priority goal for EU energy policy, we also observe stronger support among a great number of major member states, again with the British government taking on a new lead role. However, we also observe less readiness for such a priority among some of the new member states that entered the European Union in 2004. Also, when looking at details, i.e. positions taken back in 2006 on further integration in individual energy sub-policy areas, we observe quite mixed preferences among member-state governments.

This fact underpins another main conclusion – that the energy policy integration achieved through the policy packages adopted in 2009 cannot be understood without reference to EU-level institutions providing entrepreneurship so as to find equitable solutions for the member states. Supranational institutions, notably the European Commission, backed energy policy supranationalism more skilfully than what is observed in the baseline period. This is noted in various ways. First of all, the Commission gave its competition service a far more active role than observed in the baseline period, extending the arsenal of instruments applicable for pursuing energy policy integration. Next, far better co-ordination took place between different Commission services holding responsibility for climate, energy and competition policies, in turn

reflecting greater determination by the Commission inter-service coordination department, and a new co-operative atmosphere between separate services, at administrative and political levels. This entrepreneurship conducted supports that supranationalism takes on the role as a perspective truly complementary to intergovernmentalism. To be sure, initial change in member-state preferences was a necessary but not sufficient condition for the stronger energy policy integration seen in the period. As to the puzzle of DG TREN formulating climate change mitigation as the priority goal for EU energy policy, we noted above that this can indeed be viewed as a mandate given by the ministers of energy in key member states, supporting the intergovernmentalist approach. Yet, we also observed that DG Environment and the Secretary-General of the Commission worked actively to convince DG TREN that integrating climate and energy policies could create new solutions to remove deadlocks in energy policy integration as such. Hence, the study cannot exclude that an element of tactics was involved in DG TREN's acceptance of this priority, indicated e.g. by the relatively lax GHG savings threshold it proposed for biofuels in the Renewable Energy Directive.

In order to investigate the broader legitimacy base of EU energy policy integration among non-state stakeholders, the study applied the policy network approach, asking whether the stronger integration were associated with shifts in preferences or such actors or with changed opportunities for different stakeholder networks to exert influence on EU policy-makers. Here, a main conclusion is that the preferences of major stakeholder networks were quite stable when compared to the baseline situation, although longer-term changes are observed. This said, we observed strong indications of shifts in opportunities of various stakeholder networks to influence Commission energy policy-making.

This study started out with from the assumption of a trade-off existing between policy ambitiousness and policy legitimacy. A clear conclusion drawn from the study is that the increments towards stronger EU integration achieved through the energy policies adopted in 2009 were facilitated by the tactic of simultaneously negotiating different sub-policies, i.e. through issue-linking. The agreement reached thus represented higher ambitiousness than the baseline situation coupled with a stronger and broader legitimacy base. Legitimacy was secured through substantial side-payments in the form of differentiated burden-sharing for member states based on national income levels, by adjusting the state aid regime to allow new forms and levels of state aid, and by introducing more flexibility as to how member states should be allowed to reach targets set, as e.g. through removing specific sector targets for renewable energy.

A final conclusion is that also external factors and events played a role. High international oil prices fuelled competitiveness concerns and the Russia–Ukraine gas disruptions fuelled security of supply concerns that accentuated urgency among several member states as to the need for EU-level energy policy solutions. Expectations about possibilities for a global climate change agreement in Copenhagen late 2009 to instruct higher commitments for also non-EU countries made frontrunner action less problematic in terms of international competitiveness.

Yet, we now know that the external situation changed dramatically after 2009, not only because the Copenhagen climate change agreement did not achieve what the EU hoped for but because of the financial crisis already under development from 2007 eventually settling as a deep economic crisis for the European Union, reducing economic output levels and making unemployment levels rocket in many EU countries.

On this background, a pertinent question would be how robust the new-achieved legitimacy for EU integration of energy and climate policies really was. This question is pertinent since the 2009 policy packages represented only a first step of the Action Plan for EU energy policy integration that was presented as part of the 2007 Strategic Energy Review, at that point endorsed by the European Council. Late 2008 the Commission in November 2008 presented a new plan for EU energy policy integration with its second Strategic Energy Review. The five-point plan included: replacing the non-efficient TEN-E mechanism with a new mechanism for funding and selecting priority energy infrastructure projects; take action on external energy relations; revision of oil and gas stocks and crisis response mechanisms; a new energy efficiency policy package; making the best use of the EU's indigenous energy resources through full-scale demonstration of low-carbon technologies, including 12 CCS projects and a Roadmap towards a 2050 energy policy for including a policy agenda for 2030 (European Commission, 2008a).

Additionally, the two 2009 energy policy packages left some issues undecided because time was too short to get differences sorted out before re-appointment of a new Commission and European Parliament elections. For the Renewable Energy Directive, this concerned aspects of the sustainability criteria for biofuels, notably how to deal with potential indirect land-use changes (ILUC) from higher biofuels consumption. For the EU ETS, remaining unresolved issues included specific benchmarks for industries entitled to free allocation and new state aid guidelines to compensate industry for higher electricity tariffs and to allow new levels of state aid for CCS projects. As to internal energy market policies, further integration included the development of guidelines and codes that would ensure the harmonization of practices regulating access to cross-border infrastructure and stimulate cross-border trade in electricity and natural gas.

Below, we briefly analyse some of the EU energy and climate policy proposals adopted since 2009, in terms of integration ambitiousness and acceptance of key stakeholders: member-state governments, non-state stakeholders and EU institutions. Specific attention is also given to whether the good atmosphere of co-operation continued between the relevant services of the European Commission.

6.1 EU energy policy integration efforts after 2009

Revision of sustainability standards for biofuels

The 10% target for biofuels in the Renewable Energy Directive was accepted by the Council on the condition that proper sustainability criteria for biofuels were implemented. The directive established sustain-

ability criteria dealing with direct effects from feedstock production while leaving the far more complex issue of calculating indirect effects stemming from the fact that biofuels produced on traditional croplands would not necessarily reduce the production of food crops, only displace this production to other locations, having negative ecosystem effects. Both the renewable energy and fuel quality directives adopted in 2009 required further attention to possible inclusion of such indirect land use impacts in the sustainability criteria. During 2010, DG Energy screened research findings on the topic, with some model results showing that GHG emissions stemming from utilization of some biofuels feedstock could be greater those from conventional fuels.

DG Energy questioned these findings, however, and opted for scrapping ILUC standards and instead adopting the more simple method of increasing the GHG threshold for biofuels eligible to count against the 10% target. Opposing ILUC criteria and supporting DG Energy's questioning of research results were EU farmer associations and biofuel producers. Supporting ILUC criteria were a large group of scientists engaged by the European Environment Agency and other environmental NGOs.¹¹² As opposed to DG Energy, DG Environment and DG Climate stated that scientific results were strong enough to support ILUC criteria. The Commission-internal disagreement caused postponement of the proposal and arbitration from José Manuel Barroso's office and other top European Commission officials early 2012.¹¹³ A new intervention by President Barroso at a May Commission meeting asked the energy and climate commissioners to reassess a compromise since the energy and climate directorates had now apparently agreed to incorporate crop-specific ILUC into the EU's fuel quality directive but not in the renewable energy directive.¹¹⁴ In September, a draft text showed a new compromise that would limit biofuels from food crops to no more than 5% of final energy consumption in the transport sector by 2020, and introduce a higher GHG saving requirement of 60% for biofuel installations that started operating on 1 July 2012 or later instead of 1 January 2017 under existing 2009 rules. The draft also proposed that after 2020, biofuels should be subsidized only if they lead to substantial GHG savings that take ILUC impacts into account, and provided that these fuels do not

¹¹² In September 2011, a draft opinion by a range of scientists engaged by EEB asked for revision of existing policy since clearing or cutting forests for energy crops could lead to a significant loss of carbon sinks that could take many decades to recover fully. A DG Energy spokesperson claimed such conclusions rebutted by others (ENDS Europe, 14 September 2011, 'Europe's policy on bioenergy dealt a new blow'). In mid-2011, a group of cross-party MEPs and NGOs urged the European Commission to adopt ILUC standards instead of only increasing the GHG threshold. (ENDS Europe 12 July 2011, 'Commission urged to propose ILUC criteria'). At a workshop in Brussels early in 2012, Kjell Andersson of the Swedish bioenergy industry group Svebio warned workshop participants against an ILUC factor because there are too many uncertainties in the modelling. Corn-ethanol's impact ranges from 2 grams of CO₂ per megajoule to 208g CO₂/MJ, he said. Andersson's comments were dismissed as misleading by Nusa Urbancic, biofuel expert at green group T&E. The group, along with eight other NGOs, say there is enough evidence in the scientific studies to introduce policy that would fix factors that reflect emissions from ILUC for different biofuels crops. (ENDS Europe, 26 January 2012, 'Commission chief wades into ILUC debate').

¹¹³ ENDS Europe, 26 January 2012, 'Commission chief wades into ILUC debate'.

¹¹⁴ ENDS Europe, 21 May 2012, 'Barroso calls for 'balanced' ILUC proposal'.

come from food crops.¹¹⁵ The farming and biofuels industries dismissed the proposal, claiming it would destroy the entire industry built up in Europe. Environmental NGOs were pleased and urged the Commission not to water down the proposal.¹¹⁶

Yet, in the final proposal presented mid-October, the European Commission had done exactly that. While keeping the 5% limit on biofuels from food crops, ILUC standards had been scrapped until at least 2021, adding that a further review should be done by December 2017. Fuel suppliers would be instructed to use annexed crop-specific values when reporting the lifecycle greenhouse gas (GHG) emissions of their products but would not need to account for these when meeting their 6% GHG reduction obligation under the Fuel Quality Directive (FQD). To promote advanced biofuels, member states would be allowed to double-count these towards the transport sub-target. The commission had also changed the scope of the proposed 60% GHG saving requirement for biofuel installations, proposing this to apply for plants starting operation after 1 July 2014 instead of 1 July 2012.¹¹⁷

And, despite these changes, at the February 2013 Energy Council meeting there were strong voices opting for a further watering-down of biofuels standards. Several energy ministers, including those of Poland, Hungary, Czech Republic and Slovakia dissented on the 5% cap on biofuels from food crops and had reservations to the ILUC formulations. Other ministers, including those of the UK and Denmark, wanted far more attention to be paid to the ILUC problem, and the Danish minister proposed that the 2017 review date should be brought forward to 2014. The UK was worried that double-counting of advanced biofuels towards the 10% transport sub-target would mean that the overall 20% target for renewable energy would not be met. Also the Environmental Council meeting in March slammed the proposal, echoing Energy Council reservations about the proposed 5% cap on food-based biofuels, although some delegations also called for a more stringent cap.¹¹⁸

The Energy and Environment Commissioners reacted differently. The former said he accepted the concerns and that a 6% or 7% cap, or addressing biodiesel and bio-petrol separately, would better protect

¹¹⁵ The estimated ILUC impact of three crop groups was given in an annex to the proposal: oil crops estimated at 55 grams of CO₂ equivalent per megajoule, followed by sugars (13 g) and cereals (12 g), and feedstock with no ILUC impact including waste, agricultural, aquaculture and forestry residues and aquatic materials (ENDS Europe, 11 September 2012, 'EC seeks to limit use of biofuels from food crops').

¹¹⁶ The biodiesel trade association EBB warned that the proposal would wipe out the entire EU biodiesel sector employing 450,000 persons, with the only biodiesels surviving in the market coming from imported palm oil, contradictory to EU objectives on sustainability since palm oil production is linked to deforestation in countries such as Indonesia. (ENDS Europe, 14 September 2012, 'ILUC plan will kill biodiesel sector, warns EBB'). In October, the bioethanol and biodiesel industry, farmers' organisation Copa-Cogeca and vegetable oil industry association Fediol collectively rejected capping the use of biofuels from food crops by 2020. All warned that the proposal was based on inexact data and that some member state would clearly not agree with the 5%, mentioning France promoting a 7% cap at the national level.

¹¹⁷ ENDS Europe, 17 October 2012, 'EU executive waters down biofuels proposal'.

¹¹⁸ ENDS Europe, 21 March 2013, 'Environment ministers slam ILUC proposal'.

investments already made by the biofuels industry, promising greater flexibility.¹¹⁹ By contrast, the Environment Commissioners defended the 5% cap as a highly pragmatic approach to tackling the ILUC problem, balancing environmental concerns against support for Europe's existing biofuels industry. European Environmental Bureau called it 'shocking' that the majority of member states wished to make the already watered-down final text even weaker.¹²⁰ With the Commission proposal rejected by the Councils of Energy and Environmental Ministers, an ad-hoc working group has continued working on the plan with a view to presenting a progress report in June 2013.

Biofuel standards remained a contentious issue causing inter-service disagreements, as had been the situation back in 2008 when the Renewable Energy Directive was drafted. DG Clima sought standards that would secure maximum contribution to GHG emissions reductions, while DG Energy wanted greater use of biofuels also in order to bolster security of supply and support the continued growth of an emerging industry in Europe. This indicates that climate change was no longer seen by DG Energy as an absolute top priority goal for EU energy policy. The protracted ILUC discussions and interventions from President Barroso also indicate that the co-operative atmosphere established between DG Energy and DG Environment back in 2008 had changed.

Discussions in the Councils of Energy and Environment Ministers alike showed that the rift was evident between member-state governments as well. One consequence of failure to agree on stricter standards would probably be that member states with deeper climate change concerns would go on with stricter national biofuels standards than those which downplayed the problems of climate change, in turn representing limited harmonization and EU-level integration.

Fiscal energy policy measures: Coal subsidies and efforts at revising energy taxation

Another test of how robust legitimacy for further EU integration came when the European Commission asked for changes in fiscal energy regulations. In 2010, the European Commission proposed to end coal subsidies in the European Union by 2014, since the late 1980s viewed as an important measure to complete the internal energy market and, surely a measure that would add support to achieving the climate and renewable energy targets adopted. Strong opposition came mainly from Spain and Germany, member states with the highest remaining levels of subsidies, but also the European Parliament who called instead for the end of 2018 as deadline. Late December 2010, the Competitiveness ministers agreed to allow EU member states maintain state aid for uncompetitive coal mines until December 2018, and to extend such subsidies until 2027 for coal mines important for social welfare benefits and the rehabilitation of

¹¹⁹ ENDS Europe, 22 February 2013, 'ILUC proposal criticised by EU energy ministers'.

¹²⁰ ENDS Europe, 21 March 2013, 'Environment ministers slam ILUC proposal'.

sites, with a gradual phase-out starting in from 2013. Environmental NGOS condemned the decision.¹²¹

In 2012, the Commission proposed revision of tax levels under the 2003 Energy Tax Directive, introducing a minimum tax rate for CO₂, set at €20 per tonne, and changing existing volume-based tax rates to energy-based rates. The proposal also included a proportionality requirement aligning tax rates for diesel and petrol, and to align minimum tax levels automatically with CO₂ prices in the ETS or the consumer price index. Poland immediately opposed any binding CO₂ component. France, Belgium and Sweden called for scrapping the CO₂ component for biofuels.¹²² Spain and the UK voiced concerns as to the proportionality requirement and the automatic adjustment proposed for the tax levels. Also the European Parliament's lead rapporteur criticized the proposal for having a significant and destabilizing effect on EU economies and representing a significant intervention in the fiscal policies of member states. While acknowledging the need to incorporate climate and environmental concerns into the energy taxation directive, the rapporteur maintained that energy and industrial policies were equally important and had been somewhat overshadowed.¹²³

Like the case of biofuels standards, the postponed phase-out of coal subsidies and failure to incorporate CO₂ taxation into the energy tax directive indicate how various member-state governments valued other policy goals higher than fighting climate change. We also observe how the relevant Parliament Committee now joined in arguing for toning down the climate policy ambitions. This represented a break with the past all the time the Parliament had historically taken the role as pusher of high EU climate policy ambitions, as noted in this study.

Energy-efficiency Directive

A major test of stakeholder positions on further energy policy integration came when the Commission in June 2011 adopted its promised draft of a new directive on energy efficiency, collecting previously separate pieces of legislation and revising these. The draft directive proposed no binding efficiency targets at the EU or national levels – a continuation from the 2006 Green Paper and signals given by the European Council back in 2007. It stated, however, that binding national efficiency targets would be considered if member states had not achieved sufficient progress towards the EU's 20% energy efficiency goal by June 2014.

As opposed to such overall *targets*, the Commission had in an early draft proposed binding sector targets: energy suppliers would be obliged to achieve annual energy savings equivalent to 1.5% of their energy sales through national obligation schemes that gave them opportunities to

¹²¹ Subsidy phase-out would be gradual, with at least 25% reduction by 2013, 40% by 2015, 60% until 2016 and 75% until 2017. Ministers from Sweden and Denmark abstained voting in the Council of Ministers (ENDS Europe, 10 December 2010, 'Subsidies for coal to be extended until 2019').

¹²² ENDS Europe, 19 November 2012, 'No deal on energy taxation in sight for this year'

¹²³ ENDS Europe, 7 November 2011, 'Rapporteur attacks EU energy taxation proposal'.

achieve their targets jointly with others. Public bodies would be required to renovate 3% of their buildings annually, starting in 2014. Heavy opposition by energy firms and member-state governments, fronted by Germany, induced the Commission to allow greater flexibility to implement measures equivalent to obligation schemes. Also the renovation of buildings measure had been altered, so that the 3% target would only apply to buildings above 250m², and only government-owned buildings, as opposed to the early draft that had not mentioned such thresholds.

The first demands by the Parliament ITRE Committee rapporteur Claude Turmes, representing the Green group, was that binding national energy saving targets should be included, and that the 1.5% annual savings obligations should apply to the transport sector as well. On the other hand, he also called for flexibility, proposing that energy firms should be allowed to opt out from the obligation through financial contributions for an energy efficiency investment fund.¹²⁴ Other MEPs spoke of allowing greater flexibility for member states and let national targets reflect existing initiatives and differing levels of performance.¹²⁵

The Energy Council expressed major concern as to the quantitative measures proposed. The Polish presidency suggested increasing the proposed threshold for small energy suppliers excluded from the obligation, and in line with Sweden, to cut the target from 1.5 to 1.2%. France wanted to exclude sectors in the EU emissions trading scheme (ETS) and Austria for more credit for early action.¹²⁶ The ministers agreed on the 3% refurbish requirement for public buildings to only apply to central government offices, to postpone the review of national energy efficiency efforts as well as adding additional flexibility as to the proposed requirement of high-efficiency cogeneration and district heating.¹²⁷

In the trilogue talks involving the Parliament, the Commission and the Council of Ministers, ending with agreement in June 2012, the member states rejected the call from the Parliament for binding national efficiency targets, but accepted bundling of proposed flexibility measures with a 25% cap on what could be achieved through these, leaving energy suppliers with a target of at least 1.12% savings a year. Opt-out of the obligation scheme would be allowed through implementing equivalent alternative measures such as energy taxes or CO₂ taxes. Some member states, notably Germany, Spain and Portugal, unsuccessfully proposed counting savings from early actions separately from other flexibility measures, something that would have resulted in total energy savings by 2020 of only 12%. The Parliament here demanded successfully that at least 15% energy savings by 2020.

The Council of Energy Ministers succeeded in maintaining the 3% renovation target for central government buildings only. The European Parliament secured national building renovation roadmaps and mandatory

¹²⁴ ENDS Europe, 6 October 2011, 'MEP proposes big changes to draft EED law'.

¹²⁵ ENDS Europe, 13 January 2012, 'MEPs push for more flexible EED directive'.

¹²⁶ ENDS Europe, 29 March 2012, 'EED trilogue talks set to be very challenging'.

¹²⁷ ENDS Europe, 8 November 2011, 'EU states seek to weaken energy efficiency law'.

energy audits for large companies, initially opposed by the Energy Council. Proposed mandatory information to consumers through smart meter and billing requirements was dropped as was the proposal to make combined heat and power (CHP) the default option for new power installations.¹²⁸

The energy efficiency directive represented incremental EU energy policy integration through minimum sector targets for energy suppliers and central government buildings. Unlike the renewable energy policy, however, no binding overarching targets were established at the EU level. Stakeholder positions were very much in line with those observed whenever energy efficiency policies were discussed earlier in the decade. The Parliament called for more ambitious and binding targets. The Council of Energy Ministers called for less committing policies at the EU level.

Infrastructure package

Another major test of the robustness of stakeholder acceptance of EU energy policy integration came when the European Commission in October 2011 presented its promised transport, energy and telecommunications infrastructure package. This included a proposal for a single €50bn funding facility (Connecting Europe Facility) for the three sectors for the period 2014–20 (€9.1bn for energy projects) combined with a project bond initiative and new rules for level of EU support for individual projects. The proposal acknowledged that the market alone would unlikely deliver sufficient funding of the infrastructure needed to meet the 2020 growth strategy and climate and energy goals. Included was a proposed list of 12 priority gas and electricity corridors, EU-harmonized rules for limiting licencing time for projects of common interest (PCIs) to three years, and an organizational requirement to set up ‘one-stop shops’ to facilitate the approval processes.¹²⁹

The proposal met strong backing by the energy industry and the Parliament’s ITRE Committee. Environmental groups endorsed priority electricity grid corridors, but Greenpeace voiced concerns about including also a cross-border network for CCS and other green voices expressed concerns about the many new natural gas corridors.¹³⁰

Some member-state governments opposed the three-year project approval limit and called for cuts in the Connecting Europe Facility along a general cut in the EU budget for the period 2014–2020, in line with austerity plans implemented at the national level. The Cyprus presidency of 2012 suggested cutting the facility available for energy projects to €7.1bn.¹³¹

¹²⁸ ENDS Europe, 14 June 2012, ‘Agreement reached on EU energy efficiency law’.

¹²⁹ ENDS Europe, 19 October 2011, ‘MEPs said the proposal favoured gas pipelines over renewable energy networks’.

¹³⁰ ENDS Europe, 19 September 2012, ‘TEN-E guidelines get energy committee go ahead’.

¹³¹ ENDS Europe, 30 October 2012, ‘Cyprus suggests cuts to EU budget proposal’.

Agreement between the European Parliament and the Council of Ministers was reached in November, endorsing the 12 priority trans-European corridors and slightly extending the approval time limit for PCI projects with half a year. The amount of funds available under the Connecting Europe Facility was to be decided in the parallel budget negotiations.¹³²

The infrastructure package represented a clear step towards stronger EU energy policy integration. After years of wrangling since the Maastricht Treaty established the TEN-E facility in the early 1990s, agreement was finally reached on projects to be given priority status as no longer a purely national but an EU-level responsibility. Moreover, acceptance of EU-level rules intervening with national approval processes, long floated by the European Commission, marked a new leap in that it allowed for EU saying in area planning processes, a policy area earlier guarded zealously as a purely national competency.

The infrastructure package attracted quite strong support among stakeholders as it related broadly to EU energy policy goals. Construction of new cross-border electricity networks was initially viewed primarily as a prerequisite for the internal energy market to boost trade and competition. For stakeholders giving a high value to the GHG emissions reduction goal, new infrastructure would be a prerequisite for ensuring market penetration of renewable electricity and the CCS solution. For stakeholders concerned with security of supply, notably eastern European member states, cross-border infrastructure within the European Union could contribute to reducing the high dependency on Russian gas supplies.

Climate and energy policies for the post-2020 period

Perhaps the most significant test of EU stakeholder positions as to maintaining mitigation of climate change the priority goal for EU energy policy came when the Commission presented its promised long-term plans for how to achieve GHG emissions reductions of 80–95% by 2050. Separate long-term plans were adopted by DG Clima and DG Energy, both suggesting pathways towards 2050 with intermediate targets for GHG emissions cuts and deployment of low-carbon energy solutions, respectively.

First out was the Low-Carbon Roadmap prepared by DG Clima and adopted by the Commission in March 2011. This Roadmap suggested intermediate GHG cuts of 40% for 2030 and 60% by 2040 in addition to a new higher target of 25% cuts by 2020 as opposed to the 20% already adopted in the energy and climate package. This upward revision was a suggested response to the plunge experienced for EU ETS carbon market prices after the economic crisis had sent industrial production levels down and revealed a massive surplus of emissions allowances in the market. When the Environmental Council discussed the proposed long-

¹³² ENDS Europe, 28 November 2012, 'EU lawmakers strike deal on TEN-E guidelines'.

term plan in March 2011, the minister of Poland vetoed, primarily because of the up-scaled target for 2020.

With carbon market prices in steady decline, DG Clima also floated the idea of delaying auctions of allowances to reduce the surplus in the market, referred to as a set-aside of allowances. However, officials from Poland again opposed.¹³³ Still, backed by many other member states, the Commission continued preparing a proposal for a temporary set aside of 900 million allowances as a quick-fix solution to tackle the large surplus of allowances on the market. The proposal, adopted late 2012, was followed by a report proposing all in all six options to reform the ETS more fundamentally, which included increasing the EU's 2020 greenhouse gas reduction target to 30%, permanent removal of allowances from the EU ETS, stricter annual caps, extending the scope of the ETS to new sectors, limiting access to international Kyoto credits, and introducing price management.¹³⁴

In parallel, DG Clima re-drafted its Low-Carbon Roadmap proposal with the new 2020 target omitted, that was debated by the Environment Council late 2012. Again, Poland vetoed, this time opposing the set-up of milestones set between 2020 and 2050. By contrast, environment ministers of major EU member states such as the UK, Germany and France pushed for a new 30% target for 2020 and also backed the 2030 target as a step to prop up Europe's depressed carbon market and provide certainty for business about investing in low carbon technologies. While Poland stood alone in vetoing the proposal, other central and eastern European nations such as Romania and the Czech Republic were sympathetic to Poland's position that new ambitious climate goals should not be formulated without other industrialized countries doing the same.¹³⁵

DG Energy presented its long-term plan late 2011. This plan focused on how the EU could accomplish its 2050 goal of 80–95% reduction in GHG emissions without compromising other energy policy goals: security of supply and industrial competitiveness. The Energy Roadmap 2050 included a series of decarbonization scenarios that all suggested a share of renewables in gross final energy consumption of about 30% in 2030. While not formulating this as a target, a number of EU energy ministers asked that this figure be deleted, indicating clear reservations about committing to a new, higher EU renewables target. Some ministers called for keeping the 30% as a target, including those of Germany, Belgium, Ireland and Sweden.¹³⁶ When formally discussed at the Energy Council in June 2012, Poland refused to back the roadmap, like it had dismissed the low-carbon roadmap, reiterating that further EU carbon reductions should only be agreed if other industrialized countries took equivalent measures.

¹³³ Bloomberg Businessweek, 'EU Carbon-Permit Set-Aside Requires Change of Law, Poland Says', 12 April 2012.

¹³⁴ ENDS Europe, 14 November 2012, 'EC unveils plan to reform carbon market'.

¹³⁵ EurActiv 14 December 2012, Poland defies Europe over 2050 low-carbon roadmap, <http://www.euractiv.com/climate-environment/poland-defies-europe-2050-low-ca-news-511380>.

¹³⁶ ENDS Europe, 13 June 2012, Council drops reference to 30% renewables share.

All other member states backed the Energy Roadmap, leading Energy Commissioner Oettinger to downplay the significance of the new Polish veto for going ahead with new long-term energy proposals.¹³⁷

According to DG Energy, consultations had shown that most respondents supported renewable energy targets beyond 2020, although with a divide between NGOs and some industry groups. The European Parliament in March 2012 called for binding targets for 2030.¹³⁸ The consultations had also shown persistence of the divide between groups supporting harmonization of subsidies at the EU level and those opting for continued diverse national support schemes, with around 50% of respondents falling in each category. Industry groups Eurelectric and BusinessEurope called for only non-binding targets and technology-neutral support schemes. These groups claimed the greenhouse gas reduction goal alone to be sufficient to drive the development of low carbon technologies, claiming the existing renewable energy policy to have caused conflicts with both the EU ETS and the internal market, expected to increase further with a growing share of renewables in the market.¹³⁹

Within the Commission, we noted similar divisions on the issue of post-2020 targets – both concerning whether and not to set new more ambitious climate targets at all, apparently opposed by the industry and research commissioners¹⁴⁰ and whether to set only one single climate target and leave the EU ETS the only instrument to achieve the target, abandoning new targets for renewable energy and energy efficiency. In 2011, Peter Vis, chief of staff of the EU Climate Commissioner warned publicly that the draft Energy Efficiency Directive could undermine the bloc's carbon market by depressing carbon prices even more than that already caused by the economic crisis. This marked a strong message since commenting publicly on draft EU laws broke with the protocol for Commission officials.¹⁴¹ Commissioner of Energy Gunther Oettinger, on the other hand, were long silent on whether new binding climate targets should be set for 2030 while clearly supporting renewable energy targets founded also in other important EU energy policy goals. On 27 March 2013, the Commission adopted a Green Paper on 'A 2030 framework for climate and energy policies', launching a public consultation on the type, nature and level of potential climate and energy targets for 2030. This showed that agreement had been reached between DG Climate Commissioner Hedegaard and Energy Commissioner Oettinger in support of multiple post 2020-targets for CO₂ reduction, renewables and energy efficiency. President Barroso stressed at the launch meeting that EU's emissions trading scheme (ETS) would not be the sole pillar of future climate and energy policy.¹⁴²

¹³⁷ ENDS Europe, 15 June 2012, 'Poland vetoes energy roadmap to 2050'.

¹³⁸ ENDS Europe, 19 March 2012, 'Stakeholders back post-2020 renewables targets'.

¹³⁹ ENDS Europe, 21 February 2012, 'Future green energy policy divides stakeholders'.

¹⁴⁰ EuropeanVoice.com, 27.3. 2013, 'Commission to propose 2030 climate targets by year end', retrieved at: <http://www.europeanvoice.com/article/2013/march/commission-to-propose-new-2030-climate-targets-by-year-end/76835.aspx>

¹⁴¹ EurActiv, 16 June 2011, 'Brussels in disarray over energy directive'.

¹⁴² ENDS Europe, 12 March 2013, 'EC keen to set multiple low-carbon targets'.

Responses by the European Parliament were, however, not reassuring for those opting for only one climate target to be achieved by strengthening of the EU ETS. On 14 March 2013, the Parliament voted on the 2050 Energy Roadmap, backing a 2030 renewable energy target higher than 20%, though a proposal to put this as high as 45% was rejected by just one vote. On the other hand, mid-April, the full Parliament rejected plan forwarded by the Commission to withhold emissions permits from the European Emissions Trading Scheme (ETS) to combat oversupply in the market, after such a plan had earlier been supported by the Environment Committee but not by the ITRE Committee.

Hence, we observe a shift from back in 2008 with more outspoken division between the member states on maintaining climate change the priority goal for EU energy policy or not. The new economic realities and the failure of international climate talks to get many non-EU industrial countries commit to GHG emissions spurred the kind of member state opposition that had been expressed also back in 2008, but which had then been overcome by side-payments in the energy and climate policy negotiations. This indicates a not too strong legitimacy base for continued EU energy policy integration with climate change concerns the key driver. Considerable variation between member-state ambitions in the field have become more visible – with Germany most significantly representing the group of countries taking a strong policy lead position and Poland a policy laggard position concerning low-carbon energy transformation. The strength of these groups will be decisive when the final decisions on post-2020 climate and energy policy goals planned for late 2013 are to be taken.

Internal energy market

What then about internal energy market integration, long viewed as the flagship of EU energy policy integration? Post-2009 stakeholder positions in this policy area reveal a mixed picture of willingness to further dismantle national policies as well as practices that serve to inhibit competition in the full EU energy market. To be sure, in late 2011, all EU state leaders made a commitment to a January 2014 deadline for completion of the internal energy market. On the other hand, in a communication 15 November 2012, the European Commission warned that the EU was still not on track as regards this deadline, noting that eight member states were late in transposing the EU's third energy market package (Commission of the European Communities, 2012). The communication also expressed concern with a several new interventions by member states, such as the development of national capacity mechanisms involving subsidies for existing thermal plants to ensure back-up capacity for the increasing amounts of intermittent sources of renewable electricity. The communication requested the member states to consider cross-border solutions before developing exclusive national mechanisms, holding that such arrangements could distort the market, hinder investments, and contradict EU decarbonization objectives by probably favouring fossil-fuel generation over renewables. On this point, the communication referred to other policies under development that would alleviate the intermittency problem of renewables and also assist completion of the internal energy market: new guidelines on the trans-

European energy network to speed up the development of cross-border grids, ongoing plans to develop guidelines on renewable energy subsidies in 2013, and revision of EU rules on environmental state aid to minimize competition distortions.

What may seem particularly worrying for protagonists of the internal energy market are energy policy developments in the UK. As noted above, Britain spearheaded energy-market liberalization; since the early 1990s it has lobbied for radical market opening in the EU, whereby market prices would govern the selection of energy technology options through renewable energy certificate trading instead of national politicians setting a guaranteed price. The new Energy Bill adopted in late 2012 introduces precisely such guaranteed prices in the form of a system of ‘contracts for differences’, where investors will be compensated if the market price of electricity drops below a ‘strike price’ set by the government: the aim is to provide greater certainty about the returns on investments in renewables, CCS and nuclear power. A portfolio of energy technologies eligible for support will be added and a new government-owned company will act as a single counterpart to these contracts, to limit the risks for private companies. Also proposed in the Energy Bill is the creation of a national power capacity market to provide insurance against blackouts.

The British proposal was commented by Green MEP Claude Turmes, who found it a big threat to the internal market because nuclear power would be included in the portfolio of technologies to receive support.¹⁴³ As noted above, however, the very same person actively supported keeping national extra-market support schemes for renewable energy when the draft RES Directive was discussed by the Parliament back in 2007. A clear indicator of actual EU energy market integration is alignment in tariffs across national borders. As of February 2013, the Amsterdam gas and power exchange APX-Endex noted power prices in northwest European markets were diverging for the first time in years, taken as an indicator of markets becoming more fragmented instead of more integrated, in contradiction to the intentions behind the EU internal market policy (Beckman, 2013).

To sum up, there are signs that the actual willingness to ensure internal energy market integration on the principles envisaged by EU internal energy market policy is currently in retreat. A further good test on this willingness will be the capacity of the new EU-level co-ordinating bodies established as part of the Third Internal Energy Market Package, EnTSO-E, EnTSO-G and ACER to produce new harmonized and legally binding codes to ensure non-discriminatory access to cross-border infrastructure and spur trade across borders. The test is imminent, given the deadline set for finalizing this work in 2014.

¹⁴³ ENDS Europe, 16 November 2012, ‘EU lagging behind on energy market integration’

Concluding remarks on EU post-2009 energy policy integration

Looking at policy development since 2009, we observe a mixed picture in terms of further EU energy policy and energy market integration. Most significantly, we observe stronger reservation among many stakeholders to let climate change mitigation top the list of EU energy policy priorities. The economic crisis in Europe and failure of international climate talks to commit other industrial countries have cooled the willingness of EU member states to spearhead GHG emissions reductions, fearing this would add costs for national industries already in trouble because of the economic crisis.

The broad legitimacy base that was established back in the period 2007–2009 provided for the higher ambitiousness observed in EU energy and climate policy at that point. The European Commission and member-state governments alike played decisive entrepreneurial roles in shaping policy packages that created this legitimacy base. However, this legitimacy base appears weakened after the economic crisis, which has hit the EU member states with varying force, some of them coming under pressure by others to implement severe austerity measures in order to rescue the monetary union. This has certainly embittered more generally the atmosphere for co-operation in the EU, likely to impact also energy and climate policy co-operation. With austerity measures currently crippling several national economies, the member-state governments simply have less capacity for investments needed to go on with low-carbon energy reforms, and would be less willing to make compromises that could give their national industries additional costs in the short term even though they may be rational in the longer term. The new situation even seems to have impacted on the capabilities of the Commission to co-ordinate policies, with stronger conflicts between the Commission services complicating continued entrepreneurship as to producing ambitious and balanced policy proposals.

This said, latent drivers still exist that could again shift member-state attention toward stronger EU energy policy integration. As noted above, the member states have become more equal in terms of dependency on fossil fuel imports making it increasingly rational for all to ensure better internal co-ordination. New international events causing petroleum prices to hike or disruptions in gas supply may spur new efforts. Moreover, all member states will turn incrementally similar in energy interests because of investments in renewable energy to deliver on the binding national goals set up in 2009, providing for the spread of advocacy for continued low-carbon energy reform at the EU level. And finally, the climate change challenge has not been called off and new dramatic weather events may well trigger new efforts at stronger international climate policy co-ordination, also at the EU level.

List of interviewees

- Chris Beddoes, Europa, Vice-Secretary General, 15 September 2011
- Arno Behrens, Centre for European Policy Studies (CEPS), Head of Energy & Research Fellow, 24 April 2012
- Simon Bennett, DG TREN, Policy officer CCS Policy, 23 April, 2012
- Sylvia Beyer, DG ENER, Policy Officer Unit Security of Supply and Networks, 23 April, 2012
- Tom Brookes, European Climate Foundation, Head of Energy Strategy Centre, telephone interview, 9 May 2012
- Helen Donoghue, DG ENER, Principal Administrator of Strategy and Programming Unit, 25 April 2012
- Christian Egenhofer, Centre for European Policy Studies (CEPS), Senior Fellow, Head of the Energy and Climate programme, 13 September 2011 and 24 April 2012
- Paal Frisvold, Bellona Brussels, Board Leader, 11 September, 2011
- Bjørn Staale Haavik, Energy advisor, Norway's Representation to the European Union, 14 September 2011
- Tor Eigil Hodne, Statnett Brussels, Director EU Office, 14 September 2011
- Paul Hodson, DG TREN, Head of Unit Energy Efficiency, 13 September 2011
- Jürgen Müller, DG CLIMA, Member of Cabinet, 24 April, 2012
- Susanne Nies, Eurelectric, Head of Unit Energy Policy & Generation, 23 April 2012
- Brigitta Renner-Loquentz, DG COMP, Head of Unit State Aids, 26 April 2012
- Jürgen Salay, DG CLIMA, Policy Officer, co-ordinator of the implementation of the Effort Sharing Decision, Unit Low Carbon Technologies, 13 September 2011
- Jesse Scott, Eurelectric, Head of Unit Environment & Sustainable Development Policy, 26 April, 2012
- Yvon Slingenberg, DG CLIMA, Head of Unit Implementation of ETS, 12 September 2011
- Matti Supponen, DG ENER, Policy Co-ordinator, policy and project officer of Unit Internal Market II: Wholesale markets; electricity & gas, 13 September 2011
- Jonas Teusch, Researcher, Centre for European Policy Studies (CEPS), 24 April 2012
- Kai Tullius, DG TREN, Policy Coordinator CCS Policy, 23 April 2012
- Tom van Ierland, DG CLIMA, Policy Officer, Economic assessment of climate policies in Unit Strategy and Economic Assessment, 14 September 2011

Hans van Steen, DG ENER, Head of Unit Renewables and CCS policy,
25 April 2012

Stefaan Vergote, DG CLIMA, Head of Unit Strategy and Economic
Assessment, 14 September 2011

Peter Vis, DG CLIMA, Head of Cabinet, 15 September 2011

Thomas Wyns, CAN Europe, Policy officer, 15 September 2011

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