

Chapter Eleven

The Role of EU Institutions in Energy Policy Formation

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A basic puzzle underlying any effort to understand energy policy formation within a complex transnational decision making arena like the European Union (EU), where both national and supranational level interests are simultaneously represented and preferences continuously negotiated, is why there is any semblance of a common energy policy in the first place. Such an achievement, albeit limited and fragmented in its current state, is quite remarkable given the sheer complexity of the energy sector, the range of import dependencies, and the varying energy mixes among the 27 Member States. Coupled with these challenges is the multiplicity of crosscutting pressures inherent in the EU's three-pronged policy objectives of energy security, economic competitiveness, and environmental sustainability. As the preceding chapter highlighted, problems emerging from environmental degradation, rapidly diminishing resources, and the increasing reliance on energy imports have necessitated the development of a more integrated approach to energy and climate change and the move to a more sustainable and secure energy supply. Despite the fact that large majorities of European citizens embrace the goals of environmental sustainability and show strong support for EU and domestic efforts to combat climate change, there nonetheless remains a complex array of core and often competing national interests that would seem to bedevil a more comprehensive, transnational approach to energy policy. How have EU level institutions and supranational processes operated thus far to transform such national and intergovernmental barriers to a common energy policy?

Although many of the contributing chapters to this volume have demonstrated how the complex and varied dimensions of a common European energy policy are being negotiated in less than coherent ways due to the influence of narrow interests of industry lobbies and the competing agendas of various Member States, less attention has

been paid to the nature and role of the specific EU institutions and the actual processes of policy formation at the community level. Therefore, this chapter offers an analysis of the policy-making process within the EU institutional landscape with a goal of teasing out how each of the core EU institutions contributes to energy policy formation and its relative coherence (or lack thereof), given the varying degrees of competence and authority possessed by each institution, the interinstitutional rivalry inherent in the EU policy process, and the elements of both intergovernmentalism and supranationalism that characterize how European energy policy is being shaped at this stage. Each of these three factors will be addressed here as we seek to understand the prospects for a common energy policy in this new era of EU institutional development under the Treaty of Lisbon.

The chapter is organized into three sections. The next section "Theoretical and Conceptual Models for Understanding EU Institutions and the Policy-Making Process" provides an overview of the most prevalent conceptual or theoretical frameworks that are typically employed to explain policy outcomes in the EU context and argues that the multilevel governance approach is the most useful and analytically appropriate for our examination of energy policy and the role of EU institutions in its formulation thus far. Following this discussion, the second section "The Role of EU Actors and Inter-Institutional Rivalry and Coordination in Shaping Energy Policy Development" employs the multilevel governance framework to trace key policy developments in recent years and to analyze the role and specific actions of each institution therein. Whereas many of the preceding chapters in this volume have highlighted the various tensions between the European Commission's (hereafter: the Commission) approach vis-à-vis the Council and Member States, very little attention has been paid to the third actor in the EU institutional triangle, the European Parliament. Therefore, more effort is made here to elucidate the role of the Parliament in advancing EU energy policy through its various responses to the key actions and proposed legislation of the Commission as well as its interaction with the other decision making body, the Council of the European Union (formerly known as the Council of Ministers in the pre-Lisbon period). Addressing the fundamental questions at the heart of this book, the final section of the chapter "EU Institutional Interaction and Impact in the Formation of the EU Energy Policy" attempts to answer to what extent the EU's institutional actors can lay some claim to the success and progress made so far in the effort to formulate a common and more comprehensive energy policy and to identify the major obstacles and institutional

barriers that might impede further movement toward a truly common EU energy policy.

Theoretical and Conceptual Models for Understanding EU Institutions and the Policy-Making Process

The scholarly literature on the EU has evolved significantly since the early days of the functionalist/neofunctionalist debates when European integration was almost exclusively studied from the lens and theories of International Relations. As the Union itself has developed politically and institutionally over the course of more than half a century, the concepts and analytical tools of Comparative Politics have been increasingly applied to understand and explain decision making processes and policy outcomes in the EU setting. Since its inception, the EU¹ has had the institutional characteristics of a domestic political system, that is, legislative, executive, and judicial organs, and as Simon Hix (1994, 1999) argued, has by now acquired most of the policy-making attributes possessed by national governments. In fact, he suggests that approximately 80 percent of the laws and rules governing the flow of goods, services, and capital in the Member States now emanates from the European level (Hix 1999, 3). Whether or not the EU functions like a state or is rather a *sui generis* political entity is a central question that continues to drive a great deal of theoretical and methodological debate, but perhaps the more contentious division is between state-centric and nonstate-centric approaches to understanding European integration. The former largely rejects supranationalist or federalist perspectives or interpretations of developments in EU history and generally draws insights from realist theories of international relations to explain those developments as products of interstate bargaining and compromises reached through intergovernmental negotiations. Moravcsik's seminal text *The Choice for Europe* (1998) is perhaps the defining work of this approach and the central tenet articulated therein is (unsurprisingly) that European integration can be best understood "as a series of rational choices made by national leaders" (1998, 18).

In contrast, those applying nonstate-centric approaches are much more willing to acknowledge the autonomy of action and power of supranational institutions and elites. These approaches can be loosely seen as descendants of the neofunctionalist school whose founding text was Haas's 1958 classic, *The Uniting of Europe*, wherein the

critical concept of political spillover was elaborated. Political spillover refers to the gradual convergence of interests and beliefs of national elites in response to the integration process. Haas asserted that: "Political integration is the process whereby political actors in several distinct national settings are persuaded to shift their loyalties, expectations and political activities toward a new centre, whose institutions possess or demand jurisdiction over the pre-existing national states" (1958, 16). In no way discounting the role of Member States and their elites in the integration process, there is, nonetheless, recognition that the supranational institutions and the leaders within them are independent actors in their own right. Thus, this phenomenon of supranationalism—community level actors, ideas, and interests—could be seen as the primary object of inquiry and locus of analysis of those working in the nonstate-centric tradition. One such example is the Sandholtz and Zysman (1989) analysis of the instrumental role the Commission played under the leadership of its president, Jacques Delors, in revitalizing the European project and relaunching political integration through its introduction of the Single European Act in 1986. In their study, the authors asserted the notion of policy entrepreneurship to describe the leadership initiative taken by the Commission to galvanize national governments and enlist industry support for achieving a unified internal market. As others have noted and the authors readily acknowledge, their argument was reminiscent of Haas's depiction of institutions as "agents of integration" (1958, 29).

Understanding the functions of the EU institutions and how they shape policy development is therefore directly linked to the larger interest in or broader goal of explaining integration and how policy formation can be seen as a key variable in that enterprise. As such is the primary objective of this chapter, it is important to bring these theoretical debates into focus and particularly to underscore how scholarship seems to have moved beyond the facile intergovernmentalist versus supranationalist debates. Sandholtz in particular rejected the dichotomy between what he referred to as the intergovernmentalist and institutionalist approaches recognizing that some decisions are made within intergovernmental institutions and therefore require analysis of intergovernmental bargaining, but he also emphasized that the formation of government preferences are "themselves influenced by EC institutions and law" (1993, 3). This more symbiotic perspective was further developed by Sandholtz and Stone Sweet in *European Integration and Supranational Governance* (1998) where the authors sought to explain why lawmaking competences tended to

migrate from the national to the EU level more rapidly in some policy domains than in others. Their question bears directly on our attempt in this volume to understand the emergence of and the prospects for continued and deeper development of a common energy policy. They argued that increasing cross-national exchanges would encourage public authorities to develop modes of supranational governance undermining and making national modes of governance more costly to maintain. Thus, once these supranational rules were in place and new policy spaces created, institutions and EU organizations would structure further expansion of cross-border exchanges, transnational policy networks and the EU's authority to govern. The authors called this process one of "institutionalization" and further argued that it is this dynamic that has essentially transformed the integration process, shifting it away from negative integration that focuses on eliminating national barriers to exchange to one of positive integration of forging common European policies that now extend beyond agriculture, trade, and monetary policy to include areas such as environmental protection, consumer health and safety, gender equity, foreign policy, and justice and home affairs, and so on.

Included in these institutionalist approaches are also scholars who have applied the insights of historical institutionalism to the study of the EU, arguing that while national governments are key actors responsible for making most EU decisions, the rationale and motivations for their decisions and preferences are shaped by the history of their past involvement in the EU ("path dependency"). These scholars also refuse to treat EU-level institutions as black boxes or mere arenas within which interstate bargaining takes place and view institutions as shapers of values and norms.² Mirroring broader debates in international relations and comparative politics, constructivist approaches are also on the rise in EU studies.³ Sharing with historical institutionalists the notion that ideas and identities matter, constructivists explore how integration processes are transforming the nature of the state system and the political, social, and cultural identities therein. While important, such approaches are not as relevant for understanding why and how certain policies evolve upward to the EU level and what specific roles are played by the EU institutions in creating and sustaining that legal and policy migration.

The framework that seems best suited for that task and the aims of this project is what may be broadly referred to as the governance approach. This growing literature examines the functioning of the EU as a system of governance and emphasizes not only the process of institutional change but also the day to day functioning of the EU as

a normal polity. There is a plethora of studies employing some form of governance approach⁴ but one of the earliest and most influential is the multilevel governance approach formulated by Marks (1992) and Hooghe and Marks (2001). Their approach emphasizes the open-ended nature of the EU system within which a diverse range of actors operates at different levels from the local to the international where all have the potential to wield influence.

Theories of multilevel governance attempt to go beyond traditional analyses, which focus on competing national and EU level interests. Rather, multilevel governance scholars insist that EU policy is shaped by cross-national and cross-institutional actors/alliances that work together toward common objectives in issue areas and reflect a “melding” of states “into a multi-level polity” (Hooghe and Marks 2001, 27). As Warleigh has pointed out, new theories and approaches to studying the EU must “address what appears to be a rather different world of policymaking, in which not only the range of actors involved, but also the very ways they produce policy, have changed. This shift is often thought of as one from “government” to “governance...” (2006, 78). Interestingly Warleigh advocates combining multilevel governance with concepts of policy networks, which he says can be either policy communities or issue networks. He argues that taken separately each approach can elucidate only so much about the nature of the EU polity or the process of decision making but employed together we can understand both issues. However, alone the policy-based literature and related concepts seem analytically inadequate to fully explain why new policy formation such as that of the energy field is emerging in the first place. Ironically, as Richardson points out, policy communities and network analysis are the dominant models for explaining EU policy making despite the fact that most radical policy changes did not emanate from either but rather in response to exogenous changes (see Richardson 2001, 12). Indeed, as Jean Monnet famously opined, “Europe will be forged in crises, and will be the sum of the solutions adopted for those crises.” One way of interpreting the recent flurry of activity and attempts to formulate a common energy policy in Europe could in fact be related to the threat of an already real and looming crisis over energy security problems as well as the growing evidence of global warming. Such conjecture would not give us much analytical purchase here, but the crisis thesis will be revisited in the concluding chapter.

Ironically, one of the limitations of the purely policy oriented studies includes the failure of describing the actual workings of the EU

institutions. In addressing this problem, Richardson explores the relationship between epistemic communities and EU institutions and the influence that knowledge-based communities can wield in the policy-making process. The role of epistemic communities, which are in fact a variant of a policy network, is certainly critical in shaping EU energy and environmental policy, yet applying this conceptual framework only brings in a single dimension of the policy process—the initial phases of discerning the technical nature of problems and how they contribute to policy formation. For example, the Commission often convenes panels of experts to study problems and produce reports that subsequently form the basis of a policy initiative.⁵ Certainly these approaches are superior to the “garbage can” model where analysts assert that “decision situations” arise under three conditions: problematic preferences, unclear technology, and fluid participation. Here the key decision making organization is viewed as “a collection of choices looking for problems, issues, and feelings looking for decision situations in which they might be aired, solutions looking for issues to which they might be the answer, and decision-makers looking for work.” (Cohen, et al. 1972, 2) This is a much less structured approach to describing the policy-making process, and therefore has been employed to analyze the EU policy-making process, but it tends to imply that policy agendas are somewhat random, which is certainly not reflective of what has transpired in the 2000s with regard to EU-level energy policy innovation.

Likewise, the “Policy Soup” approach (Kingdon 1984) argues that policy agendas emerge out of a process stream of problems, policies, and politics, which converge at certain opportune “policy windows” to allow for policy formation, depending on compelling outside circumstances. Again, the vagueness and lack of analytical focus on nonstate oriented institutional actors like the Commission and the European Parliament render this policy approach ineffective and largely inapplicable to the analysis of EU energy policy formation. Finally, Richardson’s work on policy making in the EU traces how game theorists have attempted to explain EU policy formation through rational choice models. However, there are many critiques of this approach (Busch 1999, Hechter 1990, Garrett and Weingast 1993, Sabatier 1988), particularly given the repeated social interactions within the EU, the ideational factors around which actors may converge, and shared normative beliefs, all of which can significantly influence cooperative efforts. Thus it appears that the frameworks conventionally employed to understand EU policymaking too often offer only partial explanations and are inadequate to the deeper

aim of understanding how the institutional architecture within the EU fundamentally shapes the process. Instead, many studies are now combining various polity- and policy-oriented explanatory frameworks in efforts to more fully understand EU policy-making. Notable among these are the combination of multilevel governance and policy network theory as advocated by Warleigh (2006) and Bache (2008). Per Ove Eikeland (2010) employs this synthetic approach to powerful effect in a recent analysis of the EU's third internal energy market package. As he frames it: "The *supranationalist* perspective inspires our long-term analysis of the power of EU institutions vis-à-vis Member-State governments, while a *policy network* perspective underlies our analysis of influence by nonstate agents on the Commission proposal" (2010, 3). It is interesting to note that while only attempting to explain a single dimension of EU energy policy—efficiency and competitiveness elements concerned with creating free and fair internal energy markets—there was nonetheless a need to utilize a more complex analytical apparatus. Specifically, what Eikeland sought to explain were the logic behind and the implications of the Commission proposals in the 2007 package, which included revised electricity and gas directives as well as new regulations of access conditions for electricity and gas networks, the establishment of a new EU-level energy regulatory agency, and last but not least, the highly contested mandatory ownership unbundling proposal.

Eikeland's study powerfully illustrates the crosscutting and complex nature of EU energy policy formation. As the author notes, even within this singular focus on the internal market and the economic efficiency drive, strong degrees of "high politics" are present due to the role of energy supply as a strategic security asset. Furthermore, strong control traditionally exercised by national governments, and even by some sub-state levels of political administration, would lead one to predict Member-State government reluctance to yield control in favour of the EU level. On the other hand, the decision to include energy in the single market policy framework back in the 1990s had already created the potential for EU institutions to play a greater role in energy policy, which incidentally validates the insights and arguments made by historical institutionalists. In trying to answer whether or not the Commission through its third internal energy market package exerted more independence and ability to influence Member States than had previously been the case, Eikeland's analysis also brought into focus the roles of the other institutions such as

the Parliament and the European Court of Justice (ECJ) as well as the critical role of industry-related policy networks. While the study answered this affirmatively with solid empirical evidence, it was also concluded that the various coordination linkages between the EU institutions and external policy actors are far from approximating a strong policy community. As the author sums up: "With the traditionally strong policy network between the Commission and energy producers now appearing weaker than before, the larger picture to emerge from this study is clearly in line with Richardson (2000, 1008): policy networks in Europe have become less stable and more issue-specific, making policy predictions less certain than before" (Eikeland 2010, 14).

Thus, if the energy policy networks are too disparate to systematically impact the policy process even within a narrow domain, it is not necessary or appropriate to integrate such concepts here for this broader level of analysis. Nonetheless, this lengthy digression on Eikeland's study serves to accentuate the tensions and complexities involved even when isolating the analysis to one single dimension of EU energy policy. Although this chapter is concerned with more fully exposing the policy-making process, the primary aim is to discern the scope of action of the EU institutions in energy policy formation, and therefore the more general theoretical framework of multilevel governance seems better equipped to this descriptive and analytic task.

The multilevel governance approach does not deny that the state is an important feature in decision making (perhaps even the most important), but asserts that the EU represents a new type of polity where the state no longer monopolizes European-level policy making or, for that matter, even the aggregation of domestic policy interest. A second and related assumption is that decision making at this level necessarily results in some loss of control at the national level. A final claim of the approach is that subnational actors do not necessarily operate within one national arena, but rather can create transnational associations. In summing up their approach, the authors insist that, "supranational institutions... have independent influence in policy making that cannot be derived from their role as agents of national executives.... National governments play an important role but, according to the multilevel governance model, one must analyze the independent role of European-level actors to explain European policy making." (Hooghe and Marks 2001, 3) Invoking the analytical concepts and theoretical assumptions of the multilevel governance framework, the independent role of EU institutions in energy policy formation will now be assessed.

The Role of EU Actors and Inter-Institutional Rivalry and Coordination in Shaping Energy Policy Development

As is well understood by students of EU politics, three actors form what is known as the “institutional triangle” in the European Union (See Egenhofer et al. 2008). These core institutions are the European Commission, the Council of the EU and the European Parliament. Although the ECJ is a critical institution that undeniably shapes integration through its rulings and is perhaps the most supranational of all the EU institutions, it does not form part of the policy-making triangle per se and thus will not be considered here. The core competence and authority of each of institution have been defined and transformed through the treaties with the most noteworthy changes being the ever expanding role of the parliament from an appointed and relatively powerless assembly in the first decades of its existence (1950s to the 1970s) to a directly elected body in 1979 and now a nearly equal co-legislative partner with the Council resulting from changes brought forth in the Single European Act (1986), Maastricht (1993), Amsterdam (1999), and Lisbon (2009) treaties. The Council, long considered the main decision making body and the chief mechanism of representing the Member States, has also been somewhat transformed through the sheer expansion of the Member States (from 6 at its founding to 27 today) and the accompanying changes in its voting procedures—namely the shift toward more qualified majority voting thereby making this most intergovernmental of the institutions slightly less so with the national veto possibilities significantly curtailed. Still, the Council undoubtedly remains the champion of the Member States’ interests and the least supranationalist of the institutional actors. The Commission, since its origins with the European Coal and Steel Community (ECSC) High Authority, continues to play the dominant and indeed monopoly role in policy initiation and such has been the case with recent innovations in energy policy and, as will be emphasized below, the Lisbon Treaty further enhances this capacity.

Though a full-scale textbook explanation of the powers and functions of these institutions is beyond the scope of this chapter,⁶ it is necessary to sketch out the conventional trajectory of policy formulation in the EU context to better understand the critical role of each institution in shaping EU energy policy thus far. In its role as the executive body and its sole authority to propose legislation, the

Commission will be briefly analyzed first followed by a short discussion of the Council, and a fuller description of the role and newly expanded powers of the Parliament. Once these roles, functions and internal organizations are clearly understood, we can more readily trace specific examples of individual action of these key institutions as well as their relative degree of coordination in shaping energy policy formation. The multilevel governance framework specifies four distinct, sequential phases of the policy-making process in the European Union: (1) policy initiation; (2) decision making; (3) implementation; and (4) adjudication (Hooghe and Marks 2001, 12). For our purposes, only the first two will be considered as the implementation phase is nascent at best for most aspects of energy policy and the Court is not a part of our present analysis.

The Commission

Hooghe and Marks refer to the Commission as the “conditional agenda setter” in its power to initiate and draft legislation (2001, 12). As such it has been one of the most powerful institutions in shaping the evolution of integration, but it is also quite restrained in its financial and administrative resources. The Commission is led by a president, a set of vice presidents, and a College of Commissioners divided into various functional units and policy portfolios at the ministerial level with the total number comprising 27—one representative from each of the Member States. The corresponding Directorates-General (DGs) are predominantly sectoral in nature and generally provide technical and administrative support for each of the policy sectors. Approximately 23,000 officials comprise the bureaucracy or administrative services making this the largest institution, yet its expenditures represent a mere 5 percent of the total EU budget. With this in mind it is quite remarkable that the Commission has operated as effectively as it has, particularly as its policy remit has expanded dramatically from a few limited fields to now include almost every policy sector imaginable. Part of this stems from the character of the Commission as a collegial body. There are elaborate mechanisms to ensure this principle of collegiality, with the real key to this being the Secretariat-General (SG). The SG serves as a sort of clearing house and a nerve center as it monitors legislation, chairs meetings of the DGs and generally facilitates the horizontal coordination of the Commission. This is a crucial element in policy fields like energy and the environment where crosscutting issues involve multiple DGs in the drafting of policy proposals.

Also, it should be noted that Commission decisions are collectively taken by simple majority, and once a common Commission policy has been articulated and approved, all of the Commissioners must support that policy even if it is not a part of their own portfolio and, of course, even if their own national government opposes it. In the context of formulating policy initiatives, many of the Commission's core competences derive from its role in the regulation of the internal market, but as Andersen (2000) has illustrated, the Commission has been effective in exploiting institutional rules to redefine the energy sector to the environment and foreign policy areas as well. DG Transport and Energy (DG TREN) has taken the lead in drafting actual legislation that has been the bulk of analysis in this volume but the environment, enterprise, competition, and in some instances two or three other DGs have all followed the dossiers very closely. In fact, as we will see below, the Commission has recently and quite aggressively invoked its authority in the external dimension of energy policy, by directly addressing the security of supply issue and putting concrete strategies and a proposed new organization into place to ensure diversification and to coordinate energy supply. This aspect of energy policy has, of course, historically been the jealously guarded prerogative of Member States, so if this policy direction progresses, it is a clear validation of the multilevel governance assertion that national governments are indeed increasingly losing traditional decision making authority. To further illustrate the crosscutting nature of the energy sector just in terms of the Commission's authority, whereas DG TREN and others have actually crafted the legislation, DG Competition intervenes in the implementation phase when Member States have not fully transposed internal energy market rules or implemented other energy regulations (van Schaik 2006, 181).

The Council of the European Union

Until the ratification of the Lisbon Treaty, the Council was always characterized as the main decision making body of the Union but as previously mentioned, the Parliament has now become a veritable co-legislator. The Council is an interesting institution in that it is composed of both permanent representation from each Member State, the Coreper I and II, as well as the important (non-permanent) ministerial formations that are convened in semi-regular sessions with the delegated Ministers coming from national capitals in order to deliberate and take decisions on legislative proposals from the

European Commission or amendments proposed by the Parliament. These meetings of national ministers take place in the composition of different sectoral Councils, the two most politically significant ones being the General Affairs comprised of foreign ministers and the ECOFIN Council composed of national economics and finance ministers, both of which incidentally, have some aspects of energy issues on their agendas. In the context of formal energy policy proposals, the leading Council formation is the Transport, Telecommunications and Energy (TTE), but as energy has become more of a political priority since 2006, other Council formations have been convened such as GAERC (security of supply, Russia, external relations and development issues), ECOFIN (energy markets), and Competitiveness and Agriculture Council (biofuels) (van Schaik 2006, 178–179). Once again, this range of Council formations underscores the cross-cutting complexity and multifaceted nature of the energy policy area.

In contrast to the various Council ministerial formations that convene only semi-regularly, the Working Party (WP) on Energy within the Council typically meets on a weekly basis. Coreper I led by deputy permanent representatives from the Member States acts as the main clearing house between the WP and the Council and Coreper II, led by ambassadors, is involved only with the issues related to foreign policy, development and nuclear aspects. As noted above, the competences on which much of the energy policies or proposals have been based are predominantly that of the internal market and the environment, and both of these areas are subject to the co-decision procedure (meaning an equal legislative role for the Parliament) with Qualified Majority Voting (QMV) used as the voting method within the Council. The QMV essentially means Member States do not exercise veto power, thus again strengthening the argument of the multi-level governance approach in that even in this strategic issue area, where horizontal competence has been absent until the Lisbon Treaty and where EU Member States have such diverse interests and needs (i.e., producers versus nonproducers, cross-national diversity in the structures of energy sectors, varying energy mixes, different conceptions of energy as a tradable commodity or a public service, etc.), the decision patterns and policy making trends are decidedly less intergovernmental than might otherwise be expected. Nonetheless, as we examine specific examples of Council action below, it is clear that it is definitely the Member States and their negotiations within the Council that put the brakes on or otherwise limit the ambitions of a coherent, common approach to energy policies, particularly in the areas of competitiveness and security of supply.

The European Parliament

Turning to the third actor in the institutional triangle, the European Parliament, it is critical to underscore again the extent to which its powers have expanded dramatically over the past decades in order to appreciate how these may be increasingly deployed to exert more influence in shaping energy policy. As this institution has been the least discussed in this volume, we should first briefly examine the basic composition and internal organization of the institution before analyzing its role in the policy-making process. Directly elected in EU-wide elections since 1979, the European Parliament (EP hereafter) presently comprises 736 members for fixed, renewable five-year terms. Although the elections are organized nationally, once elected, the MEPs (Members of the European Parliament) do not sit as national delegations but rather in political-ideological blocs.⁷ Representing on average over 100 different political parties, the political groups are now reduced into seven core formations on the left-right dimension with an eighth grouping representing the “non-attached” members. Never has a single party group had enough seats to form a majority, so groups must work together to achieve a majority. Three groups have developed a rather consistent grouping over the EP’s history—the Socialists on the left, the Liberals in the center-right, and the European People’s Party on the right.

The 2009 European elections resulted in a clear victory for the European People’s Party (EPP) and a defeat for the Party of European Socialists (PES) grouping. The EPP group currently has 265 members against 184 MEPs for the Socialists. In the outgoing 2004 European Parliament, the former EPP-European Democrats (EPP-ED) group had 284 MEPs to the PES’s 215. The Alliance of Liberal and Democrats for Europe (ALDE) obtained 84 seats, down from 103 in the previous legislature. The Greens/European Free Alliance group won 55 MEPs, increasing from 42 the last time around, which is a positive development in terms of prospects for greater pressure on sustainability and climate change issues.⁸ In terms of Member-State representation, the number of seats is based roughly on the size of population, meaning that Germany, the most populous EU Member State, has 99 seats whereas Malta, the least populous, is allocated five seats. Such a formula results in the smaller countries being overrepresented while larger ones are underrepresented. This is not a particularly salient factor however given that most scholarly research has shown that party or political affiliation is the stronger predictor of voting behavior, not

national identity (See for instance, Hix and Lord (1997) and Kreppel (2000)). The president is elected by the MEPs and thus is typically from the largest political group, and he or she serves a two-and-a-half year renewable term. The president plays a powerful role in this most unique of unicameral, transnational legislative bodies, where his or her responsibilities include presiding over plenary sessions, working with leaders of party groups to draw up the agenda, and overseeing the work of the parliamentary committees.

Just as in normal parliamentary bodies, the bulk of the real legislative work is done in committees, so for two to three weeks each month MEPs work in Brussels and typically convene full plenary sessions only three or four days each month in Strasbourg. The committees range in size from 28 to 86 members, reflecting the EP’s own hierarchy and influence over certain policy areas with the environment and budget among the most powerful. In the case of energy policy, the Committee on Industry, Research, and Energy (CIRE) is the key actor, but other committees such as environment and foreign affairs are also engaged, depending on the particular content of legislation under consideration (van Schaik 2006, 181).

As noted, the EP’s decision making authority has incrementally expanded from an advisory and consultative (Treaty of Paris 1952 and Treaties of Rome 1957) to a cooperative role (Single European Act 1986) giving the EP the right to a second reading for certain laws being considered by the Council, to its current role as a full legislative actor initiated with the co-decision procedure and rights to a third reading introduced by the Maastricht Treaty in 1993, extended in the Amsterdam Treaty in 1997, and further strengthened with the 2009 Lisbon Treaty. In addition to these legislative powers, the Parliament also exercises joint powers with the Council over fixing the EU budget and enjoys supervisory authority over other EU institutions, including the right to approve the College of Commissioners, and with a two-thirds majority, to force the resignation of the Commission through a vote of censure. Because the EP functions in a political system that is partly supranational and partly intergovernmental, there are nonetheless significant constraints on its power, in particular its inability to introduce legislation and raise revenue—the classic instruments of power wielded by traditional legislatures. However, in an empirical analysis of the EP’s relative policy-making authority vis-à-vis national parliaments, Bergman and Raunio concluded that “MEPs probably have a more direct impact on policy outputs at the EU level than many national MPs have on national-level policy” (2001, 123). This assessment is further validation that the EU political system is becoming

more reflective of a multilevel governance structure as opposed to a state-centric, intergovernmental one. While not dismissing entirely the notion that states continue to matter and are vigilant in their attempt to safeguard sovereignty and policy-making authority, the multilevel approach allows us to move beyond the rigid intergovernmentalist versus supranationalist dichotomy and appreciate the multi-actor, multilevel governance mechanisms in place that are melding a new kind of polity. The way in which national parliaments and the EP interact is a primary case in point. All Member States' parliaments now have standing European Affairs committees and subcommittees that institutionalize their coordination and relations with the European Parliament. Therefore, rather than seeing power shifts in zero sum ways, the multilevel governance perspective emphasizes the intermeshing of competencies and shared authority across EU level institutions and between national governments and supranational actors.

The EP's role in actual policy formation is substantially affected by the ways in which it acts in concert or in tension with its co-legislator, the Council. The Lisbon Treaty has now made virtually all policy areas subject to the co-decision procedure, which means that the EP has essentially obtained veto power. If a piece of legislation ends up being negotiated in a conciliation committees comprised of members from both institutions with a Commission and the Council does not accept the EP amendments, a proposal dies. Thus, the fate of and the actual policy content of the EP's agenda and the way in which they try to shape proposals are largely determined by this interinstitutional procedure. Undoubtedly, then, there is an element of institutional rivalry that characterizes the policy-making process in the EU context, where the Parliament plays an increasingly independent and powerful role as opposed to its past experience as a junior legislative partner and an ineffectual and weak counterpart to the Commission. Now we will examine how this unique policy-making process and these key EU institutions have shaped the development of an emerging common energy policy.

EU Institutional Interaction and Impact in the Formation of EU Energy Policy

Figure 11.1 displays the timeline of the most significant actions taken by the EU since the mid-2000s. What is missing from this trajectory

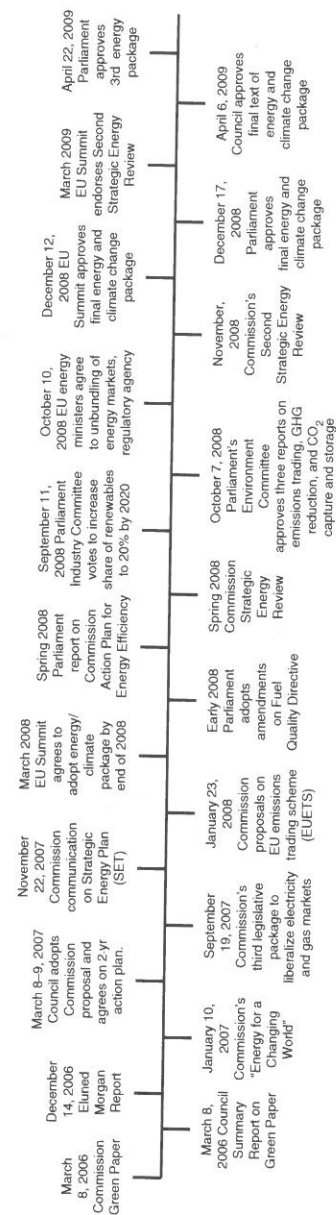


Figure 11.1 Key developments in EU policy formation

is the politically momentous decision taken by the European Council at the 2005 Hampton Court summit, where under the leadership of the UK presidency of the EU, the heads of state and government of the 25⁹ Member States acknowledged the need for a more coherent EU energy policy to reconcile the three primary objectives of competitive energy choices for European consumers, security of supply, and environmental sustainability. This pronouncement paved the way for the Commission Green Paper in the spring of 2006 that in turn laid the groundwork for the EU's new strategic energy policy proposed by the Commission. It is worth highlighting this event as it illustrates that ultimately the decision to push policy and governance upwards to the EU level still ultimately resides with the Member States. The Commission is obviously a key driver of the future policy developments, but the initial political will that precipitates and is necessary to sustain it should not be underestimated. This final section will trace some of the key developments of energy policy formation with a goal of elucidating how these three core institutional actors can take some credit for the progress made so far in the effort to formulate a common and more comprehensive energy policy but it will also identify the major obstacles and institutional barriers that might impede further movement toward a truly common EU energy policy.

Table 11.1 highlights key elements contained in the early communications regarding energy policy and illustrates many of the institutional tendencies discussed in this chapter. Displayed in the first column, the Commission Green Paper, "A European Strategy for Sustainable, Competitive and Secure Energy," published March 8, 2006, laid the foundations of a renewed effort to construct a common energy policy by outlining general policy areas and overarching goals. The paper focused on the completion of an internal energy market but also included proposals for responding to disruptions in supply, such as compulsory gas and oil stocks and a new regulatory European Energy Observatory, as well as the development of a common external energy policy to coordinate relations with external suppliers. The Commission paper also addressed diversification of supply as well as a road map for renewable energy and a strategic energy technology plan to promote research into new energy technologies. Goals proposed by the Commission remained broad, however, as reflected in the table, with the exception of a target 15 percent reduction in greenhouse gas emissions after 2025.

The Council responded favorably to the Green Paper on March 24, 2006, adding several of its own concrete energy targets as well as text addressing Member State sovereignty, external relations, and security

Table 11.1 Energy policy initiatives and legislative actions

<i>Commission Green Paper (Mar. 8, 2006)</i>	<i>Council (Mar. 24, 2006)</i>	<i>Parliament—Eluned Morgan Report (Dec. 14, 2006)</i>	<i>Commission: An Energy Policy for Europe (Jan. 10, 2007)</i>	<i>Parliament (Feb. 14, 2007)</i>	<i>Council (Mar. 8–9, 2007)</i>
CO ₂ reduction by 15% (as much as 50%) after 2025	Diversification of energy sources	30% CO ₂ reduction by 2020	20% CO ₂ reduction by 2020	30% CO ₂ reduction by 2020	20% CO ₂ reduction by 2020
Internal energy market	Electricity interconnections	60–80% CO ₂ reduction by 2050	Int'l negotiations for 30% CO ₂ reduction by 2020	60%–80% reduction by 2050	30% reduction by 2020 if other developed countries also commit, should aim for 60% by 2050
European Energy Observatory	20% energy saving by 2020	Binding target for 25% renewables in primary energy by 2020	50% reduction by 2050 binding 20% renewables by 2020	25% renewables by 2020	Binding 20% renewables by 2020
Diversify energy mix	Increase renewables to 15% by 2015	Roadmap for 50% renewables by 2040	10% target for biofuels by 2020	12.5% biofuels by 2020	Binding 20% renewables by 2020
Strategic Energy Review	Increase biofuels to 8% by 2015	Target for energy efficiency improvements by 20% by 2020	20% energy consumption reduction by 2020	60% carbon-neutral electricity by 2020	10% binding target for biofuels by 2020
Roadmap for renewable energy with targets for 2020 and beyond (including heating and cooling directive)	Common approach to address crisis situations	Set binding target for car emissions	ETS revision	50% increase in spending on energy research	Strategic Energy Reviews
Review of ETS	Common external energy policy toward 3rd countries	ETS revision	Supply crisis response development (strategic stocks)	ETS revision	ETS review
Strategic energy plan	Internal energy market	Make EU most energy efficient economy in the world by 2020	Internal energy market ("unbundling," regulation)	Make eu most energy efficient economy in the world by 2020	enable increased energy efficiency requirements on office and street lighting by 2008 and in private households by 2009
Common external energy policy	Review of ETS	Heating and cooling directive	Common external energy policy	Partnership with Africa but also other world regions	
Promote international agreement			Africa-Europe Energy partnership		
Crisis response mechanism			Strategic Energy Technology Plan		

of supply. The Council approved of measures to further the internal energy market and proposed the first concrete goals for energy saving and renewable energy usage, calling for a 20 percent savings in energy by 2020, an increase in the percentage of renewable energy in overall energy consumption to 15 percent and biofuels to 8 percent by 2015. Most notably, the Council document, while proposing targets for Europe as a whole, reasserted the sovereignty of Member States in determining the composition of their own energy usage and focused on the need for solidarity in external relations as well as a crisis response mechanism to address disruptions in supply. The Council justified its proposals for renewable energy targets as necessary for the diversification of supply and the promotion of energy security.

A less favorable response came from the Parliament on December 14, 2006, in the form of the Eluned Morgan Report.¹⁰ The report asserted the need for more action, specifically in the realm of climate change policy, with the goal of making the EU “the most energy efficient economy in the world by 2020” (Eluned Morgan Report). To reach this end, the Parliament argued for higher binding targets in nearly every area. It proposed cutting greenhouse gas emissions by 30 percent by 2020, with a 60–80 percent reduction by 2050, increasing energy efficiency improvements to 20 percent by 2020, and requiring a higher percentage of renewable energy usage (25 percent by 2020, 50 percent by 2040). At times, the Parliament’s report took a harsh, scolding tone toward the Commission for its lack of ambition in goal setting, such as when it stated that the Parliament “regrets that the Commission has enormous problems linking transport with the energy question; recalls that the transport sector is the cause of Europe’s biggest security of supply problem and intense oil dependency, and that climate changing emissions from the transport sector are rising steeply, notably from aviation” (Eluned Morgan Report).

The Commission responded with its first proposals on January 10, 2007, in “Energy for a Changing World” (An Energy Policy for Europe), which outlined more concrete goals for a common energy policy. Proposals included a 20 percent reduction in greenhouse gas emissions from primary energy sources by 2020, with up to a 50 percent reduction by 2050, and a minimum target of 10 percent for the use of biofuels by 2020. The communication also focused on the “unbundling” of energy companies and distribution networks to increase competition in energy markets and the development of a European Strategic Energy Technology (SET) Plan to support technology growth in areas related to energy efficiency. In the realm of external relations, the Commission suggested developing an Africa-Europe

Energy partnership to assist the continent in developing as a sustainable energy supplier.¹¹

Once more, the Parliament responded with a request for more aggressive measures, specifically to address climate change and environmental issues. While the Parliamentary resolution welcomed efforts to harmonize markets and echoed security of supply concerns, the largest section of the document focused on “making energy policy environmentally sound.”¹² The Parliament once more encouraged the Commission and the Council to make the EU the most energy efficient economy in the world by 2020 and proposed higher targets in every area, calling for 25 percent renewables in the EU energy mix, 30 percent greenhouse gas reduction by 2020, 60–80 percent reduction by 2050, and a 60 percent carbon neutral electricity supply by 2020. In arguing for these goals, the Parliament acknowledged the need for security of supply, but took most of its justification from the need to combat climate change. The Parliament also displayed some impatience with Member States’ progress in implementing older policies noting that, “if Member States were to fully implement existing EC legislation, half the EU target of a 20 percent energy saving by 2020 would already be met” (European Parliament resolution on the input to the 2007a Spring Council in relation to the Lisbon Strategy).

An additional resolution on climate change, approved by the Parliament on the same day, reiterated this impatience with the other two institutions’ reluctance to act decisively on environmental issues. For example, the resolution states that the Parliament “regrets the lack of clarity of the Commission’s ‘energy and climate package’ with regard to the target for greenhouse gas emission reductions for 2020; emphasises that an overall 30 percent reduction for all industrialised countries is necessary to have a reasonable chance of attaining the EU objective of limiting the average temperature increase to 2°C,” and then “insists” that the Commission impose binding targets on CO₂ emissions reduction.¹³ The Parliamentary document also admonishes Member States that had not taken appropriate measures to meet building energy efficiency standards and urges the Commission to take action against them. (European Parliament resolution on climate change)

The Council’s response to these communications reflects a compromise between the Commission and Parliamentary proposals. A meeting of the Council on March 8–9, 2007, debated and approved proposals including the original 20 percent reduction in CO₂ emissions by 2020. It did, however, include a provision for a 30 percent reduction goal if other developed countries agreed to comparable measures. The Council also accepted the Commission’s original goals of

20 percent renewable energy and 10 percent biofuel usage by 2020. It invited the Commission to publish updated Strategic Energy Reviews to serve as the basis for new action plans in the future. From these specific examples, as well as some of the other interventions highlighted in Table 11.1, we can discern a pattern of coordination and push-back that is largely reflective of the identity and the interests of each institution and their native competencies. The Commission, long an advocate of liberalization and completion of the single market, has been most eager to push through measures that deliver on that aspect of the EU's energy policy priorities—competitiveness. In contrast, the Council, the negotiated summation of Member State interests, is most defensive of each country's sovereign right to choose between different energy sources and the structure of its own energy supply, thus privileging the energy security priorities.

Finally, the Parliament is in a sense the most unencumbered of the institutions in that its main motivations and actions stem from overarching environmental commitments and the priority of sustainability and combating climate change. In this vein, we might even characterize the Parliament's role thus far in energy policy formation as perhaps the conscience of the Union.

These characterizations may be a bit oversimplified, but the general pattern is not altogether unsurprising and seems likely to continue in the Lisbon era where Community level competence has been expanded in the area of energy policy. The expansion is explicit with the inclusion of the Energy Chapter and implicit by virtue of its granting to the EU a single legal personality, allowing it to act in a more unified and decisive way in its external relations and in signing international agreements.

The majority of text regarding energy in the Lisbon Treaty falls under Article 2, which lays out Union versus member authorities in certain policy areas. While it lists energy as a shared competence area in Article 2C, the Treaty reserves more authority for the EU in instances of difficulties in supply of energy, with an amendment to the Treaty on the European Union Article 100. The biggest section on energy, though, appears under Article 2, 147, replacing the old language in Title XX (which concerned the environment) with the more specific language that forms the basis of the new chapter on energy policy. The new Title XX, Article 176A stipulates that European Union energy policy will ensure the functioning of an internal energy market, guarantee security of supply, and promote efficiency and interconnection. Paragraph 2 gives responsibility for these goals to the Council and Parliament, with consultation of the Economic and Social Committee

and the Committee of the Regions. The Title then asserts that such authority will not hamper an individual Member-State's ability to structure its own energy supply and resources and then in paragraph 3 reasserts the authority of the Council and Parliament over energy matters within the fiscal realm.¹⁴

Also noteworthy is the fact that the Lisbon Treaty does away with the comitology procedure, under which the European Commission had to consult with committees made up of Member-State experts as part of the implementation process. The Parliament had been critical of the comitology procedure as undemocratic, as it gave a very limited role to the elected body and allowed the Commission to push through important implementing measures without its endorsement. The Lisbon Treaty now puts the Parliament on the same footing as the Council, as the delegating acts come under parliamentary control. With the new legislation, the Member States wanted to ensure that the EU executive must still consult national experts in the process and establish a mechanism for any institution to revoke an implementation measure. The Parliament, on the other hand, appears satisfied that it will have more powers under the new rules. It can revoke delegations or object to changes made by the Commission to an annex, for example.

In conclusion, it is evident that the EU institutions and supranational processes will likely play an ever greater role in shaping EU energy policy in the future vis-à-vis national governments and intergovernmental bargaining, given the new found powers of the Parliament, the shift toward Community methods and voting procedures even within the most intergovernmental institution, the Council, as well as the growing entrepreneurial drive and assertiveness of the Commission. However, the scope of their action and the relative coherence of the emerging common energy policy will likely be conditioned by the existing inter-institutional rivalries and the policy preferences and biases therein. Thus, even in the face of new found political will and momentum and a stronger legal basis from which to exercise authority, the obstacles to a more coherent energy policy may ironically lie as much with the fragmented, competitive nature of the EU institutions and policy process as it does with the purported intergovernmental barriers.

Notes

1. Note that this chapter follows the conventional practice of using the EU to refer not only to its proper name post-Maastricht, but also its former iterations as the ECC and the EC.

2. See for instance the collected volume edited by Sophie Meunier and Kathleen McNamara, (2007) *The EU at Fifty*.
3. In fact, the *European Journal of Public Policy* in 1999 devoted a special issue to *The Social Construction of Europe*.
4. Richardson (2001) provides an excellent overview of the various approaches that apply concepts of governance and suggests how such studies have contributed to better understanding of the complex system of governance within the EU including clearer analysis of the various actors (state, nonstate, supranational institutions and interest groups) and their mechanisms of coordination.
5. This approach is extremely useful and applicable when it comes to environmental policy making. In the EU context, he, Mazey, and Richardson's (1992) study revealed how the Commission worked with an epistemic community to process the CFC problem.
6. See the following for such expositions: (Peters 1991; Nugent 1999 and McCormick 2010; Dinan 2011).
7. According to EP rules, a group must have at least 20 members, elected from at least one-fifth of Member States.
8. EurActiv June 25, 2009. (<http://www.euractiv.com/en/eu-elections/2009-2014-centre-right-european-parliament/article-183383> (accessed September 30, 2010).
9. 25 as opposed to the current 27 because the summit preceded the accession of Romania and Bulgaria in 2007.
10. The Eluned Morgan Report was an own-initiative report drawn up by Eluned Morgan, British member of the Industry, Research and Energy Committee, and later adopted by other committees and the Parliament as a whole.
11. Illustrating even further the cross-cutting policy perspectives that get folded into the EU's energy policy agenda, the GAERC adopted Council Conclusions in April 2006 for the first time linking energy concerns with development policy. For more discussion, see van Schaik (2006) pp. 182–185.
12. <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P6-TA-2006-0603> (accessed October 5, 2010).
13. <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P6-TA-2006-0603> (accessed October 5, 2010).
14. In Article 100, paragraph 1 shall be replaced by the following:

“1. Without prejudice to any other procedures provided for in the Treaties, the Council, on a proposal from the Commission, may decide, in a spirit of solidarity between Member States, upon the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy.”

(replaced: The Council shall, acting unanimously on a proposal from the Commission and after consulting the European

Parliament and the Economic and Social Committee, issue directives for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the common market.” (147) Title XX shall be replaced by the following new Title and new Article 176 A: “TITLE XX ENERGY Article 176 A

1. In the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim, in a spirit of solidarity between Member States, to:

- (a) ensure the functioning of the energy market;
- (b) ensure security of energy supply in the Union; and
- (c) promote energy efficiency and energy saving and the development of new and renewable forms of energy; and
- (d) promote the interconnection of energy networks.

2. Without prejudice to the application of other provisions of the Treaties, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish the measures necessary to achieve the objectives in paragraph 1. Such measures shall be adopted after consultation of the Economic and Social Committee and the Committee of the Regions. Such measures shall not affect a 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, without prejudice to Article 175(2)(c).

3. By way of derogation from paragraph 2, the Council, acting in accordance with a special legislative procedure, shall unanimously and after consulting the European Parliament, establish the measures referred to therein when they are primarily of a fiscal nature.”

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Conclusion

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

Vicki L. Birchfield and John S. Duffield

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

Jacques de Jong and Coby van der Linde (2008)

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

The Context

As acknowledged throughout this volume, energy in some ways has been at the heart of the European integration project from its very