

The Third Internal Energy Market Package: New Power Relations among Member States, EU Institutions and Non-state Actors?

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Abstract

The article analyses the September 2007 European Commission proposal for a third internal energy policy package, agreed by the European Union in spring 2009. Compared to legislation from 2003, the proposal reflects greater will on the part of the Commission to pressure unwilling Member State governments, and shifts in Commission leverage *vis-à-vis* Member States as well as a shift in policy networks with clout in EU policy-making. This shift in Commission leverage would indicate stronger supranational governance in EU energy matters in the future.

Introduction

This article analyses the proposal of the September 2007 European Commission ('the Commission') for a third internal energy policy package, aimed at removing the remaining barriers to free and fair competition and trade in the internal energy market.¹ We focus on the proposal to require national energy companies to sell off their gas and electricity network businesses: *mandatory ownership unbundling* (MOU). The proposal aimed at hindering European

¹ The policy package included proposals for revised Electricity and Gas Directives as well as proposals for new regulations of access conditions for electricity and gas networks and on the establishment of a new EU-level energy regulatory agency. Mandatory ownership unbundling was included as part of the proposed Directives (Commission, 2007a, 2007b).

energy suppliers in discriminating in matters of who should get access to European energy networks and on what terms, fundamental for the internal energy market idea.

Throughout the 20-year history of internal energy market policies, the Commission had preferred MOU, but abstained from formally proposing it in the first and second policy packages, the latter drafted in the early 2000s and adopted by the Council in 2003. Then, the weaker provision of *legal unbundling* (the organizational separation of production/supply and network activities) was adopted, still leaving control of grid operation and investments with the major energy groups. Revival of the MOU in the September 2007 proposal responded to reports of continued misuse of network ownership to hinder fair access for competing suppliers and energy consumers.

The proposal did not survive the ensuing Council negotiations. That indicates that much control in internal energy market policies still rests with Member State governments, supporting an intergovernmental understanding of power relations between Member States and supranational institutions within the European Union (EU). Such hindsight information also points towards interpreting the Commission proposal as a bargaining chip to ensure at least some progress in internal energy market legislation.

Yet the Commission's determination seems puzzling since the Council of Energy Ministers in June 2007, only three months ahead of the launch of the third energy market package proposal, warned the Commission against including MOU. This could indicate that the Commission had reason to expect that the proposal would eventually make it through further Member State government negotiations, in turn an indication of a potential shift in power between agents engaged in making internal energy market policies.

We first ask if the decision reflected *that EU institutions had gained leverage compared to the situation in 2003, when the Commission abstained from tabling MOU*. Next, acknowledging the pluralist perspective on policy-making in the EU, we ask if the decision reflected *changes in influence on the Commission from different groups of non-state stakeholders*.

As our empirical investigation seeks to explain a specific Commission proposal, we need a basis in theory that focuses on actor influence on day-to-day politics in the EU. The proposal was, on the other hand, embedded in a *long-term* EU effort to create a free and fair internal energy market, so we need to understand how it reflected longer-term EU integration and power balances. Our analytical framework reflects both these needs. 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 non-state agents on the Commission proposal.

Several recent EU studies have combined polity- and policy-oriented explanatory frameworks in efforts to get a better grip on EU policy-making – notably the combination of multi-level governance and policy network theory in Warleigh (2006) and Bache (2008). Our empirical focus is on energy policy-making with strong elements of ‘high politics’ due to the role of energy supply as a strategic security asset, and similarly strong control traditionally held by national governments but less so by sub-state levels of politics and administration, making the multi-level governance perspective less relevant for analysing policy development here. The ‘high politics’ dimension of energy would lead us to predict Member State government hesitation to yield control in favour of the EU level. On the other hand, the decision to include energy in the single market policy framework in the 1990s created a potential for EU institutions to play a greater role in energy policy. This tension makes EU energy policy even more interesting as a study object for trends in European integration and day-to-day policy-making.

I. Brief on Data Collection

Our new empirical data on process variables from the period 2003–07 come from various sources and their triangulation: policy documents of the Commission, the Parliament and the Council; consultation documents provided to the Commission from stakeholders throughout the process; and position papers available at stakeholder websites. Supplementary first-hand information was gathered in interviews with stakeholders in Brussels energy policy in the spring of 2008 (Eikeland, 2008). Additional secondary sources have been extensively consulted for historical data: academic journals, books and working papers, business and policy newsletters.

II. Analytical Framework

EU policy studies were long dominated by the debate between international relations (IR) scholars adhering to the *intergovernmentalist* and *supranationalist* positions on the nature of the EU as a polity (George, 2004). The former saw EU integration basically 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). The latter offered a different view, portraying the Commission in more autonomous terms, 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).

The received supranational view built on early neofunctionalist studies predicting that the supranational EU level would gradually gain power at the expense of Member State governments through functional spillover from integration already under way 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 supranationalist position retained other elements from these studies: 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). Various factors were cited as constraining individual governments' full control over EU decision-making: 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, 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 *et al.*, 1996; Bache and George, 2006, pp. 34–5).

While IR theory has focused on features of the EU as a polity, later studies have emphasized day-to-day EU policy-making, united in their claim that the growth in scope of policies decided at the EU level has made policy-making more similar to that at the national level, in turn rendering tools from domestic and comparative politics more applicable for analysing EU policy processes and outcomes.

The *policy network* approach is one such approach, derived from efforts to understand national policy-making under the new governance conditions created by neo-liberal reforms, causing fragmentation of public decision-making and increasing interdependence between state and non-state actors (Bache, 2008, p. 21; Warleigh, 2006, p. 88; Rhodes, 1997). Central to this approach is actor collaboration to achieve policy outcomes, and how central authorities deal with the representation and mobilization of non-state and non-governmental interest groups (Warleigh, 2006, p. 88). With resource interdependence as the explanatory motor for why governmental and non-governmental organizations are bound together in networks, key resources identified have been financial, informational, political, organizational and constitutional-legal (Rhodes, 1997; Bache, 2008, p. 33). Further typologized as 'policy communities' depicting highly integrated policy communities (high interdependence, stable relationships, restricted membership, insulated from other networks) and loosely integrated 'issue networks' (limited interdependence, open membership, less stable relationships, less

insulated from other networks), policy network studies set forth hypotheses linking characteristics of networks to the degree of influence on policy outcome (Bache, 2008, p. 33). Yet other network scholars have focused on normative and cognitive factors binding actors together to influence policy-making – typically the *epistemic community* (Haas, 1992) and *advocacy coalition* frameworks (Sabatier, 1998).

Some scholars see the *policy networks* approach as particularly well-suited for the study of EU policy-making, highlighting the fluid institutional structure, fragmented (sector-specific) policy-making, the many participants engaging through multiple access points and the absence of a strong power centre (Peterson, 1992, 2004; Jachtenfuchs, 2001; Hull, 1993; Bache *et al.*, 1996; Mazey and Richardson, 2001). Peterson (1995) argues that the Commission is particularly dependent on information resources in the preparatory phase of policy development to ensure that policies proposed will be legitimate and have a better chance of being adopted and implemented. The Commission therefore often takes initiatives of its own to establish networks by inviting stakeholders to expert and consultation committees – indicating an often under-resourced Commission dependent on stable relationships with trustworthy partners with useful information.

While participation may be comprehensive, it gives no guarantee for actual policy influence. This has prompted a range of studies focusing on the effectiveness of Brussels lobbying, indicating that transnational alliances of industrial companies (all-European business sector association) are generally the group of non-state agents with greatest success in networking with and influencing the Commission (Bouwen, 2002, p. 382; Greenwood, 1997, p. 4; Bache and George, 2006, p. 335; Butt Philip, 1985; McLaughlin and Jordan, 1993). Such transnational industry sector associations have access to expert knowledge needed by the Commission, and their opinions are considered more representative than those of individual firms (Greenwood, 1997, p. 4; Bouwen, 2002, p. 382). Yet, research indicates variation in success also between transnational networks. Most clout on the Commission is enjoyed by alliances able to organize members' interests into a non-competitive format, creating coherent organizations with representative outlets that can make decisions with ease and alacrity, and can influence individual members (Greenwood, 1997, pp. 18–20).

A combination of the supranationalist and policy network perspectives has been chosen for this study of the energy policy domain. Both approaches take a pluralist perspective on EU policy-making, while serving distinct purposes. The former inspires investigation of development in the will and power of EU institutions towards Member State governments to pursue internal energy market policies, examining how the Commission has sought to gain clout –

for example, by using non-state agents as a potential instrument in supranational governance. The corresponding proposition guiding the empirical study is that the decision to include MOU in the third energy market legislative package reflected *higher will and clout on the part of the Commission to pressure for more radical energy market liberalization* than the case in the early 2000s, when it decided not to include MOU in the second package.

The latter perspective gives transnational networks involving non-state agents a potentially independent role in EU policy-making, based on the assumption that resource interdependencies exist between EU institutions and such non-state agents. The corresponding proposition is that the decision reflected *shifts in the capacity of different networks to influence the Commission on the specific issue of MOU*.

The explanatory power of the policy network approach lies in comparative and dynamic logic as the capacity (resources) of agents within one network to influence policy must be seen in relation to competing agents' abilities to form, maintain and expand networks. Specifically, we examine changes in Commission linkages to networks of European industries representing major consumers and the suppliers of energy within the EU, respectively – the key non-state stakeholder groups in EU internal energy market policies. Position papers show that energy-consuming industry networks (represented by various euro-federations) were generally supportive of MOU, providing it with better opportunities to shift to market suppliers that could offer the most favourable energy contracts. European energy suppliers, on the other hand, had more differentiated positions, with companies vertically integrated opposing MOU. The operational proposition is therefore that *the 2007 proposal reflected greater clout by major energy consumer stakeholder groups towards the Commission at the expense of energy suppliers, compared to the situation previously*.

III. Shifts in Clout: I

Did the Commission gain stronger will and more clout towards Member States in internal energy market policies from 2003 to 2007? It had an active independent role when the internal energy market idea was first proposed in the late 1980s (Lyons, 1992). The Commission then acknowledged that the national vertically integrated gas and electricity utilities represented a challenge to real market opening and mooted various decision procedures for dealing with this challenge: direct application of EU competition rules (then Articles 85 and 86 EEC) against the utilities to dismantle their dominant market positions; infringement procedures against Member States according

to Article 169 EEC; specific electricity and gas market directives, formulated unilaterally by the Commission on the basis of Article 90 (3) EEC; or on the basis of Article 100a of the EEC Treaty – a consensus-based procedure that would allow other EU bodies a say in the pace and scope of the liberalization package (Eising, 2002; Lyons, 1992, p. 23).

DG COMP opted for a rapid break-up of monopoly structures through the application of community competition rules and Article 90 for the Commission to unilaterally adopt new gas and electricity directives (Eising, 2002). The Commission allowed DG COMP to start proceedings against gas and electricity import/export monopolies, sending letters to Member State governments requesting them to justify their national monopolies (Lyons, 1992, p. 23). DG COMP was inspired by a March 1991 judgment by the European Court of Justice (ECJ) upholding that the Commission could use such procedures to force through greater competition in the telecommunications sector (Lyons, 1992, p. 13).

However, major national energy groups, Member State governments and European Parliament representatives (from the left-wing parties in particular) were sceptical of market competition in energy and unilateral moves by the Commission. Energy was widely regarded as a common good, and large-scale public utilities as a normal structure for providing this good. The Commission, including its energy service (DG Energy), acknowledged that only the consensus procedure (Article 100a) would ensure the needed legitimacy of new legislation (Eising, 2002). DG COMP thus found itself constrained from playing an active role in EU internal energy market policies. This was consolidated when the ECJ decided in the *Almelo* case² that, under the Treaty, opportunities for derogation of EU competition rules existed for companies operating under public service obligations (Lyons, 1998, p. 34).

The consensus procedure chosen entailed that the first policy package (the 1996 electricity and 1998 gas directives) resulted in only minor commitments from Member State governments: a very few high-volume consumers were granted the right to shift supplier, grid independence was to be ensured only by separate accounts for transmission and production/supply activities (unbundling of accounts), and no clear rules for transparency of terms for grid access were agreed (grid owners could choose to list openly terms of access – *regulated* third party access; or negotiate individual deals with eligible customers – *negotiated* access) (European Parliament and the Council, 1996, 1998).

² Dutch electricity distributors asked for dismantling the exclusive import and export rights of the generators. The ECJ found that competition rules had been breached, but that Article 90-2 offered opportunities for derogation if the companies operated under public service obligations.

The Commission nevertheless continued to threaten Member State governments with EC Treaty competition rules unless implementation was forthcoming, as in 2001, to press acceptance of a second liberalization package (Commission, 2002). This package came after Commission benchmarking reports had shown that several Member States lagged seriously behind in implementing the 1996 electricity and 1998 gas directives, and that vertically integrated companies remained impediments to the realization of fair competition in the EU (Commission, 2001). The resultant 2003 legislation marked a step forward: granting all consumers the right to shift supplier by July 2007, mandatory *legal* unbundling and new transparency rules requiring *regulated access* (European Parliament and the Council, 2003a, 2003b). Also mandatory ownership unbundling was up for discussion, with several Member States backing the idea. Six member countries had implemented MOU in their national electricity sectors and two in their national gas sectors by 2003 (Commission, 2003). Fronting the pro-MOU group, the United Kingdom had implemented ownership unbundling back in the 1980s. British politicians, championing neo-liberal thinking in Europe, had a central role when the Commission drafted its first internal market directives (Lyons, 1992). Also the Scandinavian countries and the Netherlands were among the early reformers. Additionally, most European parliamentarians now supported radical market opening, with strong parliamentary voices calling for MOU (Eikeland, 2008). Fronting the anti-MOU group were France and Germany, even arguing against 'legal unbundling' (Council, 2002).

Changes 2003–2007

Although legal unbundling was introduced in 2003, energy consumers continued to voice dissatisfaction, complaining of discrimination in access to grids from the vertically integrated energy groups and the resultant higher tariff levels. The new Commission appointed in 2005 under the Presidency of José Manuel Barroso therefore took a new line in internal energy market policies. As part of his overall plan to revitalize the Lisbon agenda, Barroso promised a more proactive application of competition policy, including the screening of industrial sectors for barriers to competition (Commission, 2005). The internal energy market was chosen as a pilot case, with DG COMP and DG TREN jointly launching a major inquiry into competitive conditions in European electricity and gas markets.

This joint project ushered in a new era of close co-operation between the two directorates in internal energy market policies. When the first results of the energy sector inquiry came in, DG COMP was convinced that a new liberalization package was needed. DG TREN was not fully convinced, but

the preliminary report of early 2006 tipped the scales, leading the two DGs and commissioners, Neelie Kroes and Andris Piebalgs, to agree on the need for a new, more radical energy liberalization package.³ The report concluded that flaws in access to energy infrastructure in many Member States had caused unnecessarily high energy prices and loss of welfare opportunities for energy consumers. It also stated that vertically integrated energy producers had constrained competition through discrimination of others in the use of infrastructure and had impeded new infrastructure investments, causing problems for independent producers of electricity and heat. This was also viewed as a barrier to producers of indigenous renewable energy, and hence to the alleviation of *climate change* and *security-of-supply* concerns.

These new concerns came to the top of the EU policy agenda as the member countries saw import dependencies of oil and gas on the rise and international competition for remaining fossil fuel sources tightening. International oil prices were rising due to rapid growth in demand from China and other high-growth economies. The international war on terrorism and unrest in the Middle East brought in new uncertainties on the supply side. At the same time came new worries over the security of gas supply. Concerns were growing over the greater influence of Russia after a series of acquisitions by state-owned Gazprom of European wholesale companies. The EU's eastern enlargement further aggravated import dependency on natural gas, with the problem intensified by declining internal EU reserves of gas and oil. When, in early 2006, Gazprom held back gas supplies on the pipeline to Europe through Ukraine, allegedly because of disagreement over transmission payments, this caused loss of supply also to some EU countries, reinforcing existing mistrust, especially among many countries that had experienced Russian dominance during the cold war.

At the 2005 Hampton Court summit, EU heads of state recognized the need for a more coherent EU energy policy to balance the three primary objectives: competitive energy for European consumers, security of supply and environmental improvement of EU energy systems. In March 2006, the Commission responded by proposing a new strategic energy policy for Europe (Commission, 2006a), passed by the European Council Spring Summit 2006.

The Commission adopted the strategic energy review in January 2007 as part of an energy and climate package that included the high-profile 20 per cent goals for climate gas reductions, renewable energy and energy efficiency by 2020 (Commission, 2007c). It put liberalization of the European gas and

³ From interview with Lars Kjølbye, Head of Unit Antitrust – Energy & Environment, DG Competition, European Commission, Brussels, February 2008.

electricity markets on top of the list of further action needed to achieve the energy policy objectives set. The strategic control exercised by the vertically integrated energy groups over energy infrastructure was seen as constraining not only competitive energy prices, but also the further investments necessary to counter climate change and improve security of supply (Commission, 2006b).

The Commission then proposed proceeding with a *third legislative package*, putting MOU at the top of priorities with an alternative Independent System Operator (ISO) proposed as a ‘fallback position’ – the latter retaining joint ownership with returns on network operations regulated, while operation, maintenance and development of networks would no longer be decided by the vertically integrated owner. The European Spring Council 2007 agreed on the need for new legislation.

However, the Energy Council in June warned the Commission not to table MOU (EurActiv, 2007). As in 2003, Germany and France headed the Member States backing this position, which also included 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 (EurActiv, 2007). These countries still hosted vertically integrated energy groups and lagged behind in implementing previously adopted internal market policies (Eikeland, 2008). As in 2003, the pro-MOU countries were headed by the United Kingdom, strongly backed by the Netherlands, the Scandinavian countries and others that had now implemented MOU – in all, 13 for the electricity sector and ten for the gas sector in 2007 (Commission, 2008). The Commission also got support for MOU from the Parliament in its July 2007 plenary session.

Still, a minority voiced deep concern as to what MOU might entail for European security of supply – a minority actually larger than in 2003 (Eikeland, 2008). The issue of security-of-supply strategies for Europe marked a major line of disagreement between the two positions on MOU. Sceptics held that dismantling their strong national champions would weaken their power in negotiations with major foreign upstream companies, thus reducing national security of supply (Eikeland, 2008). Those in favour, backed by the Commission, argued that MOU would guarantee the independence of transmission system operators, as well as bolstering crucial trade and investments in new infrastructure.

We can gain a deeper understanding of the differences by examining the strategies pursued by the governments of Germany and like-minded allies for securing their gas supplies from Russia. The German government accepted Gazprom’s acquisitions of shares in national gas infrastructure in return for German acquisitions in Russia. The underlying philosophy was that cross-ownership, combined with active bilateral diplomacy, would mean joint

commercial interests in ensuring stability of supply. The strategy supported by the other group of member countries, and by the EU Commission, was to bolster EU Member State consumer power towards external suppliers and speak with one united voice in energy-political talks with Russia. De-integration of institutional links on the supply side would be part of such a strategy, compatible also with the creation of a competitive market internally in the EU.

Despite the signals from the Energy Council, the Commission proceeded to draft its proposal with MOU included. Interviewees in Brussels give DG COMP much credit for this decision. The proposal was in fact co-authored by DG TREN – an unusual procedure in the Commission, which was normally bound by the high-level agreement that DGs should not interfere in each other's policy domains.⁴ The alternative International Standards Organization (ISO) model was secured as a fallback position, clearly more in line with the incremental consensus-seeking procedure preferred by DG Energy.

The extended role of DG COMP became evident also in the toning down of 'regionalization' as an option for step-wise full internal market integration – a strategy promoted by the electricity supply industry and supported by DG TREN back in 2003. DG COMP feared such a procedure could increase the chances of regional cartelization.⁵ The extended role of DG COMP in internal energy market policies was shown not least in its initiation of investigations and court-filing against major companies suspected of breaching Community competition rules: companies allegedly using long-term contracts to abuse their dominant position (Distrigaz, EdF and Suez-Electrabel); and companies manipulating wholesale and balancing markets. DG COMP proceeded to prepare cases for the ECJ, with the one against German E.ON becoming the most highly profiled.

DG COMP presented these companies with deals that would reduce fines for infringement of EU competition rules in return for the sell-off of 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. The Commission knew that energy-intensive industry associations in Member States supported ownership unbundling. For example, the German Steel Industry Association, in a policy statement to Germany's EU Presidency in 2007, made it clear that: 'If, as a result of the current regulations on grids, the intended market inputs fail to materialize in the medium term, an ownership unbundling of grids must be

⁴ Information received in interview with Matti Supponen, Electricity & Gas Unit, DG TREN, European Commission, Brussels, February 2008.

⁵ Information received in interview with Lars Kjølbbye, Head of Unit Antitrust – Energy & Environment, DG Competition, the European Commission, Brussels, February 2008.

considered as a further step, as this is the only way to ensure that the structure of grid access is really free of discrimination for all potential grid users' (Wirtschaftsvereinigung Stahl, 2006). MOU supporters also included the Federation of German Consumer Organizations, which refuted arguments from the government that it would run contrary to constitutional guarantees for property (Europe Energy, 2007). Moreover, BNE, the German association for new energy suppliers, also opted for strict unbundling to prevent market-dominant companies from exploiting their position, and their EU-level federation EREC took a clear pro-MOU position (Eikeland, 2008). Interviews show that central officers within DG TREN and DG COMP expected companies to eventually sell off their grids even without regulatory demands in place. This was based on perceptions of the future electricity grid coming to resemble the Internet, with many small agents dispatching renewable energy to fulfil the new EU climate goals, dramatically changing the current business of serving a few central producers and making specialized grid operators better commercially prepared.⁶ The tendencies for stricter national rules on ownership conduct and national regulators squeezing grid tariffs were other factors reducing the commercial rationale of owning electricity grids. The Commission expected companies to sell off their grids voluntarily, and that this in the next round could change the political dynamics at the national level, leading Member State governments to shift their position on MOU.

The Commission added a carrot to the proposal to appease Member States reluctant to accept MOU for fear that Russian Gazprom might seize the opportunity to buy networks on sale and gain a firmer grip on the European gas market. The last-minute 'third-country clause', requiring unbundling also by companies from third countries, was particularly important in getting new eastern Member State governments to accept MOU. With many of these states eager to connect to the EU and the Nato umbrella after leaving the much-hated planned economy and Soviet sphere of interest, the Commission obviously hoped for their support in its strategy to combine market forces internally with a united voice in talks with Russia. They proved split on the issue, however. Planning economy structures are still evident in many of their energy sectors, and some of these states remain hesitant about yielding to a new international structure that might limit their own national sovereignty. Yet other countries – the Baltic States in particular – are energy islands within the Union. Lacking infrastructure to link up with the community and still

⁶ Information received in interview with Lars Kjølbye, Head of Unit Antitrust – Energy & Environment, DG Competition, the European Commission, Brussels, February 2008.

totally dependent on energy supplies from Russia, they are understandably hesitant about policies that could ‘bite the hand that feeds them’.

Hindsight proved the Commission right in assuming that major companies would eventually strike deals that included ownership unbundling to avoid fines for infringing EU competition regulations. On 28 February 2008, the German energy giant E.ON confirmed such a deal (*The Economist*, 2008).⁷ However, this did not change the position of the German government, which attended a Council meeting in Brussels the same day, leading the country’s deputy energy minister, Peter Hintze, to remark: ‘It’s very astounding. The timing coincidence of these events. [. . .] It’s a very questionable game’ (*The Guardian*, 2008). In a letter dated 29 January, prior to the E.ON announcement that it would sell off its transmission assets, a group of eight Member States, headed by Germany and France, refused MOU and also the Commission ‘fallback’ ISO model, tabling the third option that only slightly revised the existing legal unbundling model.

Thus we see clear evidence during the Barroso Presidency of a shift in the will of the Commission to push market integration a major step forward. This is shown not least by the new role accorded DG COMP in energy policy-making and the informal restrictions from the 1990s lifted on its use of EC Treaty competition legislation instruments under its command. According to sources within the Commission, the DG COMP and DG TREN co-drafting gave the proposal a solid anchoring in the Commission even before it was forwarded to other services for consultation. In fact, this anchoring had already been ensured by Barroso’s insistence on placing the Lisbon agenda at the top of the Commission priority list.

IV. Shifts in Clout: II

Was the Commission decision to table MOU influenced by non-state agents operating in transnational policy networks for lobbying Brussels policy-makers? To what extent did the decision reflect shifts since 2003 in different stakeholder networks and their clout on the Commission?

The ‘consensus procedure’ chosen back in the 1990s for internal energy market policy development entailed that interest-group interaction with EU institutions and national governments came to play an important role. When DG Energy started up law-making in the field, major energy-consuming industries were eager supporters of a single energy market with competition in supply, expected to lower energy tariffs and production costs. On the other

⁷ In late July 2008, Vattenfall Europe AG, the German subsidiary of the Swedish Vattenfall, followed suit, announcing that it would sell off its high-voltage grid (EurActiv, 2008).

hand, the Commission needed detailed technical and operational advice from agents running the national energy systems, which in turn gave producers and transmission grid operators particularly good access to the Commission. In 1989, national electricity associations formally established Eurelectric, the Brussels-based euro-federation representing the supply-side interest *vis-à-vis* the EU institutions. Over time, a quite stable and close relationship developed between DG TREN and Eurelectric, based on mutual dependencies. Representing the latter at the EU level, Eurelectric was established with the specific mandate to influence the development of internal energy market policy, primarily targeting DG TREN as the main responsible body within the Commission. DG TREN, on its side, was dependent on Eurelectric's technical knowledge on how specific policy proposals would affect the electricity supply system. Since Eurelectric is a comprehensive transnational network in its own right, with members from all national supply systems, it has also been an important agent for testing the legitimacy of new proposals, crucial for getting these adopted by Member State governments. Eurelectric thus evolved with a unique position to influence the Commission's internal energy market policy.

Later, separate euro-federations were established to represent the views of transmission system operators and energy traders in Brussels: ETSO and EFET. The three organizations all took a 'no position' stance on MOU, instead urging the Commission to ensure stronger implementation of policies already decided within the second energy liberalization package and to push 'regionalization' as a first-step process towards a fully fledged internal energy market. The 'no position' on MOU reflected the highly differing views among members, with some national industries already 'ownership unbundled' and others characterized by strong vertically integrated companies. A 'no position' was the only way of maintaining a façade of internal coherence, and also reflected the fact that vertically integrated companies constituted a considerable counterweight within the organizations.

Energy consumer stakeholder representation in Brussels has been far more fragmented. A separate federation, BEUC (Bureau Européen des Unions de Consommateurs), represents national consumer organizations in the Brussels policy machinery. Energy-intensive industries are represented by the umbrella organization BusinessEurope. Some national industry associations are represented by the International Federation of Industrial Energy Consumers (IFIIEC-Europe). Additionally, specialized euro-federations exist for specific industries (Eikeland, 2008). Fragmentation became somewhat less pronounced after several of these joined IFIEC in 2004 in the Alliance of Energy-Intensive Industries to take a more *united stance* in energy and environmental policy processes in Brussels. Except for BusinessEurope, which

represented both energy consumers and producers, all the consumption-side organizations stood united in demanding MOU (Eikeland, 2008).

Interviews with Commission staff and key stakeholders in Brussels in February 2008 indicated a shift in the relative influence of energy suppliers and consumers on the Commission from 2003 to 2007. This shift was much a product of the new role played by DG COMP, defending 'consumer sovereignty' as the fundamental normative stand for why competition is good for societal welfare. The industry federations strongly favoured policies that could lower the high energy tariffs, including ownership unbundling. DG COMP, on its side, needed information on how energy-intensive industries were treated by the vertically integrated companies for its sector inquiry. Energy-consuming industries in Europe actively contributed to this inquiry, providing information important for the company investigations later carried out by DG COMP. The relationships established included senior Commission officials directly invited by industry federations to the trading floor where they could observe how market manipulation actually took place.

DG COMP had formerly been known as not particularly engaged in networking in energy matters, partly because it had a limited role in that field and partly because it wished to be seen as independent from special interests. Although DG COMP would be expected to push for radical liberalization, the information collected from industrial energy consumers certainly strengthened the conviction of DG COMP that ownership unbundling was needed. While united on this issue, however, DG COMP and Europe's energy-intensive industry are clearly at odds on other energy-related issues – like the fate of long-term contracts, which the former wants abolished and the latter extended. Only time will show whether the new relationship will take the form of a longer-term stable network in which the agents manage to agree on solutions, or whether the relationship will be embittered by deep disagreement on other policy issues.

The energy supply side, on the other hand, lost influence over the Commission in the period leading up to the third energy liberalization package proposal (Eikeland, 2008). This was due partly to disagreements within Eurelectric and partly to the new role of DG Comp in pushing for internal energy market policies within the Commission. For example: the Eurelectric idea of a step-wise internal market development starting with regionalization, backed by DG TREN in 2003, was scrapped when DG COMP feared that merging national TSOs into a greater regional body would create new cartels in the market. Beyond MOU, the supply-side federations still managed to lobby successfully for moderating other provisions of the proposal (Eikeland, 2008).

Thus we find firm indications that senior Commission officials linked up more strongly with energy-consuming industries in internal market affairs than before, and that a weakening of the long, stable policy network with energy producers took place prior to the launch of the new internal energy market policy proposal. However, as yet the new linkages are far from resembling a strong policy community. 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, p. 1008): policy networks in Europe have become less stable and more issue-specific, making policy predictions less certain than before.

Conclusions

The Commission has for 20 years struggled for greater supranational powers in internal energy market affairs, and its proposal of a third policy package marked yet another attempt. With Member State governments rejecting MOU, the Commission again experienced the determination of recalcitrant Member States to remain in charge – making intergovernmentalism still well suited to depict the power relations in long-term EU internal energy market policies.

However, our study has shown that supranationalism gained a new foothold in energy policies in the period studied. The Commission under the leadership of President Barroso evinced a far clearer *independent will* than its predecessor to ensure Member State progress in finalizing the internal energy market process in that the latent power of DG COMP was activated to push for energy liberalization by directly targeting the energy groups for breaches of EU competition rules. Moreover, the new Commission gave this part of the EU bureaucracy a new role in co-drafting EU energy market legislation with DG Energy. The Commission decision to prevail on MOU, despite warnings from the Energy Council, was firmly fronted by DG COMP and based on its newly activated powers. One possible scenario was that major vertically integrated companies under investigation by DG COMP would strike deals involving the sell-off of network businesses to avoid biting penalties for breaches of competition rules. Recognizing these companies' influence on Member State government positions, the Commission evidently hoped that such selling-off would weaken industrial lobbying against MOU at the national political level, in turn inducing Member State governments to change their minds. Through its transnational network with industrial energy consumers, the Commission was aware that national federations of energy-consuming industries were pro-MOU – a view shared with various other

national lobby groups – and that these voices would become relatively louder in national political discussions if energy suppliers were forced to sell off their networks, losing reasons to defend an unbending stance on the issue.

While evidence is clear that the Commission used non-state agents and transnational networks in its strategy towards Member States, our study indicates that such networks also played a more direct role in influencing the Commission proposal. The federations of industrial energy consumers provided the DG COMP with information for the energy sector inquiry, a central background paper for the Commission's final proposal and for DG COMP's decision to proceed with investigations of specific companies. Energy consumption-side lobbyists gained influence relative to the major energy supplier federations in the period 2003–07, due partly to better co-ordination among various industry organizations. Importantly, the major supply-side organizations were deeply split on the issue, which weakened their ability to present a forceful position and lessened their thrust on the Commission. The supply-side organizations also lost influence after DG COMP assumed an active policy development role alongside DG TREN, the latter as the key interlocutor of the supplier side with the Commission.

Summing up, our study shows the relevance of applying a pluralist perspective in studying the formation of EU policies, and of combining international relations and domestic/comparative politics perspectives to understand specific policy proposals from the Commission. Alone, the supranationalist and policy network perspectives applied would have missed out important nuances in explaining why the Commission tabled MOU in its 2007 third internal energy market proposal. The former perspective focuses on the long-term development in power relations between supranational and national institutions in EU energy policy, with transnational networks of non-state agents a potential instrument for the Commission in this power play. The latter approach gives non-state agents in networks with the Commission a potentially independent role in day-to-day EU policy-making, with influence on the specific MOU proposal explained in terms of resource interdependencies and abilities of agents within networks to form coherent policy positions.

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