
The Europeanisation of Energy Policy – What Scenario for Effective Institutionalism?*

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Summary: The energy policy has been part of the path to the (post-Lisbon) European Union as we know it today since the very beginning of this project in form of the both European Coal and Steel Community or Euratom. However, in past years/decades the energy topic shifted from ‘low’ to ‘high’ politics¹. Despite energy policy being a delicate issue that has been at the discretion of the Member States, the Lisbon Treaty established energy as the shared competence between the European Commission and the member states. Since then, the Commission has been very active in driving the integration of the energy policies², resulting in establishing the Energy Union and gradually coupling the energy with climate variable³, ultimately, creating a platform for occurring energy transition. Nevertheless, the EU is heavy energy-importer but the Member States are endowed differently in terms of the structure of energy mix, imports/exports and energy security, which challenges the institutional framework and governance of the energy sector within the EU in the future. The ultimate question reflecting the institutionalism approach is, how the EU institutional structure responds to the Energy Union project and division of competences both in vertical and horizontal perspective, from the point of effective decision-making and implementation of energy policy.

Keywords: energy policy – institutionalism – Europeanisation – Member States interest – Energy Union – differentiated integration – intergovernmentalism

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² MALTBY, T. European Union energy policy integration: A case of European Commission policy entrepreneurship and increasing supranationalism. *Energy Policy*, 2013, vol. 55, pp. 435–444.

³ SOLORIO, I. Bridging the Gap between Environmental Policy Integration and the EU's Energy Policy: Mapping out the ‘Green Europeanisation’ of Energy Governance. *Journal of Contemporary European Research*, 2011, vol. 7, no. 3, pp. 396–415.

1. Introduction

The European Union (hereinafter as the “EU”) is “without question the most densely institutionalized international organization in the world”⁴. The foundation and development of the EU is characterised by strengthening power of the EU institutions and Europeanisation of the policies, i.e. the ambition of integration and concentration of decision-making in the centre.

In the original European Coal and Steel Community Treaty (hereinafter as “ECSC”) the institutional structure simple refer to a Commission, a Parliament, Council and a Court. The ECSC Treaty placed the Commission as the main body, by setting “the duty to ensure, that objectives of the Community would be attained” (Article 8). To fulfil this duty, the Commission was entitled to adopt decisions, recommendations and opinions. (Article 14). The Parliament and the Council were considered as the peripheral. The Parliament had advisory position (Article 24) and the Council’s role was “to harmonise the action of the Commission and that of the Governments, which are responsible for the general economic policies of their countries” (Article 26)⁵. Although the ambition of all three European communities founded in 1950s was the integration based on the common interests, the supranational character had to be built. The supranational character of European communities was visible in the decision-making of the Commission, but in the very limited areas of policies. The cooperation between original six countries was balancing between supranationalism (implementing through Commission’s powers preferably in area of common market) and inter-governmentalism (implementing through consensus of Member States within Council’s meetings in other policy areas).

Despite the supranational and intergovernmental development, the formal change was presented only in 1986 within Single European Act (hereinafter as SEA). The strengthening of the Council position (presenting qualified majority voting), including formal incorporation of the European Council into institutional structure and innovations of the decision-making processes strengthening the Parliament’s positions (presenting cooperation position) represents not only the supranational approach, but also confirm the ambition of the Commission and European Communities members of the Europeanisation of the processes and building internal market. The core reform presented in the SEA was than not only the presentation of new and deepen competences of the Community’s bodies and institutions, but also the reformed institutional structure.

⁴ POLLACK, M. A. Rational Choice and Historical Institutionalism. In WIENER, A., BÖRZEL, T., RISSE, T. (eds). *European Integration Theory* (3rd edition). New York: Oxford University Press, 2019, pp. 108–128

⁵ Treaty establishing the European Coal and Steel Community, 1951.

The implementation of the SEA had practical implications. The idea of internal market was immanently followed by the idea of economic and monetary union. Delors report⁶ inspired the discussion between Member States and Community institutions, leading to organisation of Intergovernmental conferences. The output of the conference in Maastricht in 1992 became efficient in the form of Maastricht Treaty on the European Union in 1993. That presents significant step into integration in area of internal market and strengthening of the Commission position within the European Communities. Meanwhile the Europeanisation ambitions in other policies as foreign affairs, security policy, judicial and policy cooperation and internal affairs rely in the hands of the Council and Member States. Article A of the Treaty on the European Union established accordingly separate international multilateral cooperation in the form of the European Union. The European Communities had represented the supranational approach and refer competences to EC institutions, while the EU referred to intergovernmental structure and left decision-making in hands of the Council and agreement of Member States.

This development was followed also in incoming Amsterdam Treaty (1997) and Nice Treaty (2001). The main challenge for both treaties was to settle, how the institutional structure and existing decision-making processes that worked for 12 states may work for twice the number. As Schütze argued, “the widening was only one aspect of the demand for constitutional change. The Union equally wished to deepen its evolution towards political union by establishing more democratic and transparent institutions”⁷. Both treaties presented minor changes in institutional structure and did not provide sufficient institutional and policy background for the Europeanisation of the cooperation between Member States.

Each Treaty amendment from SEA to Nice had presented pragmatic approach, reflecting ongoing development and introduced it into the text of Treaty. Each political compromise in areas of concrete policies (as immigration, asylum, cohesion, energy, social, innovations etc) had been admitted to the advanced European integration, but mainly in the legal pragmatic formulation.

The following Lisbon Treaty differs significantly from the previous ones. It presented new constitutional structure and the European Union had replaced its predecessor European Communities. It means meaningful change in understanding the process of integration, by shifting some competences from Member States to the European Union and using more precise definitions in the text. According

⁶ THYGESEN, N. The Delors Report and European Economic and Monetary Union. *International Affairs*, 1989, vol. 65, no.4, pp. 637–652.

⁷ SCHÜTZE, R. *European Union Law (2nd edition)*. Cambridge: Cambridge University Press, 2018, pp. 1–916.

to Laeken Declaration⁸, Lisbon Treaty aimed at a better division and definition of Union competences. The Treaty of Functioning of the European Union (hereinafter as “TFEU”) therefor introduced new title on “categories and areas of Union competence”. The Laeken declaration also aimed to “more democracy, transparency and efficiency in the European Union”⁹. As such, the Lisbon treaty presents different attributes on the way to political union, including obligation to follow democratic principles (Article 2, TEU), representative democracy (Article 10(1))¹⁰ and again strengthen competences of the EU institutions.

This legal and political environment presents unique conditions to development and deepening of the integration in several field of internal market and related policies.

Our research is focused on the on the development of the energy policy and creation of the Energy Union and the position of the relevant EU institutions in decision-making and implementation, as set in the strategic documents and legislative acts. The theoretical basis of the research is the historical institutionalism, which goes beyond the formal institutions approach by expanding the analysis on which and how the institutions matter. As defined by Fioretos, Falletti, and Sheingate, “Historical institutionalism is a research tradition that examines how temporal processes and events influence the origin and transformation of institutions that govern political and economic relations”¹¹. We analyse how EU institutions, procedures and norms contribute to the development of the Energy Union and how the role of EU institutions should be identified in transition of the competence in energy policy from Member States to EU and its institutions from the point of building the most effective institutional structure for the successful implementation. As such, we will apply the model developed by the Mahoney and Thelen, by presenting “innovations in historical institutionalist theorizing and arguing that previous historical institutionalism had focused on continuity rather than change, and that, to the extent that it had theorized change, had seen such change as exogenously driven and sudden”¹².

⁸ EU. *Presidency Conclusions of the Laeken European Council (14 and 15 December 2001)*. [online]. Available at: < <https://www.consilium.europa.eu/media/20950/68827.pdf>>

⁹ EU. Treaty on the Functioning of the European Union. OJ C 326, 26.10.2012, pp. 47–390.

¹⁰ EU. Treaty on European Union. OJ C 326, 26.10.2012, pp. 13–390

¹¹ FIORETOS, O., FALLETTI, T.G., SHEINGATE, A. Historical Institutionalism in Political Science. In: FIORETOS, O., FALLETTI, T.G., SHEINGATE, A. (eds). *Oxford Handbook of Historical Institutionalism*. New York: Oxford University Press, 2016, pp. 3–28.

¹² MAHONEY, J., THELEN, K. A Theory of Gradual Institutional Change. In: MAHONEY, J., THELEN, K. (eds). *Explaining Institutional Change*. New York: Cambridge University Press, 2010, pp. 1–37.

2. From ECSC to Energy Union

2.1. Historical development of Energy Union

The energy policy has been integral part of the European Union since the establishment of the ECSC and subsequently Euratom. However, the provisions of the founding treaties of both emphasized and prioritized their political and economic dimensions, rather than stipulated a comprehensive energy policy on a supranational level. The political perspective was relatively straightforward. The principal intention was to create and safeguard the peace by “substitution of historic rivalries” (primarily between the France and Germany) for “fusion of their essential interests” and “the foundation of a broad and independent community among peoples long divided by bloody conflicts”¹³, moreover, the nuclear energy had been recognized as an essential resource for “effecting progress in peaceful achievement”¹⁴. Furthermore, the fact that coal, steel and nuclear energy are crucial resources in the arms industry, necessary for military mobilization, should not be neglected in the context of ever-lasting peace initiative.

In the context of economy, the motivation was the creation of integrated common market (regarding the coal, steel and the nuclear energy), ensuring “the raise of the standard of living” in the Member States and economic growth, supplemented by the foundation of the barrier-less general common market and customs union by the *Treaty of Rome*¹⁵, establishing the European Economic Community (EEC). Moreover, at that time, the “member states have been opposed to an EU-wide energy policy,” because the “countries [were] endowed differently in terms of energy resources, and [had] different import needs and consumption patterns”¹⁶.

Ergo, the ECSC’s and Euratom’s political and economic focus overshadowing the imprecise guidelines for energy policy and the lack of political will among the member states to shift towards ‘energetic federalization’, resulted in the failure of formulation and implementation of common energy policy for the member states.

The turning point came in the 1970s – times, when “the ECSC was increasingly marginalized by the rapidly rising use of oil.” Eventually, the coal’s share on energy market was drastically on decline as oil “had surpassed coal as the most important

¹³ Treaty establishing the European Coal and Steel Community, 1951.

¹⁴ Treaty establishing the European Atomic Energy Community, 1957.

¹⁵ Treaty establishing the European Economic Community, 1957.

¹⁶ HAALAND MATLÁRY, J. *Energy Policy in the European Union*. New York: St. Martin’s Press, 1997, pp. 1–174.

fuel supply,” with “natural gas rapidly catching up”¹⁷. An urge to broaden the energy cooperation between the member states was triggered by 1973 oil crises, consequently leading to the adoption of the *Council Resolution concerning a new energy policy strategy for the Community*¹⁸ in 1974 emphasizing the closer coordination between the member states and outlining the guidelines concerning the improvement of the security of the energy supply (diversification of supplies and promotion of nuclear energy) and furthermore, more rational energy demand, together with the consideration of the problems of environmental protection, targeting the year 1985¹⁹. This also reflects “international discussion on new human right to environment.”²⁰

The further development of EU energy policy was aimed on the liberalization of the energy market. Eikland indicates that European Commission had a vision of a nondiscriminatory internal energy market concept on the legislative basis, ensuring a free and fair competition and improvements of efficiency, prices, consumer protection, etc.: “Internal market policy has since [1988] gone through distinct stages ending with revision of legislation aimed at bringing speed to market opening. These are now called the first, second, and third internal energy policy packages, denoting clusters of directives and regulations targeting different aspects of liberalization of the electricity and gas markets. The first package took several years to negotiate and ended up with the 1996 Electricity and 1998 Gas Directives as major outputs. The second package was enacted in 2003 and contained revised Electricity and Gas Directives as well as specific regulations to harmonize trade and operation of infrastructure across national borders. The third package was finally enacted in July 2009, containing further revisions of the Gas and Electricity Directives, the cross-border regulations as well as an additional regulation establishing an independent agency for boosting cooperation between national energy regulators.”²¹

Moreover, based on the support of “a majority of EU citizens [who believed] that Europe is the best level for determining energy challenges”²², Commission

¹⁷ BIRCHFIELD, V. L.; DUFFIELD, J. S. Introduction. In: BIRCHFIELD, V. L., DUFFIELD, J. S. (eds). *Toward a Common European Union Energy Policy: Problems, Progress, and Prospects*. New York: Palgrave Macmillan, 2011, pp. 1–9.

¹⁸ COUNCIL OF THE EUROPEAN UNION. Council Resolution of 17 September 1974 concerning a new energy policy strategy for the Community. OJ C 153, 09/07/1975, pp. 1–2.

¹⁹ LANGSDORF, S. *EU Energy Policy: From the ECSC to the Energy Roadmap 2050*. [online]. Available at: <http://archive.gef.eu/uploads/media/History_of_EU_energy_policy.pdf>

²⁰ JANKUV, J. Protection of the right to environment in international public law. *International Comparative Law Review*, 2019, vol. 19, no. 1, pp. 146–171.

²¹ EIKLAND, P. O. EU Internal Energy Market Policy: Energy Market Policy: Achievements and Hurdles. In BIRCHFIELD, V. L., DUFFIELD, J. S. (eds). *Toward a Common European Union Energy Policy: Problems, Progress, and Prospects*. New York: Palgrave Macmillan, 2011, pp. 13–40.

²² EUROPEAN COMMISSION. *Special Eurobarometer: Attitudes towards Energy*. [online]. Available at: <http://ec.europa.eu/public_opinion/archives/ebs/ebs_247_en.pdf>

developed a strategic framework and objectives of common EU energy policy, constructed on three pillars: security of supply, competitiveness and sustainable development²³. The document *An energy policy for Europe*, denoting the beginning of the more integrated European energy policy, endorsed by the European Council, set three predominant quantifiable targets to be reached until 2020, so-called 20-20-20 goals: a) a reduction of EU greenhouse gas emissions of at least 20%, which could be eventually increased to 30%, below 1990 levels, in case that other developed countries decide to join the international cooperation; b) a reduction of the energy consumption within the EU by 20%, achieved via improvement of the energy efficiency; c) an increase of the utilization of renewable energies in the energy mix by 20%²⁴²⁵.

Another important milestone in the pursuit of common European energy policy was the ratification of the Lisbon Treaty, which finally comprehended a title on energy, bringing “energy policy for the first time fully within the competence of the Community organs”²⁶. The Lisbon Treaty introduced a profound legal basis for the energy sphere with creation of Article 194 of Treaty on the Functioning of the EU. The aim of the policy, appealing on the solidarity between the Member States, was to 1) ensure the smooth and effective functioning of the energy market; 2) fortify the security of energy supply in the European Union; 3) endorse the energy efficiency and recommend the further development of alternative and renewable forms of energy; and 4) promote the interconnection of energy networks on European level. Hence, energy became part of the shared competences between the Member States and the EU, adhering to the principles of subsidiarity and proportionality²⁷.

For the better comprehensibility see *Table 1*, consisting of EU documentation, selected on the basis of their energy goal-orientation and incorporation of integration patterns.

²³ SENCAR, M., POZEB, V., KROPEC, T. Development of EU (European Union) energy market agenda and security of supply. *Energy*, 2014, vol. 77, pp. 117–124.

²⁴ COMMISSION OF THE EUROPEAN COMMUNITIES. *An energy policy for Europe* (COM(2007) 1 final). [online]. Available at: < <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0001:FIN:EN:PDF>>

²⁵ LANGSDORF, S. *EU Energy Policy: From the ECSC to the Energy Roadmap 2050*. [online]. Available at: < http://archive.gef.eu/uploads/media/History_of_EU_energy_policy.pdf>

²⁶ BIRCHFIELD, V. L., DUFFIELD, J. S. Introduction. In: BIRCHFIELD, V. L., DUFFIELD, J. S. (eds). *Toward a Common European Union Energy Policy: Problems, Progress, and Prospects*. New York: Palgrave Macmillan, 2011, pp. 1–9.

²⁷ EU. Treaty on the Functioning of the European Union. OJ C 326, 26.10.2012, pp. 47–390.

Table 1: Overview of EU's major pre-Energy Union strategic documents with energy focus

Year	Name of the document	Objective of the document
1974	<i>Council Resolution concerning a new energy policy strategy for the Community</i>	Call for coordination of energy policies within the Community and adoption guidelines for energy supply and demand
1996 (1998)	<i>Directives 96/92/EC (98/30/EC) of the European Parliament and of the Council concerning common rules for the internal market in electricity (natural gas)</i>	First of three legislative packages designed for liberalization and harmonization of EU's internal energy market
2003	<i>Directives 2003/54/EC and 2003/55/EC of the European Parliament and of the Council concerning common rules for the internal market in electricity and natural gas</i>	The repeal and revision of 1996 and 1998 directives, harmonizing the cooperation between MSs
2007	<i>An energy policy for Europe</i>	Energy action plan, emphasizing deeper integration, focusing on security of supply, competitiveness and sustainable development
2009	<i>Directives 2009/72/EC and 2009/73/EC of the European Parliament and of the Council concerning common rules for the internal market in electricity and natural gas</i>	So-called 'Third Energy Package' amended the 2003 directives and was aimed on further liberalization of internal electricity and gas market
2009	<i>Lisbon Treaty</i>	Creation of specific legal provision for the energy field – platform for the share of competences between a Member State and EU (TFEU)
2010	<i>2020 Energy Strategy</i>	Communication from European Commission elaborating on <i>An energy policy for Europe</i> , targeting the energy sustainability and efficiency
2011	<i>Energy Roadmap 2050</i>	Response to a request by European Council. The post-2020 strategy focused on the EU's decarbonization objective while ensuring security of energy supply and competitiveness
2013	<i>Green Paper</i>	A 2030 framework for climate and energy policies, a follow-up to <i>2020 Energy Strategy</i> with specific attention to climate and environment
2014	<i>European Energy Security Strategy</i>	The document sets out areas and concrete actions that need to be implemented in the short and longer term to respond to energy security concerns
2015	<i>Energy Union Package</i>	Introduction of strategy for the Energy Union

2.2. How much competence to EU institutions?

Lisbon Treaty transition of energy policy to the competence of the European Union also means diversification of competences between EU institutions. The main ‘engine’ is the European Commission, but the role of European Council and Council of the European Union are still considered as strategic. The activism of the Commission in acceleration of the Energy Union development is visible both in relation to internal market development and in relation to drafted and adopted legislation. The European Council and Council are still main communication channels of national interests, although the legislative initiative is in hands of Commission itself.

The **European Commission** could be easily identified as an actor with agenda setting power firmly in the hands. Naturally, the integration of the energy sector may be perceived as a logical consequence of the spill over effect stemming from the cooperation in other sectors.

However, the argument is that Commission is a neofunctional driver of the integration within the energy segment. The Commission, in order to enhance the EU competences in energy governance – to shift loyalties – is pushing a political spill over through the interconnection between the significant aspects of energy policy, namely: a) energy security; b) internal market; c) energy sustainability and efficiency; and d) climate change. The overlap of the policies enables the Commission to adopt the integrative approach when suggesting solutions and actions with a view to marginalize the Member States’ resistance and weaken their national positions towards particular issues. Hence, the legislative proposals or action plans are clustered and tend to form packages consisting of interlinked topics. This pattern may be traced for example in the following documents (as well as in other legislative proposals): *An energy policy for Europe* set out three predominant points of interest – sustainability, security of supply and competitiveness – but also appeals on the internal energy market, renewable energy, technology, international energy policy, etc.²⁸. *Directive 2009/28/EC* on the promotion of the use of energy from renewable sources besides renewable energy emphasize the energy security and sustainability²⁹. The Third Energy Package with the primary mission to further coordinate the liberalization of the gas and electricity internal market with the focus on consumer protection acknowledges that the energy security is “an essential element of public security and therefore inherently connected to

²⁸ COMMISSION OF THE EUROPEAN COMMUNITIES. *An energy policy for Europe* (COM(2007) 1 final). [online]. Available at: < <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0001:FIN:EN:PDF> >

²⁹ EU. Directive 2009/28/EC of the European Parliament and of the Council on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC.

the efficient functioning of the internal market” in gas and electricity, and also mentions the sustainability of the energy in the context of the climate change³⁰. *Regulation (EU) No 994/2010* concerning measures to safeguard security of gas supply linked the security of supply with the functioning of the internal market and environmental impacts³¹. Furthermore, the Commission’s policy paper *Energy 2020 – A strategy for competitive, sustainable and secure energy* stipulates strategic priorities for the timeframe of 10 years and includes: energy efficiency, fully integrated market, energy security, research and innovation, and external dimension of energy market³². In the *Green Paper – A 2030 framework for climate and energy policies*, Commission elaborates on the 2020 framework, which “integrates different policy objectives such as reducing greenhouse gas (GHG) emissions, securing energy supply and supporting growth, competitiveness and jobs through a high technology, cost effective and resource efficient approach,” with the special focus on the “long term climate objectives”³³. Finally, the European Energy Security Strategy document incorporated and embraced the concept of integrated market, development of associated technology and the external aspect of the energy policy³⁴. This should contribute to effective strengthening of the EU position internationally, as the “EU uses to be supporter of the green agenda, in internal policies as well as in the external relations.”³⁵

Moreover, from the social constructivist perspective, the European Commission in fact needed “motivation for the European integration, and member states delegation of competences to the supranational level in energy policy.” Hence, the Commission as a “policy entrepreneur” gradually socially constructed guiding norms and structures regarding an adequacy of supranational actions, countering the pressing issues, endangering the EU in which the Member States’ measures would be insufficient. Therefore, primarily in the context of the energy security

³⁰ EU. Directive 2009/73/EC of the European Parliament and of the Council concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC.

³¹ EU. Regulation (EU) No 994/2010 of the European Parliament and of the Council concerning measures to safeguard security of gas supply and repealing Council Directive 2004/67/EC.

³² EUROPEAN COMMISSION. *Energy 2020: A strategy for competitive, sustainable and secure energy* (COM(2010) 639 final). [online]. Available at: <https://ec.europa.eu/energy/sites/ener/files/documents/2011_energy2020_en_0.pdf>

³³ EUROPEAN COMMISSION. *GREEN PAPER: A 2030 framework for climate and energy policies* (COM(2013) 169 final). [online]. Available at: <<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0169:FIN:en:PDF>>

³⁴ EUROPEAN COMMISSION. *European Energy Security Strategy* (COM(2014) 330 final). [online]. Available at: <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0330&from=EN>>

³⁵ BLAŽO, O., KOVÁČIKOVÁ, H., MOKRÁ, L. European Environmental policy and public procurement – connected or disconnected? *International and Comparative Law Review*, 2019, vol. 19, no. 2, pp. 239–265.

(and 2006/2009 gas disruptions), the activity of the Commission “in the form of problem-solution coupling and ‘discourse framing’”, resulted in the acceptance to a certain extent of supranationalism in energy policy by Member States “as a mechanism to increase their individual and collective energy security”³⁶.

Furthermore, the Commission as the actor in energy policy contributes to institutionalisation of the climate as integral part of the energy policy governance³⁷. The clean energy transition as the main idea of the *Clean Energy for all Europeans*³⁸ legislative framework represents the key tools and measures to be implemented aligned with the Energy Union objectives. It imposed obligations to Member States by setting energy efficiency and renewable energy as common targets following adopted international climate commitments. The competence of the Commission as the main EU institution in implementation of Energy Union was enhanced by adoption of *Regulation on the Governance of the Energy Union and Climate Action*³⁹. That allows Commission to monitor and assess the progress of Member States in implementing Energy Union goals on the basis of their National Energy and Climate Plans (so-called NECPs). The monitoring role and competence of the Commission to assess the progress in Regulation application strengthen the position of the Commission and noticeably contributes to deepening integration in area of energy policy. Since its adoption it is regular part of the Commission programme, reflecting the ongoing development in this area.

Nevertheless, the **Council of the European Union** (hereinafter as “Council”) plays important role in presenting Member States position. Before the ratification of the Lisbon Treaty, the position of the Council was stronger than the one of the Commission. Positions of the Member States had been discussed within the specific rotation of national ministries.

The decision on Energy Union shifted position of the Council to consultative body and refers decision-making process to the Commission. The role and

³⁶ MALTBY, T. European Union energy policy integration: A case of European Commission policy entrepreneurship and increasing supranationalism. *Energy Policy*, 2013, vol. 55, pp. 435–444.

³⁷ SOLORIO, I. Bridging the Gap between Environmental Policy Integration and the EU’s Energy Policy: Mapping out the ‘Green Europeanisation’ of Energy Governance. *Journal of Contemporary European Research*, 2011, vol. 7, no. 3, pp. 396–415.

³⁸ EUROPEAN COMMISSION. *Clean Energy for All Europeans*. [online]. Available at: < <https://publications.europa.eu/en/publication-detail/-/publication/b4e46873-7528-11e9-9f05-01aa75ed71a1/language-en> >

³⁹ EU. Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council.

position of Council is still important, as it provides guidelines and strategic positions of Member States. In relation to the Energy Union application, “the Council adopted a set of conclusions on the future of energy systems in the Energy Union. They identify priorities and principles for future policy-making aimed at ensuring the energy transition towards an affordable, safe, competitive, secure and sustainable energy system”⁴⁰. The conclusions are set against the background of the recently completed *Clean Energy for all Europeans* legislative package and the Commission Communication *A Clean Planet for All*, which sets out a strategic vision for the EU’s future climate policy. They also recall the European Council conclusions on climate change of 13-14 December 2018, 21-22 March 2019 and 20 June 2019⁴¹.

To illustrate the position of the Council, the Conclusions of 2019 contains highlights and calls in relation to concrete actions, such as development of reliable and cost-effective energy networks, development and deployment of innovative technologies, promotion of sector coupling and sector integration. Concrete ideas are formulated in the form of recommendations and calling the Commission to present proposals to further development and legislation drafts (see points 28-30)⁴². However, it is full discretion of the European Commission to draft the legislation proposal (Article 17)⁴³.

The position of the **European Council** in this area is limited in constitutive way, although it has political power due the institutional structure itself. European Council on the last three summits (2018 and two in 2019) had confirmed interest to continue in implementation of the Energy Union as introduced by the Commission in 2015. The role of the European Council is mainly in setting the agenda and underlining its importance, including the observation of fulfilment international political obligations. As stated in the TEU: “The European Council shall provide the Union with the necessary impetus for its development and shall define the general political directions and priorities thereof. It shall not exercise legislative functions.” (Article 15(1))⁴⁴. For the implementation of the adopted conclusions, the intervention of the Council or Commission is needed.

⁴⁰ COUNCIL OF THE EUROPEAN UNION. *Council outlines principles and priorities for the future of energy systems in the Energy Union* (Press Release). [online]. Available at: <<https://www.consilium.europa.eu/en/press/press-releases/2019/06/25/council-outlines-principles-and-priorities-for-the-future-of-energy-systems-in-the-energy-union/>>

⁴¹ COUNCIL OF THE EUROPEAN UNION. *Conclusions on the future of energy systems in the Energy Union to ensure the energy transition and the achievement of energy and climate objectives towards 2030 and beyond – Council conclusions (25 June 2019) (10592/19)*. [online]. Available at: <<https://www.consilium.europa.eu/media/40028/st10592-en19.pdf>>

⁴² Ibid.

⁴³ EU. Treaty on European Union. OJ C 326, 26.10.2012, pp. 13–390.

⁴⁴ Ibid.

In 2018, the Conclusions of the European Council “underline the need for the Single Market to evolve so that it fully embraces the transition to a greener economy” (point 2.2)⁴⁵ and for the continuation of “the work on the elements outlined in the Communication “A Clean Planet for all” together with the Council. The European Council will provide guidance on the overall direction and political priorities in the first semester of 2019, to enable the European Union to submit a long-term strategy by 2020 in line with the Paris Agreement (point 10)⁴⁶.

Conclusions of the European Council in first half of 2019⁴⁷ focused more in detail on climate change, as the particular agenda. In individual point II, the European Council “reiterates its commitment to the Paris Agreement and recognises the need to step up the global efforts to tackle climate change in light of the latest available science (point 5(1)), emphasises the importance of the EU submitting an ambitious long-term strategy by 2020 striving for climate neutrality in line with the Paris Agreement (point 5(2)) and calls on the Council to intensify its work on a long-term climate strategy (point 5(5)).

The European Council on its second regular session in 2019⁴⁸ repeatedly underlined the importance of the climate change in the policies and international obligations to UN and Paris Agreement. As stated in point 4 of the Conclusions: “the European Council invites the Council and the Commission to advance work on the conditions, the incentives and the enabling framework to be put in place so as to ensure a transition to a climate-neutral EU in line with the Paris Agreement¹ that will preserve European competitiveness, be just and socially balanced, take account of Member States’ national circumstances and respect their right to decide on their own energy mix, while building on the measures already agreed to achieve the 2030 reduction target.” The recommendations of European Council go far beyond sole political declaration, when asking Member States “to remain committed to scaling up the mobilisation of international climate finance from a wide variety of private and public sources and to working towards a timely, well-managed and successful replenishment process for the Green Climate Fund” (point 5).

⁴⁵ EUROPEAN COUNCIL. *European Council meeting (13 and 14 December 2018) – Conclusions* (EUCO 17/18). [online]. Available at: <<http://data.consilium.europa.eu/doc/document/ST-17-2018-INIT/en/pdf>>

⁴⁶ Ibid.

⁴⁷ EUROPEAN COUNCIL. *European Council meeting (21 and 22 March 2019) – Conclusions* (EUCO 1/19). [online]. Available at: <<http://data.consilium.europa.eu/doc/document/ST-1-2019-INIT/en/pdf>>

⁴⁸ EUROPEAN COUNCIL. *European Council meeting (20 June 2019) – Conclusions* (EUCO 9/19). [online]. Available at: <<https://www.consilium.europa.eu/media/39922/20-21-euco-final-conclusions-en.pdf>>

3. Intergovernmentalism or differentiated integration – what scenario for EU energy policy to effective institutionalism?

As to the institutionalism applicable we can follow Moravcsik's liberal **intergovernmentalism**⁴⁹, which seeks to explain the outcomes of the EU's grand institutional bargains, such as the Treaty of Rome, the SEA, and the Maastricht Treaty. Moravcsik⁵⁰ explains these institutional choices as a three-step process. "First, domestic societal actors form preferences for cooperation or policy coordination at the EU level, partly as a result of their position in the international political economy. States aggregate societal interests and thereby demand some level of European cooperation. Second, state executive representatives armed with these preferences bargain in the EU arena, attempting to supply their constituents with the desired outcomes. Third, states choose institutional arrangements that maximize the credibility of their commitment to cooperate." Outcomes, according to Moravcsik, result from the interaction of preferences and bargaining power.

Moravcsik's approach refers to intergovernmentalism perspective of the EU institutions working, which could be applied mainly in period before 2009. The cooperation between Member States in area of energy policy varied and depended on both internal and external factors. Internal factors included missing competences of the EU institutions to implement energy policy as the shared one, rather than it had coordinated character. The domestic actors' preferences for cooperation became part of the Council's meetings, however only introduction of article 194 TFEU implies the possibility of the Commission to act directly and within ordinary legislative procedure. External factors presented the different approaches of some Member States and its national energy policy, including dependency on external gas resources and other international obligations. However, as Sandholtz argues, counter to intergovernmentalism, that "the national interests of Member States do not have independent existence; they are not formed in a vacuum and then brought to Brussels. Those interests are defined and redefined in an international and institutional context that includes the European Communities. States define their interests in a different way as members of the European Communities than they would without it"⁵¹. The important and decisive factors are then two:

⁴⁹ MORAVCSIK, A. Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach. *Journal of Common Market Studies*, 1993, vol.31, no. 4, pp. 473-524.

⁵⁰ MORAVCSIK, A. 1998. *The Choice for Europe: Social Purpose and State Power From Messina to Maastricht*. Ithaca, NY: Cornell University Press, pp. 1–514.

⁵¹ SANDHOLTZ, W. Choosing union: monetary politics and Maastricht. *International Organisations*, 1993, vol. 47, no. 1, pp. 1–39.

political will of the national actors (having the executive competence to represent it on European level) and membership in the EU.

The Lisbon Treaty changed energy policy character, when the role and competences of the EU institutions have been strengthened, and the Member States had decided to rely on the common approach and to build Energy Union rather than discuss and negotiate particular issues during Council meetings or summits. The political consensus leads to adoption of several secondary legislation (regulations and directives) and also strategic documents and packages. The energy policy' objectives together with the impact of the external factors as UN Sustainable development agenda 2030 and Paris Agreement, helped to strategic decision on **Europeanisation** of energy policy by drafting strategy to create Energy Union. Although the Commission achieved new competences in area of energy policy and became the most relevant actor in developing Energy Union, there still exists conditions for differentiated integration, considering individual Member States obligations to Paris Agreement and to UN in SDG2030 agenda. The other area of potential differentiation rather than integration is transition to climate-neutral and carbon-free EU due different material conditions of Member States. As stated in the European Council Conclusions⁵², Member States have right to decide on their own energy mix, depending on their national conditions. Similar differentiated approach is apparent in relation to allocation of finances to contribute to Green Climate Fund. Meanwhile we underline, that both energy mix decision and Member State contribution to Green Climate Fund had been announced and declared by the European Council, urging Commission and Council to work on the concrete strategy and guidelines for its effective implementation. Although the role of Commission in energy policy was strengthen (including decision-making and legislative competences), the position of the other two involved institutions – European Council and Council, remains important as the communication channel within the EU multilevel governance system between Member States and the EU and also as supervisor in the sense of upholding internal and external obligations of Member States in the energy policy. Such distribution of powers between EU institutions in materiae refers to the principle of effective institutionalism, that institutions are working effective when “they have significant effect on the state behaviour”⁵³.

The differentiated integration should be considered as the interim measure applicable in time, due different national conditions. European Commission should

⁵² EUROPEAN COUNCIL. *European Council meeting (20 June 2019) – Conclusions* (EUCO 9/19). [online]. Available at: < <https://www.consilium.europa.eu/media/39922/20-21-euco-final-conclusions-en.pdf> >

⁵³ MARTIN, L. L., SIMMONS, B. A. *Theories and Empirical Studies of International Institutions. International Organization*, 1998, vol. 52, no. 4, pp. 729–757.

observe that all Member States fulfil obligations stated in the Energy Union strategy in determining time. European Commission in cooperation with Council and European Council may effectively contribute to the Europeanisation, by active sharing of its work (rather than coordination) and constant contribution to decision-making, legislation drafts and adoption and implementation of goals stated in strategic documents, which fulfilment should create Energy Union. The monitoring of assigned international obligations fulfilment by the European Council may help to effectively work on Europeanisation of energy policy considering different positions of individual Member States, but building the Energy Union as the concept based on common values and transfer of competences to the European Union, to deepen integration in another policy area.

4. Conclusion

The cooperation between Member States of the European Union in energy policy has been existing in the different extent since the foundation of European Coal and Steel Community as one of its predecessors. As the energy portfolio has been developed throughout the time including different resources of energy, requirement of environment protection, sustainability of energy etc., the coordination between Member States became more significant. Intensification of coordination was supported by the ambition of European Commission in area of internal market development, to which the energy policy is mainly connected with. The ambition to deepen coordination of Member States interests lead to the Europeanisation of the agenda, particularly by introduction of Article 194 TFEU in Lisbon Treaty. The energy policy has been regulated by European law and Treaty provisions explicitly. The Commission received more competences especially in legislative area and together with the European Council and Council had presented the concept of Energy Union in 2015. Since that, all three institutions have been intensively working in cooperation with Member States on achievement of set goals. Although the energy policy character is shared, the effective implementation requires deliberation of different national material conditions. This means challenge to EU institutions, because the effective institutionalism in energy policy means to create Energy Union including all Member States, rather than involve some in different perspective. Alongside, the different material conditions in transition to clear energy concept, de-carbonisation and related energy goals may be achieved by individual Member States in different time-period, but by all-in-all in the common one agreed. The differentiation should be considered as the preliminary step to fully harmonised policy. EU institutions play the most important role in the process of Energy Union implementation.

As Mahoney and Thelen added to the institutionalism in a way to explain endogenous sources of change, they focus on “the power-distributive effects of institutions, which are defined as “distributional instruments laden with power implications”⁵⁴. Institutions then “lock in advantages for winners, who might be expected to support existing institutions, and losers, who might be expected to challenge them. Hence all institutions contain within them a dynamic, endogenous source of contestation, with dissatisfied actors constantly pressing for institutional reforms that will favour them. Such reforms, moreover, may occur not suddenly, at a critical juncture, but gradually or incrementally over time, as dissatisfied actors seek to move institutions marginally away from the status quo”⁵⁵.

The current institutional structure refers to the goals adopted in the strategic documents in energy policy however the role of European Commission, European Council and Council has to be balanced with the national interests of those Member States. The effective institutionalism should mean in relation to Energy Union, that European Commission as the engine of the integration, in the horizontal perspective should prepare and justify proposals of legislations and adopts decision, which will be properly discussed and implemented by the executive European institutions with the consensus of the Member States. That is the task of the European Commission with strong political support of European Council, that the potential dissatisfied actors would rather discuss the concrete proposals within the Council’s meeting and in the legislative process then to refuse them and slow down the whole process of Energy Union building. In vertical perspective, that is more task of the European Council to consult and discuss potential areas of cooperation with Member State leaders and executive representatives, to avoid negative connotations within other EU institutions’ meetings and especially in Council meetings and COREPER work (Committee of the permanent representatives as the Council support body in internal structure). The effective institutionalism is then the solution when the Member States will follow its national interest transferred to the strategy on building Energy Union and European Union institutions will adopt the relevant legislation and implement it effectively and influence the Member State behaviour and implementation of adopted strategies and plans to achieve goals in the agreed period.

⁵⁴ MAHONEY, J., THELEN, K. A Theory of Gradual Institutional Change. In: MAHONEY, J., THELEN, K. (eds). *Explaining Institutional Change*. New York: Cambridge University Press, 2010, pp. 1–37.

⁵⁵ POLLACK, M. A. Rational Choice and Historical Institutionalism. In WIENER, A., BÖRZEL, T., RISSE, T. (eds). *European Integration Theory* (3rd edition). New York: Oxford University Press, 2019, pp. 108–128.

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