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CHAPTER 14

Energy Policy

Sharp Challenges and Rising Ambitions

David Buchan

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■ Summary

Energy policy has rapidly gained in importance for the European Union (EU), as it faces the challenges of creating an internal energy market, increasing energy security, and playing an active role in combating climate change. Reform of the energy market has been a constant activity since the late 1980s. Reform has been based on liberalizing cross-border competition, but this risks being increasingly undermined by member-state intervention and subsidy to promote renewable energy and to ensure adequate back-up power. Energy security has been an area of EU energy policy of little added value for member states, but this is changing with measures to improve infrastructure, to increase resilience against external shocks, such as interruptions of Russian gas, and to diversify supplies. Finally, efforts to curb energy use and to develop low-carbon energy are at the heart of Europe's new programmes and targets to combat climate change. These three strands of policy involve different policy-making communities and illustrate a range of different policy modes.

Introduction

Worries about dependence on energy imports, see-sawing oil prices, and energy-driven climate change have brought energy policy to the top of the EU's agenda in recent years. At the same time, energy-market liberalization, which has remained a constant on the EU agenda for the past twenty-five years, has been pushed harder than ever by the Commission. This chapter focuses on the EU's three main energy-related preoccupations: the internal energy market, energy security, and efforts to develop a low-carbon economy.

Each of these strands of energy policy has different characteristics and dynamics, involving different circles of policy-makers and stakeholders. These strands also have varied connections to other EU policy domains: energy-market liberalization is part of the single-market programme (see Chapter 5) and has been heavily affected by competition policy (see Chapter 6); energy security connects to EU foreign and security policy (see Chapter 18), while climate change brings together energy and environmental concerns (see Chapter 13).

As regards the internal energy market, the Commission in particular has, over the past several decades, sought adoption and implementation of several 'packages' of liberalizing legislation, with a controversial third package winning approval by the European Parliament (EP) in April 2009 and by the Council in June 2009. In 2007, dissatisfaction with the lack of competition and frequency of discrimination in the energy market had led the European Commission to make another push to open access to Europe's gas and electricity grids, where the first and second packages were judged to have largely failed in their aims (see the section 'Issues and interests' later in the chapter). The Commission proposed in its third package that energy supply companies should be forced to sell or 'unbundle' the ownership of any networks they owned. In the course of 2008, the Commission compromised in the face of solid opposition from the French and German governments, and agreed to let the member states opt for reinforced independent management of their networks. Nonetheless, the Commission managed to use antitrust pressure to get some significant ownership-unbundling in Germany.

Energy security, defined as having adequate access to energy at reasonable prices, has acquired far greater salience for the Union, especially because of new member states' concerns about over-reliance on Russia. Nowhere have the Union's 2004 and 2007 enlargements to central and eastern Europe had more impact than on relations with Russia, given the region's energy dependence on, but political animosity towards, Russia. Yet the twenty-eight member states still seem unsure about how far to go towards having a collective EU energy policy towards Russia, as distinct from national policies and bilateral deals with Moscow. But repeated interruptions in the flow of Russian energy along the traditional transit routes of Ukraine and Belarus have encouraged the EU to do more to diversify away from Russian energy altogether. In 2011, for the first time ever, member states gave the Commission a

mandate to negotiate a legal framework for the import of energy, in this case gas from the Caspian. A further effort to reduce dependence on Russian energy followed Russia's annexation of the Crimean region of Ukraine in March 2014.

Europe's ambitious climate-change goals aim to transform almost every aspect of its energy system, given that energy use accounts for around two-thirds of global greenhouse gas emissions. When the European Council and the EP agreed in December 2008 on the new climate and renewable-energy package, it seemed that the perceived urgency of climate action might have the potential to develop an integrationist dynamic comparable to that created by the '1992' single-market programme (see Chapter 5). This has not proved to be the case. Economic recession, starting with the 2008 financial crisis and prolonged by the debt woes of the euro area, and the rest of the world's failure so far to match EU climate action, have dampened enthusiasm for what many see as an expensive go-it-alone European climate policy.

Scope and history of EU energy policy

The goals of energy policy—ensuring that energy is as cheap, secure, and clean as possible—are the same at the EU level as at the national level. But the remit for EU policy is narrower, addressing the internal energy market and environmental aspects of energy.

In the early years of European integration, coal and nuclear power did figure prominently, in the form of the 1951 Treaty of Paris (European Coal and Steel Community, ECSC) and in the 1957 Treaty of Rome (European Atomic Energy Community, or Euratom). The ECSC was essentially a political scheme to put coal, which had been an economic engine of war-making, under international constraints. That done, the ECSC continued for fifty years as a social instrument to assist, with money and re-training, the run-down of west European coal mining (and steel production). When that task was largely completed, the ECSC Treaty was allowed to expire in 2002. Euratom, which is still in force, had some of the same political rationale, namely to create international supervision over something that could be used as a weapon, although it was also thought that civil nuclear energy could be developed effectively on a collective European basis. In practice, Euratom has since functioned more as a technical agency, while EU governments have kept nuclear-policy decisions very much in their own hands. The ECSC and Euratom, therefore, were not devised, and have not served in practice, as parts of a common energy policy.

Both coal and nuclear power declined in importance relative to oil, the use of which expanded greatly in the 1950s and 1960s. The first oil crisis in 1973–4 was dealt with largely by the founding in 1974, on a US initiative, of the International Energy Agency (IEA) to organize the holding and sharing of emergency oil stocks among its members (Black 1977). The EU also has legislation on oil stocks, but for the nineteen EU states that belong to the IEA (which also includes Australia,

Canada, Japan, New Zealand, and the US) it is essentially secondary to their IEA obligations. So there was far less to the foundation of EU energy policy than initially meets the eye.

While the treaties contained no separate and specific article on energy policy, over the years policy-makers borrowed legal competence from the economic and environmental parts of the treaties to justify proposing and passing energy measures. Energy's economic importance gained recognition in the 1986 Single European Act (SEA) and the subsequent single-market programme (see Chapter 5). Leaning on the treaties' market-opening and antitrust principles (see Chapter 6), the Commission in 1989 set about the task of liberalizing the electricity and gas markets, a task in which it is still engaged today. EU policy thus far has such a narrow focus because it concentrates on those energy sources that are especially dependent on fixed, cross-border networks and which require regulation to prevent market abuse by dominant suppliers. By contrast, oil and coal have a more flexible transport system that is inherently less susceptible to market abuse. Therefore the EU policy focus on oil relates to security of supply and the level of stocks, and even then the EU plays a secondary role to the IEA.

The 1992 Maastricht Treaty on European Union (TEU) gave the EU competence to improve cross-border energy infrastructure in a programme known as Trans-European Networks (TENs) and increased the EU's ability to act on the environment (see Chapter 13 and Matlary 1996). It is on this legal foundation that the EU's ambitious climate-change programme has been erected.

More recently, two factors have combined to push up the agenda the idea of a more ambitious energy policy. On the one hand, the growing concern about climate change has focused attention on the need to reduce the use of carbon and to control emissions more effectively. On the other hand, eastern enlargement has drawn more attention to the issue of security of energy supplies. Hence, the Treaty of Lisbon (ToL) has given the EU a bigger role in energy. It states in Article 176A that:

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

- ensure the functioning of the energy market;
- ensure security of energy supply in the Union;
- promote energy efficiency and energy saving and the development of new and renewable forms of energy; and
- promote the interconnection of energy networks.

But the same article of the ToL goes on to reaffirm that 'such measures shall not affect a member state's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply'. Thus the ToL does not reduce the autonomy that the member states

currently enjoy. France is perfectly free to use nuclear reactors to generate most of its electricity, just as Poland does with its deep coal seams. Likewise, the UK has been free to go full steam ahead in extracting its oil and gas, just as the Netherlands has been free to husband its gas reserves carefully. Therefore the EU role in energy policy is weaker than the role of central governments in more developed federations. In the latter, even where fossil-fuel reserves are the property of states or provinces or (in the case of the US) private landowners, the federal authorities levy royalties, impose retail taxes, and own all offshore reserves and some onshore reserves. In the EU, national governments decide how to exploit their energy resources, how they tax energy, and what mix of energy sources they choose to rely on (with the exception of renewable energy for which national targets are agreed at an EU level).

Energy security has been the weakest side of the EU energy-policy triangle. Enlargement has increased the case for strengthening it. New central and east European states are keen for an EU energy-security policy to help them to avoid over-reliance on Russia, while older and bigger member states in western Europe still prefer to settle energy ties with Russia bilaterally. In the past, EU authorities have had little legal right to involve themselves in securing energy supply. Only with the ToL did they get formal competence 'to ensure security of energy supply'. One result of this has been that the Commission has been authorized to negotiate, on the EU's behalf, a legal framework for the import of Caspian gas as an alternative to Russian gas.

Internal energy market

The construction of the internal energy market has been the longest standing of the three strands of the EU's energy policy. It is situated at the intersection of two robust EU policies—the single European market (see Chapter 5) and competition policy (see Chapter 6). Progress to date has been hard-fought, but in 2011 the European Council formally set 2014 as the date for completion of the internal energy market.

Issues and interests

The Commission has been the champion of liberalization in the European energy market. Knowing the resistance from some governments, it was understandably slow in the 1990s to start its liberalization drive. Yet, once launched in this direction, the Commission has doggedly persisted, even after energy security and climate change began to eclipse liberalization as an issue. Its main goal is to curb the natural monopolies of the gas and power networks by ensuring open, non-discriminatory access for all third parties to these grids. It started with a first package of directives in 1996 (Electricity Directive 96/92/EC) and in 1998 (Gas Directive 98/30/EC), but soon decided these measures were too weak. So it proposed a second package

of legislation (Electricity Directive 2003/54/EC and Gas Directive 2003/55/EC) that required the 'legal unbundling' of supply networks from energy generation, causing energy companies to put network grids at arm's length by placing them in separate subsidiaries. Again, the Commission soon decided that these measures did not go far enough to liberalize the market. So in 2007 it proposed its third package of measures, incorporating the concept of ownership unbundling (OU), forcing energy companies either to sell their networks outright or to put these networks under entirely independent management. These proposals provoked strong opposition from France and Germany as well as a number of small member states.

Behind the Commission's persistence is its conviction that a competitive and fully interconnected energy market would also help to tackle energy security (by making emergency stocks easily transferable around the EU) and climate change (by maximizing efficient use of energy and minimizing emissions). Another reason is that the Directorate-General for Competition (DG COMP) became heavily involved, when, in response to consumer complaints about rising gas and electricity prices, it started in mid-2005 an in-depth investigation into EU energy markets. This investigation uncovered, according to DG COMP, 'serious shortcomings' (Commission 2007*d*), particularly with regard to attempts by companies to keep rivals off their grids. As well as paving the way for some antitrust suits (see the following section), this sector-wide investigation led DG COMP to conclude that grids and networks had to be made stand-alone operations, and the way to do this was new ownership-unbundling legislation. In this, the DG then responsible for energy and transport (DG TREN) concurred. In 2010, DG TREN was divided into DG ENER responsible solely for energy policy and DG MOVE (mobility and transport).

A large number of member states backed the Commission's proposals on OU. This was not surprising as nearly half the EU members—thirteen to be precise—had already by 2007 taken their own national decisions to introduce a form of OU in electricity. Seven of these countries had also done so in gas. One factor was the UK's hardening of support for OU within the EU. Despite having led the unbundling revolution in the 1980s with the break-up of British Gas, the UK had for a long time paid little attention to the unreconstructed nature of the continental energy industry. But from 2000, as the UK turned from gas exporter to importer, it began to realize that it needed to ensure that the terms on which it imported gas from continental Europe were as competitive as possible.

Arrayed against OU were France, Germany, and six smaller states. In France, where the energy sector has been dominated by state-owned *Electricité de France* and *Gaz de France*, many politicians anathematized OU as forced privatization. In Germany, with its privately owned energy sector and constitutionally guaranteed property rights, many in industry as well as in politics lambasted OU as expropriation. Some smaller member states argued that their energy companies were too small to be unbundled.

Internal energy-market legislation is a matter for co-decision by the EP and the Council. While there was a clear majority in the EP for OU in electricity, many

members of the European Parliament (MEPs) shared the reluctance of some governments in the Council to interfere with the structure of a gas industry stretching far beyond the EU. Most MEPs followed the line set by their political groups, rather than their national governments. Particularly vociferous in speaking against their governments' opposition to OU were Green MEPs from Germany and Luxembourg, who claimed that the big utilities had deliberately kept renewable energy off their grids, and urged that they should be broken up.

Significantly, the EU-level body of national regulators, European Regulators Group for Electricity and Gas (ERGEG), endorsed the Commission's OU proposals. Whatever the line taken by their governments, almost every one of the national regulators (twenty-seven at the time) supported the concept of stand-alone networks because they were clearer and simpler to regulate. Lobbying over energy-market reform takes place at several levels—at the member-state level especially in the case of big state-owned producers, in special consultative fora created by the Commission (see the following section), and through EU-wide associations. Among the latter, it has naturally been energy users who have lobbied for a more competitive energy industry, including OU if necessary. Prominent among these user groups is the European branch of the International Federation of Industrial Energy Consumers, together with its powerful German national affiliate, the Verband der Industriellen Energie und Kraftwirtschaft. The Commission has been receptive to energy users' complaints about over-pricing and anti-competitive practices. Such complaints spurred the Commission into launching its 2005 competition inquiry into the energy sector and its third legislative package in 2007.

On the producers' side, the electricity industry, as represented by its main trade association, Eurelectric, generally responded more constructively to the Commission's third package proposal than did the gas industry, represented by Eurogas whose opposition to OU was more rigid. Electricity companies have felt less need to hang on to their networks at all costs, in terms either of ownership or of management, because networks are a relatively small part of their business, which is dominated by power generation. Belatedly, the Commission realized that its campaign to force energy-supply companies out of owning transmission infrastructure carried the risk of discouraging much-needed new investment in transmission wires and pipes. In 2013, it issued guidance to the effect that it would be happy to see financial investors put their money into Europe's energy infrastructure because such investors had no energy-supply interests that could cause a conflict of interest.

In this strand of energy policy, the pattern of issues and interests is familiar from many other sectors caught up in the drive to develop the single European market, with persistent arguments between the enthusiasts and the doubters as regards the pace of liberalization. The bias within the EU has been towards a faster pace, although in some member states powerful coalitions of governments and industries have been able to apply the brakes now and then (see Chapter 5). The energy sector has much in common with experience in other industries.

Third time lucky for liberalization?

In developing the internal energy market, the EU has been acting in classic regulatory or re-regulatory mode—and with considerable success, if the ambition of the task is taken into account. The Commission has been trying to open up to cross-border competition a sector that was historically organized around 'national champion' companies, backed, if not owned, by national governments, as well as to break up vertical integration in a sector where that structure has been the standard business model. By way of comparison with another federal system, the twenty-eight member states now have more of a standard electricity-market design than the fifty US states.

In terms of agenda-setting, a typical role of the Commission, there has been little surprise. The Commission has essentially been trying for years to push through the same agenda or to achieve the same goal—open access on energy networks. The greater power for national regulators that the Commission sought as part of its third package, and the proposal to separate ownership and operation of networks from other parts of the energy business, was to ensure that owners and operators of networks do not abuse their monopolies (see Table 14.1). In terms of the policy cycle (see Chapter 3), this raises a question about the implementation and enforcement of earlier directives. The Commission has pursued most member states for their failure to implement the third package, which should have been transposed into national law by 2011. The most widespread infringement of internal energy-market rules relates to the failure of many governments to limit the regulation of retail end-user electricity and gas prices to just the poor and vulnerable sections of their populations as is permitted by EU rules.

What has been new in recent years is the close cooperation between the Commission's energy and competition Directorates-General, and how competition

TABLE 14.1 Re-regulating energy

	Unbundling of networks	Access to networks	Market opening	National regulation
First legislative package 1996–8	Separate management and accounts	Negotiated or regulated terms of access	Power: 35% open by 2003. Gas: 33% open by 2018	Mechanism for regulation
Second legislative package 2003	Separate subsidiary	Regulated terms of access	Power and gas markets 100% open by July 2007	Specific regulator for energy
Third legislative package 2009	Separate ownership or operator	Regulated terms of access	No change from second package	Upgraded and harmonized powers for national energy regulators

policy has been brought in to bolster liberalization. It was not like this at the outset. When in 1991 Leon Brittan, the Competition Commissioner, announced his intention to apply competition policy to energy, DG TREN was nervous that this would be 'a very costly political strategy' (Matlary 1996: 272) and might backfire. There was also a view, particularly promoted by France, that energy was special, and that it should be exempted from competition policy because it was a 'service of general economic interest'. The Commission produced a Green Paper (Commission 2003d) and then a White Paper (Commission 2004c) on services of general interest, but did not find evidence that energy liberalization had failed to serve the general interest.

DG COMP has used the in-depth knowledge it gained as a result of its 2005–6 energy-sector investigation in support of liberalization. In May 2006, it launched surprise inspections—or 'dawn raids' as the press like to call them—on a number of gas-company premises across western Europe. In December 2006, it did so with several electricity companies. In addition, during the following two years it launched formal antitrust investigations against several companies for allegedly shutting competitors out of their markets or manipulating prices. DG COMP subsequently turned its attention to the energy market in the newer member states. In 2012, it launched an antitrust inquiry into allegations that Gazprom had abused its dominant market position in eight central and east European member states to make them pay more for Russian gas than the prices it charges west European member states with access to alternative supply sources (European Commission press release, IP/12/937). In December 2013, Gazprom said it would seek a negotiated settlement of the allegations with the Commission.

Antitrust pressure provided an interesting interaction with the legislative reform process. The Commission maintained that the scale and nature of the conflict of interest inherent in vertically integrated energy companies required the sort of structural remedy that could be achieved only by legislation requiring 'stand-alone' networks, not through isolated antitrust actions imposing behavioural remedies (usually fines) on individual companies. 'This requires comprehensive structural reform [because] even the most diligent competition enforcement cannot solve all the problems in these markets', noted Neelie Kroes (2007), then Competition Commissioner, launching the Commission's third package.

In parallel with the legislative measures over the past decade to equalize network access has been the trend towards more European-wide regulation. The big difference, however, between the two developments is that while there is an agreed goal of creating a single energy market, there is little desire—among governments or even in the Commission—to create a single European regulator. The Commission plays a central role, but often does so through its creation of, and influence over, various European regulatory and industry groups. Each package of liberalizing legislation has been accompanied by some development in regulation. The first package of 1996–8 was followed by the creation of industry fora. The Florence Forum was set up in 1998 as a twice-yearly meeting of all the stakeholders in the electricity industry—producers, transmission system operators (TSOs), consumers, traders—with national regulators,

government officials, and the Commission. In 1999, the Madrid Forum was set up to do the same for the gas industry. The fora have provided a useful process of consultation between the regulators and the regulated. But, lacking any law-making or mandatory enforcement powers, they have been little more than regulation by cooperation. During this period, however, network operators were encouraged, particularly by the Commission, to form themselves into EU-wide associations—the European Network of Transmission System Operators for Electricity (ENTSOE) and the European Network of Transmission System Operators for Gas (ENTSOG)—to make consultation easier. As Cameron (2007: 104) points out, this constituted a form of unbundling at the European level by separating the TSOs out, irrespective of what was happening at the national level.

Moreover, the changing structure and ownership of national industries have required more explicit regulation, leading to the considerable expansion of the roles of national energy regulators. Their role began to acquire a European dimension under the first package of open-access directives of 1996 and 1998, which allowed the option of 'regulated' third-party access to networks on the basis of tariffs approved by national regulators. The second package of directives of 2003 required every member state to have a national energy regulator; by that stage all member states had one except for Germany, which finally set up a network regulator in 2005. National regulators were given a minimum set of powers and an instruction to coordinate with each other and liaise with the Commission. The Commission decided to make a kind of carbon copy of the Council of European Energy Regulators (CEER) (which the regulators had set up in 2000 as their own informal club), to call it the European Regulators' Group for Electricity and Gas (ERGEG), and to give it the formal duties of advising the Commission and consulting with industry on regulation. Despite these developments, the competences and independence of national regulators varied considerably, and they lacked any European mandate to take a broader view.

The Commission's third package (Electricity Directive 2009/72/EC and Gas Directive 2009/73/EC) promised a step-change in the national regulators' European role. It harmonized up the powers of national regulators. More importantly, it upgraded ERGEG into the Agency for the Cooperation of Energy Regulators (ACER) (Regulation 713/2009), which has, for the first time, the power to take and enforce binding decisions. This will enable national regulators to exercise some European powers. The Commission argued that such changes were necessary to ensure that whatever is decided on unbundling would be implemented and enforced. But as far as ACER is concerned, the Commission has not wanted this particular acorn to develop into an oak. In particular, it has been reluctant to give ACER power over the European associations of TSOs.

The Commission has used ENTSOE and ENTSOG to spearhead the completion of the internal energy market by 2014, in particular by drafting vital network codes for the EU grids following framework guidelines set by ACER, itself under Commission supervision. It was unusual to ask one part of an industry to draft rules for the rest of that industry. TSOs, though unbundled to varying degrees, are still

commercial organizations, and their semi-legislative role has been queried by some other energy companies. However, they have been judged to be the only bodies with the expertise to carry out this technical task.

The Commission's stated reason for pulling its punches on ACER's powers was constitutional. The Court of Justice of the European Union (CJEU) in its 1958 *Meroni* ruling and other case law, has held that an authority to which power is delegated (like the Commission) cannot confer on another body (like ACER) powers different from those possessed by the delegated authority under the treaty, and that there should be no delegation of powers involving a wide margin of political discretion between different objectives and tasks that would escape democratic control. The Commission's Legal Service maintained that the *Meroni* doctrine must limit ACER's powers, while other Commission officials said they were nervous about ACER being used as the thin end of the wedge in a long-standing campaign by some to remove competition powers entirely from the Commission and give them to an independent agency (see Chapter 6). However, the Parliament rapporteur claimed (European Parliament 2008) that his proposals for ACER would respect *Meroni*, because, while the agency would have a prime role on codes of a technical nature, responsibility for network codes on politically sensitive competition and market issues would stay with the Commission. Some MEPs felt the Commission was inhibited less by a fifty-year-old ruling than by a desire to dominate a weak agency.

To sum up, carrying through the third package of energy-market reform has been the result of unusually close cooperation between the Commission's DG COMP and DG ENER, with antitrust action used as the spearhead for legislative reform. It may prove the high-water mark of energy-market liberalization, which has become somewhat eclipsed, even compromised, by issues of energy security and climate change that increasingly require non-market rules and mechanisms (see Box 14.1).

BOX 14.1 Limiting state intervention in a liberalized market

This has become a major preoccupation for the Commission. The issue also relates to energy security and climate policies discussed later in this chapter, but is addressed here because of its significant influence on the internal energy market. In its March 2013 Green Paper on the 2030 framework for energy and climate policy (Commission 2013), the Commission admitted that it had overestimated the speed of energy infrastructure and market integration, and underestimated the impact of national renewable schemes, so far the most successful part of EU climate policy, and the knock-on effect of these subsidy schemes on the electricity market. In particular, intermittent, weather-dependent renewables have increasingly been pushing off the grid the very conventional fuels—gas, and to a lesser extent coal and nuclear—that these renewables need for occasional back-up security of supply. The problem is that progress on *integrationist* policies to link national markets with cross-border infrastructure and common trading arrangements is lagging behind the *disintegrationist* development of national renewable and back-up subsidy schemes. The Commission reluctantly accepted, in the 2009 energy and

climate package, member states' insistence on running their national renewable subsidy schemes, and now, to the Commission's dismay, most governments are now planning to subsidise loss-making conventional power plants, especially gas-fired generation, that the utility companies say that they would otherwise have to close. The common feature of these capacity schemes is that they all have an autarkic, security-begins-at-home feature, favouring domestic over imported electricity. The Commission would like member states to rely more on each other for emergency power, but this presupposes cross-border interconnectors that are often not yet built or cross-border trading arrangements not yet agreed. To try to regain control of these *disintegrationist* tendencies, the Commission (2013m) issued guidelines in autumn 2013 that seek to persuade member states to Europeanize, or at least regionalize, their renewable and capacity schemes. If such persuasion does not work, the Commission is threatening to use the new set of state-aid rules that it is preparing for the energy and environment sector in order to enforce the guidelines, as indeed the big European utilities are begging the Commission to do.

Energy security

Energy security has traditionally been the weakest of the EU's three energy policy strands. The 2004 and 2007 enlargements have increased the case for strengthening it. The central and east European member states are keen for an EU energy-security policy to help them to avoid over-reliance on Russia, while bigger and more established member states generally prefer to deal with Russia bilaterally on energy issues. In the past, EU authorities have had little authority to involve themselves in securing energy supply. Only with the ToL did they get formal competence 'to ensure security of energy supply'. For the EU itself, energy security has habitually been more about gas, especially pipeline gas that locks customers into dependency on suppliers, rather than about oil, the supply of which can be more easily drawn from the global oil market. Instability within Middle East oil suppliers raises concerns for oil consumers in Europe, as elsewhere, but as mentioned in the Introduction these concerns are primarily dealt with in the wider forum of the IEA. The dependency concern about piped gas has created considerable interest, and some division, among EU member states about the possibility of Europe reviving its indigenous gas industry through replicating the US revolution in hydraulic fracturing, or fracking (see Box 14.2).

Issues and interests

The issue of energy security has gone up and down the ladder of salience within the EU depending on how easy it has been for Europeans to gain reliable access to energy supplies and on the variations in energy, especially oil, prices. In the 1970s, there were two moments of 'crisis' related to the actions of Middle East oil producers.

BOX 14.2 Shale gas in Europe: a role for the EU?

Until recently, the EU institutions have stayed largely on the sidelines in the shale gas debate, as have the US federal authorities, and for the same reasons—EU member states, like individual US states, play the main regulatory role and are divided on the ‘fracking’ issue. France and Bulgaria have passed legal bans on hydraulic fracturing, so far the only known commercial way of extracting shale gas or oil, while Poland has forged ahead and accounts for almost all of the fracking that has taken place in the EU. Several other governments, notably that of the UK, profess strong interest in exploiting their shale potential, but local opposition has constrained drilling. Reticence to act at the EU level also stems from the fact that the ToL clearly leaves it to member states to decide their energy mix. But the EU has been drawn in because the shale gas issue has become part of a wider debate about the perceived conflict between Europe’s competitiveness and its unilateral climate policy. In this debate, the contrast is made between an economically depressed Europe and a US that has both embraced shale gas and avoided saddling itself with a burdensome climate policy. The particular fear is that Europe’s energy-intensive industries will migrate to the US in search of cheaper energy input for manufacturing.

In 2012–13, the EP passed several resolutions which broadly affirm the right of member states to exploit shale gas, but call on them to do so under strict regulation that might require amending or extending existing EU environmental legislation. With existing directives on mining waste, water protection, water depletion, air pollution, and bio-diversity, the EU has environmental legislation covering almost all possible side effects of fracking for shale gas (Buchan 2013). However, in order to ensure consistency in the implementation of this legislation and a level playing field in fracking operations, in January 2014 the Commission (2014c) laid out, in the form of a formal recommendation, a list of measures that it expected member states to take to address health and environmental risks. It said it would review the application of the recommendation after eighteen months, and if the recommendation was ignored, new legislation might be proposed.

In subsequent years European consumers relaxed as new sources of oil and gas were discovered, including in Norway and the UK, and supplies seemed to be more reliably available. In recent years, however, concerns about energy security have re-emerged as, on the one hand, reserves in the EU have been depleted and, on the other hand, the doubts about the reliability of foreign suppliers, especially Russia, have increased.

The Commission has historically been a *demandeur* in energy security, seeking a role that has not been granted by the member states, particularly regarding negotiating with any specific supplier country. Its approach has been general: to police the level of emergency oil stocks; to hold energy dialogues with countries or groups of countries (e.g. the Organization of Petroleum Exporting Countries (OPEC)); and to try to export EU energy rules and policy to neighbouring countries through such mechanisms as the Energy Charter Treaty and the Energy Community (see the following section).

The weakness of EU energy-security policy is commonly put down to the fact that among the older member states, the bigger ones prefer to conduct their own foreign energy policies. In relation to Russia, it should be pointed out that energy is only part of the bilateral foreign policies that countries such as Germany, France, and Italy conduct with Moscow. Moreover, the energy element of these foreign policies—though backed by governments—is carried out largely by leading national champion companies, such as Germany’s Eon, Gaz de France, and Italy’s Eni, which have long-term contracts with Russia’s Gazprom, because both sides see this as being in their interest. So the weakness of EU energy-security policy vis-à-vis Russia stems in part from a wider weakness in Europe’s common foreign and security policy (see Chapter 18).

It is an open question whether having a major oil or energy company really contributes to a country’s feeling of energy security. But the fact is that, while not all large EU states have an oil major, none of the smaller states do. Smaller states are therefore more interested in the EU having a common external-energy-security policy and speaking with one voice. Where the central and east European member states differ from other smaller states is that they want this voice, when directed at Moscow, to be a tough one. The central and east European member states still carry a strong anti-Russian animus from their days as forced members of Soviet institutions and alliances. Among this group the three Baltic states are in a unique position, because they are still linked to the Russian electricity grid, and not yet connected to the main EU grid. The European Council of February 2011 committed the EU to ending this energy isolation of the Baltic states by 2015.

Energy security is not a universal concern for European energy providers. The electricity sector is more concerned about network reliability and stability in the growing influx of intermittent renewable energy sources such as wind power (discussed in the next section on climate policy). The gas sector, which depends overwhelmingly on foreign gas and is tied to inflexible supply lines from abroad, by contrast, is very sensitive about energy security. This concern persists even though shipments by sea of liquefied natural gas (LNG) to Europe are increasing. Concerns about energy security contributed to the gas industry’s hostility to the Commission’s OU proposals, which threatened to make the companies sell their gas-transport and logistics facilities. Not only have the gas companies wanted to hold on to their pipelines, but many of them have also sought to raise the proportion of their gas sales that they can cover with gas from their own upstream assets, as insurance against gas shortages or price spikes. This has tended to incline Europe’s gas companies against supporting a collective EU energy-security policy, if that were to make it harder for them to compete with each other for the lease of upstream assets from gas-producing states around Europe, such as Algeria and Russia, and, in the past and probably in the future, Egypt and Libya.

Overall, therefore, the discussion of energy security is marked by an untidy patchwork of different concerns and conflicting interests. These do not easily coalesce around collective and consistent European interests or yield a clear priority list of issues to be pursued.

Driven by events

In energy security, there is a gap between potential (what EU states could do together) and performance (what they actually do together). It is also difficult to characterize in terms of the EU's usual policy modes. The EU has taken some energy-security decisions—for instance, the 2004 Gas Security Directive (2004/67/EC), the 2005 Electricity Security Directive (2005/89/EC), the 2010 Gas Security of Supply Regulation (994/2010), and the establishment in 2011 of the Gas Coordination Group (representing government and Commission officials, regulators, and gas industry representatives)—in its traditional regulatory mode.

In terms of its grand design, however, EU energy-security policy is harder to categorize. It hardly falls into the category of policy coordination, because few member states have formal policies to coordinate. Most, if not all, member states would subscribe to the general desirability of having a diversity of energy types and energy sources. This is particularly the wish of Bulgaria, Estonia, Finland, Latvia, Lithuania, Romania, and Slovakia, which are entirely dependent on Russia for their gas imports. But only Spain has had a formal limit (60 per cent) on the maximum amount of gas that it can import from any one country, which was set in 2000 and corresponded to the level of Spain's imports from Algeria at the time (these have since proportionally declined). National energy-security policies tend to be just the random result of the accretion over time of decisions on energy mix and sourcing.

Nor can EU decision-making in energy security be remotely described as intensive transgovernmentalism in or outside EU institutions. Until recently, member states barely talked to each other about energy security. Nineteen member states can discuss energy-security issues in the IEA, but their decisions there on security of supply relate only to emergency oil stocks.

Events have tended to be the driver in energy security. The first measure to address oil security, the 1968 Oil Stocks Directive (68/414/EEC), which required the holding of minimum reserves, was taken well before the build-up to the first oil shock of 1973–4. That price-and-shortage shock prompted further legislation in the 1970s, but this was really to implement the regime for oil crisis management instituted by the IEA. This regime helped the EU to weather the second oil shock of 1979–80, which from the mid-1980s was followed by a long period of relative calm, even price decline, in energy markets that lasted until the long run-up in oil prices started from 2000.

The Soviet Union's collapse in 1991 jolted the EU into creating the Energy Charter Treaty (ECT). It was designed to create a legal framework for cross-border investment and trade in the energy sectors of the countries of the former Soviet Union, though it was dressed up as a wider international agreement and has more than fifty signatories. The ECT was an interesting attempt to export EU policy to countries from which the EU imports energy. It has, however, been only a limited success, not least because the most important target country, Russia, has not ratified the treaty or a subsequent protocol on gas transit. Gazprom objected to the transit provisions of

the ECT, which it felt threatened its effective monopoly control over the flow of gas in Russia and the flow of gas from central Asia across Russia.

The EU has since exported its energy policy successfully in another direction. In 2005 it set up the Energy Community for south-eastern Europe to include the west Balkan countries of the former Yugoslavia, as well as Albania and, until they joined the EU, Bulgaria and Romania. The original aim of this Community—which obliges its members to accept EU energy-market principles and decisions—was to provide a framework for EU financial aid in repairing the shattered grid of the former Yugoslavia and to prepare states for eventual EU membership. Subsequently, it has come to be seen by Commission officials in Brussels as a valuable potential bridgehead for exporting EU energy-market policy and practice further east, to Turkey and beyond. The Commission has been keen to attract energy transit countries to the Energy Community, and of two countries that are key to the transport of pipeline gas to Europe, Ukraine joined in 2011, but not yet Turkey.

The 2004 and 2007 enlargements were thus a catalyst for policy on energy security. Central and east European states brought with them serious concerns about energy dependence on Russia and high expectations of the EU easing these concerns. These expectations were initially disappointed. When the Commission brought out its second Strategic Energy Review in November 2008 (Commission 2008*b*), it was a far more modest affair than the first strategic review in 2006 (Commission 2006*b*), which led to the new EU energy and climate programme. The energy-security aspect of this second review proposed revision of the 2004 Gas Security Directive, updating of oil-stocks policy to approximate to IEA practice, and greater EU involvement in planning and supporting energy infrastructure, including new pipelines to bring Caspian-region gas to Europe as an alternative to Russian supply. But to turn these proposals into action, it took the serious disruption of Russian gas supplies to much of south-eastern and central Europe in January 2009, as well as the impact of the ToL, with its first-time mentions of ensuring 'security of energy supply' in the EU 'in a spirit of solidarity'. The result was passage of the 2010 Gas Security of Supply Regulation (994/2010) which imposed requirements for larger gas storage and more gas pipe interconnections between member states, and the formal setting up in 2011 of the permanent Gas Coordination Group to deal with any gas security issues or crises. The acute political crisis in EU–Russian relations caused by Russia's behaviour in Ukraine in 2014, and the consequent threat to the supply of Russian gas to Europe through Ukraine, has also spurred further efforts to improve the Union's resilience to external energy shocks over Ukraine, and to diversify sources of energy imports away from Russia. Following Germany's decision, in the wake of Japan's 2011 Fukushima nuclear disaster, to accelerate its exit from nuclear power without consulting any of its EU neighbours, an Electricity Coordination Group was also set up, primarily to discuss any national energy-mix decisions that might impact EU partners.

To sum up in one sentence, the EU was ill-prepared for the implications of enlargement for its energy security, but events finally forced energy security on to the top of the EU agenda and into the ToL.

Climate change

The third strand of EU energy policy, climate change, is arguably the one in which the EU has shown the greatest ambition. EU policy-makers see themselves as pioneers in developing both international and domestic measures to mitigate climate change, especially through the part they played in negotiating the Kyoto Protocol and its implementing provisions and the role it has tried to play in the negotiation of a follow-on international climate agreement (Sbragia 2000; Lenschow 2005). Ambition to lead internationally (see Chapter 13) has translated into an effort to lead by example and thus to ambitious internal targets for reducing greenhouse gas emissions. Because of energy production's significant contribution to greenhouse gas emissions, this has had major implications for internal energy policy. However, the EU has found it very difficult to adjust its key climate-policy instrument, the Emissions Trading System (ETS), to the reality of Europe's prolonged economic downturn, and the price of carbon traded on the ETS has fallen too low to change the behaviour of either electricity generators or users. In January 2014, the Commission (2014b) proposed new emission targets for 2030 and a reform of the ETS.

Issues and interests

The Commission has been particularly entrepreneurial with regard to climate change. Internally, it managed to reverse some initial European scepticism about using a cap-and-trade system to control carbon emissions, which involves putting a reduced (and gradually declining) cap on emissions, issuing permits for emissions up to that overall cap, and allowing trading of these permits. In 2003, the EU created the ETS (Directive 2003/87/EC 'establishing a scheme for greenhouse gas emission allowance trading within the Community') and turned it into the central instrument for implementing the EU's Kyoto obligations.

Externally, the Commission exploited the US rejection in 2001 of the 1997 Kyoto Protocol by effectively taking over leadership of international efforts to combat climate change (see Chapter 13). Most member states shared the Commission's desire for EU leadership in the United Nations climate negotiations. Consequently, the member states' governments have by and large acquiesced in the Commission's redesign of climate-change policies, challenging its detail more than its principles. The publication of the Stern Review (2006), which focused on the economics of climate action and showed the pay-off of early action to combat global warming, may have constituted a critical juncture at which there was a paradigm shift to put climate change ahead of other concerns. Indeed, in some member states governmental portfolios were rearranged by collocating the relevant energy and environmental ministries under the same minister, as France did in 2007 and the UK in 2008, in order to improve policy-making coherence. The EP, where Greens are well represented, is also strongly committed to combating climate change.

That said, climate-change policies evoke different reactions within governments. Energy or industry ministers tend to want to temper the climate-change enthusiasm of their environment ministerial colleagues with realism about the competitive effects of making European industry pay for stringent carbon controls. The newer member states have tended to be less enthusiastic about taking radical measures to address climate change, worried about the cost implications for their relatively poor and energy-intensive economies. Moreover, some of them are heavily dependent on coal for electricity generation; coal generates 95 per cent of Polish power, for instance.

Energy-intensive industries—particularly aluminium, cement, and steel—concerned about foreign competition, particularly amid the economic downturn from 2008, are very concerned about the implications of the increased energy costs associated with addressing climate change because their competitors outside Europe would not face the same costs.

There were two particular drivers to the development of the EU's climate-change-related energy policy in 2008. One was the desire for leadership in the negotiation of a successor agreement to Kyoto, which, it was hoped, would set binding emissions targets from 2012. The other was to prevent 'gaming' of the allocation system by national governments for the benefit of their own industries. In January 2008, the Commission (2008a) proposed a set of binding targets for reductions in emissions, increased use of renewables, greater energy efficiency, and a more centralized allocation of permits under the ETS.

External ambition and internal compromise

The major feature of the negotiations leading up to the EU's December 2008 climate and renewable energy agreement was the revolt of new member states over its cost for their relatively poor economies. In its January 2008 blueprint, the Commission had tried to head off this revolt by proposing that central and east European member states should get: (1) less demanding targets for increases in renewables with several concessions; (2) permission to increase emissions in sectors outside the ETS (mainly transport, building, agriculture, and services), in contrast to emissions cuts for richer, older member states; and (3) a slightly larger share of ETS allowances to auction than their share of economic output would warrant.

But the central and east European member states made clear during the course of 2008 that they wanted more. They organized within the Council and negotiated as a bloc with the French presidency. Eventually they settled after getting two more concessions—a further increase in ETS auction revenue and transitional free allowances for their power sectors. However, central and east European states still face adjustment problems to the new climate and green-energy policies that accelerate the adaptation these countries have already had to make from the energy wastefulness of their communist past.

In the December 2008 agreement, the Commission did succeed in securing greater centralization of the allocation of carbon permits under the ETS. Under the

agreement, allocation moved in 2013 from national governments to a mixture of market auctioning and allocation by the Commission.

However, the Commission largely failed in its attempt to design a parallel pan-EU system for trading renewable electricity. This was not totally surprising. While the Commission had a fairly clear field in designing the ETS—only the UK and Denmark had prior national emission schemes—it had, in the trading of renewables, to steer around twenty-seven national support schemes, often dear to their governments' hearts. The EP largely strongly supported the Commission's proposals, but they too disliked the Commission proposal for free cross-border trade in renewable electricity because of its probable effect in disrupting generous green-power subsidies. The opposition of the EP, supported by several key governments in the Council, meant that restrictions on trade in renewables were retained. Nonetheless, the initiative also sets differentiated renewable-energy targets for all twenty-seven member states, despite ToL language letting countries keep control of their energy mix. The agreement also sets a common bio-fuels target for all (see Box 14.3), despite MEPs' criticism that this would aggravate food shortages and price surges by encouraging crop-based fuels. MEPs did secure changes to encourage renewable road fuels not based on food crops.

The economic downturn during 2008 also affected the strength of support amongst the old member states, although primarily in the form of seeking special treatment of selected sectors. It caused Chancellor Angela Merkel's German government—with very separate environment and economics departments under ministers from different parties—to insist that major exporting industries, such as Germany's, should continue to have free carbon permits as long as they remained in danger of losing market share to foreign rivals with no carbon constraints. The downturn also fuelled similar demands from poorer central and east European states for free allocations, especially if, like Poland, they were heavily dependent on dirty coal for power generation.

BOX 14.3 The EU energy and climate change goals for 2020, agreed in December 2008

- 20 per cent reduction in greenhouse gas emissions by 2020 compared to 1990; up to 30 per cent in the case of a matching international agreement;
- 20 per cent renewable share in total energy consumption by 2020, based on binding targets for individual member states;
- 10 per cent minimum share for renewable energy in all forms of transport. Second-generation bio-fuels, made from wood and waste and that do not compete with food, and electricity to power cars count extra towards this target;
- 20 per cent improvement in energy efficiency by 2020 compared to business-as-usual projections. This is not a binding target nor will it mean a cut in overall energy use.

Citing the problems of recession and foreign competition, European industry has lobbied effectively for a gradual phasing-in of paid carbon allowances, under a system whereby companies would have to buy their carbon allowances at auction, instead of being given them free, in the reform of the ETS. The electricity industry in the old member states accepted early on that it would have to pay for its permits in the future. Not being exposed to competition from outside the EU, the power sector can pass on the cost of permits to its EU customers without fear of losing market share. This, of course, raises costs for its customers, especially electricity-intensive industries that are exposed to extra-EU competition, and therefore, if they pass on all of their higher energy bills to customers, they risk losing market share or jobs to non-EU competitors. So in the reform of the ETS they lobbied for, and won, the promise that they would continue to receive free allocations of emissions permits. Thus, while most of the broad intent of the Commission's proposal survived in the December 2008 agreement, a number of compromises were made to diminish the economic impact on some actors, be they member states or industries.

However, all the pressures that had made the 2008 reform of the post-2012 ETS a considerable feat of negotiation had magnified by 2014. By then the problem on the ETS was not free allowances, but simply far too many. Within one year, 2012, the surplus of allowances hanging over the trading system had doubled from 1 billion to 2 billion allowances, for a variety of reasons. Demand for allowances was down due to recession, while supply was inflated by an influx of international credits, by companies carrying over unused allowances from previous ETS phases, and by the Commission selling some reserve allowances in order to fund other energy objectives such as carbon capture and storage.

Persuading member states to make an extra effort, and to pay an extra price, would have been far easier if the EU still had a sense of leadership in international climate negotiations. But this sense largely evaporated at the 2009 climate summit in Copenhagen (see Chapter 13). The EU arrived there with a firm legal commitment to cut its own emissions, which it hoped would form the keystone of a new binding international treaty. However, it found itself completely bypassed by the US and leading developing countries, which rejected any binding commitments in favour of allowing countries to offer voluntary emissions reductions as they saw fit. At the 2011 Durban climate summit, the EU regained some ground in helping to broker an agreement aimed at producing in 2015 an emission-reduction deal of some unspecified legal force, but which would not take effect until 2020. Yet, at subsequent climate summits in Doha in 2012 and Warsaw in 2013 the EU had little to show for its efforts to accelerate progress towards a 2015 deal.

For several years after Copenhagen, therefore, the Commission found little enthusiasm for an extra climate effort on Europe's part. Eventually, the Commission came up with a short-term solution known as backloading, for which it won hard-fought approval from the Parliament in 2013. This backloading will not reduce the number

of allowances on the ETS, but merely delays auctioning 900 million of them until near 2020.

Struggling to keep its own carbon-trading system patched together, the EU has scaled down its aspirations for international climate leadership. For instance, the EU had boldly decided to require, from the start of 2012, all international airlines to obtain ETS carbon allowances for all and any of their flights ending in or originating from European airports. It has since suspended this requirement following an outcry from third countries such as the US and China, pending the outcome of international aviation talks on emissions. Structural reform of the ETS is clearly vital, if the EU is to have real credibility in the next major round of world climate talks in 2015.

In an effort to bolster the long-term credibility of the ETS, the Commission (2014*d*) proposed in January 2014 the creation of, from 2021 on, 'a market stability reserve' to regulate automatically carbon-allowance liquidity in the ETS; allowances would be put into the reserve in times of excess liquidity, and returned to the market at time of tighter liquidity. This reform came as part of the Commission's (2014*b*) proposed energy and climate targets for 2030, designed to provide policy certainty to investors in low-carbon energy and to set out Europe's contribution to the global climate negotiations in 2015.

The main proposed targets are for a 40 per cent reduction in emissions by 2030 compared to 1990, and for a EU-wide binding target for a 27 per cent renewable share in total energy consumption. The Commission claimed that the 40 per cent emission target was compatible with the long-term goal of the EU, along with other developed economies, to cut emissions by 80–95 per cent by 2050, but was criticized for its lack of ambition by environmental groups. The latter, however, reserved their main criticism for the Commission proposal to replace, post-2020, national renewable targets with a relatively low, single EU-wide target that posed evident problems of enforcement. The Commission said the switch was to give member states more flexibility in reducing emissions, and it proposed a new 'governance framework' based on Commission supervision of national energy plans. The idea is explicitly borrowed from the European Semester process of Commission supervision of national fiscal and economic policies. In policing policy in this area, the Commission has, effectively, an external ally in the capital markets which quickly penalize governments showing fiscal laxity. Whether the same system can be translated to energy and climate policy, where there is no instant danger for governments letting their national policies stray from the EU or Commission line, is doubtful.

To sum up with regard to climate change, the EU is acting in what might be called a 'revolutionary regulatory mode'—seeking to change the way Europeans live, produce their energy, make their products, heat their houses, and take their holidays, and by taking the lead in climate-change negotiations seeking to some extent to change the rest of the world's lifestyle. As it has turned out, many Europeans were not ready for the revolution, and the EU's international partners have been similarly wary of accepting the EU's global climate leadership.

The EU showed some capacity to learn from the mistakes in the early phases of the ETS when it came to designing later stages. But climate-change policy depends on a tricky trade-off between economic and environmental factors, requiring complex brokering of competing interests within both EU institutions and national governments, a process which is susceptible to economic cycles. The difficulty of adapting the ETS to new realities is a reminder that EU legislation is as hard to modify as it was to pass in the first place.

Conclusion

EU energy policy has developed unevenly because it is part economic policy, part environmental policy, and part security policy. Market-making came first, but it took several decades before environmental policy took off, and the EU is still stumbling over security policy. Future energy policy will also develop unevenly, with different policy strands moving at different paces and also becoming more intertwined. An increasing threat to the goal of a geographically unified energy market achieved through liberalization is the existence of twenty-eight national renewable-energy subsidy schemes and the emergence of national-capacity subsidy schemes to guarantee back-up for these renewables. These schemes are a challenge to market unity because they favour national energy providers, and to liberalization because they are state interventionist in nature. However, they may be inevitable if Europe is to meet its climate goals and deal with a potentially wider risk of the lights going off than was posed by the occasional cut-off of Russian gas in the past. One solution is for the EU to redouble its traditional focus on improving cross-border energy infrastructure so that member states could trade more renewable energy among themselves and rely more on neighbouring states in times of energy shortage. This would make it easier to regionalize, and eventually Europeanize, these subsidy schemes that may become a lasting feature of the low-carbon economy.

As for climate change, the EU is unlikely to recover that first-flush enthusiasm that came from inventing and implementing the first international emissions trading system, until it finds that its leadership has some serious followers in the international community. Therefore a revival of EU climate policy requires not only some structural reform of its ETS that leads to a permanently tighter adjustment downwards of the supply of allowances to achieve real reductions in emissions. It also depends on the EU recovering its nerve about economic competitiveness, which may require either a shale gas revolution in Europe or a waning of the shale gas revolution in the US. Most of all, it will depend on the world's two largest emitters, the US and China, submitting themselves to some form of carbon restraint.



FURTHER READING

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CHAPTER 15

Justice and Home Affairs Institutional Change and Policy Continuity

Sandra Lavenex

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Summary

The control of entry to, and residence within, national territory, citizenship, civil liberties, law, justice, and order lie very close to the core of the state. Nevertheless, the permeability of borders within the European Union (EU) has prompted cooperation among governments, and in fewer than twenty years, justice and home affairs (JHA) have moved from a peripheral aspect to a focal point of European integration. Given the judicial and legal implications of rising cross-border movement, cooperation among national agencies concerned with combating crime, fighting terrorism, and managing borders, immigration and asylum has thus gradually moved from loose

(continued...)