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THE DEVELOPMENT OF ENERGY POLICY IN THE EUROPEAN UNION

CONTINUITY, CRITICAL JUNCTURES AND CHANGE

Ingmar Versolmann

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The Development of Energy Policy in the European Union

This book uniquely details the longer-term integration of energy policy in the EU, from its inception to the contemporary 'Energy Union', whilst also bringing it fully up to date regarding its place in current climate discussions, the European Green Deal, REPowerEU, the European Climate Law, and the struggle to achieve net zero.

Analysing the policy area from a perspective that explains current developments through economic processes, path dependence, and political decisions over time, the book identifies the factors and mechanisms that enable and constrain actors and energy policy development. It contributes to the broader debate about institutional design and (European) integration in the energy sector, examining key legislation, the motives of actors complying with institutional rules, and the idiosyncratic factors that contribute to continuity and account for change.

This book will be of key interest to scholars, students, and practitioners/policymakers interested in European energy policy and energy/environmental governance, and more broadly to European politics and theories of European integration, international political economy, public policy, international organisations, and global governance.

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Continuity, Critical Junctures and Change

Ingmar Versolmann

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Abbreviations and acronyms

ACER	Agency for the Cooperation of Energy Regulators
CAP	Common Agricultural Policy
CBAM	Carbon Border Adjustment Mechanism
CEECs	Central and Eastern European Countries
CFD	Contracts for difference
CFSP	Common Foreign and Security Policy
CHP	Combined Heat and Power
COREPER	Committee of the Permanent Representatives of the Governments of the Member States to the European Union
CORSIA	Carbon Offsetting and Reduction Scheme for International Aviation
DGs	Directorates-General
DSM	demand-side management
DSO	Distribution System Operator
EC	European Community
ECCP	European Climate Change Programme
ECJ	European Court of Justice
ECSC	European Coal and Steel Community
EEA	European Economic Area
EEC	European Economic Community
EED	Energy Efficiency Directive
EEU	Effective and Efficient Unbundling
EFSI	European Fund for Strategic Investment
EGD	European Green Deal
EGDIP	European Green Deal Investment Plan
ENNOH	European Network for Network Operators of Hydrogen
ENTSO-E	European Network of Transmission System Operators for Electricity
ENTSO-G	European Network of Transmission System Operators for Gas
EPBD	Energy Performance of Buildings Directive
EPs	Emergency Plans
ESIF	European Structural and Investment Funds
ESR	Effort Sharing Regulation

EU	European Union
EU DSO Entity	European entity for distribution system operators
EU ETS	EU Emissions Trading System
Euratom	Treaty establishing the European Atomic Energy Community
GCG	Gas Coordination Group
GHGs	greenhouse gases
GOs	Guarantees of Origin
HI	Historical Institutionalism
ICAO	International Civil Aviation Organization
IEA	International Energy Agency
IEM	Internal Energy Market
IGA	Intergovernmental Agreement
ILUC	Indirect Land Use Change
ISO	Independent System Operator
ITO	Independent Transmission Operator
ITRE	European Parliament Committee on Industry, Research and Energy
JTM	Just Transition Mechanism
LCOE	Levelised Cost of Energy
LNG	Liquified Natural Gas
LULUCF	Land Use, Land-Use Change and Forestry
MEP	Member of the European Parliament
MEPS	Minimum Energy Performance Standards
MRV Regulation	EU Monitoring, Reporting and Verification Maritime Regulation
MSR	Market Stability Reserve
Mtoe	Million Tons of Oil Equivalent
NDCs	Nationally Determined Contributions
NECPs	National Energy and Climate Plans
NEEAPs	National Energy Efficiency Action Plans
NEETs	National Energy Efficiency Targets
NEMOs	Nominated Electricity Market Operators
NOC	National Oil Company
NRA	National Regulatory Authority
NTPA	Negotiated Third-Party Access
OECD	Organisation for Economic Co-operation and Development
OEEC	Organisation for European Economic Co-operation
OPEC	Organization of the Petroleum Exporting Countries
OU	ownership unbundling
PAPs	Preventive Action Plans
PCI	Project of Common Interest
PMI	Project of Mutual Interest
PPA	Power Purchase Agreement
QMV	qualified majority voting
RCCs	Regional Coordination Centres
RED	Renewable Energy Directive

RES	Renewable Energy Sources
RFNBO	Renewable Fuel of Non-Biological Origin
RRF	Recovery and Resilience Facility
RRPs	Recovery and Resilience Plans
RTPA	Regulated Third-Party Access
SB option	single buyer option
SEA	Single European Act
SEIP	Sustainable Europe Investment Plan
SEM	Single European Market
SOR	System Operation Region
SoS Regulation	Security of Supply Regulation
TCE	tonne of coal equivalent
TENs	Trans-European Networks
TFEU	Treaty on the Functioning of the European Union
TOP contracts	Take-or-pay contracts
TPA	third-party access
TSO	Transmission System Operator
TYNPs	Ten-Year Network Development Plans
UNFCCC	United Nations Framework Convention on Climate Change
WTO	World Trade Organization

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1 Introduction

Integration of energy policy in the European Union

Introduction

Energy governance within the European Union (EU) is characterised by an interconnected policy framework addressing economic competitiveness, security, and sustainability. This book offers a thorough examination of the key themes shaping energy policy in the EU and the strategies that underpin its drive from initial policy proposals in the 1950s towards highly ambitious contemporary initiatives in the form of the European Energy Union and the European Green Deal. With measures to complete the internal market and the goal to phase out the EU's dependence on Russian gas imports in the context of the Russia-Ukraine war, and multiple gas disputes unsettling the security of a stable supply of energy, energy has become one of the most prominent issues on the agenda of the EU. During his tenure, European Commission President Jean Claude Juncker placed significant emphasis on Europe's energy policy, displaying a staunch commitment to transforming energy legislation into a cohesive European Energy Union (Juncker 2014: 5–6). This vision was later complemented by the von der Leyen Commission's introduction of policy measures under the European Green Deal (EGD), which aspires to achieve climate neutrality by 2050 (European Commission 2019). Further reinforcing this direction, the REPowerEU framework was introduced with the aim of rapidly diminishing the EU's reliance on Russian energy imports (European Commission 2022b). These efforts resulted in the establishment of a European Energy Union, which, through its comprehensive policy strategy, holds the potential to profoundly shape multiple policy domains and profoundly shape the *acquis communautaire*. However, this ambitious task of creating a holistic energy policy was not easy to accomplish and is still underway. The Energy Union and its associated policy frameworks, as a contested project of the EU, have been one of the ultimate stress tests of political and economic integration. Much has been achieved on the internal and external dimensions of energy policy during the past decade. However, many issues remained in limbo between the aspirations of supranational institutions, national preferences of Member States in the intergovernmental domain, and geopolitical realities posed by third-country suppliers to leverage their own political ends. To tackle various pervasive shortcomings, the Commission proposed plans in 2015 to deploy a fully integrated internal market; ensure the security of

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supply; improve energy efficiency; decarbonise the economy; and implement a research, innovation, and competitiveness strategy (European Commission 2015a, 2015b, 2015c). Moreover, aspirations within the energy policy framework have been further enhanced by the European Green Deal (EGD), introduced under the Von Der Leyen Commission (European Commission 2019).

The EGD, which was presented on 11 December 2019, combines a series of mutually reinforcing measures and initiatives that aim to achieve climate neutrality in the EU by 2050 (meaning there will be no net emissions of greenhouse gases in 2050). It is based on a strategy to endorse a circular economy, in which economic growth is decoupled from resource use to transform the EU into a fair and prosperous society. It aims to protect, conserve, and enhance the EU's natural capital, and protect the health and well-being of citizens from risks related to the environment. This transition towards a sustainable economy should be done in a just and inclusive manner. It covers all sectors of the economy – energy, industry, buildings, transport, and agriculture – and is reinforced by the European Climate Law under Regulation (EU) 2021/1119 (EP/Council 2021), published on 9 July 2021. The European Climate Law sets the legally binding EU-wide target of net-zero greenhouse gas emissions by 2050, and an interim target of at least 55% by 2030 compared to 1990 levels.

As the above illustrates, energy policy has gained ample significance over the past decade as major decisions have been implemented, and researchers have analysed different driving factors for, and obstacles to, further policy developments and integration in this area (see review of key themes in energy policy in this chapter). This book therefore contributes to a growing body of work on the politics of European energy policy and offers a distinctive perspective by analysing 70 years of EU energy policy integration, from its inception to legal provisions introduced in response to Russia's invasion of the Ukraine. What sets it apart from other contributions is the unique approach that views policymaking as a process deeply influenced by past decisions. Legislation doesn't materialise out of thin air and at a specific point in time; rather, it is shaped by decisions made previously. Consequently, legal provisions change only gradually. The book seeks to answer the question *under what conditions does integration occur in the policy area of energy over time?* Moreover, the book explores to what extent integration has been accomplished and which shortcomings can be identified that might become future target areas to coherently integrate energy policy. In addition to the overarching question, it also addresses the following sub-questions to add analytical depth to the analysis: why were external issues not addressed in the 'early days' of energy policy? Why has integration on the internal dimension progressed so slowly? What are the reasons for the (comparably) swift development of energy legislation in the past decade?

Historical Institutionalism (HI) serves as the theoretical framework of this research. EU scholars have increasingly utilised HI to analyse temporal aspects of European integration, including feedback mechanisms, lock-ins, and path dependence (Pollack 2008; Fioretos et al. 2016; Lockwood et al. 2017; Verdun 2016). The approach is recognised for its potential to explain specific characteristics of

the policymaking process, drawing from both macro-historical insights (HI) and micro-foundational (rational choice) assumptions (Thelen 1999). The latter is actor centred and conceives outcomes as the actions and strategic behaviour of individuals, whereas the former stresses the assumption that interests are structurally given (Thelen 1999). Thelen (Thelen 1999) argues that a cross-fertilisation should take place, whereas researchers might "strive for creative combinations that recognize and attempt to harness the strengths of each approach" (Thelen 1999: 380). Pollack (2008) goes even a step further as he "does not consider historical institutionalism as a distinct and competing school of thought, but rather as a particular variant of rational-choice theory emphasizing the importance of time, feedbacks, sequencing, and path-dependence in the study of politics" (Pollack 2008: 4).

Path dependence is a key concept in this volume, which suggests that 'lock-ins' hamper actors' abilities to amend policies once they are introduced and that the decisions and events of the past significantly influence the direction of future events or decisions, creating a kind of momentum or inertia that can be difficult to alter (Pollack 1996; Stacey & Rittberger 2003; Pierson 1996; Pierson 2004). In addition, norms and values are incorporated in the model to answer questions about the *preference formation* of different actors, reflecting a sociological approach (Bulmer 1998; Thelen 1999). This is particularly beneficial as many proposals and decisions on energy policy refer to ideational factors, like the notion of solidarity and trust between Member States. The decision to employ and incorporate both rational choice and sociological approaches is derived from Historical Institutionalism's ambition to stand between these two views, while placing an emphasis on temporal processes, and the role of historical events, context, timing, and sequences in shaping institutional development and political outcomes (Pollack 2008; Steinmo 2008; Wiener & Diez 2009). This choice is discussed in greater detail in Chapter 2.

Building on existing HI approaches, this book offers three significant theoretical contributions by developing a fine-grained and nuanced ontology of core concepts and a systematic approach to their operationalisation. Temporal processes including path dependence, critical junctures, increasing returns and positive feedbacks, institutional stickiness, and institutional lock-ins are concepts that are closely associated with HI to capture the phenomenon of institutional persistence and transformation (Arthur 1988; North 1990; Pierson 2000, 2004; Collier & Collier 2002; Capoccia & Kelemen 2007; Capoccia 2015; Scharpf 1988). They are used to answer the question of why and how institutions emerge, why institutions stay on a specific path over time, and how and when change is instigated to create a new institutional trajectory (Arthur 1988; Scharpf 1988; North 1990; Thelen & Steinmo 1992; Pollack 1996, 2008; Pierson 2000, 2004; Peters et al. 2005; Capoccia & Kelemen 2007; Fioretos et al. 2016).

Although path dependence is such a central component of HI, the literature can fall short regarding how to operationalise the concept and render these temporal processes visible. Thus, this book's *first contribution* is the development of a methodological model to overcome this shortcoming and proposes a way to operationalise path-dependent processes. It utilises a model consisting of feedback processes based on the notions of intended goals, policy output, and policy outcome.

Furthermore, coordination and learning effects also contribute to feedback processes, whereas learning within institutions is guided by a rationale that is embedded within, and shaped by, the institutional design. The *second contribution* of the book is its nuanced insight into the notion of critical junctures. It deploys a model which distinguishes between distinct forms of critical junctures, which in turn address different levels of the institution. It posits that critical junctures exist for the institutional matrix in its entirety, amending primary legislation in the form of treaty law in the EU. Critical junctures also exist as smaller events, which have an impact on a specific sector like energy policy but do not alter the institutional trajectory as a whole, only affecting secondary legislation. The *third contribution* of this research is the application of a framework that proposes that the logic of preference formation is rooted in the situational and institutional context, instead of predefined motivations for preferences by various actors. Choices are based on both rationality and calculated self-interest on the one hand, and normative and ideational factors on the other, depending on the situational context. According to the applied framework, the situational context is an important factor influencing these patterns, along with the proposition that the role of timing and the specific sequence of events determine the institutional trajectory.

These theoretical contributions are obtained through a comprehensive analysis of driving factors that sparked developments in energy policy. The Lisbon Treaty, which changed the requirements on how legislation is proposed and adopted, and the three Energy Packages, together with the creation of the Single European Market (SEM) through the Single European Act (SEA) (the internal dimension), will be central points of reference. Lisbon changed the voting rules in a wide range of policy areas, and energy policy per se became a formal competence of the EU. Hence, with the adoption of an energy chapter in the Lisbon Treaty, energy policy was explicitly brought into the remit of the EU for the first time (Duffield & Birchfield 2011: 5). This book sets out the factors that made this development possible and, from a Member State's perspective, desirable or even necessary.

The HI scholar sees the present as an outcome of sequential events from the past. In order to fully understand deeper integration of a policy area, or the absence thereof, it is paramount to embed past events into the analysis as contemporary policy developments are contingent on preceding incidents. Incorporating the past as an analytical reference point for the present is often inadequately addressed (or omitted entirely) when explaining contemporary policy developments. Hence, HI addresses this omission by understanding temporal processes in terms of institutional continuity and/or change. Consequently, it is worthwhile to assess the timespan when the predominant alignment of the EU was characterised by stark institutional inertia with respect to policy development in the energy sector – from the 1950s to the 1980s. This analysis furthers our understanding of the factors that lead to institutional lock-ins and lay bare predispositions and settings that impede deeper integration of the policy area. In particular, the analysis of factors that evoke institutions to be locked-in and immobilised is an expedient endeavour. In addition, the three Energy Packages, which were adopted between the 1990s and 2000s to create, and subsequently complete the internal energy market, also serve

as valuable evidence of incremental policy development on the internal dimension. The packages were the initial steps taken by the EU after the inception of the SEM programme (European Commission 1985) and a direct consequence of the SEA. Finally, the introduction of co-decision in the Lisbon Treaty informed further integrative steps in the field of energy policy, or put differently, made deeper integration possible, which is also analysed.

Both the internal and external dimensions of energy policy are intrinsically interwoven and, thus, should not be analysed separately. The internal dimension directly affects the external dimension and vice versa. For instance, in the context of the internal energy market, legal provisions, such as those delineated in the Third Energy Package (EP/Council 2009a, 2009b), necessitate the unbundling of energy suppliers from generators. As a consequence of these regulations, prospective investors from non-EU countries may perceive diminished incentives to engage with the European markets. The stipulated legal frameworks might not align with their strategic preferences, potentially acting as a deterrent to their market exploration. This in turn has a direct effect on the security of supply and the stability of the energy system. In addition, third-country suppliers might use the 'supply leverage' to exert pressure on EU's policymakers. The EU is heavily reliant on energy imports (European Commission 2022a), a disadvantageous situation that can be exploited by supplier countries to achieve political ends as exemplified by the energy crisis triggered through the war in Ukraine (European Commission 2022b). As put forward in this short example, an analysis of both dimensions and their interconnectedness enables a more comprehensive and holistic understanding of the policy area. Moreover, I incorporate exogenous factors and external shocks/constraints as possible critical junctures in the analysis (e.g. Russian/Ukrainian gas disputes, the oil crises in the 1970s, annexation of the Crimean Peninsula by the Russian Federation) to derive an explanation of actors' preference formation and investigate how ideas about deeper integration are generated due to external forces.

It should be noted that it was beyond the scope of this volume to analyse environmental policy and climate change in the context of energy policy, in tandem with market-driven legislation, due to the sheer volume of legislation. Nevertheless, the final chapter presents the exception by providing a comprehensive HI analysis of recent energy legislation under the European Green Deal, incorporating legislation addressing sustainability, environmental policy, and climate change. The breadth of legislation from the Coal and Steel Community to Euratom, the Single European Act to the Lisbon Treaty, up to the Energy Union, provided extensive empirical data for a longitudinal study. Adding an additional layer would have jeopardised the quality and depth of the analysis. However, one can posit that institutional stickiness also affects environmental policy in the context of energy policy. For instance, the phenomenon of carbon lock-in and the path-dependent processes of specific technological developments in renewable energy warrant further research.[1] Furthermore, environmental issues can be seen as another external factor/variable influencing policymaking in energy.

In summation, the contribution of this book to the existing empirical literature on European energy policy is its unique approach to gauging temporal processes

and its appraisal of the role of institutions *together with* different actors. This undertaking contributes to the structure/agency debate, deploying an in-depth understanding of institutional inertia, path-dependent processes, and critical junctures in accordance with European integration. A central focus of this research is a way to operationalise various degrees of institutional inertia, understood as the degree of institutional stickiness. An intriguing aspect of this analysis is the inherent fluidity of energy policy due to an ongoing discourse among Member States, the 'incompleteness' of the policy area and the demand of certain Member States for further integration, along the lines of more integrated policy fields like the common commercial policy, customs union, competition, monetary policy.

EU energy policy and its resistance to change

Energy policy has been an attribute of the European integration project from the very beginning, through the Treaty establishing the European Coal and Steel Community (ECSC Treaty 1951) and the Treaty establishing the European Atomic Energy Community (Euratom Treaty 1957). Although very ambitious in design, both treaties proved less effective than initially anticipated. Regarding the ECSC Treaty, regional integration was meant to serve as a means to secure peace in Europe by creating a common market for coal and steel. The rationale was to forge resilient economic and political ties between France and Germany to facilitate the reconstruction of Europe. The common market for coal and steel, the two commodities constituting the backbone of the industry at that time, would advance peace-building efforts through economic integration and mutual interdependence. Simply put, without coal and steel, there is no war. However, coal quickly lost its predominance due to a shift towards other energy sources like oil and natural gas.

The Treaty establishing the European Atomic Energy Community, signed in 1957, was established to create a community policy regarding the supply of nuclear power and to develop a potent nuclear industry (Matlary 1997). Nuclear power was conceived as a panacea for supply security and the strategic alternative energy source of the future, whereas coal was seen as the traditional fuel. The goal was to create a specialist market for nuclear power in Europe, to distribute nuclear resources equitably among the Member States, to ensure high safety standards, and to foster research in this field. The overarching aim was to promote the peaceful use of nuclear energy while limiting any potential military application. It also aimed to establish Europe as a notable player in the nuclear field amid the context of the Cold War and the rise of nuclear energy.

Nevertheless, Euratom also faced many obstacles: the promise of nuclear energy as a limitless, affordable power source was not fully realised due to technical difficulties, high costs of nuclear power plant construction, and political obstacles. The third treaty, known as the Treaty establishing the European Economic Community in 1957 (EEC Treaty 1957), was broadly aimed at constructing a common market within a 12-year period. Notably, it did not specifically mention energy. From a current perspective, it is remarkable how little focus there was on electricity and gas. This was owed to the fact that these energy sources were predominantly

distributed at a national level, with limited cross-border connections (Vedder et al. 2016).

Although energy policy could be considered part of the very core of the EU, it is a near-paradoxical situation that energy policy could have been more comprehensively and effectively integrated from the beginning, as was the case with other policy areas. Commission recommendations that were made between the 1960s and the 1980s, which explicitly asked for the creation of a common energy policy next to the coal and nuclear sectors (for instance, European Commission 1968; European Commission 1972; European Commission 1981), were "largely ignored by the Council and the Member States" (Maltby 2013: 438, see also: Kirchner & Berk 2010). That said, energy legislation was not wholly absent as regulations and decisions were implemented. As this book will illustrate, energy policy was somewhat stuck in a structurally induced gridlock due to certain adverse conditions posed by the institutional design and specific choices regarding the energy mix. The detailed examination of these challenging preconditions will take place in Chapter 3.

As stated, energy was part of the European project from the outset but was not supranationalised like other policy areas in the early years, such as the common commercial policy or the common agricultural policy. Moreover, energy markets were incorporated quite late into the internal market programme. From the 1950s until the early 1990s, energy policy successfully resisted various 'neofunctional' pressures – the specific impetus based on economic interdependence, which students of European politics might identify as causes for further integration. In the first 40 years following the creation of the EU, Member States considered energy a sovereign concern (McGowan 2008). Due to the vital importance of energy to economic performance and societal implications, issues surrounding energy markets and energy security arise as a fundamental backdrop in functioning economies and constitute pivotal issues for every EU Member State.

Simply put, without energy and a reasonable policy on energy, a sovereign state and its markets are simply not viable. And yet, while other core policies in the EU developed further, comprehensive integration did not occur in this area. Moreover, when integration was attempted in the 1960s up to the 1980s, it only achieved limited and relatively modest success. National solutions dominated the policy landscape, contrived through bilateral and intergovernmental agreements with supplier countries. Electricity and gas markets were monopolised, and National Oil Companies (NOCs) championed the national markets, which led to highly concentrated energy markets with no room to manoeuvre for external investors. There were few, if any, technical regulations and infrastructure plans, and the absence of physical interconnections and grids made trade between Member States cumbersome or simply impossible. Community action was not set out effectively until the 1990s (Maltby 2013).

The Single European Act (Council of the European Union 1987) initiated the creation of the Single European Market (SEM), slated for completion by 1992. This development ultimately incorporated the internal dimension of energy policy under the umbrella of the single market programme. As the first significant revision of the Treaty of Rome, the SEA allowed the EU to take a more ambitious stance on energy legislation. It introduced qualified majority voting (QMV) in the Council

(formerly unanimous voting) on market-related issues, afforded the Commission greater independence regarding legislative proposals, and granted the European Parliament more powers. Major decisions were implemented in the mid-1990s and 2000s relating to the internal energy market in the form of the First, Second, and Third Energy Packages but demanded further legal provisions as they did not prove to be effective enough to tackle various issues concerning the regulatory environment and the security of supply. On the external dimension, effective community policy was not laid out until 2010 – with an ineffective Council Directive concerning measures to safeguard the security of natural gas supply implemented in 2004 (Directive 2004/67/EC) (Council of the European Union 2004). This is surprising, given the salience of issues concerning the provision of supply security. However, there was a reluctance to give away information on how Member States conduct their energy policy regarding relations with third countries and under which contractual premises these bilateral agreements were made. Hence, legislative acts explicitly addressing external relations with third countries were absent. The aspiration was to govern energy relations with third-country suppliers through internal market rules, export EU legislation to trade partners via bilateral agreements and regional cooperation and adhere to the multilateral framework of the World Trade Organization (WTO). This governance style represents a strategy of setting standards and norms indirectly through trade agreements and partnerships rather than through direct diplomatic or political engagement. Therefore, the EU sought to incorporate (regional) energy markets in neighbouring countries into the EU internal energy market through bilateral agreements and energy trade initiatives like the Energy Charter Treaty and the Energy Community Treaty (Batzella 2017; Vedder et al. 2016; Maltby 2013; McGowan 2008).

This reticence to create a common approach to energy policy raises some important questions for understanding the policy area: Why has integration on the internal dimension, although formulated and initiated, progressed so slowly (and is still incomplete)? Why were external issues not effectively addressed in the 'early days' of energy policy? Why did the EU state the need for an Energy Union at a particular point in time and was able to successfully instigate the comprehensive policy framework? Research on the topic is particularly timely, given that significant legal provisions were made within the past 20 years, making data/sources accessible for academic scrutiny. This volume will help to understand the driving factors towards deeper integration in a contested policy area characterised by divergent interests of Member States, due to their respective energy mixes and historical legacies, and their expectations about how a common policy should be created and what it should comprise. Moreover, it investigates the factors that caused the institution to remain in considerable inertia for almost 40 years.

Key themes in EU energy policy

The following section provides an overview of existing literature that is relevant to this book, which can be divided into four categories: historical accounts and comprehensive volumes on the evolution of energy policy towards an Energy Union

(for the sake of brevity in some instances referred to by their editors); research that addresses the external dimension of energy policy; efforts to create and liberalise a common internal energy market; and the European Commission as a policy entrepreneur and driver of deeper integration.

Although the academic literature on the historical evolution of the policy field is relatively scarce, some scholars have been intrigued by the topic and used different approaches to analyse it. The first thorough assessment of energy policy in the ECSC, EEC, and Euratom was conducted by Lucas (1977). This comprehensive research is an invaluable account of the proceedings of various actors and institutions from the inception of the ECSC until the mid-1970s. The research meticulously depicts Member States' preferences regarding their policy instruments and considers the different energy sectors (coal, oil, gas, nuclear energy). Lucas ultimately argues that the most important crossroad was the missed opportunity to confide in petroleum products instead of blind faith in nuclear energy, which ultimately hampered deeper integration in the early days. The second invaluable book-length assessment of the policy area within the historical context was provided by Matlary (1997). By using competing theoretical perspectives, among them Neofunctionalism, Multi-Level Governance and Policy Network Analysis, she provided a comprehensive analysis of energy policy from the 1950s to the mid-1990s, emphasising the policy developments after the Single European Act. She identifies energy suppliers and Member States, with their specific historical legacies and diverging preferences based on economic reasons and security concerns, as the primary opponents of a common energy policy. However, Matlary stresses the fact that the energy sector became more integrated due to the single market programme. Addressing different dimensions of energy policy, Schubert et al. (2016) provide a thorough and holistic account of historical developments; the main actors concerned with the process of decision-making; the common internal energy market; climate change, energy efficiency, and renewable energy sources; and the external policies of the Union. Their research provides an overview of all the prominent themes in the energy sector, drawing from an impressive range of legislation, primary sources, and secondary literature. Buchan and Keay (2015) deploy a coherent analysis of the EU's endeavours towards a common energy policy and its plan to create an Energy Union. They address all the main themes of the policy field and conclude that a move towards more Europeanisation is necessary to avoid the renationalisation of energy policy. To this end, the authors call for a new overarching institutional arrangement under which Member States should concede more competences to the Union.

Another significant book-length contribution which analyses the path to, and the status quo of, the Energy Union is edited by Andersen et al. (2017). The volume analyses the stimuli and factors that contribute to the demand for an Energy Union, the security dimension of energy policy, policy tools at the EU's disposal, and the main actors that contest the Energy Union. The main argument promotes the proposition that the Union, although pursuing a liberal approach to international political economy, transformed its regulatory approach towards a regime that the authors call 'liberal mercantilism' to augment its power. In this respect, the Energy Union marks a crossroad away from an approach based on market-building and

competition (a pure liberal model) towards one in which the EU utilises its market power for political ends to increase energy security.

The second important group of relevant contributions for this book focus on energy security issues and, as an adjacent theme, the EU's relations with Russia and other major supplying countries (Winzer 2012; Kaveshnikov 2010). Winzer (2012) conducted a comprehensive assessment of existing literature on energy security to garner different conceptualisations of the term that allowed for a translation into quantifiable measures. As different conceptual frameworks led to stark variations in outcome, they highlight the need to carefully define the concept of energy security dependent on the research and proposed a narrower definition. Different dimensions of energy security in Europe are addressed in an edited volume by Szulecki (2018), providing a comprehensive contribution to the literature, which depicts the multitude of issues concerning internal dynamics and external policy challenges. Youngs (2009) focuses specifically on the foreign policy dimension of energy security by bridging three areas of the debate: market-based versus geopolitical strategies, the relationship of energy security contingent on the governance in producer states, and the EU's capacity to act as a foreign policy actor. The findings suggest that, although energy security gained in importance to the Common Foreign and Security Policy (CFSP) since the mid-2000s, divisions between Member States regarding the scope and nature of external action made it difficult for the Union to speak with one voice and attain predefined goals.

Similarly, Haghighi (2007) provides a comprehensive account of the internal and external measures concerning the security of oil and gas supply in Europe up to the mid-2000s, utilising case law and relevant legislation. The research also addresses the relations of the EU with the major oil- and gas-producing countries of Russia, the Mediterranean, and the Persian Gulf countries. Following Regional Security Complex Theory and gauging the pros and cons of regional and interregional energy cooperation, Kirchner and Berk (2010) propose that a comprehensive common energy policy and greater European cooperation can be expected. This is due to the liberalisation of energy markets, efforts to introduce a super grid of power supplies, and the spin-off from environmental policy. However, EU-Russian energy relations will stagnate rather than improve. From a rational choice perspective, it has been shown that aggregated rational self-choices of Member States steer EU collective action towards Russia (Bozhilova & Hashimoto 2010). Situated in an Intergovernmentalist approach, Pointvogl (2009) argues that there has been a shift in priorities in energy policy towards emphasising supply security. The main drivers for deeper integration are Member States' perceptions of energy supply security, which is, in turn, significantly shaped by energy business considerations. These factors shape and influence the willingness of Member States to integrate energy policy further and implement existing legal provisions, most significantly regarding the creation of the internal energy market. Utilising a regime theoretical approach, Padgett (2011) evaluates to what degree the EU's endeavour to diversify sources of supply and delivery routes is successful. The EU approaches potential energy partners across wider Europe within an institutionalised regime based

on the norms of the internal market. His findings suggest that energy consumers in the EU's neighbourhood are willing to implement multilateral institutions, but asymmetries of interest and regional geopolitics constrain cooperation with energy producers. Drawing from the literature on the EU as a civilian power and from a system of governance perspective, Lavenex (2004) suggests that the EU should be conceived as a polity in the making, with its own perceptions of roles, responsibilities, and threats. Against this backdrop, the EU's neighbourhood policy serves as an external governance tool in energy policy through which the EU disseminates parts of its norms, rules, and policies. However, using a new institutionalist framework and the notion of socially constructed ideas, Kuzemko (2014) argues that the market liberal approach is not the only influential factor for the evolution of energy policy and is contested by the ability of ideas to be influential in energy matters. Ideas are important explanatory variables concerning relations with Russia that go beyond materialist explanations of deteriorating relations based on Russia having resource assets (conducting incorrect market reforms) and the EU's role as an energy importer. Here, Russian energy governance changes are not the product of superior fuel assets and power politics, but the consequence of embedded ideas about the socioeconomic role of energy.

Another prominent theme in the literature addresses the internal market. Scholars agree that efforts to liberalise energy markets are inherently interconnected with the external dimension. Completing the internal market, and in this context, the full unbundling via the implementation of the Third Energy Package was defined as a measure not only to enhance energy security but also to align Member States' preferences towards third countries. Moreover, the creation of real gas markets with solidarity provisions would diminish Gazprom's ability to play Member States off against each other (Grätz 2009). Similarly, market liberalisation was identified as the momentum for further integration, a principle of internal policymaking and energy diplomacy. As the internal and external dimensions are intrinsically interwoven, the strategy of opening the market has been important to maintain energy security – and has been successful, especially concerning countries which aspire to join the EU. However, this strategy might not be effective in countries that do not strive for membership (McGowan 2008).

Other scholars analyse the regulatory framework and the rules governing energy markets. Del Guayo et al. (2010) took stock of the effect that ownership unbundling (OU) – the separation of supply/generation activities from transmission network activities – has on the property rights of gas and network owners. The research provides an account of the process of energy liberalisation in the EU over time and the ramifications OU (as part of the Third Energy Package and the wider approach to liberalise energy markets) has for Member States with different preferences and opinions towards this potent policy tool. Yafimava (2013) assesses the Third Energy Package, including the Gas Target Model (a collection of regulatory steps to achieve a single EU gas market), the network code for a Capacity Allocation Mechanism (EU-wide rules on harmonising auctions selling access to pipelines), and the regulatory challenges it imposes on non-EU-suppliers, in particular for Russia, who is most affected by the energy package. By conceptualising national

energy policy as a path-dependent process, Baumann and Simmerl (2011) gauge the potential of the EU's internal energy policy and the different attitudes of the Member States towards the external dimension of a common energy policy. Their findings suggest that the completion of the internal energy market is a priority but can only be successful if accompanied by progress in the external dimension. Utilising the three-tiered agenda-building model and embedded in a systematic historical analysis, Ciambra and Solorio (2015) have shown that the current paradigm to energy policy in the EU has its roots in the goals, regulatory customs, and market-driven approach derived from policymaking in the United Kingdom. A valuable contribution to this book is provided by Eising (2002), who empirically shows how institutional norms affected the process of liberalisation of the European electricity supply industry. He concludes that shared norms (the consensus norm and reciprocity norm) and the concept of market integration permeating the institutional framework were constraining factors for Member States. At the same time, these norms made cooperative outcomes easier to reach and ensured that actors' fundamental concerns were addressed. Eikeland (2011b) deployed a thorough and concise analysis that addresses the entire liberalisation of the internal energy market comprising all three energy packages, including the proposal and outcome of the Third Energy Package and a thorough account of ownership unbundling. Based on his findings, he concluded, and in line with the research of other scholars (for instance, Buchan & Keay 2015), that although considerable progress has been achieved on the internal dimension, institutional reforms have been insufficient due to actors' failure to implement policies sufficiently and limited reforms. Buchan and Keay (2015), therefore, propose a reform of the electricity markets, because the Commission, while recognising the need for change and the shortcomings of the current institutional design, does not address fundamental issues in its entirety. In addition, they argue for a more market-friendly regulatory regime, away from technology-based approaches (realised through market intervention by Member States), towards one in which state intervention is reduced to create a genuine level playing field and a solid basis for competition and free trade. Although not harnessing a distinct theoretical approach, Wood (2010) provides a detailed account of Europe's energy mix – including economic and regulatory matters, environmental concerns (in particular CO_2 emissions), relations with suppliers, public opinion, and concerns regarding nuclear power. Here, energy policy is conceived as a multi-dimensional field, inextricably interconnected with other policy areas.

The fourth significant group of contributions addresses the Commission as the driving factor for institutional development. Eikeland (2011a) uses a theoretical framework comprising a supranational perspective and a policy network approach, making visible the Commission's capabilities to take a more ambitious stance in the proposal for the Third Energy Package. The Commission was able to exert more pressure towards unwilling Member States and exercised more independent will compared to the proposals from 2003. In addition, Eikeland shows that the Commission utilised non-state agents and transnational networks to strategically influence Member States and inform the proposal. Employing a multiple streams framework

to analyse the first gas directives, Herweg (2015) concluded that the rise of energy legislation on the institutional agenda resulted from the Commission's success in framing energy matters as a competition issue, hence providing a different view of the toolbox the Commission utilised to further deeper integration. In this analysis, the Commission exploited a policy window evoked by the uncompetitive state of energy markets and applied a competition clause of the EEC Treaty to foster an agreement between Member States reluctant to liberalise gas markets. Another explanation for the Commission's enhanced role in energy affairs is provided by Mayer (2008). Drawing from a Historical Institutionalist framework, he argues that the Commission utilised path-dependent dynamics to augment its role in the energy sector and to establish itself as an important international player. The Commission presented itself as "an experienced 'solution provider' and productively engaged in coalition building with significant state actors" (Mayer 2008: 271). Hence, the Commission shaped external energy policy toward an outcome that would not have transpired otherwise because it seemed less and less desirable for Member States to maintain an intergovernmental institutional framework. An alternative view is provided by Eberlein (2008), who conceives the Commission as a principal who delegates powers to sectoral governance actors and builds coalitions with private stakeholders and sub-state regulatory agencies. This contrasts the 'traditional' view that Member States are the principals who delegate powers to the Commission as an agent. The Commission endorsed this strategy to create network mechanisms that can coordinate Member States' policies and acquire the expertise of sectoral actors. Baumann and Simmerl (2011) argue that the Commission constantly increases its regulatory output to create a common energy policy. The key to success on the external dimension should be shared objectives about energy security collectively defined between the Member States and the Commission, as well as the institutionalisation of sound procedures and instruments for maintaining external energy security. They conclude that an active role of the Commission is paramount in both cases. It is the Commission's responsibility to identify and spell out the value of pooling resources on the external dimension, and the Commission should have a coordinative role in utilising a toolbox that provides a set of diplomatic, political, and other measures in case of a supply disruption. By focusing on the liberalisation of the gas market and the evolution of policies concerning trans-European gas infrastructure, Brutschin (2016) argues that the Commission utilised network governance to coordinate energy policy more effectively. The creation of ACER and ENTSO-G – an agency and an association entrusted with the management and coordinated operation of the European gas network, and initiated by the Third Energy Package – has proved to be successful and helped the Commission to link market liberalisation and measures concerning gas infrastructure. As shown in the research, the Commission's strategies depend on the environment in which it operates: hard power measures (competition law, infringement procedures) are used when there is a demand for security policies; soft-power measures (ad-hoc groups, consensus-seeking) are used to introduce stepwise advancement of energy policy.

As we can see, contributions towards the literature are manifold, identifying various factors influencing decision-making. However, this research takes a

different approach as it explains current policies, or policy development per se, as a process deeply rooted in the historical context and shaped by decisions made in the past. In this sense, my approach conceives policymaking as a process that is informed by reinforcing policy mechanisms, feedback processes that incrementally change legislation, and the institutional design itself.

Book outline

This book is structured as follows. Chapter 2 presents the theoretical framework of this research. It elaborates on Historical Institutionalism to discuss its key features and critically engages with the theoretical framework and its specificities vis-à-vis the rational-choice and sociological strand of institutionalism. Notably, the concepts of interest and preference formation, the calculus and cultural approaches, path dependency, institutional stickiness, lock-ins, inertia and equilibria, and the concept of critical junctures are expounded upon. Chapter 2 also introduces the research design and operationalisation of the main concepts; the dependent variable of integration in energy policy and how it is measured is explained. The logic informing the causal relationship between two independent variables and the dependent variable is discussed. Finally, four hypotheses are developed, and the independent and dependent variables are defined. The last section of the chapter discusses the methodology approach applied and case selection.

The subsequent five empirical chapters investigate the case studies and test the four hypotheses. The first empirical chapter, Chapter 3, analyses the institutional developments in the period from the late 1940s to the 1970s and tests the first hypothesis. The chapter suggests that if no critical juncture occurs in a setting of high institutional stickiness, low integration can be expected. The chapter explores the inception and institutional design of the European Coal and Steel Community, and Euratom and the institutional inertia that followed. Furthermore, it illustrates that national interests dictated Community policymaking in the 1960s and 1970s. Many proposals were stymied by some Member States' desire to maintain control over energy policy, and, hence, policy development was severely hampered in almost every regard. In the face of a severe energy supply threat like the oil crises of 1973/74, the Community lacked solidarity and unity, and the prevailing institutional mindset was guided by self-interested rational decision-making, while ideational factors had little influence. The United Kingdom and France emerged as principal veto players in the development of the European Communities' energy policy, each harbouring specific national interests that thwarted collective action. While the UK aimed to shield its North Sea reserves and protect domestic corporations like British Petroleum, France maintained a protectionist stance due to its historical involvement in the oil sector and post-Second World War nationalisation of energy industries, both effectively stalling any substantive progress in a unified EEC energy agenda. As a consequence, the institution was in a state of complete institutional inertia, severely resisting change and reducing any policy development to a bare minimum.

Chapter 4 investigates the implementation of the Single European Act (SEA) and its impact on energy policy. In doing so, it tests the second hypothesis, which

assumes that a locked-in institution needs a critical juncture to disrupt its dysfunctional institutional path. The Single European Act Treaty can be understood as a critical juncture since it marked a turning point for the institutional trajectory and the development of a common energy policy. It opened the door for creating an internal energy market and paved the way for an increasingly efficient and effective decision-making process. Due to the changes brought about by the SEA, the Community could reach decisions and adopt measures much more quickly and effectively than before, and energy policy was no exception. As Chapter 3 demonstrates, many earlier proposals collapsed owing to the requirement that their implementation was dependent on unanimous voting in the Council. Hence, the Single European Act and the associated rule of qualified majority voting in the Council represented a significant change to the Community's framework and provided the institution with the capacity to free itself from the pathological lock-in caused by the institutional design.

Chapter 5 explores the incremental policy change that occurred following the implementation of the SEA, the three energy packages and the introduction of legislation on the external dimension of energy policy. This chapter tests the third proposition that posits that if no critical juncture occurs in a path-dependent institutional setting, incremental change of secondary legislation can be expected. Comparing the *policy outcome* of the First, the Second, and then the Third Energy Package reveals that institutional change occurred in a stepwise, path-dependent manner. Change to the institutional makeup – manifesting itself in the form of the three packages addressing market liberalisation – was not achieved by completely and abruptly overhauling the institutional design. Rather, the institutional matrix changed incrementally. The chapter also demonstrates that endogenous momentum – changes initiated from within the institution – in the form of novel ideas about the governance of energy systems contributed to altering institutional rules.

Chapter 6 analyses the implementation of the Lisbon Treaty and factors that led to policy provisions under the Energy Union. It tests the fourth and final hypothesis regarding when high integration of primary law can be expected and the subsequent impact on the institutional trajectory. It demonstrates that the institution once again needed a critical juncture to catapult itself out of the institutional path to become more responsive to exogenous events. The Lisbon Treaty altered the institutional trajectory to a significant degree as different dimensions of energy policy were incorporated into the institutional matrix. After the critical juncture occurred, the institution fell back into institutional equilibrium and a process of moderate integration of secondary law was triggered.

Chapter 7, the final empirical section, focuses on providing a comprehensive HI analysis of recent energy law adopted as a result of initiatives such as the Energy Union, the European Green Deal (EGD), and REPowerEU, in response to Russia's aggression in Ukraine. This chapter provides a succinct examination of key legislative acts implemented to date. It synthesises various energy and environmental legislation to comprehensively demonstrate the linkages between different policies and cross-sectoral integration under the Energy Union framework and the EGD. Finally, the Conclusion revisits the theoretical and empirical contributions of this

book. It begins with an overview of the four hypotheses and the extent to which they are supported by the analysis of 70 years of developments in the area of EU energy policy. The main theoretical and empirical contributions of the book are discussed in more detail and placed within larger theoretical considerations within Neo-Institutionalism. Finally, the main challenges and caveats are discussed before setting out avenues for a future research agenda on EU energy policy from a Historical Institutionalist perspective.

Note

1 See: Unruh (2000): Understanding carbon lock-in and Lockwood et al. (2017): Historical Institutionalism and the politics of sustainable energy transitions: A research agenda.

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2 Conceptualising integration in EU energy policy

Lock-ins, path dependence, and critical junctures

Introduction

This chapter sets out the theoretical and methodological considerations that form the backbone of the analysis. Historical Institutionalism is applied as the overarching theoretical approach used in this volume. This chapter discusses Historical Institutionalism's key features, explaining and critically engaging with the theoretical framework and its specificities vis-à-vis the rational choice and sociological strands of neo-institutionalism. Notably, the concepts of interest and preference formation (Milner 1997; Woll 2008), the calculus and cultural approaches (Pollack 2008; Thelen & Steinmo 1992; Thelen 1999; Dietrich & List 2012; March & Olsen 1984; March & Olsen 1989; Bulmer 1998), path dependency (positive feedback mechanisms) (Arthur 1988; North 1990; Pierson 1996, 2000, 2004), institutional stickiness, institutional lock-ins based on Fritz Scharpf's 'joint decision trap' (Scharpf 1988), inertia and equilibria (Shepsle 2008), and the concept of critical junctures (Capoccia & Kelemen 2007; Capoccia 2015) are expounded upon.

Historical Institutionalism (HI) emphasises the role of historical events, timing, and sequences in shaping institutional development and political outcomes. It is one of the three main branches of New Institutionalism, along with Rational Choice Institutionalism and Sociological Institutionalism. Historical Institutionalists argue that once institutions are in place, they significantly influence political behaviour and subsequent institutional development, a concept known as 'path dependence'. Institutions generate expectations and vested interests that can be hard to change. A core concept in this approach is 'critical junctures', understood as moments in history when significant decisions are made that set the path for institutional development. Such junctures may lead to an 'institutional lock-in', wherein it becomes challenging to change the institutional framework even if it is not producing efficient or effective outcomes. Historical Institutionalism seeks to explain why and how institutions emerge, persist, or change and how they shape societies' political and social life.

Historical Institutionalism as a theoretical framework for the study of energy policy

Historical Institutionalism (HI) emerged with the revival of institutional theories in the late 1980s and found their way into European studies by the early 1990s.

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It is noteworthy that the 'old' institutionalism (before the behaviourist turn of the 1950s) could be deemed a rather descriptive approach, incorporating descriptive comparative accounts of institutional settings with no explanatory capacities to facilitate comparative research (see Thelen & Steinmo 1992; Peters 2012). The new institutional approaches and their success in political science can be attributed to "overcoming the impasse of intergovernmentalists/neofunctionalist debate" (Pollack 1996: 430), offering viable analytical tools to understand and gauge European institutions' role during the integration process.

This book builds on the work of Arthur (1988), Scharpf (1988), North (1990), Thelen and Steinmo (1992), Pollack (1996, 2006, 2008), Thelen (1999), Peters et al. (2005), Capoccia and Kelemen (2007), Pierson (1996, 2000, 2004), Steinmo (2008), and Fioretos et al. (2016). It sits in the broader literature on HI by further developing concepts of temporal processes, such as path dependence, critical junctures, increasing returns and positive feedback, institutional stickiness, and institutional lock-ins. It expands on the phenomenon of institutional persistence and the constraints actors face over time to answer why, once a specific path is taken, departures or deviations from this path become less likely, and how and when change occurs. Moreover, it elaborates on the formation of actors' specific preferences that inform institutional choices.

Institutions are understood as actors and structures in which agency is embedded (Saurugger 2014). Although very diverse in their assumptions, institutionalists agree on one premise, namely, that 'institutions matter'. Different strands evolved within the approach, such as Rational Choice Institutionalism, Historical Institutionalism, Sociological Institutionalism, and Discursive Institutionalism (Hall & Taylor 1996; Saurugger 2014). These theories evolved as a reaction to behavioural approaches that dominated political science in the 1960s and 1970s (Hall & Taylor 1996), which considered political phenomena the aggregate consequence of behaviour at a group or individual level, defining actor's preferences and power exogenous to the political system. Behaviouralist approaches formally organised institutions simply as arenas in which political behaviour occurs (March & Olsen 1984). On the other hand, institutionalists consider institutions not just as facilitators of exchange between actors but as entities developing strategies based on self-interest (Saurugger 2014).

These considerations are particularly relevant for the study of energy policy, as contended by Mayer (2008), who used HI to study the evolution of the EU's external energy policy, institutions have an impact on shaping political outcomes. When considering what HI could offer to the study of sustainable energy transitions, Lockwood et al. (2017) suggest that institutions not only constrain individual choice or affect individual strategies but also shape attempts by groups of actors to pursue their interests collectively. Hence, it is paramount to define how we conceptualise institutions (especially since the word 'institution' could mean many things) and why they have a strong capacity to influence political outcomes. Steinmo (2008) succinctly proposes that "the most common definition for institutions is: rules" (Steinmo 2008: 159). Some scholars bestow these rules a formal character (see Streeck & Thelen

2005), whereas others stress the informal nature of rules and norms (see Hall 1989; Marcussen 2000).

> Whether we mean formal institutions or informal rules and norms, they are important for politics because they shape who participates in a given decision and, simultaneously, their strategic behaviour.
>
> (Steinmo 2008: 159)

Path dependence and critical junctures

Against a backdrop of a new institutionalist definition encompassing both formal organisations and informal rules and procedures that structure conduct (Thelen & Steinmo 1992), HI seeks to emphasise two overarching principles that define politics: policy development unfolds over time and many of these processes are embedded within institutions (Pierson 1996). HI stresses the difficulties in reversing or substantially altering particular choices once they have been made. It depicts policymaking as a process characterised by long periods of substantial stability, referred to as 'path dependency', which is interrupted and punctuated by turbulent 'formative moments' (North 1990; Pierson 2000; Peters et al. 2005). This cycle is subsumed within the notion of 'punctuated equilibrium', namely that processes are characterised by stability but expect short bursts of rapid institutional change, after which institutional stasis sets in again. New structures are formed during crisis, imposed through conquest or implemented by the prevailing social structure, and once in place, they develop a life of their own (Krasner 1984). These formative moments, also called 'critical junctures', are critical because they place institutional settings on trajectories which are subsequently very difficult to alter. Critical junctures are the starting points for processes that follow a path-dependent rationale. They are "relatively short periods of time during which there is a substantially heightened probability that agents' choices will affect the outcome of interest" (Capoccia & Kelemen 2007: 348). Critical moments are characterised by a situation in which structural pressure (economic, cultural, ideological, organisational) is significantly reduced for a relatively short period.

Most importantly, in these moments, the scope and range of possible choices to be made by powerful actors increase substantially, and the consequences of their choices are much more significant; "Contingency . . . is paramount" (Capoccia & Kelemen 2007: 343). Actors face constraints regarding their choices during phases of equilibrium, whereas they are free during phases of change. The critical moment must be brief in relation to the equilibrium. The duration impacts actors' capabilities to act more freely: the shorter the juncture, the more open it is (Capoccia & Kelemen 2007). Critical moments can be created by both internal and external forces (Collier & Collier 2002).

The theory emphasises the 'stickiness' of historically evolved institutions (Thelen & Steinmo 1992). They tend to be 'sticky' as the designers of organisations do not want 'their' organisation to fall into the hands of opponents and be altered by them. Due to the nature of modern democracies, they can only shut these opponents

out by shutting themselves out as well. Once initial steps are taken, or institutional reform is initiated, it is difficult to undo these steps, although they might be costly for the Member States or infringe on state sovereignty (Pierson 1996). Thus, although actors possess initial primacy during institutional formation and seek choices that align with their preferences to maximise their benefits (Pollack 1996), they nevertheless carry out policy and institutional reform (or, in this regard, create institutions) that alter their position in an unanticipated or undesired way (Pierson 1996). Pierson identified several arguments on why gaps – divergences between institutional and policy preferences of Member States and European institutions – emerge and why these gaps restrict Member States' control capabilities. In this regard, he lists the following accounts as sources of change: the short-time horizons of decision-makers, the formation of unanticipated consequences,[1] the possible shift of Member States policy preferences, unanticipated sunk costs and – based on a principal-agent rationale – the partial autonomy of institutions (Pierson 1996). Pierson defines path dependency, the rigidity of institutional trajectory, as "dynamic processes involving positive feedback, which generate multiple possible outcomes depending on the particular sequence in which events unfold" (Pierson 2004: 20). As a source for a narrow conception of the term, he refers to Levi's (Levi 1997 as cited in Pierson 2004) definition of path dependence:

> Path dependence has to mean, if it is to mean anything, that once a country or region has started down a track, the costs of reversal are very high. There will be other choice points, but the entrenchments of certain institutional arrangements obstruct an easy reversal of the initial choice. Perhaps the better metaphor is a tree, rather than a path. From the same trunk, there are many different branches and smaller branches. Although it is possible to turn around or to clamber from one to the other – and essential if the chosen branch dies – the branch on which a climber begins is the one she tends to follow.
>
> (Pierson 2004: 20)

Pierson elaborates on the notion of path dependence, in which preceding steps in one direction lead to further movement in that direction, with the concept of 'increasing returns'. Routed in economics, it suggests that due to *self-reinforcing* and positive *feedback processes*, the probability of further steps along the same path increases with every step as the relative benefits – compared to alternatives – rise. Put differently, the cost of exit increases (Pierson 2000). In his seminal work on the evolution of technology, Arthur (1988) defined several indicators for the rationale behind increasing returns: large set-up or fixed costs (actors have incentives to stick with a choice where initial costs were high), learning effects (acquired knowledge leads to higher returns), coordination effects (benefits increase with the number of actors), and adaptive expectations (expectations about joint usage among actors reinforces a choice) (Arthur 1988: 112). In a subsequent analysis, North (1990) argued that Arthur's categories can be applied to institutional settings. *High costs* are involved when

institutions are created, *learning effects* apply due to the opportunity set provided by institutions, contracts with other organisations *increase coordination*, and *expectations* are 'streamlined' as the prevalent contractual environment creates stability (North 1990). "In short, the interdependent web of an institutional matrix produces massive increasing returns" (North 1990: 95). He points out that both efficient – meaning specific mechanisms provide the best choices – and unproductive paths may exist (North 1990) The concept of increasing returns by Arthur and North provides valuable insight and explanations for an analysis of energy policy, from both an institutional and a technical/technological perspective. Initial costs of creating a formal institutional structure to implement and coordinate different policies, production, electricity grids and transmission lines, pipelines, and infrastructure are high, as are the technological solutions themselves due to competitiveness and length of time for their development (Kirchner & Berk 2010). Once initiated, learning effects among different actors improve the efficiency of institutional settings, and as contractual agreements with other institutions are made, coordination between actors increases, and expectations about future events lead to stability in the system (North 1990: 95). Incorporate actors who have political power can use that power to change the rules of the game to enhance (or maintain) their power.

Institutional stickiness and change

This model provides a valuable explanation for stability and a state of equilibrium, but it tells us little about institutional change. However, to give a possible explanation for change, we have to think further about equilibrium institutions. As Pollack (1996) points out, once institutional choices are made, derived from intergovernmental bargaining based on rational expectations, institutional inertia, the consequence of equilibrium institutions, emerges due to a "combination of uncertainty, transaction costs and institutional barriers to change" (Pollack 1996: 438). Along similar lines, Scharpf (1988) provides an explanation for 'lock-ins', understood in this research as the most rigid form of institutional inertia, which can ultimately block institutional evolution. He refers to these as resulting in a 'joint-decision trap'. These "pathologies of substantive public policy" are based on two institutional conditions: "first, the fact that national governments are making European decisions and, second, that these decisions have to be unanimous" (Scharpf 1988: 267). As long as policies are placed in the intergovernmental domain (as opposed to supranational decision-making), and unanimous voting rules apply (as opposed to qualified majority voting), policy choices tend to be rigid and unresponsive to change and "have an inherent (non-accidental) tendency to be sub-optimal" (Scharpf 1988: 267). In addition, in an ongoing joint-decision system in which unanimity applies (or any other decision rule) and in which the exit option is foreclosed (to withdraw from the system), the 'default condition' of the institutional arrangement pre-empts institutional development if an agreement is not achieved. Thus, in the event of non-agreement, the *continuation* of existing policies entrenches actors and creates the adverse condition that they have to

stick to institutional commitments even in the event of sub-optimal outcomes. As Scharpf poignantly illustrates,

> In a dynamic environment, the implications for the substantive quality of public policy are obvious: when circumstances change, existing policies are likely to become sub-optimal even by their own original criteria. Under the unanimity rule, however, they cannot be abolished or changed as long as they are still preferred by a single member.
>
> (Scharpf 1988: 257)

This explanation for policy development offers some promising insights for energy policy: as long as Intergovernmentalism and unanimous voting rules apply in the historical context, the analysis will treat policy development as substantially hampered. A central focus of this research is a way to operationalise various degrees of *stickiness*. In this book, Scharpf's joint decision trap only applies to "substantial" lock-ins: in this sense, the *highest* possible state of *stickiness*. As it distinguishes between different degrees of institutional inertia (stickiness), it also provides different explanations for institutional change when critical junctures punctuate these 'sticky' institutions. On the other hand, North's definition of path dependency and the logic of increasing returns is deployed to explain mechanisms that lead to specific path-dependent policy choices but nevertheless allow for incremental change. In this case, a *low* state of *stickiness* can be ascertained. In the words of North:

> Path dependence means that history matters. We cannot understand today's choices (and define them in the modelling of economic performance) without tracing the *incremental evolution* of institutions.
>
> (North 1990: 100)

North helps us to explain specific processes of path dependence when Scharpf's definitions of substantial 'lock-ins' do not apply (intergovernmentalism/unanimous voting), as, although these processes establish institutional inertia, North's explanation still leaves room for change through "continuous marginal adjustments" (North 1990: 101). In addition, the theoretical model allows for incremental change to take place through a process called 'layering'. Under these conditions, layering occurs when new rules, practices, or structures are implemented on top of or alongside existing ones. This process can gradually alter the overall functioning and outcomes of an institution over time while the old structures remain in place, coexisting with the new layers (Streeck & Thelen 2005). To consolidate the model, there are two modes of institutional stickiness: high (Scharpf) and low (North). Furthermore, sticky institutional arrangements, whether high or low, are subsequently punctuated by critical junctures, placing the institutional arrangements on new trajectories.

The explanations proposed earlier about increasing returns are rooted in rational choice theory. However, as a complementary analytical unit, this research will also ask to what extent ideational factors contributed to policy decisions. In

this sense, it goes beyond rationalist interpretations of institutional choices. It employs *both* a rational choice approach *and* a non-rational choice approach, allowing for an analysis of both 'worlds': the strategic calculations of actors and how norms and values may have informed policy choices within the context of the institutional setting. Historical institutionalists tend to be eclectic in structuring their theoretical concepts; they *draw their insights from both a 'calculus' approach* (rational and strategic choices) *and a 'cultural' approach* (behaviour dependent on roles/norms/cognitive scripts/individual's worldview – derived from sociological institutionalism) (Hall & Taylor 1996; Pierson 1996). The common denominator of HI is its emphasis on temporal processes (Pierson 1996) and the significance of institutions. However, a fundamental question remains: why should we apply either one (or both) of these two approaches to gauge institutional choices in a historical context? Suppose there is a long-standing rivalry between these two strands in theories of politics, especially in new institutionalist literature (see Blyth et al. 2014). What do we gain from engaging with theoretical dichotomies? HI stands right between these two views and gives us a thoroughly viable and comprehensive explanation: human beings are both norm-abiding rule followers (the cultural approach – norms and values) and self-interested rational actors (the rational choice approach). It depends on the individual actor in a given situational context, on how the actor behaves, which norms and rules are identified as the possible causal mechanism(s) behind his/her actions, or what particular rational choice(s) the actor makes. There is no *a priori* knowledge on how to study politics or which of the two theoretical approaches should be applied (Steinmo 2008).

> A historical institutionalist *does not believe* that humans are simple rule followers *or* that they are simply strategic actors who use rules to maximise interest. A historical institutionalist can even be rather agnostic to these issues. What the HI scholar wants to know is why a certain choice was made and/or why a certain outcome occurred. Most likely, any significant political outcome is best understood as a product of both rule following and interest maximising.
>
> (Steinmo 2008: 126)

March and Olsen (1989) directly draw attention to this duality in their seminal work about institutions and posit that,

> political actors are driven by institutional duties and roles as well as, or instead of, by calculated self-interest; politics is organised around the construction and interpretation of meaning as well as, or instead of, the making of choices; routines, rules, and forms evolve through history-dependent processes that do not reliably and quickly reach unique equilibria; the institutions of politics are not simple echoes of social forces; and the polity is something different from, or more than, an arena for competition among rival interests.
>
> (March & Olsen 1989: 159)

Hence, the difference between Rational Choice Institutionalism, Sociological Institutionalism, and HI is that HI takes a position *in between* both camps, embracing and incorporating assumptions of both theoretical frameworks into the theoretical body, however emphasising the effects (both enabling *and* constraining) that institutions have on actors *over time* (Pollack 2008).

A historical institutional approach towards preferences

In HI, scholars work within the boundaries of both traditions. This core observation must be made when comparing the three theoretical approaches and compartmentalising their similarities/differences. Long-standing rivalries, especially between the sociological and rational choice strands, make it necessary to untangle any ambiguities. Moreover, in contrast to Rational Choice Institutionalism, HI generally rejects pure 'functionalist' explanations as to why institutions are created. Functionalist explanations tend to stress that institutions are created by contemporary actors to efficiently delegate specific functions to institutions and pay little to no attention to historical legacies (Pollack 2008). Thus, rational choice explanations emphasise the continuation of equilibrium institutions that generate optimal outcomes at any point in time.

HI, on the other hand, proposes that institutional choices made in the past can persist over time and shape and restrain the possible options for actors. That said, HI scholars like Pierson fully integrate assumptions about actors and their preferences that align with rational choice theory (Pierson 1996). Pollack (2008), another proponent of the rational-choice strand of HI, considers HI not as a school of thought,

> but rather as a particular variant of rational-choice theory emphasising the importance of time, feedbacks, sequencing, and path-dependence in the study of politics.
>
> (Pollack 2008: 4)

Rational choice approaches within the HI literature emphasise the rule-based nature of institutions and that all actors are fully aware of the terms and conditions upon which the institutions are based. Katznelson and Weingast (2005) argue that historical and rational choice institutionalism can be complementary rather than mutually exclusive as the historical context facilitates an understanding of rational choices. In this sense, specific historical contingencies and events shape the way under which rational actors reach their decisions. On the other hand, as Hall (2010) emphasises, the sociological strand of HI stresses the assumption that institutions are inherently ambiguous and open to interpretation and re-interpretation rather than based on distinct rules. This shift in perception is not dependent on an active agreement between a coalition of actors. Instead, it can occur through a process of re-interpretation, which causes the meanings actors attribute to a specific institution to change over time, in conjunction with shifts in patterns of action (Hall 2010). The central question in an institutional analysis is how an institution affects the behaviour of individuals and how actors

behave within a predominant institutional setting. Historical Institutionalists can apply both the 'calculus approach' and the 'cultural approach' in their institutional analysis (Hall & Taylor 1996).

The calculus approach contends that human behaviour is based on strategic calculations and preferences are given exogenously. On the other hand, the cultural approach advances that behaviour is not entirely strategic but contingent on an individual's worldview and that preferences are given endogenously (Hall & Taylor 1996). Can we reconcile both strands by striving "for creative combinations" (Thelen 1999: 380), and if 'yes' is the response, to what degree? How do we know which rationale sets the stage for the behaviour of actors – self-interest or norm-based actions – and which principle is the predominant rationale in a situation? Steinmo (2008) gives a succinct answer to this question:

> [t]he historical institutionalist would go to the historical record (also known as evidence) and try to find out.
>
> (Steinmo 2008: 126)

Actors are both rational actors and norm-abiding rule followers. Thus, behaviour is dependent on the individual, the context, and the rule (Steinmo 2008).

This book, therefore, embraces the possibility of utilising both theoretical strands. The empirical evidence is analysed inductively with the help of a variant of HI that allows for both rational choice and sociological explanations. Building on the seminal work of Hall and Taylor (see Hall & Taylor 1996: 940), this volume adopts an eclectic approach to the three institutionalisms driven by the empirical content observed. Contingent upon the evidence, the analysis assesses whether decisions to amend the legal framework of EU energy policy (both primary and secondary law) are based on rational calculations or ideational factors. Moreover, whether a combination of the two is evident. Does this mean that the Historical Institutionalist must fully engage in an all-encompassing synthesis of the two strands? The simple answer is no. Rather, as Thelen (1999) suggests, "we might instead strive for creative combinations that recognise and attempt to harness the strengths of each approach" (Thelen 1999: 380). For instance, a preliminary analysis of secondary data, such as press releases affiliated with European affairs, suggests that, on some occasions, actors showed a reluctance to provide each other with technical assistance during gas crises and strived to tackle supply issues with unilateral measures creating the institution to be in disequilibrium (Roggenkamp et al. 2016). In this example, crises are understood as exogenous factors disrupting the functioning of energy markets, such as cold spells during harsh winters and supply disruptions caused by third parties. A lack of cooperation, in turn, has led to market failure and, in the end, proved to be disadvantageous and very costly for the actors involved. From a rational choice standpoint, committed to the notion that institutions are in equilibrium and that actors always have the necessary information to maintain the status quo, such behaviour cannot be sufficiently explained. As actors are considered rational and self-interested utility maximisers, they should

opt for cooperation to tackle the issue and to minimise the impact of the exogenous threat on the markets.

Consequently, proposals for improvement of the regulatory framework were made. Thus, it will be expedient to enhance the theoretical model and ask about how ideational factors contributed to the development of policy instruments capable of tackling special circumstances, such as energy crises/events where the 'regulatory demand' of an institution is high, surpassing the regulatory means of markets under normal circumstances, and which push the capabilities of institutions to its limits. Simply put, the analysis of policy development and how institutions respond to crises benefits from a carefully adjusted framework that combines materialist explanations with ideational factors. Steinmo (2008) understands ideas as "creative solutions to collective action problems" (Steinmo 2008: 131). New ideas can help actors solve imminent problems. This implies that institutional change is about to happen when powerful actors have the ability and the political will to change the institution in favour of new ideas. A 'good idea' is understood as one where a group of actors come to a common understanding that a problem needs to be solved and that the idea, the 'creative solution', actually addresses the problem. Thus, "[s]een in this way, ideas are not 'irrational,' but instead are best understood as creative adaptations that can be evaluated both on rational and emotive grounds" (Steinmo 2008: 131).

The strategy to endorse both theoretical camps is particularly fruitful as examining the historical record will reveal which preferences actors endorse and why an institution follows a particular trajectory. The rational-choice approach helps to account for stability and continuity in the institutional setting, facilitating incremental change; the notion of exogenous factors generating the possibility for critical junctures investigates how institutional change can be reasoned through factors that lie outside the institution. Conversely, ideological factors will contribute to the analysis by revealing that specific decision-making processes and institutional change might result from changes in ideas about the institution and on what grounds it should be governed. Such considerations have significant ramifications for our understanding of institutions and policy development. Steinmo (2008) trenchantly comments on the divide in the literature:

> There has been an unfortunate and unnecessary tendency to pit 'ideational' analysis against 'rational' choice in a way that appears to argue that one bases decisions either on ideas or on rational calculations. This is an absurd distinction.
>
> (Steinmo 2008: 138)

In order to substantiate such considerations, Blyth et al. (2016) cite Hall and Lamont and postulate that a thorough and comprehensive explanation of a decision should abstain from a choice between "ideas or interests in the study of politics; rather, the contemporary condition is marked by the interaction between neoliberal ideas about states and markets and the material endowments of actors and groups" (Hall & Lamont 2013 as cited in Blyth et al. 2016: 159).

Hypotheses

The following section presents four hypotheses which aim to test the effects of the independent variables on the dependent variable. The proposed *dependent variable* (DV) is *the measured variation of the process of integration* in European energy policy *over time*. It can be described as the outcome of the decision-making process, the agreements reached between the different actors, and the legal provisions implemented to enrich the *acquis*. The proposed *independent variables* (IVs) are the interplay of both institutional stickiness and critical junctures and directly affect the DV. In order to measure the process of integration, this book develops a framework that distinguishes between three analytical units that are important in the institutional continuum: *intended goals* (the desired targets a policy should achieve), *policy output (the core output of the institution)*, and *policy outcome (the level of effectiveness of the policy output)*. The latter two units of analysis provide a solid basis for the conceptualisation and operationalisation of the DV.

The following paragraphs will establish a model to conceptualise the DV and the IV and establish the four hypotheses to be tested in the empirical section. First, the three analytical units will be discussed, of which intended goals and policy outcomes form the basis for measurement of the process of integration, which is defined as variations of the DV. Second, we will look at a way how we could conceive feedback processes as these are dependent on, and closely related to, the aforementioned three units forming the basis for the measurement of the DV. This could also be done in the section on the methodological approach. However, as positive feedback processes are a central concept in the HI analysis, and play a prominent role in shaping the level of integration of institutional development, the decision was made to discuss these in this section of the book. Third, the IVs will be defined and operationalised; specific functions of institutions and institutional stickiness will be discussed; and critical junctures will be operationalised. Lastly, and based on the IV and DV, four hypotheses are proposed that will contribute to answering the research question.

Measuring integration: the dependent variable

Intended goals are understood as the goals the institution collectively tries to accomplish. These desired targets are agreed upon by all the actors governed by the institution and are conceived to overcome specific energy-related issues/problems. Energy policy is comprised of different sub-fields. For instance, the proposal for the Energy Union addressed five distinct sub-fields, referred to in the official documentation as ‘dimensions’: security solidarity and trust; a fully integrated internal energy market; energy efficiency; climate policy; research, innovation, and competitiveness. Each of these specific attributes has its own goals and policy instruments at their disposal. However, the dimensions are also closely interrelated and mutually reinforcing. Historically, this segmentation between the dimensions has not been as pronounced as it was in the Energy Union proposal. Certain dimensions have gained prominence over the years as the regulatory demand towards the

institution increased. Nevertheless, each segment of energy policy has its own set of intended goals that the institution strives to accomplish. The predefined goals are addressed through, and should be attained with, specific legal provisions (the policy output) that the institution implements and adjusts when deemed necessary.

Policy output is associated with the legal provisions of the EU published in the *Official Journal of the European Union*. These provisions are the rules and guidelines all the different actors must adhere to – or at least *should* adhere to – and are conceived as the very core of the institution. As we will see in the empirical chapters, although the EU provides the legal framework for a wide range of aspects of energy policy, which are constantly expanding, suboptimal outcomes manifest themselves in the form of infringement procedures instigated by the European Court of Justice or emerge as the consequence of the failure of markets. These suboptimal outcomes are not uncommon and lay bare the weaknesses of legal provisions. In summary, the *policy output* denotes the encompassing and overarching regulatory framework that strives to govern the behaviour of the actors with specific ends to be attained. *Thus, the policy output (the rules) is the core of the institution.* We now engage with the next analytical problem of how to measure *policy outcomes*.

Policy outcome is understood as the actual *result* of how different actors transform the *policy output* into concrete action. As laid out in the preceding paragraph, the policy output sets out the fundamental underlying rules that regulate, enable, and restrain the course of their actions. Thus, an analysis of the *policy outcome* reveals the accomplishments, implications, and shortcomings that the conversion of legal provisions into actors' activity entails. It is crucial to understand and assess the effectiveness and 'quality' of the policy output – the scope and the depth of the legal provisions – and how they play out in reality. The policy output does not necessarily translate into legal provisions that sufficiently provide sets of rules capable of creating the most optimal and desired outcomes for the institution. Instead, legal instruments are 'snapshots' of the present, conceived to address issues at a certain point in time, and future implications and pitfalls are not, or cannot be, sufficiently addressed due to a degree of historical contingency. Historical contingency is an important factor influencing institutions as, in hindsight, historical developments seem to be inevitable and logically connected. Institutions and actors have to face and respond to events that they could not anticipate in advance. From a HI standpoint, institutions and human beings are subject to change as they adapt and are affected by history itself (Steinmo 2008). Exogenous factors and critical junctures could be events creating contingency. This means that exogenous events, either small or large, can impact a policy field in a way that was not anticipated when certain policy choices were made. Pierson (2000) elaborates further on the impact of small events creating contingent responses by the institution. He states, "relatively small events, if they occur at the right moment, can have large and enduring consequences" (Pierson 2000: 263).

Moreover, and most importantly, shortcomings in the regulatory framework might emerge because a coalition of actors might have differing preferences in the first place; hence, policy proposals by the Commission might be watered down during the negotiation process. Thus, an assessment of the policy outcome is essential

to understand the effectiveness of the institution regulating specific aspects of energy policy. The effectiveness of the *policy output* determines how well the activity of actors is governed and whether positive pay-offs are evident for all parties involved, whether policies lead to desirable and tangible results that help to achieve predefined goals, whether policies can deal with exogenous factors and threats, and whether policies lend stability to the institutional trajectory and contribute to institutional equilibrium. Indeed, the analysis provides an account of whether the policy framework is *actually suited* to, and *effective* in, tackling imminent issues and attaining a set of proposed goals. *Effectiveness* is directly connected to the *policy outcome* and strongly correlates with it. Consequently, the *policy outcome*, understood as variation in *effectiveness*, defines how well a particular dimension of energy policy is integrated. Put differently, integration is understood as the degree to which a policy proves effective in attaining a set of predefined goals.

The *policy outcome* is the extent to which primary and secondary legislation (the *policy output*) can effectively govern different dimensions of energy policy. As previously stated, whether legal provisions can regulate energy policy depends on the level of effectiveness of the policy output. The analysis of the policy outcome in the empirical section will not digress into a critical or normative appraisal of what the EU should or could have done but rather provide a solid benchmark on how successful the legal framework was in regulating energy policy at a certain point in time.

To summarise the interplay of all three analytical units: the policy outcome depends on the policy output's effectiveness, and the policy output in turn depends on the intended goals envisioned by the coalition of actors. Now that we have defined these three analytical dimensions, how can we measure the level of integration in practice? The *level of the process of integration is defined as the difference between policy outcomes addressing the same policy area at different points in time* – the difference measures the variation in the DV. The higher the difference of these policy outcomes, the more the area of energy policy concerned is effectively integrated. Put differently, the less disparity between policy outcomes, the less integration occurred.

Path dependence, positive feedback processes and increasing returns

As already discussed, a concept prominently featured in the HI literature is the notion of *path dependence, involving positive feedback processes and increasing returns* (Pierson 2004). This section outlines how these concepts will be operationalised based on the analytical dimensions of intended goals, policy output, and policy outcome. It is a logical step to explain the relationship of these three dimensions (intended goals, policy output, and outcome) with the concept of feedback processes at this point.

Positive feedback processes are a well-suited analytical tool that helps explain the phenomenon of stability in an institutional setting and the reasons why institutions remain on a rigid trajectory with an inherent resistance to change. Self-reinforcing or positive feedback processes can also be described as increasing returns

processes (Arthur 1988; Pierson 2000, 2004). Path dependence is captured by the notion of increasing returns, the phenomenon that the probability of further steps down a particular path increases with each step taken in the same direction (Pierson 2000). Collective action within an institution is prone to developing the qualities of positive feedback processes. Adaptive expectations are a reason for positive feedback mechanisms:

> [A]ctors must constantly adjust their behaviour in the light of how they expect others to act. Whether you put energy into developing a new party, or join a potential coalition, or provide resources to an interest group may depend to a considerable degree on your confidence that a large number of other people will do the same.
>
> (Pierson 2000: 258)

In addition, collective action always involves high start-up costs (material and cultural) and creates a good amount of learning and coordination effects. This book posits that the different dimensions of European energy policy and governance display all these features to various degrees. Indeed, high start-up costs for energy systems are an obvious example due to the cost-intensive nature of energy production, transmission, and regulatory oversight. These costs generate high expectations of *both investors*, who want to see their investments generating profits,[2] *and policymakers*, who want to create a regulatory framework providing a secure and sustainable supply of energy and an environment that attracts investors and maintains fluid markets. However, not just economic factors generate adaptive expectations and positive feedback processes.

Learning and coordination effects also create momentum for positive feedback and path-dependent processes and are characterised by monitoring processes and the evaluation of policies by different actors. Learning effects arise within institutions as actors take advantage of the opportunity sets provided by the institutional framework. Once a particular path is established, the network externalities, the learning process of institutions, and "the historically derived subjective modelling of the issues reinforce the course" (North 1990: 99). However, based on the model by Arthur (1988), learning effects might be conditioned and constrained as the processes of learning in political institutions differ from learning effects applied in economics. Pierson (2000) clarifies that actors who engage in highly complex political environments are *heavily biased in how they filter information*. Information that tends to confirm and reinforce the prevailing institutional trajectory will be incorporated, whilst disconfirming information will get filtered out. Social interpretations of complex political environments instigate feedback processes as they are frequently shared with other actors and, thus, create network effects and adaptive expectations. "The need to employ mental maps induces increasing returns" (Pierson 2000: 260). Based on these considerations, learning within institutions is guided by a rationale embedded within, and shaped by, the institutional design.

In this book, the concepts of path dependence and positive feedback mechanisms are deployed as critical analytical tools to explain the institutional trajectory

at a certain point in time. Once an increasing returns process is established, the institution will be in equilibrium and quite resistant to change. However, based on HI's assumptions, incremental steps and alterations can nevertheless be expected to change the institutional path under such conditions. *But how will this research deploy the concept of path dependence?* We have established a framework for conceptualising an institution (the policy output), measuring the DV based on the difference of policy outcomes over time, and the role of intended goals understood as the goals the institution collectively tries to accomplish. Positive feedback processes depend on and are closely related to these three units. The continuum of the *intended goals*, *policy output*, *policy outcome*, and the inherent monitoring processes associated with the policy outcome constitute the basis for explaining how increasing returns and associated incremental institutional change can be perceived.

Let us recall the 'cycle' of an equilibrium institution punctuated by formative moments followed by path-dependent processes to deploy a basis for the conceptualisation of increasing returns. First, a critical juncture (or trigger event) punctuates the institution in equilibrium and instigates an institutional *disequilibrium*. Critical moments can be created by both internal and external forces (Collier & Collier 2002). Not only do 'big' events constitute a critical juncture (and can have significant consequences), but small events that occur at the right time can also establish long-lasting legacies (Pierson 2000). However, as Capoccia and Kelemen (2007) note, some of the HI literature overemphasises that a set of *random*, small, and sequenced events can instigate a process of increasing returns. They rightly point to a shortcoming of such general assertions: the neglect of power as a key dimension in politics.

> Political science analyses of critical junctures (and synonyms) most often focus not on random small events but instead on decisions by influential actors – political leaders, policymakers, bureaucrats, judges – and examine how, during a phase of institutional fluidity, they steer outcomes toward a new equilibrium.
>
> (Capoccia & Kelemen 2007: 354)

This means that actors are not merely 'bystanders' during formative moments but actively influence the decisions made to defend or enhance their interests (Thelen & Steinmo 1992). Suppose we go back to the original goal to further conceptualise feedback processes based on the three analytical units: intended goals, policy output, and policy outcome. First, a critical juncture impacts an institution. Thus, due to the critical juncture, powerful actors make choices that put the institution on a specific trajectory. During the formative moments, the decisions can have long-lasting consequences (Capoccia & Kelemen 2007; Pierson 2000, 2004; Thelen 1999; Peters et al. 2005). The institution is set on a specific path, and increasing return processes start to unfold. The decisions made as a consequence of the formative moments are enshrined in the rules conceived to govern the institution – the *policy output*. Subsequently, actors translate the *policy output* into activity based on the institutional rules. Path-dependent processes entrench the institution and lend it stability but make it difficult and resistant to change. As seen in the policy outcome,

the ramifications of the policy output being transformed into action constitute the rationale for feedback processes. How can we explain this phenomenon? The fundamental implications of the policy outcome are the driving factors for increasing returns:

- high start-up costs (material and cultural; costs that actors want to generate a positive return on investment)
- learning and coordination effects (like monitoring and the evaluation of policies)
- adaptive expectations

All these factors contribute to feedback loops that affect the institution. Actors like the Commission, but also agencies and associations like ACER (Agency for the Cooperation of Energy Regulators), ENTSO-E (European Network of Transmission System Operators for Electricity), ENTSO-G (European Network of Transmission System Operators for Gas), and stakeholder consultations assess the effectiveness of the policy output based on the policy outcome. This means that the institutional rules and the behaviour of actors are constantly re-evaluated and monitored by actors within the institutions who assess the viability and usefulness of specific policies and ensure that institutional rules are followed. However, these actors are also shaped by and constrained by the institutional layout and can only operate within their assigned parameters. HI proposes that institutional choices made in the past can persist at a later point in time and shape and restrain the possible policy options for actors (Pollack 2008).

Moreover, actors are heavily influenced by learning effects and adaptive expectations, as they have a high interest in reinforcing the institutional trajectory (Pierson 2000). Based on this assessment, information about the policy outcome is reported back to the institution – the feedback process is complete. The feedback, in turn, triggers an adjustment of the definition of the *intended goals*, and the specific policy means deemed appropriate to tackle specific issues. Subsequently, the new intended goals generate a new policy output (an amended set of rules). Consequently, the feedback cycle starts all over again. However, this time, the institution does not face a critical moment; the 'fuel' for the institutional trajectory is provided by path dependence and feedback. These 'new' feedback processes, however, which ultimately manifest themselves in an adaption of the institutional framework, are only capable of instigating incremental steps and small changes in the institutional rules. Due to institutional constraints and path dependency, major alterations are not possible. The institution faces an equilibrium; path dependency provides the 'glue' to hold the institution together. The cost of exit increases for the different actors the longer they remain within the institutional framework.

Institutional stickiness and critical junctures: the independent variables

Having defined the analytical units of integration and feedback processes, we will now discuss the relationship between the independent and the dependent variables.

The *independent variables (IV)* are deduced from the theoretical approach outlined in the previous sections. Two independent variables are defined, as they are central units of analysis in HI: institutional inertia (lock-ins and path dependence) and critical junctures. The IVs are informed by a continuum of *both* different levels of stickiness and whether a critical juncture occurs or not. The two modes to operationalise stickiness are labelled as *low* and *high* institutional stickiness. Low institutional stickiness is reasoned through North's increasing returns rationale (North 1990), as discussed in the section on feedback processes and increasing returns. Increasing returns, characterised by path dependence, nevertheless allow for the possibility of incremental change, including learning and coordination effects, driven by adaptive expectations. High institutional stickiness is operationalised based on Scharpf's joint decision trap (Scharpf 1988). Intergovernmentalism, in combination with the unanimous voting rule, creates substantial 'lock-ins'. Once these factors are suspended and QMV is in place, change is possible. These two modes of institutional arrangements are either punctuated by critical junctures or not. However, after a critical juncture has occurred and the formative moment is over, institutional inertia sets in again and constrains the choices possible during formative moments. The measurement of the degree to which an institution is sticky or not will be operationalised with the help of a proxy variable, as explained in detail.

Institutional stickiness is one of the two independent variables influencing the dependent variable. The second IV is whether a critical juncture happens or not. 'Stickiness' means the institutional setting is rigid and resistant to change. Even if specific decisions might benefit a range of actors, institutional constraints diminish the range of possible alterations to the framework and hinder substantial deviance from an existing path. In other words, stickiness is synonymous with resistance to change over time. The question is how and why institutions are sticky. This volume proposes that institutions can be sticky for two reasons. First, they tend to be sticky due to the various factors discussed explaining positive feedback processes: feedback is based on increasing returns, learning and coordination effects, and adaptive expectations by all actors involved. Second, institutions can become subject to a particularly strong version of stickiness (or institutional inertia) caused by an institutional design that endorses veto players and pre-empts any efforts by actors to change the institutional trajectory. This mode of high institutional stickiness is referred to as 'lock-in'. However, how do we recognise whether one or the other influences decisions made in an institution? Institutional stickiness cannot be directly measured, as we defined an institution as a set of rules associated with the policy output. Therefore, stickiness is operationalised with the help of a *proxy variable*.

The proxy variable utilised to measure stickiness is the voting rule endorsed in the institution: unanimous voting or qualified majority voting. The proxy variable can be understood to have two values. First, based on Scharpf's joint decision trap model (1988), if unanimous voting is the rule, the policy area will be almost impossible to change. This value is referred to as 'high institutional stickiness'. Due to the requirement of a unanimous vote to instigate change, the institution remains on its path and is locked in on a specific institutional trajectory. The second value of the proxy variable is termed 'low institutional stickiness'. It can be observed when

unanimous voting is suspended, and qualified majority voting (QMV) is the primary voting rule – or when QMV is the voting rule from the beginning. In this case, the institution can alter its regulatory framework to a degree. However, merely incremental change is possible due to increasing returns and path-dependent processes.

High Institutional Stickiness = Unanimity Voting (no change of the regulatory framework/Scharpf's joint decision trap applies)
Low Institutional Stickiness = when qualified majority voting applies (change is possible to a degree due to increasing returns; however, merely *incremental* change)

Thus, the level of integration during the phase of institutional equilibrium (the phase where secondary legislation is made, resulting in provisions that define day-to-day energy policy) is determined by both the stickiness of the institution and the degree of integration of primary law.

The second IV is whether a critical juncture happens or not. However, what exactly is a critical juncture? As mentioned, Capoccia and Kelemen (2007) suggest that the duration of the critical juncture must be brief relative to the path-dependent process that it incites and that during this critical moment, the probability that the agent's choice will affect the subsequent outcome is significantly higher than before and after the juncture. Agents face a much broader range of possible choices compared to the time during the path-dependent institutional trajectory. Therefore, the impact these choices have on subsequent outcomes is significantly heightened. Capoccia (2015) identifies the following explanatory approach:

> [A]n event or a series of events, typically exogenous to the institution of interest, lead to a phase of political uncertainty in which different options for radical institutional change are viable; antecedent conditions define the range of institutional alternatives available to decision makers but do not determine the alternative chosen; one of these options is selected; and its selection generates a long-lasting institutional legacy.
>
> (Capoccia 2015: 151)

However, the trigger events for critical junctures do not necessarily need to be based on exogenous events but might also originate in endogenously generated driving factors. For example, power holders might disrupt institutional equilibria to achieve political objectives (Capoccia 2015). The notion that formative moments can rely on both exogenous *and* endogenous events is especially relevant for the HI analysis. It leaves room for an explanation that institutional change can be either initiated by exogenous factors (as a rational choice approach would suggest) or endogenously, without foreclosing that ideas and ideational factors might also trigger institutional change. In the words of Steinmo (2008),

> [b]ringing ideas into our understanding of institutional change, then, brings agents back into institutional analysis. One could argue that a key weakness

> of institutionalism in the past has been that actors could be simple hostages of the institutions that they inhabit. Integrating ideas into the analysis addresses this problem by making institutions both a constraining/incentivizing force and the object of political contestation.
>
> (Steinmo 2008: 133)

Thus, Capoccia's considerations about formative moments fully corroborate the assertion that an analysis of institutional change based on an HI framework entails embracing both notions. The section on methods will provide further explanation of how to approach critical junctures from a methodological perspective.

Four hypotheses

The relationship between the two IVs leads to variation in the DV. The DV can be understood to have three values based on the degree of integration: *low integration*, *moderate integration,* and *high integration*. A clear description of the scale of integration will be provided in due course. As discussed, intended goals and the policy outcome define the level of integration: *the level of the process of integration is defined as the difference between policy outcomes over time*.

Low integration

Impact of the IVs: *Low integration* occurs when high institutional stickiness coincides with no critical junctures. The high institutional stickiness (the institutional 'lock-in') will create high countervailing pressures to change and prevent the institution from changing at all without a catalytic event like a critical juncture. In this case, Scharpf's joint decision trap fully applies (measured through the proxy variable) as the cause for the institutional lock-in.

Logic: As discussed in the previous section, integration is measured as the difference between policy outcomes. Based on this rationale, *low integration* occurs when goals are defined but cannot be attained as the conceived policy outputs are not sufficiently capable of tackling specific issues and do not translate into effective legislation. Actors might be willing to address specific issues, but the institution does not provide the necessary framework to attain the goals. When comparing different policy outcomes, the difference between them shows no significant increase in effectiveness.

Moderate integration

Impact of the IVs: *Moderate integration* of primary law will happen when high institutional stickiness encounters a critical juncture. The high institutional inertia prevents the critical juncture from unfolding its full potential, which it would do if institutional stickiness were lower, culminating in a moderate outcome. A second case of moderate integration takes place when low institutional stickiness occurs without a critical juncture. North's increasing returns model then fully applies; path-dependent processes are revealed, allowing for incremental change.

Logic: *Moderate integration* occurs when goals are clearly defined and, due to provision in primary law, the institution can attain these goals to some degree. The difference between two policy outcomes over time might still be relatively moderate, pointing towards shortcomings in the effectiveness of the policy output. However, when comparing different policy outcomes, the difference between them shows an increase in the effectiveness of the policy output over time – incremental policy change is possible, and the 'effectiveness curve' of the policy output is much steeper than during times of low integration.

High integration

Impact of the IVs: *High integration* of primary law takes place when low stickiness occurs together with a critical juncture. This can be explained through the rationale that when institutions are not locked in, they are open to incremental change, and critical junctures can have a very high impact on an institutional choice. Primary law is amended through non-incremental change. However, after the critical juncture, the institution will fall back into equilibrium, and a process of moderate integration will be instigated based on path dependency. Low integration prevails as long as certain parts of the decision-making process are still subject to unanimous voting (for instance, fiscal measures in Article 194(3) TFEU concerning energy policy).

Logic: *High integration* occurs when specific goals are defined, and the institution provides the necessary means to attain these goals. Although certain actors, for instance, Member States, might not share *all* their preferences with other actors, the institutional trajectory and capacity create a fertile ground for policymaking with a large amount of effectiveness. Nevertheless, negotiations to reach a specific agreement might still be cumbersome and hard to accomplish. The institution can generate policy outputs that can effectively regulate the behaviour of actors and attain collective goals (the policy outcomes).

Based on these characteristics, non-incremental change in primary legislation can be expected whenever a critical juncture occurs. The change is non-incremental, as the critical juncture compels rapid change in the institutional setting. In the absence of these forces, incremental change in secondary legislation can be expected. It is thus incremental, as the lack of a critical juncture makes it possible for the institution to change gradually, and no short bursts of 'catalytic' events compel institutional amendments. In a nutshell, after a critical juncture punctures the institution, the institutional trajectory is altered, and a higher level of integration can be expected.

However, endogenous or exogenous events can affect the institution as well. These do not initiate far-reaching changes in the institutional design and primary law but can influence secondary legislation. They are not as strong as the events that alter the institutional trajectory as a whole but are powerful enough to alter important parts of the institution, namely secondary law. Institutional stickiness, the first IV, is associated with the policy output (the rules) and measured with the help of the proxy variable of the voting system. A critical juncture, the second

Table 2.1 Hypotheses

Independent Variables (IV)	**IV: High Institutional Stickiness:** *Scharpf's Joint Decision Trap*	**IV: Low Institutional Stickiness:** *North's increasing returns rationale*
IV: Critical Juncture	**H2: Moderate Integration** Non-incremental change of Primary Legislation	**H4: High Integration** Non-incremental change of Primary Legislation; followed by process of moderate integration of secondary law
IV: No Critical Juncture	**H1**: Process of **Low Integration** Minor change of Secondary Legislation	**H3**: Process of **Moderate Integration** Incremental change of Secondary Legislation; however, 'small' exogenous and endogenous factors affecting secondary legislation possible

IV, is an event (exogenous or endogenous) punctuating the institutional equilibrium. Finally, the level of the integration process, the DV, is measured as the difference between policy outcomes – how the rules are eventually transformed into concrete action – addressing the same policy area at different points in time (see Table 2.1).

The *independent variable* (IV) depends on *both* the degree of institutional stickiness (low – high) *and* whether a critical juncture occurred. The *dependent variable* (DV) is *the measured variation of integration* as explained in the section 'measuring integration'. The DV is understood as the decisions reached and has three values: low integration, moderate integration, and high integration.

H1: If no critical juncture occurs in a setting of high institutional stickiness, low integration is expected. 'Small' critical events will not affect the institution.

H2: If a critical juncture occurs within a setting of high institutional stickiness, moderate integration is expected. Integration will occur in the form of a non-incremental change of primary legislation.

H3: If no critical juncture occurs in a setting of low institutional stickiness, moderate integration is expected. Integration will occur in the form of incremental change of secondary legislation. However, small endogenous and exogenous events can impact the institution in equilibrium, possibly altering the trajectory of a specific part of secondary law.

H4: If a critical juncture occurs within a setting of low institutional stickiness, high integration is expected. Integration will occur in the form of non-incremental change of primary legislation. After the critical juncture, the institution falls back into equilibrium and a process of moderate integration of secondary law is expected.

Research design and methods

The study utilises a mixed methods approach. The case selection, informed by the generated hypotheses, will be explained, leading to elaborations on the methodology applied (see Table 2.2).

The analysis investigates the policy evolution from the early 1950s – the creation of the European Coal and Steel Community (ECSC) – to 2023, which includes the first proposals made by the Commission for a common energy policy up to the implementation of the most recent legislation. This timeframe will enable a comprehensive and holistic analysis of the policy area from its inception to the most recent significant developments, namely the implementation of the European Energy Union and concomitant amendments under the European Green Deal and REPowerEU. The case studies used to test the hypotheses were chosen based on a preliminary reading of policy developments and an extensive examination of secondary literature. These insights provided an initial understanding of the policy field and concomitant developments within the sector. Moreover, the case selection was informed by the theoretical framework and its assumptions about locked-in institutions, critical junctures, and notions of institutional equilibrium. Hence, cases were chosen based on the variation of the independent variables, which led to a change in the dependent variable. The dependent variable's value depends on the effect that both independent variables have on each other – the effect of one independent variable depends on the level of the other.

The delimitation from the 1950s to the 1980s will inform the case for the first hypothesis. Energy issues were on the table of European leaders during this period. For instance, the proposals to enhance European integration based on an integrated energy and transport policy were agreed on at the Messina conference (Lucas 1977) and when the oil crisis in 1973 highlighted the European Community's vulnerability to interruptions of a secure and reasonably priced supply of energy (George 1996). The implementation of the Single European Act (SEA), one of the chief objectives of which was to create a Single European Market (SEM), will serve as the case for hypothesis number two. The creation of the SEM subsequently led to the Commission's first proposals to integrate the energy domain *per se*. The period after the SEA is most suitable for testing the third hypothesis, as the first legal measures to regulate gas and electricity grids were made during this time: the three

Table 2.2 Hypotheses with case selection

Independent Variables (IV)	*High Institutional Stickiness:*	*Low Institutional Stickiness:*
Critical Juncture	**H2: Moderate** Integration **SEA Treaty**	**H4: High** Integration **Lisbon Treaty and beyond**
No Critical Juncture	**H1**: Process of **Low Integration 1950s - 80s**	**H3**: Process of **Moderate** Integration **Three Energy Packages**

energy packages. The Lisbon Treaty was chosen as the case for the fourth hypothesis as it made the proposal for the European Energy Union possible. The study's endpoint was chosen as 2023, as many important documents were published under the European Green Deal and REPower Europe.

Actors

Three types of actors are considered: intergovernmental European institutions (the Council of the EU, the European Council), supranational European institutions (the Commission, the European Parliament), actors operating in both domains (e.g. COREPER and working groups), and public and private interest groups. Variables interacting and influencing each other during the policymaking process are arranged in a multi-level model, distinguishing between materialist variables (e.g. different actors, structure and agency, exogenous factors) and ideational variables (ideational factors, norms, best practice, soft rational choice theory). A central concern is the degree to which we can ascribe agency to the different institutions, how we theorise about institutions in general and where the agency to alter them comes from. In this vein, this book contributes to the structure/agency debate and examines the level of coherence within the different institutions. It is paramount to elaborate on the sources of agency in more detail.

As discussed, institutions are more than a set of formal (or informal) rules and more than the buildings in which the institutions are headquartered. We, therefore, theorise that institutions develop their own form of agency as they might alter policy development and the institutional trajectory in resonance with their own set of preferences. However, we must emphasise that these institutions are comprised of different actors with their own preferences, committed to individual perceptions of goal attainment. The Council of Ministers is a different institutional player than the Commission, as different actors are involved in the institution. Depending on the issue, these actors display heterogeneous or homogenous interests as they derive their legitimacy/agency from diverse sources.

Moreover, as the analysis will show, divergent preferences also exist within the different institutional actors. For instance, the Commission is not a homogenous institutional player with a coherent set of preferences but embodies divergent preferences *within* the institution. As we will see in the empirical chapters, the Commission was not always internally aligned. For instance, the preferences of DG Competition and DG Energy diverged in some instances.

The actors within this spectrum have their range and scope of influence and serve as indicators for different preferences. Emphasis is placed on the Commission, the Council, and the European Parliament as the principal decision-making bodies of the EU. Public and private sector interest groups will also be incorporated in the analysis. Each of them is bestowed a particular leverage within the policymaking process, depending on the institutional preconditions at a given time (such as voting/veto power of Member States; unanimous vs. qualified majority voting) and norms and best practices. The actors, however, are systematically connected and should not be examined separately. A lopsided focus on one unit would impose

an imperfect condition for a comprehensive analysis: the unfavourable condition of overemphasis (or underestimation) of its influence on policymaking. These distinct units exert power within their scope and create a radius of influence defined by legal requirements and their available capabilities, resources, interests, and ideas. They propose, reinforce, and bring policies into existence. However, due to their inherent connectedness, they also intervene, react, and constrain each other.

Methods

This research analyses a diverse array of data, scrutinised through a qualitative analysis – an extensive document analysis is performed – while also leveraging descriptive quantitative data for further clarity. Primary and secondary law published in the *Official Journal of the European Union* serves as the backbone of the analysis, as it defines the published formal institutional rules and represents the policy output as part of the policy cycle. Member States are selected upon preliminary research conducted with the help of primary and secondary literature. At the beginning of the historical analysis, as only six Member States were part of the European project, preferences could be largely identified in official documentation and secondary literature. Stances towards specific sectors of energy policy were relatively stable over time compared to later when energy policy became broader and more intertwined with other sectors. For instance, during the inception of the ECSC and Euratom, France was very concerned with state security and bolstering its economic standing in Europe to make the French economy more competitive in the future; preferences did not change much in the first few years. However, a limitation of relying on official documentation from this time is that preferences *within* Member States could not be easily revealed. The historical record is thin, and comprehensive secondary literature addressing Member States' preferences is scarce. However, (annual) reports and the Bulletin from the European Community for Coal and Steel/of the European Communities, published by the High Authority of the European Community for Coal and Steel/the European Commission, helped to build an overview of actor preferences. Later in the historical analysis, when more Member States were part of the European Communities/European Union, preferences are clustered into groups. For instance, a cluster of Member States in favour/against a decision is created to discuss the most powerful players in more detail. These actors are treated as spearheads for policy development and specific preferences.

Official documentation from the institutions serves as primary sources in order to gain insight and explain major decisions, including conclusions of the Council, communications and proposals by the Commission, information about energy policy published by the High Authority and the Commission (for instance, the Bulletin from the European Community for Coal and Steel; the Bulletin of the European Communities), publications by the European Community Information Service and DG Energy (for instance, reports on specific energy developments; press releases published by the Commission/DG Energy and comprehensive information on their website), information and documents from the European Parliament's website, and

other relevant publications by European institutions. These documents were chosen to create a coherent narrative of historical events that serve as empirical data analysed from an HI perspective.

Given the sheer volume of information, informed decisions had to be made to reduce the quantity of documents analysed. This was achieved through a preliminary study of each of the timeframes under consideration, which indicated the most significant events and decisions. Historical accounts on the evolution of energy policy provided supplementary data.[3] A particularly challenging task was filtering out the most important legal provisions/documents/information about specific events that influenced the institutional trajectory. Hallmark decisions were mentioned and re-iterated over months in publications like the Bulletin from the European Community for Coal and Steel/of the European Communities. Comprehensive volumes by scholars or other secondary literature also pointed towards the legal documents valuable for deeper examination. However, a limitation of this approach is that a historical analysis may never be complete and, whilst informed by the literature, the scholar must make subjective decisions on what to include.

The analysis was conducted through the sequence of historical events, moving from one point to the next. The criteria for the document selection were as follows: first, communications and proposals of the European Commission, European Council conclusions (and recommendations), White and Green Papers, and the Bulletin from the European Community for Coal and Steel/of the European Communities were taken as starting points to identify a set of *intended goals*. The decision-making process was then analysed through an assessment of the preferences of the different actors, leading to a specific *policy output*. Subsequently, the *policy output* (the legal provisions) was assessed, as well as whether it was effective or not (the *policy outcome*). The policy outcome, in turn, was mentioned in new policy proposals created by the Commission as shortcomings became apparent once secondary provisions were transposed into domestic law and taken as starting points for a new set of intended goals.

A conscious decision was made to pay less attention to new legislation regarding the coal sector in the analysis of the early stages of energy policy, as it was a fully integrated sector which lost its dominance considerably after the inception of the ECSC. Indeed, early reports from the Commission highlighted the decline of the relevance of coal. Therefore, greater attention was paid to proposals addressing a common energy policy, provisions addressing oil and gas, and energy security, as these areas posed challenges in terms of deeper integration.

The Pittsburgh Archive of European Integration (AEI) was consulted for older documents that could not be found on the Commission's website (proposals, recommendations, decisions, general information, etc.). Moreover, Agence Europe was used to gain insight into relevant events affecting the energy sector and decision-making. Policy developments were cross-referenced in these documents, which helped to connect different developments, providing a more nuanced and comprehensive picture.

Extensive data from exploratory and indicative interviews with experts and decision-makers in Brussels supplemented the data acquired from documents. The

rationale behind incorporating interviews was to get a deeper understanding of the preferences of institutions and Member States and identify potential areas of relevance – data that was not always readily identifiable from documents. Fourteen semi-structured interviews were conducted in April 2018, with representatives of the Directorate General Energy (DG ENER – internal market, security, interinstitutional relations) at the European Commission, representatives of the Committee of Permanent Representatives (Germany, Poland, Austria, Latvia), Members of the European Parliament, and think tanks. Questions were formulated based on the expertise and experience of the respective interviewees to gain specific insight into particular policy events and perspectives, as well as more open-ended questions regarding policy development.

The method of process tracing served as the methodological approach. Process tracing in social science provides the opportunity to trace intervening causal mechanisms (the causal links and processes) between one or more independent variable(s) and the outcome of the dependent variable. It is a valuable tool for theory testing, as a wide variety of observations can be made within a case and as these observations reveal a particular sequence in which events unfold to serve as a valid explanation for the case and for a relationship between variables. Put differently, the lack of independence among the observations constitutes the compelling rationale for drawing inferences (George & Bennett 2005: 206–207; Bennett 2008). Theory-testing process-tracing was applied as the four generated hypotheses are based on a pre-existing theoretical framework. In theory-testing process tracing, a causal mechanism is hypothesised to be present between both X (the cause) and Y (the outcome) in a case (or a population of cases), and the context allows the mechanism to operate. The goal is to go beyond mere correlations and associations between X and Y, showing whether X's hypothesised causal mechanisms contribute to Y's outcome (Beach & Pedersen 2012: 9–11). In theory-testing process-tracing, we know both X and Y, and the researcher has either conjectures about a plausible mechanism or uses logical reasoning to deduct a causal mechanism from existing theorisation.

The theorised causal mechanism subsequently needs to be operationalised, conveying the theorised expectations into case-specific predictions about the observable indicators that should be present in the case for each part of the mechanism at work. Once the mechanisms are conceptualised and operationalised, the researcher gathers empirical evidence. The analysis is conducted stepwise, ensuring that each part of the mechanism is present. It is essential to note that the evidence for the different parts can be very different from each other, making evidence for them sometimes incomparable. They do not read like a narrative as, for instance, evidence in the form of events is different from evidence in the form of pattern evidence (for instance, the number of documents produced by different institutional actors). Thus, "[w]hat is being traced is not a series of empirical events or narratives but instead the underlying theorised causal mechanisms itself, by observing whether the case-specific implications of its existence are present in the case" (Beach & Pedersen 2012: 15).

A challenge for Historical Institutionalism is how to operationalise the two most important concepts: path dependency (including feedback loops and increasing

returns) and critical junctures (Pierson 1996, 2000, 2004; Arthur 1988; North 1990). Both concepts are well explained from a theoretical standpoint, and at least the operationalisation of increasing returns is explained in economic theory. However, in the institutionalist application, the concepts pose a methodological challenge, as how to measure these phenomena is not entirely clear. Thus, a particular focus is placed on developing a comprehensive and methodologically distinct approach to examine critical junctures.

How can we identify critical junctures? Capoccia (2015) provides boxes to be ticked before we can assume that an event qualifies as a critical juncture. First, the unit of analysis must be defined – for instance, a political organisation, a public policy, a set of formal rules, a political regime. Then, the following question must be asked: a critical juncture in the development of what? In addition, a fallacy may occur here as sometimes researchers ascribe certain events of uncertainty and economic/political upheaval critical potential; however, we have to be careful with the selection as different kinds of shocks influence some decision-making arenas and not others. Therefore, the researcher must carefully define the critical juncture as a contextualisation of the specific unit of interest. Second, once the unit of analysis is defined, potential 'candidate' critical junctures can be determined; this can be done with the help of existing literature. However, it is paramount that the critical potential of the juncture should be shown *empirically* and not assumed *a priori*. Third, once potential moments of institutional change are identified, a test for structural effects causing the anticipated change should be conducted. Is the institutional outcome based on structural antecedents inducing the change, or is agency the driving factor? Are the institutional outcomes based on political choices between available alternatives, or are the choices assumed to be there but based on structural preconditions? Fourthly, different candidate critical junctures are assessed, and the most critical ones are identified. The structural test conducted beforehand helps to rule out some candidate critical junctures, and a focus is placed on those that clearly exhibit that agency and political dynamics played an important role in developing a path-dependent institution. Fifth, once critical junctures are identified, the researcher reconstructs historical events, identifies the key decision makers and their respective interactions, and traces back which institutional alternatives would have been possible at the given time. Sixth, a counterfactual analysis can be conducted after institutional alternatives are defined. This helps to show that a different institutional choice could have been made, and if such a different choice had been made, the institutional arrangement would have created a durable institutional setting. Lastly, the researcher will present evidence that the choices made during the critical juncture created and induced a long-lasting institutional legacy.

Conclusion

This research contributes to the existing literature by analysing incremental steps towards a comprehensive energy policy, in this respect, the project of the European Energy Union. It analyses the implications of such developments for Member

States regarding existing relations with third countries. The volume provides an explanation for the factors that contributed to the further development of the institutional matrix and identifies critical junctures that instigated institutional change. In this respect, the factors contributing to deeper integration, the interplay between institutional development and policy development, are a central point of the investigation. This investigation sets out to answer the question *under what conditions does integration occur in the field of energy over time?* In doing so, it provides a theoretical model that can not only improve our understanding of integration in the energy domain but can also help explain the obstacles to, and driving factors of, European integration per se.

Notes

1 "Unintended consequences" – see also Fioretos (2011); for example, high issue density – the sheer scope of decision-making in the EU diminishes the ability of Member States to control policy trajectory.
2 Grounded in the fact that certain generating technologies only amortise after a considerable amount of time has passed.
3 see: Lucas (1977), Matlary (1997), George (1996), Schubert et al. (2016).

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3 The EU as a locked-in institution

Institutional paths in energy policy

Introduction

The first empirical section of the chapter explains the initial developments, starting with the creation of the first supranational bodies in Europe. As Lucas (1977) poignantly observed in hindsight, "[i]t is odd that energy policy, which has apparently been so unsuccessful, has frequently been presented as a reason or pretext for European integration" (Lucas 1977: 1). The Historical Institutionalist (HI) framework offers a methodological approach to analyse events in sequential order, not merely assessing policy development at a given point in time but providing methodological and theoretical tools so that causal linkages can be put into a wider historical context. However, it is paramount that the historical account does not slip into a story-telling exercise but follows a stringent method. The first step entails collecting pertinent empirical data, contingent upon the designated unit of analysis; for instance, whether particular institutional developments were widening the institutional matrix or whether institutional players sufficiently addressed specific energy sectors. Subsequently, the second step aims to identify explanatory factors and assess causal relationships through the lens of HI.

The Second World War destroyed established energy networks and supply throughout Europe. Before the war, roughly 80–90% of primary energy came from coal (Matlary 1997; Lucas 1977). The war diminished production and distribution to a large extent. Traditional coal-producing countries like Germany, Poland, and the United Kingdom faced structural and endogenous restraints. Their distribution networks collapsed, domestic mines were worked to the limit, and equipment was not properly maintained. In addition, no investment was made to stimulate growth in the sector, and unskilled labour was sent into the coal pits. In some instances, even forced labour was deployed. An *ad hoc* intergovernmental institution, the European Coal Organization (ECO), was created immediately after the war. Subsequently, its responsibilities were taken over by the Economic Commission for Europe (ECE), and in 1948, the Organisation for European Economic Co-operation (OEEC) set up permanent committees for coal, electricity, and oil. The Marshall Plan, which aided the reconstruction of Europe, made closer collaboration between European states a condition for economic support, and the OEEC was conceived to

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assist in this undertaking. In the United Kingdom, France, and Western Germany, ambitious plans were designed to revive the troubled industry, which were thoroughly successful as the total quantity of imports needed to meet domestic demand (mainly from the United States) began to fall and shifted to Poland (Lucas 1977). By 1950, Germany had recovered quite substantially. However, a solution had to be found which reconciled Germany's economic revival and France's demand for security, famously expressed by Charles de Gaulle, who stated that:

> [t]he current of German vitality is thus turned westwards. One day German aggressiveness might well face westwards too.
>
> (de Gaulle as cited in Archer 1994: 73)

A means to address this predicament was to instigate integration and promote plans for a united Europe, conceived by turning towards the coal and steel industries, which offered an attractive target for integrationists' strategic ambitions. The argument was threefold: first, these heavy industries were deemed necessary when fighting a war, posing a possible threat in the former Axis countries. Simply put, without steel and coal, no war. Second, from an economic standpoint, the industries had critical linkages in Western Europe. The steel industry in Saar was linked to France at that time but was supposed to be reintegrated into Germany.

On the other hand, the French steel mills depended on the Ruhr for coking coal. The French steel industry was larger than its counterpart in Germany. However, the industry feared competition from reinvigorated Germany, as did the French coal producers from German mines. Third, there was a potential threat that a post-war depression would hit the coal and steel industries, similar to the one occurring in the aftermath of the First World War (Archer 1994). By utilising the coal and steel sectors as an ignition spark for integration, a potential remedy which simultaneously addressed multiple concerns was found, based on its utter significance for Europe's economy.

From a Historical Institutionalist standpoint, the precarious economic situation as an exogenous factor prompted a critical juncture, which in turn shaped the initial demand for the genesis of an institutional framework in the shape of the European institutions. Moreover, it created an environment susceptible to powerful actors to steer the initial trajectory of the institution. During critical junctures, the scope and range of possible choices increase substantially. Critical junctures create demand for

> institutional formation in moments of political openness and fluidity: the various types of political processes through which institutional choices are made: strategic interaction, coalition-building, norm-generating strategies aimed at influencing the perception of the legitimacy of institutional innovations by rule-takers, and choices made by powerful political leaders.
>
> (Capoccia 2015: 101)

The European Coal and Steel Community

These factors and processes can be identified as playing a role in influencing the creation of the European Coal and Steel Community (ECSC). Critical moments can be created by both external (exogenous) *and* internal (endogenous) forces (Collier & Collier 2002). Ideational factors and normative considerations also affected the inception of the institutional matrix (the ECSC as a starting point), as the reconciliation of Europe was seen as a means to generate solidarity, prosperity, and peace amongst European states. The institutional vehicle for this operation was meant to be the ECSC. As the Treaty states, the ECSC was conceived as an institutional means to resolve "historic rivalries . . . among peoples long divided by bloody conflicts" and to bring prosperity by "concrete actions which create a real solidarity and by the establishment of common bases for economic development" (ECSC Treaty). From a political and economic view, the ECSC was instigated as an institutional measure to forge closer ties and strengthen solidarity between the two old historic foes, France and Germany, to annihilate the prospect of war and to induce an impetus for integration and economic growth. By reducing competition over coal and steel, the backbone of industry and economic activity at the time, and by providing accession to these markets for all participants, an "organized and vital Europe" should be created, "indispensable to the maintenance of peaceful relations" (ECSC Treaty). The plan for the ECSC, known as the Schuman Plan, was presented on 4 May 1950 by the French Foreign Minister Robert Schuman.

> The pooling of coal and steel production should immediately provide for the setting up of common foundations for economic development as a first step in the federation of Europe, and will change the destinies of those regions which have long been devoted to the manufacture of munitions of war, of which they have been the most constant victims. The solidarity in production thus established will make it plain that any war between France and Germany becomes not merely unthinkable, but materially impossible.
>
> (Schumann 1950)

However, as Lucas (1977) and George (1996) point out, the plan was conceived in the French Economic Planning Commission (Commissariat du Plan) by Jean Monnet and devised by the French Foreign Ministry. Monnet, as an experienced civil servant and political economist who guided the post-war reconstruction of the French economy, came to realise that in order to go beyond recovery towards sustainable economic growth and a higher quality of living for all citizens, the resources of a single nation were not sufficient. Thus, European states had to pool their resources (George 1996; Monnet 1955). Milward (1984) emphasises that the Monnet Plan had significant implications for both the international and domestic domains. One of the main aims was to make the French economy more competitive in the future, especially concerning the German economy.

However, further implications were addressed in the Monnet plan. The ultimate goal was for France to become Europe's largest steel producer, which was not an

official policy but a notion that was unofficially promoted. The projected increases in the output of the steel industries would only make economic sense if French steel exports replaced former German steel exports. However, this would only be feasible by increasing coal and coke imports to the French market. The supply of coke and coal from Germany was essential. Thus, the Monnet plan fundamentally intertwined the French with the German economy and offered a "programme for attempting to provide for future national security against Germany" (Milward 1984: 98). This suggests that in addition to the normative requirement to foster peace in Europe, rational decision-making was an essential driving factor in the initial phase of the institutional inception. As an HI framework explains, the initial phase of institutional creation is characterised by a situation in which different powerful actors have primacy regarding their institutional choices. The French government especially demonstrated assertive, rational behaviour, characterised by utility maximisation based on evaluating the potential costs and benefits of different actions. They joined the institution to increase their economic benefit and reinforce a dominant position on European markets, but also to increase their strategic security to protect national interests and establish a favourable political environment. However, as we will see later in the analysis, structural factors restrained the available choices of the different actors over time, and initial policy decisions created an institution that was prone to sub-optimal outcomes.

Another important observation from a Historical Institutionalist standpoint is the notion that Monnet's plans for creating a common market were just a starting point. Strategic actions by actors corroborate the proposition of Historical Institutionalism that actors base their initial policy choices on rational decisions. However, they become entrenched in the institutional matrix over time, which *restricts and steers* the range of available choices (Pollack 1996, 2006, 2007). Monnet had high ambitions regarding strategic economic planning and wanted to create more than just a common market. As liberal free-market systems had caused adverse effects on the French economy in the past, his vision was to create an economic community that should adopt common economic policies and rational planning procedures (George 1996). As such, coal and steel were just the starting point. The goal was to extend the planning procedures to all levels and policy areas of the European economy (Monnet 1955). It was assumed that integration would accelerate over time, and the so-called spillover effect – the momentum created by the integration of one sector leading to pressure for further integration in adjacent and related sectors – was believed to "lead inevitably to full economic unity" (Haas 1958: 283). However, European states would not have agreed to cede powers to supranational institutions all at once. The rationale for utilising coal and steel was reasoned through the immediate problems both commodities created, as coal was in short supply and steel was in excess. Thus, from a rational choice perspective, it made sense to harmonise these markets and undertake planning and production at a European level. Since steel and coal were central components for all industries, it was anticipated that rational planning of these two industries could only be achieved in a much larger economic context "as part of a more general exercise in economic planning" (George 1996: 3). Monnet anticipated that the creation

of the ECSC would trigger economic spillover, as the initial decision would lead to further integration and institutional development of other policy areas due to functional economic pressures. The ECSC was perceived as a brilliant concept. West Germany accepted the Schuman Plan to fuse French and German industries. However, the final Treaty eventually broadened its scope to include the Benelux countries and Italy. The Treaty was signed in Paris on 18 April 1951 and came into force on 23 July 1952; it was valid for 50 years and expired on 23 July 2002 (Matlary 1997).

Two important points can be observed regarding preference formation. First, the formation of the ECSC was owed to the decision to rebuild Europe and European states' economies, based on materialist considerations and rational decisions to promote prosperity and rapid recovery following the Second World War. According to this logic, preferences were *exogenously* given, and actors' behaviour can be explained through their wish to maximise utility through deliberate goal attainment and rational choices. As explained in Chapter 2, once actors choose an institution, the institution falls into equilibrium. No actor within the institutional setting with a constitutional right to amend the institution is incentivised to do so (Pollack 1996). Institutions coordinate mechanisms that maintain and sustain these equilibria (Thelen 1999). The goal of the ECSC was to,

> contribute to economic expansion, the development of employment and the improvement of the standard of living in the participating countries through the institution, in harmony with the general economy of the member States, of a common market.
>
> (Article 2 ECSC Treaty)

Second, if we go back to the formation of preferences that led to the creation of the ECSC, we can also identify *endogenous* factors that triggered institutional development. In addition to materialist considerations and rational decisions based on exogenously given preferences, there was also a prevailing idea to tie European states together to create stability and peace in Europe, rooted in a logic of appropriateness, highlighting ideational factors (see March & Olsen 1989). The idea of fostering peace, trust and confidence between the European States and ending the long-lasting enmity between historical foes has a powerful normative/ideational connotation. Therefore, preference formation can also be understood through endogenous factors. From this standpoint, economic considerations are a means to an end – namely, to further peace in Europe and to reinforce political institutions.

It should be noted that this research is not claiming that normative factors are more important than economic factors for European integration[1] but that both rationales are contributing factors for institutional development. Both exogenous momentum (the restructuring of Europe based on economic interdependence; the shortage of primary energy in the form of coal, etc.) *and* endogenous factors (ideas about how to govern and develop acceptable policy for all involved actors; how to overcome collective action problems; perceptions of how decisions should be reached) had an impact on the institution and enhanced the institutional framework.

Material considerations are an important factor for the creation of an institution. On the other hand, ideas are commonly seen as a part of the superstructure rather than the basis of political economy or, in this respect, the institutional framework.

However, they are constituting parts of institutions. "To neglect the role of ideas . . . is to miss an important component of the economic and political worlds" (Hall 1989: 361). Institutional change and institutional genesis also need *ideas* about how to *alter* or *create* an institution capable of effectively governing the institutional matrix. Rational Choice Theory can explain the conditions when institutions are in equilibrium. Actors have all the necessary information at their disposal and, based on their interests and preferences, can make perfectly informed decisions within the institutional framework. The institution, in turn, depending on a set of formal rules agreed upon between the actors, restricts and governs their actions to facilitate certainty and reduce transaction costs. Rational Choice Institutionalism sees "institutions as exogenous constraints, or as an exogenously given game form" (Shepsle 2009: 24). However, such a framework does not cover factors that instigate institutional change. Hence, Hall (1989), in a comparative study, examined how Keynesian economic ideas, inspired by the economic depression of the 1930s, influenced institutional matrices in different countries over three decades after the Second World War when many nations established the systems of macroeconomic management they use to this day. From this perspective, these new ideas created and altered prevalent institutions and, as many countries still use institutions based on these ideas, instigated path-dependent processes. Whether Keynes' ideas offer valuable economic solutions that bring economic stability after a fundamental crisis like the Great Depression (a critical juncture par excellence!), or whether austerity measures could be the remedy to curb economic downturn as propagated by his opponents (for instance, Paul Krugman, Alberto Alesina, Robert Barro), is not the focus of discussion here. Instead, the critical insight acquired is the answer to how and when new ideas can develop enough momentum to instigate institutional change successfully. The focus of the analysis is the factors leading to the development of a specific institutional trajectory after a critical juncture, as opposed to an account of the institution in perfect equilibrium involving solely strategic interaction. As stated by Hall (1989),

> [i]t is ideas, in the form of economic theories and the policies developed from them, that enable national leaders to chart a course through turbulent economic times, and ideas about what is efficient, expedient, and just that motivates the movement from one line of policy to another.
>
> (Hall 1989: 361)

In this respect, structural accounts tell us much about policymakers' constraints concerning decision-making. However, policymaking is based on creation as well as constraint. In his conclusion, Hall (1989) provides explanatory evidence of why and when new ideas successfully advance institutional matrices after a crisis. First, the key to the success of new ideas is the policymakers' judgment on whether the new ideas could resolve the (economic) problems at hand. New ideas' *(economic)*

viability is pivotal in how they are received. Second, a significant factor is the *administrative viability* of these ideas and whether the institutional capacities to implement them exist. Lastly, the reception of new ideas is contingent on *political viability*, which means the alignment of the new ideas with the goals and interests of political actors and different associations. As the following evidence suggests, all three factors were influential concerning the development of the ECSC, supporting the proposition that ideas played an important role.

The institutional design of the ECSC

The six founding Member States joined the ECSC "based on a common market, common objectives, and common institutions" (Article 1, ECSC Treaty). Article 4 addressed provisions to abandon import and export duties and quantitative restrictions on the movement of coal and steel; discriminating practices among producers, buyers, and consumers concerning prices as well as measures which obstruct the buyer in the choice of the supplier; subsidies or state assistance, or special charges, in any form used by the state; and practices concerning market distortion/division of markets (Article 4, ECSC Treaty). In addition, it established a High Authority, which constituted the supranational executive, a Common Assembly, a Council of Ministers, and a Court of Justice (Article 7, ECSC Treaty). The High Authority (which later became the European Commission) was composed of independent experts from each Member State and could issue legally binding regulations addressing the market for coal and steel. In practice, Germany, France, and Italy sent two representatives to the High Authority, whereas Belgium, the Netherlands, and Luxembourg could send one. As the Schuman Plan did not mention an institution that would represent the Member States, it was obvious that to guarantee support for the ECSC in general and for the High Authority in particular, an institution had to be conceived representing the interests of the Member States. The Council (formally labelled as the 'Special Council of Ministers') was tasked with this agenda and consisted of the governments of the six Member States. It was to be consulted by the High Authority, and it had to agree to the proposals of the High Authority by majority voting or, on special occasions, by unanimity (Glockner & Rittberger 2012). Majority voting was designed as a system of weighted votes, which meant that not only a majority of governments had to agree to a proposal but also that a Member State, which accounted for 20% of the total production of coal and steel in the community, had to be in favour of the vote (Glockner & Rittberger 2012). As we can see, the coal sector was subject to qualified majority voting (QMV), and, therefore, as we will show, path-dependent processes could gradually evolve. The coal sector exhibited minimal institutional inertia/institutional stickiness, thereby facilitating the incremental change of the associated institutional framework. Actors perceived the ECSC as a suitable institutional vehicle to govern their coal industries.

Jean Monnet was appointed the first President of the High Authority. After a preparatory period of almost two years, the High Authority became truly supranational. It exercised powers that were formerly under sovereign control and that were

assigned to it by the Member States. One of these powers addressed the capability to fix prices. The High Authority exercised these powers immediately because the coal prices were continuously rising following the end of the war, so maximum prices were set to avoid prices hardening. Price control was controversial from the beginning because of potential market distortion. However, the High Authority clarified that if it did not control the prices, powerful cartels in the Ruhr basin and the coal pits of the Nord and Pas-de-Calais coalfields would determine the price (Lucas 1977). The powers to set prices were conferred upon the High Authority in Articles 65 and 66 of the Treaty constituting the ECSC (ECSC Treaty). The High Authority considered the problem of coal cartels a priority issue, and two powerful agencies, the German GEORG and the French governmental agency ATIC, were targeted as infringers (High Authority 1955a). The French government appealed at the Court of Justice against the High Authority. However, in the end, both organisations were successfully changed (High Authority 1956a; Haas 1958: 76 & 77).

The second important task of the High Authority was to assist in the increase of the production of coal. The coal industry was still suffering from the war, and cartels had set coal prices relatively high, which made new investments in the sector unattractive. Due to the efforts of the High Authority and strong demand, coal production grew steadily until 1957. However, the total demand for energy increased faster than industry could provide coal; therefore, the difference was balanced with oil, which was seen as a supplementary fuel (Lucas 1977). Between 1955 and 1975, the High Authority predicted an increase in total energy requirements of no less than 50%, and although gas played a role in the energy equation, the heaviest demand would be for coal and oil (High Authority 1957a). Therefore, to satisfy future demand, the High Authority suggested using dual-firing power stations to generate electricity (power plants that can use *either* coal *or* oil) to uphold energy security and counter-balance possible shortages of coal supply (High Authority 1957a). A turning point in this equilibrium was reached in 1957. Even though two mild winters and an economic recession diminished energy demand, oil was still imported at the same rate. Before the war, oil had little importance in the Western European economies. During this period, attitudes of national governments towards the oil companies were formed (Lucas 1977).

Overall, from an economic standpoint, the ECSC was an institutional endeavour with somewhat limited success and "its far-reaching hopes and expectations could not be met" (Schubert et al. 2016: 94). The relatively mild winters of 1958/59 led to a decline in total coal consumption, causing a mounting level of coal stocks at pitheads. The High Authority decided against the declaration of a manifest crisis, which would have permitted import restrictions and the allocation of production quotas (European Community Information Service 1958). However, France and Germany responded to the surplus in a manner that was prohibited by the Treaty and against the will of the High Authority: they introduced restrictions on coal imports to protect their respective markets. The High Authority could not enforce the Treaty due to a lack of powers. Moreover, it could not stop oil, as an exogenous factor (and important intervening variable) influencing the institution, gradually gaining ground in the energy market (Schubert et al. 2016: 94). The Council of

Ministers and the High Authority tried to address the problem that energy sources other than coal developed a larger share of total consumption at a faster pace. Moreover, they came to realise that due to these developments, a reliable forecast of coal consumption could not be carried out unless energy policy was brought into a wider context. Therefore, they aimed to harmonise the whole energy sector through a coordinated energy policy (Special Council of Ministers 1957).

As indicated by the empirical data, the process of policy formulation was marked by less-than-ideal outcomes and suboptimal institutional performance, attributable not only to external factors but also to intrinsic institutional conditions. Nevertheless, as predicted by the applied HI framework, once an institutional path was pursued and accepted, the institution incentivised the actors to stick with their initial choice and not abandon the institution (Pollack 2006), *even in the light of an unproductive path* (North 1990). Based on increasing returns, the ECSC deployed robust path-dependent processes, adaptive expectations, and coordination effects, as actors were stuck with their institutional choices regardless of the ECSC's shortcomings concerning the governance of the coal sector. In this regard, the institution had a stake in evolving policies reinforcing existing structures and rules (North 1990).

Euratom – a powerless institution?

Monnet's choice to integrate the coal sector rested on two assumptions. The first was that coal would remain "a vital element in energy supplies for many decades to come" (High Authority 1957a: 1), an assumption prevalent in the 1950s. Electricity generation was especially meant to "give coal practically an unlimited market" (High Authority 1957a). The second assumption was that the High Authority would take an interventionist approach to coal production. Monnet hoped that the High Authority would create general economic plans for the whole Community, similar to his own efforts within the French Economic Planning Commission, directing the leading industrial sectors and providing a framework in which both private enterprises and the state sector could harmonise their decisions on investment. This approach was addressed as *indicative planning* or *dirigisme* ('guidance' or 'steering') (George 1996). However, the High Authority, which formally had clear supranational powers, did not become *dirigiste* in its orientation.

On the contrary, it confined its activity to promoting coal trade according to free market principles (Matlary 1997). Disappointed by the institutional development of the High Authority, Jean Monnet resigned from his post. In his resignation speech, he spoke of his conviction that the ECSC was the beginning of a process of integration that would trigger the creation of a truly federal union: the United States of Europe. He was convinced that the creation of the United States of Europe and a "European Common Market as big as the American market [was] crucial for the prosperity of Europe's peoples, the well-being of our workers and the solution to our problems" (Monnet 1955). Charles De Gaulle, the French president between 1959 and 1969, mocked Monnet as "the great American" (Talbott 2014). After his resignation in 1955, he founded the Action Committee for the United States of

Europe, a position he held until 1975 (Piodi 2010). As an independent organisation committed to federalism, it comprised leading political and trade union leaders. It promoted integration through atomic energy, the realisation of the European internal market, and the alignment of social policies (High Authority 1955b).

Monnet's resignation was not driven by desperation but aimed "to help the '*relance*' – the re-launching of Community Europe" (Archer 1994: 87). The idea of integrating the sectors of transport, oil, and atomic energy, as well as creating a common market among the Member States of the Community, was proposed in the Benelux Memorandum of 1955. Presented by Belgium, the Netherlands, and Luxembourg, the memorandum served as a blueprint for economic integration in Europe. In addition, it suggested that both the Atomic Energy Community and the Economic Community would need new supranational institutions (Archer 1994). The memorandum formed the basis for the Messina conference held from 1 to 3 June 1955, where the foundation was laid to create the two Communities, a task that was delegated to a committee of the representatives of the six Member States, headed by the Belgian Foreign Minister, Paul Henri Spaak. The committee eventually became known as the Spaak Committee, which subsequently worked on the technical details of the proposals – not without a great deal of internal wrangling, as one might assume (High Authority 1956b). However, on 29 May 1956, the twin proposals were discussed at a conference in Venice. All nuclear industry-related issues were addressed with the creation of Euratom, whereas for

> all forms of conventional energy, oil, gas and electricity, the solution proposed [was] to place them under the High Authority of the ECC&S [European Community for Coal and Steel], at least until the time [came] when the question of European institutions would definitely be resolved.
>
> (High Authority 1956b: 8)

As there was never a perception that nuclear energy was a sector that required a supranational institution, the motives leading to Euratom were purely political. In particular, Jean Monnet's Action Committee pursued an agenda utilising nuclear energy as a momentum for political ends. As Lucas states,

> [w]hen the political motives required technical support, they fell back on a technical vision of the future which was an extreme view that did not enjoy the best of the arguments even at that time.
>
> (Lucas 1977: 28)

Hence, following HI's assumptions about the factors contributing to creating new institutional rules, the Action Committee deployed endogenous momentum for institutional change and to amend the predominant institutional trajectory. This evidence corroborates the claim that, when assessing the formation of preferences of actors, "ideas render material considerations legible through processes of communication, coordination, and persuasion" (Fioretos et al. 2016: 12). Similar to the inception of the ECSC, after the initial endogenous spark concerning institutional

formation, subsequent preferences of Member States were rooted in rational decision-making and calculations regarding a trade-off between economic interests and security considerations.

Following a two-day session between the heads of state of Belgium, Germany, France, Italy, Luxembourg, and the Netherlands, an agreement was eventually reached in February 1957 in Paris (High Authority 1957b). The Treaties establishing the European Economic Community (EEC) and the European Atomic Energy Community (Euratom) were signed in Rome on 25 March 1957 (High Authority 1957c). What stands out is the omission of legal provisions addressing energy policy in the Treaty establishing the European Economic Community. The decision not to incorporate the energy domain was significant for future policy development insofar as, from an HI standpoint, early decisions were crucial to institutional development as they became increasingly entrenched over time, and shaped and constrained the range of possible policy choices in the future. Although Euratom was mentioned throughout the document, not a single reference to other energy-related issues was made (EEC Treaty 1957). Hence, excluding the sectors that the ECSC and Euratom Treaty did not cover hampered their further development from the outset. That said, the ECSC and Euratom Treaties created two unique institutions with considerable supranational powers in their respective policy fields. Deubner (1979) detailed the negotiations leading to the Euratom Treaty and the final outcome. Prior to Messina, France was reluctant to accept the prospect of a general common market and instead proposed sectoral integration in specific economic policies. It was the first industrialised country after the war that strived to develop a nuclear programme on a large scale and endeavoured to produce nuclear weapons.

As a consequence, France needed supplies of uranium and technology and, therefore, proposed the creation of Euratom (Deubner 1979). Germany was not overly enthusiastic about Euratom but needed the support of France to bolster the envisioned project of the common market. France eventually agreed to the common market and Euratom due to their deteriorating international standing, aggravated by France's involvement in the failure of the Suez Canal intervention of 1956 (Matlary 1997). The crisis was instigated by ongoing tensions between Egypt and Israel on one side and the UK and France on the other. It led to the closure of the Suez Canal, which was one of the major oil transit routes. The Suez Crisis raised serious concerns regarding energy security and the secure supply of oil needed for electricity generation, thus creating the opportunity to frame Euratom as a means to solve Europe's energy problems (Brutschin 2016).

The crisis can be seen as the first, however missed, opportunity for the High Authority to extend its competence and to gain influence in the gas, oil, and electricity sectors (Schubert et al. 2016). The lack of response to the crisis can be largely explained by the contractual arrangements at that time, with most Western oil companies having secured beneficial oil deals and the relatively stable political situation in the producer countries (Brutschin 2016). In addition, the importance of oil was not yet fully appreciated in the industrialised world. Thus, the role of Euratom was envisaged as a means to create a powerful nuclear industry capable of creating vast amounts of energy (Matlary 1997; Euratom Treaty 1957).

As previously stated, the initial trigger concerning the formation of Euratom and the EEC was rooted in an *idea* about how to enhance the institutional matrix further and foster deeper integration, and not the outcome of actors' choices based on exogenously given preferences and perfect information. The evidence corroborates the claim of Hall and Lamont (2013) that "interaction between neoliberal ideas about states and markets and the material endowments of actors and groups" (Hall & Lamont 2013: 12) is the critical driving factor for initiating change. Along these lines, political considerations and not rational calculations founded the basis for the idea of creating Euratom as a means to invigorate the European project. Even more so, in the case of France, the institution was meant to reinforce the process of securitisation. Hence, preferences were endogenously constructed on the perception of state security. Notwithstanding the importance of rational calculations regarding costs and benefits during the subsequent bargaining process for both institutions, the starting point for institutional change can be best explained by assumptions resting on an ideational foundation and endogenous momentum created by powerful agents inside the institution.

Another important observation is the missed opportunity of the High Commission to integrate oil, gas, and electricity (Schubert et al. 2016) into the institutional framework and create policies for the respective sectors. This case serves as evidence for a short counterfactual analysis. The counterfactual analysis shows that a different institutional choice could have been made. A different institutional arrangement could have created a more agile and effective institution, especially if it had included a majority voting mechanism (Capoccia 2015). As we will see, the biggest challenge for a comprehensive energy policy in the three decades following the crisis was the pervasive situation that no legislation could be passed without unanimous consent within the Council. Had majority voting been in place, the Council could have acted more decisively and quickly. Incorporated in the theoretical model as a proxy variable for institutional stickiness, the unanimity requirement created an adverse institutional environment, foreclosing any real advancement in terms of secondary legislation. Hence, the Suez Crisis was an important and missed opportunity for the Communities to integrate the policy area much earlier than the historical record shows.

Lucas (1977) points out that it would be an exaggeration to say that Euratom was a mere trade-off between the French and the other five Member States, who were (un-)enthusiastic about Euratom to varying degrees. However, it is fair to say that without the significant support of the French government, Euratom would never have been formed (Lucas 1977). Although supportive of a civil nuclear programme in general, the United States was highly critical of French aspirations due to their own ambitions to control the world market and flood it with large quantities of cheap enriched uranium. The United States feared that it would lose its dominant economic and technological position. Moreover, they had geopolitical concerns as the leader of French nuclear efforts was a communist (Deubner 1979). The French aspired to create a pan-European supply agency to buy uranium on the Western European market, meaning from France, with high prices. They strived to create a common European nuclear market and a joint enrichment plant to break

the US monopoly (also regarding reprocessing). In addition, France supported joint research and development efforts to "secure the place of their own lines of development inside Europe" (Deubner 1979: 216). From a French standpoint, which was purely self-interested, the rationale behind Euratom was the aspiration to get cheap access to the nuclear know-how of other Member States, a secure supply of high-quality uranium from the Belgian Congo, and a subsidy for its atomic research programme financed via the Community budget (George 1996). Moreover, France planned to build its own nuclear military capability (Schubert et al. 2016).

The United States overtly opposed attempts to create a European nuclear arsenal and demanded that European efforts to design a uranium isotope separation plant be abandoned – in exchange for US technology. Eventually, the United States signed an agreement with Euratom to build six nuclear power plants, helped finance them, and delivered technological assistance, enraging French President Charles de Gaulle (Schubert et al. 2016). Deubner (1979) denoted that Euratom was a "stillborn 'integration' scheme" (Deubner 1979: 223). Although conceived as a monopoly supply agency, the final Treaty had minimal relevance as an instrument of deeper European integration. Member States could purchase uranium from the cheapest supplier on the world market, which was the United States, and only formal authorisation was required from the agency (Deubner 1979). The United States sold cheap uranium rods to West Germany (George 1996). There was no obligation to construct a joint enrichment plant in the Treaty; therefore, France constructed its own independent enrichment facility. No reprocessing plant was authorised, and jointly directed national and community research was limited. Ultimately, even the proposed common market for atomic energy goods did not unfold its full potential due to national economic forces (Deubner 1979).

The Commission was slow to start work – in late 1959 due to the illness of its first president – and when it finally did, national rivalries became inherent (George 1996). Italy and West Germany soon developed their own nuclear research agenda following Euratom. Having the most extensive nuclear research programme and expecting to benefit the most from Euratom subsidies, France generally became less supportive of Euratom (Bache et al. 2014). Moreover, the Commission clashed with the French government over the right to inspect French plutonium facilities, which the Council did not support, and a proposal to create a joint programme with the United States regarding reactor development. Although the Commission won by a majority in the Council regarding the reactor development, the French government insisted that budgetary concerns had to be decided by unanimity, thus ultimately weakening the Commission's position (Bache et al. 2014). "Euratom moved perceptibly from the development of a powerful nuclear industry within the Community to the coordination and supplementing of national programmes – a move very much in keeping with French desires" (George 1996: 158). By the time the three executive institutions merged in 1967, Euratom had almost forfeited its institutional viability, with only the research centres, the Treaty, and the personnel representing the institution. "These disembodied entities, without any real functional relationship, have nevertheless continued to affect community energy

policy, much as chickens continue to run around after their heads have been cut off" (Lucas 1977: 44).

Moving to an analysis of the development of a *common* energy policy concerning *all forms* of energy, we have to consider endogenous and structural factors. First, the **endogenous factor** we should be aware of is the intrinsic difficulties in implementing a common policy posed by the institutional design of the three institutions. Formal competences were only given to the institutions regulating coal policies and nuclear energy, leaving the three Commissions with no say regarding any other forms of energy. From a Historical Institutionalist standpoint, the requirement to reach decisions by unanimity in policy domains not provided for by the Treaties created what Scharpf (1988) called "pathologies of substantive public policy" (Scharpf 1988: 267), which informs the reasoning for the proxy variable concerning high institutional stickiness. The theoretical model predicts that when the institution shows high institutional stickiness and in the absence of a critical juncture, the institution will display a process of low integration over time. In this regard, the ECSC Treaty stated in Article 95 that,

> (i)n all cases not provided for in this Treaty where it becomes apparent that a decision or recommendation of High Authority is necessary to attain, within the common market in coal and steel . . . the decision may be taken or the recommendation made with the unanimous assent of the Council and after the Consultative Committee has been consulted.
>
> (ECSC Treaty Article 95)

As the evidence shows, apart from the coal and nuclear sectors, the institution displayed high stickiness and was locked in. The EEC Treaty stipulated that powers already conferred on the institutions of the ECSC were untouched, and no reference was made to the use of natural resources. Only Article 103 provided the Council with the formal powers to put forward a directive to overcome difficulties in the case of a supply shortage of certain products, a loophole that was later exploited to implement the legal provision for the regulation on stock management (Haghighi 2007). The Euratom Treaty can be seen as a major obstacle to developing a common energy policy – especially from a supply security standpoint – concerning conventional energy sources in Europe. Nuclear energy was conceived as a panacea concerning supply security, rendering concerns for other forms of energy obsolete and treated as a formidable technological solution to diminish the dependence on third-country suppliers. The primary goal was to create a robust nuclear industry that should provide extensive energy resources (Haghighi 2007). However, as discussed, Euratom did not deploy its expected supranational powers due to "the victory of national economic forces" (Deubner 1979: 223). Another main obstacle to an aligned energy policy was the diverging preferences of the three executives. ECSC officials advocated the protection of the European coal markets, EEC officials preferred a market-based approach based on cheap imported energy, and Euratom officials championed nuclear energy to render both coal and imported energy obsolete (George 1996). Based on endogenous momentum, the internal wrangling

and vested interests of the different executive powers posed a major stumbling block to developing an energy policy addressing different sorts of energy.

Second, **the exogenous structural factor** that coal rapidly lost its predominance as the main energy source was not anticipated when the three communities were formed in the 1950s. In addition, oil was ignored entirely due to the enthusiasm for nuclear power and the inherent 'modernist' and technical musings of how to deal with growing energy demand. However, it was used as a supplementary source of energy. Only two forms of energy were assumed to be of real significance in the long term (George 1996). The first was the coal sector, which was to be maintained for political stability due to commitments to the labour force and social stability in general (Lucas 1977). The second was nuclear energy, the future of energy, paving the way to a prosperous Europe and helping to "contribute to the raising of the standard of living in the Member States . . . by creating the conditions necessary for the speedy establishment and growth of nuclear industries" (Euratom Article I). Thus, control of other energy sources, like oil and gas, remained in the hands of Member States who did not want to cede their advantageous relationship with producing countries (Haghighi 2007). Due to these developments, path-dependent processes unfolded in Member States, solidifying their individual control of these energy sectors and leaving no room for supranational institutions to manoeuvre.

A locked-in institution: energy policy in the 1960s and 1970s

Gas did not play an indispensable role in the 1960s. The first pipelines from the Soviet Union to the European Communities were built from the late 1960s/early 1970s onwards (Högselius 2013), and concerns regarding the security of supply did not arise before the 1990s (Brutschin 2016). Hence, oil became the rising energy source within the European Union, significantly influencing EU energy policies and increasing the region's dependence on oil-producing countries. We, therefore, should turn our analysis to the factors leading to such developments, keeping in mind that matters regarding oil needed unanimous decision-making if addressed in a proposal. At first, the increase in oil imports into the Communities was reasoned through the inability of Western European coal mines to meet the increasing energy demand, and oil from overseas was considered a boon when the security of the energy supply posed a threat (Lubell 1961). However, after Europe faced overproduction of indigenous coal during the mild winters of 1958/59, which happened to coincide with an economic crisis between 1957 and 1959, long-term commitments to import coal from the United States made in previous years of shortage, and the inflow of cheap oil, led to a decline of domestic coal production (Lucas 1977). As a result, the three big coal-producing countries in Europe (West Germany, France, and the United Kingdom) cut back on coal production, and the downturn was reflected in the pessimistic forecasts of both the OEEC and the ECSC. When compared, the Hartley Report of 1957 (OEEC) and the Robinson Report of 1960 (ECSC) clearly show this trend (see Table 3.1). In just three years, we see a downward revision of 75 million tons of indigenous coal production in 1965 and 90 million tons in 1975 (Lubell 1961).

Table 3.1 Comparison of the Hartley Commission Report with the Robinson Commission Report (in millions of TCE – tonnes of coal equivalent)

	Actual		*Projected*					
	1955	*1958*	*Hartley 1965*	*Hartley 1975*	*Robinson 1965*	*Robinson 1975*	*Change in estimates 1965*	*Change in estimates 1975*
Indigenous production	*603*	*621*	*720*	*860*	*675*	*790*	*–45*	*–70*
Coal	*477*	*472*	*520*	*520*	*445*	*430*	*–75*	*–90*
Other	*126*	*149*	*200*	*340*	*230*	*360*	*30*	*20*

Source: Lubell (1961: 407)

Thus, it can be stated that the commissions were aware of the predicament concerning the coal sector and amended their rather optimistic view of the mid-1950s to a more accurate version in the early 1960s. Figure 3.1 shows that the consumption of coal stagnated on the energy markets between 1950 and the mid-1960s and deteriorated vis-à-vis oil, whereas total energy consumption increased quite rapidly.

Energy markets were under exogenous structural pressure as oil advanced at the expense of coal, and oil prices fell. The low oil prices were enabled by new oil discoveries in the United States and the Soviet Union in the 1940s and 1950s, the discovery of the world's largest oil field in Saudi Arabia (Ghawar field, 1948), and discoveries in Libya in 1956 and 1959 (Brutschin 2016). In 1960, coal sales were not higher than in previous years, but oil sales had increased by more than 25%. The High Authority warned of the consequences of these developments as the livelihood of Community miners was endangered, the reliance on energy supplies from outside of the Community evoked security concerns, and the investment represented by the coal industry was threatened. Thus, assuming rationality, the three Executives, set up in the so-called Inter-Executive Working Party, worked on measures to coordinate energy policies in the Community countries (High Authority 1961). Three memoranda were issued, two addressing the coordination of energy policy (March 1960; January 1961) and one addressing imports of coal from third countries (October 1961) (High Authority 1964a). After having examined the proposals, the six ministers asked the Community Executives to go beyond the objectives in the original proposals and to draft proposals for an "energy policy designed to culminate in the establishment of a Common Market for Energy". The ministers emphasised that the "Executives need not confine themselves to the legal possibilities afforded by the existing treaties" (High Authority 1964a: 73).

This demonstrates the Council's initial willingness to tackle the imminent problems posed by the substantial structural changes in the energy sector and to find effective and acceptable solutions to these new challenges. The Council's invitation to go beyond existing legal frameworks can be interpreted as an acknowledgement of the urgent issues precipitated by fluctuations in energy markets. This initiative

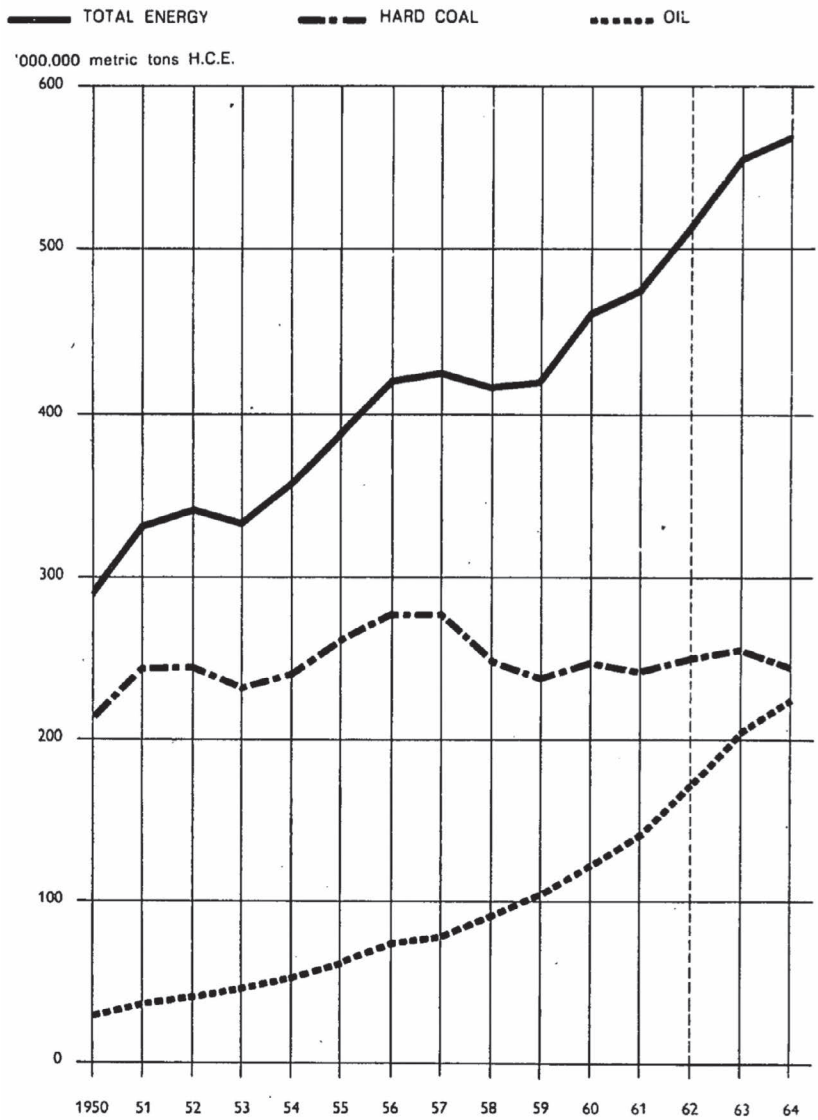

Figure 3.1 Oil consumption versus consumption of hard coal
Source: High Authority (1964a)

further suggests an increasing cognisance of the economic and socio-economic ramifications these markets impose on other policy domains, thereby illustrating the complex interdependence inherent in energy policy. The High Authority duly took on the task and prepared a draft resolution in June 1962. A common policy was reasoned through the growing share of imported hydrocarbons, to address

the potential opportunities posed by the development of nuclear energy, and to tackle social issues. The goal was to create conditions to ensure a cheap, stable, and secure supply of energy in terms of cost and available quantities, fair competition, and freedom of choice for consumers (Haghighi 2007). The unexpected observation is that many of these ideas and propositions can be found in contemporary policy proposals regarding the Energy Union, which we will explore in Chapter 6.

However, in the end, "it proved to be impossible to secure the Council's unanimous acceptance of the draft resolution" (High Authority 1964a: 78), which was an already amended version of the original proposal made by Member States' representatives. In the end, the draft resolution merely represented the minimum commitments in relation to a common energy policy. The three Executives considered it wholly inadequate because it did not address a common energy policy at all. The adverse outcome of the decision fuelled concerns within the High Authority, and the European Parliament "evinced deep disquiet" (High Authority 1964a: 79). This serves as strong evidence in corroboration of the first hypothesis: in the absence of a critical juncture, a locked-in institution, which is subjected to the highest degree of institutional stickiness, is trapped within its own institutional design. "[J]oint-decision systems . . . are able to block their own further institutional evolution" (Scharpf 1988: 267). If decision-making is subjected to unanimous voting, it is very difficult, if not impossible, to reach an agreement on effective policy instruments addressing contentious issues. Despite the profound impact of potent exogenous forces on the institution and its performance, such as the oil market's surge and coal's decline, these catalysts failed to reroute the entrenched institutional trajectory. Under such conditions, there is no 'gradualist', stepwise way of transforming the institution towards greater policy potential (Scharpf 1988). The evidence suggests that to equip the institution with the capacity to react to exogenous change, the policy area under concern must be addressed in primary law, and QMV has to be the decision rule. This was the case for coal and nuclear power. The focus here is not on the efficacy of the policy provisions *per se* but instead on the institution's capacity for policy generation in the first instance. Policy evolution was severely hampered for those sectors in energy policy not provided for by the Treaties. Moreover, policy proposals geared towards creating a common energy policy represented merely the lowest common denominator, as each Member State had the power to veto any given policy proposal if any of the provisions included were against Member States' own preferences. Therefore, we see a process of low integration in the early 1960s.

The inability to reach an agreement not only hindered the creation of a common energy policy but also prevented the Communities from tackling the extremely difficult and immediate problems with regard to coal. The coal-producing countries introduced more and more national measures due to external pressures and severe social and economic complications. Thus, governance tools were less and less in line with the spirit of the ECSC Treaty. From a free-market perspective, this state of affairs could not continue. The High Authority was "determined to leave no stone unturned to bring about a comprehensive solution" and stated that it was "essential that some definite prospect of an ultimate energy policy should emerge soon"

(High Authority 1964a: 79). A forecast made in 1964 predicted rapid growth of the Community economy – 4.6% GNP per annum – and indicated that total energy consumption was also expected to rise substantially, at a rate of about 4% per year (High Authority 1964b).

Consequently, this projection induced further concerns regarding the share of coal in the overall energy consumption, even as the production of other energy sources was expanding. Increasing energy demand would have to be met by energy imports, mainly by acquiring crude oil. As these imports were also assumed to grow significantly over time, questions of stability and security of supply arose, in terms of both tonnage and prices (High Authority 1964b). It was predicted that by 1970, barely one-third of total energy requirements would be satisfied by coal, and even if production quantities were sustained, they would decrease to 33% in 1970 and 27% in 1975 (High Authority 1964b).

By the middle of the 1960s, oil had superseded coal as the Communities' most important primary fuel (Duffield & Birchfield 2011). Oil became very cheap and was available in large quantities. In response to this development, in 1960, the Organization of the Petroleum Exporting Countries (OPEC) was created to counterbalance the oil surplus and extremely low oil prices. This development was furthered by the Soviet Union's entrance to the world oil market. Russian oil was much cheaper than its Middle Eastern counterpart. Therefore, to balance the bargaining power of exporter countries, the Head of the Directorate-General of Economic Affairs and Energy (ECSC) proposed that agreements between Member States should be made to coordinate energy policy at the European level. However, this proposal never materialised (Brutschin 2016). As shown in Table 3.2, things got even worse in 1970 than anticipated in the already pessimistic predictions of the mid-1960s. By 1970, only 22% of primary energy consumption was covered by coal, whereas oil accounted for almost 60% and "the shares of a decade earlier had been almost exactly reversed" (Duffield & Birchfield 2011: 3).

In addition, gas gained importance, with a share of almost 10% compared to nearly zero in 1950. Natural gas appeared in the energy markets in the mid-1950s.

Table 3.2 Total energy consumption by fuel source in TCE (tonne of coal equivalent) millions and % share

Energy Source	*1950 (Consumption)*	*1950 (%)*	*1960 (Consumption)*	*1960 (%)*	*1970 (Consumption)*	*1970 (%)*
Pit coal	*210*	*70*	*243*	*52*	*189*	*22*
Lignite	*23*	*8*	*32*	*7*	*33*	*4*
Petroleum	*35*	*12*	*139*	*30*	*501*	*59*
Natural gas	*1*		*13*	*3*	*73*	*9*
Primary electricity	*31*	*10*	*39*	*8*	*49*	*6*
Total consumption	*300*	*100*	*466*	*100*	*845*	*100*

Source: Commission of the European Communities 1972a

Its performance was particularly impressive as a consequence of increasing production in the Netherlands, and gas ousted coal from some of its traditional markets, thus accelerating the decline of coal consumption. Nuclear energy did not satisfy initial expectations of its contribution to the energy mix; this was not accounted for by technological advances insofar as nuclear technology reached a certain maturity. However, the fact was owed to the plentiful supply of cheap oil, rendering competitive nuclear energy prices difficult (European Commission 1972a).

The main obstacles to the solution of urgent energy issues persisted. The institutional design of the European Communities was never intended to capture the shift in the energy mix, creating institutional inertia, as "[t]he community institutions were never given any explicit jurisdiction over oil and, later, natural gas, not to mention any general competence in the area of energy policy" (Duffield & Birchfield 2011: 3). These omissions produced the inherent tendency for policy outcomes to be sub-optimal. From a Historical Institutionalist perspective, no institutional development could be initiated. The early decisions to exclude specific sectors of the energy domain from the institutional arrangement, conferring no competences to the Communities in these sectors, foreclosed the development of increasing returns and institutional alignment. Relatively small events and decisions early in the sequence shaped and constrained decisions later down the sequence and developed wide-ranging consequences for the institution's ability to respond to the changing context. Had the institution been subjected to lower levels of institutional stickiness – operationalised as the second independent variable (IV) – and governed by qualified majority voting (QMV), along with path-dependent processes, the institutional matrix might have undergone incremental change over time. Under the applied theoretical model, a critical juncture was needed to jolt the institution out of its prevailing lock-in.

However, that is not to say that the Commission did not fight hard to bring forth proposals addressing the energy dilemma. In 1968, on its own initiative, the merged Commission presented the memorandum "First guidelines for a Community energy policy" (European Commission 1968). During the preceding months, the divided responsibility of the three Executives was frequently cited as one of the causes of slow progress. Unfortunately, the preparation of the guidelines took two years and much of the psychological momentum was lost along the way (Lucas 1977). Documents like guidelines and proposals for secondary legislation serve as evidence for the analytical unit of *intended goals*, as discussed in Chapter 2 on research design. They outline the anticipated goals the institution tries to achieve. In this regard, they serve as a 'blueprint' for the *policy output*; the legislation the institution intends to deploy to govern energy policy.

The Commission based the guidelines on two documents: a Protocol of Agreement concluded between the Member States in 1964 (Special Council of Ministers 1964) and a Council decision of 1967 regarding the policy for oil and natural gas. In the Protocol of Agreement, Member States asserted their aim to create a common energy policy in terms of a common commercial policy and the supply from third countries, address the management of state subsidies, and issues of competition based on different fuels. The guidelines emphasise the serious "obstacles to trade

within the Community as regards energy products" (European Commission 1968: 5) and the need to counterbalance the excessive risks arising from the significant dependence of the Member States on "imports and from insufficient diversification of the sources of supply" (European Commission 1968: 6).

The guidelines also contained specific proposals, which fell into three categories: the establishment of a framework for action and a policy addressing measures in the case of the interruption of energy supplies, measures to create a common market, and the creation of a policy for obtaining cheap and secure supplies (European Commission 1968). The proposals, understood here as *intended goals*, were ambitious in their conceptualisation, as they addressed different levels of energy policy and a common market. However, the Council could only agree on a general set of principles (Duffield & Birchfield 2011). The lack of progress can be attributed to the design of the institution. It was not until November 1969 that the Council met to discuss the guidelines – almost three years after the Executives had merged. The Member States agreed on fundamental principles; however, none of the proposals the Commission had sent to the Council – part of a "policy of little steps" – were approved at the end of 1971 (Lucas 1977: 50). Consequently, the evidence reaffirms that the final policy output achieved only a modicum of its intended goals, thereby substantiating the assertion that the institutional framework served as a significant impediment to institutional development.

The only proposal that materialised during this period was Directive 68/414/EEC, implementing an obligation for Member States to maintain minimum stocks of crude oil and/or petroleum products, "at least 65 days average daily internal consumption in the preceding calendar year" (Council of the European Communities 1968: 586). Although measures to align different Member States' energy policies to create rules for a common market and ensure the security of supply were on the table, in the early 1970s, the Communities saw again resistance to instigating a common European energy policy. Policy measures and legal provisions materialised only with limited capacity to regulate energy markets and provide supply security effectively. In 1972, the directive from 1968 to mandatorily store a minimum of oil stocks was updated and increased from 65 to 90 days (Council of the European Communities 1972). However, the stock increase was to be carried out as soon as possible but not later than 1 January 1975 (Council of the European Communities 1972).

A subsequent step was Directive 73/238/EEC to provide the competent authorities in the Communities with the necessary powers in an emergency caused by a supply disruption. The powers conferred entailed the following: to draw on emergency stocks; to impose specific or broad restrictions on consumption; to give priority to supplies of petroleum products to specific groups of users; and to regulate prices in order to prevent abnormal price rises (Council of the European Communities 1973). In addition, the Commission made further proposals for more 'little steps' – without any progress being made. Even those agreed-upon measures had their roots in initiatives instigated years before and, therefore, just required minimal political will (Lucas 1977). Beyond essential commitments, no blueprint for additional institutional endowment materialised, indicating a pronounced state of

institutional lock-in. The implemented policy measures in the case of a supply disruption represented the absolute bare minimum of political will conferred to the institution. As Lucas (1977) explains,

> [t]he lack of any interest in energy policy from the member states is certainly the most striking aspect of this period. . . . (D)iscussion of energy was desultory and there was no determination to reach agreement. . . . There was, in fact, agreement in principle on many of these proposals, but there was no determination to solve the secondary problems that they threw up. . . . The reason for the lack of determination was not so much that the proposals would have harmed the interests of member states, but much more that no member state felt it had anything to gain from the proposals, and therefore no government made an effort to have them agreed.
>
> (Lucas 1977: 51)

In the present case, it is evident that the notion of rationality looms large when evaluating Member State policy choices and their preferences. The prevailing interest among Member States was to maintain sovereignty over energy policy, thereby limiting the Commission's role. This lacklustre institutional performance can largely be attributed to a lack of political will coupled with an inadequately designed institutional framework. There was limited advancement in developing a unified energy policy due to the perceived absence of economic benefit and structural constraints hampering Commission leadership. Indeed, by 1972 – five years after the institutional merger – energy policy remained poorly integrated and bereft of effective policy instruments. At this point, we must recall that the formal competences of the EEC addressed only coal and nuclear energy, both diminishing in their importance (Matlary 1997). Hence, matters regarding oil and gas were subject to unanimous voting in the EEC.

Consequently, the institutional trajectory exhibited fundamental rigidity, rendering alterations to secondary legislation exceedingly tricky. Apart from the tenuous provisions on oil stocks and emergency measures, new wide-ranging provisions were almost impossible to trigger. Although the deficiencies in energy policy were highly salient, and commitments towards policy change ostensibly existed in principle, the individual agendas of policymakers and the heterogeneous preferences among Member States served as significant obstacles to developing a unified policy. Moreover, provisions concerning a common energy market and ensuring the security of supply were not addressed via primary legislation. As discussed, primary legislation is the cornerstone for any policy area, providing a legal basis for all subsequent acts. Without it, the implementation of policy measures is piecemeal and lacks coherence. Therefore, the institution could not be altered, and national energy policies were conceived as the appropriate means to ensure the supply of energy.

In 1972, the Commission published a communication called "Necessary progress in Community energy policy" (European Commission 1972c), which built on the "First guidelines for a Community energy policy" (European Commission 1968). The Commission underscored specific factors that were instrumental in

effecting changes within the context of energy policy and the global energy landscape. This included the changing attitude of exporting countries to a more assertive role regarding their price policy, thus creating a seller's market and resulting in changed costs (this means that oil producers were in a position to determine unilaterally questions of price and supply). They also addressed a nascent debate on how to improve the quality of life, which found its first practical expression in a discourse about environmental protection and the upcoming enlargement of the Community, "which will have the effect of altering both the pattern of the energy sector and *ideas* on energy policy" (European Commission 1968: 5). The memorandum furthermore clarified that the role of the public authorities on the Community energy markets should be strengthened. However, the term 'public authorities' was ambiguously formulated and could, depending on the interpretation of the Member States, refer to either themselves or the Commission.

The proposal again set out ambitious *intended goals* and specific measures to tackle issues associated with each sector (oil, natural gas, coal, electricity, and nuclear energy). However, despite attempts by the Communities to instigate renewed impetus for a comprehensive energy policy, they did not achieve the desired results, and the lack of *policy output* prevailed. Much like its predecessor from 1968, the set of proposals did not generate more enthusiasm among Member States. France, in particular, was reluctant to relinquish authority to supranational institutions and sought to circumscribe the Commission's role in the formulation of energy policy. This fact was exacerbated after the accession of the UK, which supported France's attitude in limiting the powers of the Commission (McGowan 2011).

In addition, the Commission published a communication in 1972 based on a comprehensive analysis of the demand side along with a predicted future supply situation of primary energy sources to identify available policy options. In the 1960s, "[o]il was available in virtually unlimited quantities and at relatively low prices, and covered most of the new demand which arose" (European Commission 1972b). Gas gained some turf in the overall energy demand, the demand for coal decreased further, and nuclear energy was side-lined due to much cheaper conventional energy. Almost like a pre-emption of the approaching oil crisis in 1973, the Commission warned that oil producers had become aware of their advantage on a sellers' market and sought to intervene more directly in managing their resources. The Commission, therefore, proposed specific means to tackle long-term energy security. The list of issues almost reads like a policy proposal for the 2015 Energy Union: a rational utilisation of energy to reduce the pressure on the market, the diversification of sources of supply to increase both short- and long-term security, and the creation of a stable energy market to ensure a regular and sufficient supply of energy at the lowest possible cost (European Commission 1972b).

The first oil shock

The oil crisis of 1973/74 hit the European Communities hard and can be seen as the severest event that had affected the European Communities until then. It serves as valuable evidence for further investigation. From a Historical Institutionalist

perspective, exogenous events like the oil crisis can punctuate the institutional trajectory that prompts the institution to change its path and initiate amendments to the institutional framework and its formal rules. This creates two main questions that warrant further investigation. First, did the crisis initiate the institution to change its path and, hence, deploy enough momentum to be classified as a critical juncture? Second, if it did not fulfil this premise, what reasons can be identified for why the crisis did not provide the necessary momentum to change the institution, despite its severity for energy markets and the economy? The oil crisis of 1973/74 is thus an excellent case to assess under what conditions exogenous events instigate critical junctures.

The crisis occurred due to the Egyptian and Syrian invasion of Israel on 6 October 1973, initiating the Yom Kippur War (also known as the October War), during which Israel managed to push back the invasion with the help of Europe and the United States. As a response, the oil-producing countries, organised through the OPEC, instigated an oil embargo on 16 October 1973, which meant that they cut crude oil production and began to increase the oil price. The embargo targeted the United States, the Netherlands, and partially Denmark (European Community Information Service 1974). The Netherlands had allowed the United States to use its territory and airlift military equipment to Israel. In addition, the Netherlands provided Israel with oil during the war (Schubert et al. 2016). The Dutch, in return, sought support from their fellow Member States without much success.

Contrary to promoting solidarity within the European framework, France and Britain pursued individual agendas during the energy crisis. Britain adopted a policy aimed at not antagonising OPEC, mainly driven by domestic interests (McGowan 2011). Similarly, both France and Britain joined the Arab blockade against the Netherlands, further undermining a unified response. The Dutch invoked the Treaty of Rome, pointing to the fact that commodities had to move freely within the Community. However, France sided with the Arab oil producers, stating they could choose whom to sell to. Both the British and the French declared their approach to the Middle Eastern conflict was one of neutrality, and, as a consequence, the Arab oil producers classified both as friendly countries. Europe was grappling with two formidable challenges: first, its significant reliance on Middle Eastern oil, which was made vulnerable by geopolitical unrest, and, second, the absence of political will and the institutional capacities for coordinated action in times of crisis. The crisis showed "the unacceptably high cost of disunity" (Laqueur 1974). The price of oil per barrel first almost doubled, then quadrupled, leading to a price increase from 3 to 5 USD, and throughout 1974 to more than 12 USD (Schubert et al. 2016).

Although the oil crisis could have created hope to reignite a debate on feasible policy options to create a comprehensive energy policy, this was unfortunately not the case. At the Copenhagen summit in December 1973, where measures to tackle the crisis were discussed, a common response by Member States was blocked due to disagreements between Germany and Britain over the funding of regional policy (Schubert et al. 2016). Intergovernmental bargaining was characterised by decision-making anchored in rational choice theory, where Member States engaged in strategic interactions to optimise utility and achieve their respective policy

objectives. The Copenhagen Summit did not provide a solution to the grave situation the oil crisis evoked; instead, it emphasised that Europe was facing a severe crisis, was split between different interests, and did not have the capacity to instigate joint action (Laqueur 1974). Based on self-interested calculations and utilitarian considerations, Britain and France believed that if they adhered to the wishes of the oil-producing countries, a steady and cheap oil supply could be maintained, and they would get better deals than the other European countries (Laqueur 1974). In Vienna on 18 March 1974, OPEC decided to lift the embargo and step up the production but left the oil price unaltered. As European Communities Commissioner Ralf Dahrendorf put it in early 1974, "(n)ever before have the clouds lowered so menacingly over Europe as now" (European Community Information Service 1974: 1). Consequently, the skyrocketing oil prices led to a decrease in economic growth by 1.5% and an increase in the general price level by 3%. Demonstrating the far-reaching implications of the energy crisis, the following economic sectors suffered the most from the slow-down of economic growth: chemicals and plastics industries, building and construction, textiles, cement, glass, ceramics, tourism, trade and other services, and rubber and motor vehicle construction. In addition, the crisis also had an impact on employment, payment balances, and monetary reserves (European Commission 1974a). The empirical evidence underscores the intricate interplay between the energy sector and diverse policy domains, as well as the broader economy of the European Communities. The pervasive impact of the energy crisis, manifesting not only in reduced economic growth and inflation but also in sectoral downturns and employment challenges, attests to the systemic vulnerability and interconnectedness of these policy areas.

Amid the crisis, the Commission published a communication in June 1974 named *Towards a new energy policy strategy for the European Community*. The communication was full of concern about energy security and hence,

> [v]igorous action must be taken in order both to guarantee greater security of supply and to prevent violent' changes in the prices of energy materials, which always prejudice the effectiveness of investments undertaken and call into question the wisdom of the path economic development has followed.
>
> (European Commission 1974b: 1)

The Commission's call for action reflects a concern not just for immediate issues in energy policy but also for broader economic and institutional implications. The need for secure energy supplies and stable prices is essential for maintaining effective investments and the overall direction of economic development. Therefore, the Commission's statement suggests a need for structural and institutional adjustments to better manage future challenges. As already mentioned, the crisis would worsen the balance of payments, and as an immediate consequence, the external debt of the Community would increase (European Commission 1974b). Intriguingly, as Buchan and Keay (2015) emphasise, the Commission also proposed an absolute institutional innovation: the creation of a Community agency, with its own legal personality and financial resources. This agency should have been the

institutional body assigned with the planning of energy supplies and infrastructure (European Commission 1974b: 38). A daring and courageous undertaking, given that Member States' energy markets were highly concentrated, due to the severe economic conditions the European Community found itself in. As one might assume, and based on the empirical evidence already examined, the proposal met an unceremonious demise, vanishing without a trace.

It became evident that the institution's efficacy in mitigating exogenous threats hinges on its inherent institutional capacity to react to these forces. Should this capacity be lacking, particularly when a sector remains extraneous to the established institutional framework, the institution is incapacitated from initiating effective countermeasures. In response to the oil crisis, Member States resorted to bilateral agreements with Arab suppliers based on their respective set of preferences and stance on the Arab-Israeli conflict. This showcases the dominance of rational choice calculus in intergovernmental negotiations, characterised by action based on self-interest, underlining the locked-in institution's incapacity to resolve the problem. Despite high hopes associated with the oil stock obligation of 1968 (the subsequent Council Directive from 1972 was not in force yet) and expectations of solidarity, the nine Member States opted for individual solutions (Schubert et al. 2016). OPEC's strategy could be best summed up as one that sought to divide and rule – which worked perfectly in the European Communities (Matlary 1997).

Only after this did US Secretary of State Henry Kissinger unite most West European countries to establish a common front by creating an emergency oil-sharing mechanism, further delaying any common initiative within the Communities (Matlary 1997). Not to mention, the United States' involvement in forming a consumer cartel – as a response to the measures taken by the producer's cartel – further complicated the OPEC crisis (George 1996). As a result, and in line with Gaullist foreign policy objectives, the French government did not follow the policy measures initiated by the United States and subsequently did not join the International Energy Agency (IEA) – the consumer cartel. The idea behind the IEA was not new. Kissinger suggested founding an 'Energy NATO', an international organisation within the framework of the Organisation for Economic Co-operation and Development (OECD) (Schubert et al. 2016). However, "[t]his produced a split within the Community which made an energy policy impossible to achieve" (George 1996: 163). The attempts by the Commission to involve France in oil-sharing and research activities on alternative energy resources were hampered by France's resistance to joining the IEA. France decided to do so to signpost some sort of 'Communitarian virtue' – something that other Member States did not receive well (George 1996).

In addition, Directive 73/238/EEC of July 1973, on measures to mitigate the effects of difficulties in the supply of crude oil and petroleum products, did not create a solution at a Community level. It conferred powers in the case of a supply shortage to "competent authorities" (Council of the European Communities 1973: 1) at a Member State level. Moreover, "Member States shall appoint the bodies to be responsible for implementing the measures to be taken in execution of the powers provided for" (Council of the European Communities 1973: 2), thus underlining that national programmes were preferred over European ones during

and after the crisis. In case of a supply disruption, it took another four years to confer minimum competences to the Commission. Based on the directive mentioned earlier, and the obligation to maintain minimum stocks of crude oil and/or petroleum products (Directive 72/425/EEC), Council Decision 77/706/EEC allowed the Commission to "set a target for reducing consumption of petroleum products in the Community as a whole by up to 10 % of normal consumption" (Council of the European Communities 1977: 1), after consulting expert groups from the Member States. The Council would subsequently have to decide by a qualified majority on the proposals concerning reduction targets by the Commission (Council of the European Communities 1977) – a minor success, given the Community's relentless efforts to comprehensively integrate energy policy for 20 years. However, the decision still endorsed a strong sovereign component as the expert groups, who should consult the Commission about the appropriate measures to be taken in the case of a supply shortage, were recruited from the different Member States.

Interestingly, it took the Commission another one and a half years, until June 1979, to develop detailed rules for implementing the Council Decision (European Commission 1979b), which happened to be during the second oil shock of 1979. This time, the oil crisis was caused by the Iranian Revolution and the subsequent Iran-Iraq war. Once again, diminished oil supplies dramatically increased the world price of crude oil (European Commission 1979a).

As we can see, only insignificant progress was made in consolidating European energy policy; the institution was locked in and unable to alter its institutional trajectory, which was agreed upon more than 20 years earlier. From a Historical Institutionalist perspective, early decisions significantly impacted later decisions as they entrenched the predominant rules deeper into the institutional matrix. Again, we must recall that, at this time, any oil-related policy was subject to a unanimous vote in the Council.[2] This evidence supports the first hypothesis that the voting system severely hampered policymaking and that the most rigid form of institutional inertia caused a complete lock-in of the institution and malfunctioning of the institutional matrix. Energy policy at this time provides strong evidence to support the assertion that in the absence of qualified majority voting in an institution, institutional development and policy change are severely hampered. However, one crucial question remains unanswered. Why did the oil crisis, which represented a serious threat to the European Communities, not constitute a critical juncture/formative moment for energy policymaking and was not a catalyst for the creation of primary law or the amendment of secondary law? Why did the crisis not instigate institutional change? An explanation based on the premise of self-interested utility maximisation of the different Member States regarding their preferences provides a plausible answer. A later communication from the Commission points to causes for Member States' action that are reasoned on the grounds of self-interested behaviour and that are, in this case, closely linked to the notion of 'high politics'. The document states that,

> [i]t is because adequate and reasonably-priced energy supplies are so fundamental to the functioning of the economy and to the stability of society that

> energy questions in time of actual or threatened difficulty become charged with the highest political significance both domestically and in the field of foreign relations.
>
> (European Commission 1979a)

The data indicates that exogenous and endogenous factors are requisite for modifying primary legislation and qualifying an event as a critical juncture, as exemplified by the establishment of the ECSC. In this particular instance, both types of factors were manifest. During the oil crisis, exogenous factors were present; however, endogenous momentum was not evident due to the diverging preferences of actors, and any ideas regarding further institutional development were absent. Consequently, during periods of crisis – here in the form of energy crises – when salient exogenous forces impinge upon an institution, and the relevant policy area resides within the realm of intergovernmental decision-making, institutional rules undergo minimal or no modification. Specific competences must be transferred to the institution in advance and enshrined in primary law as a prerequisite to amend secondary provisions and enhance the possibility of finding a common solution to a problem on a supranational level. Otherwise, the exogenous event will not impact the supranational institution but rather influence the regulatory framework of the different Member States on a national level. The crisis significantly impacted the institutions that governed energy policy on the national level; consequently, each Member State reacted differently and provided policy measures depending on individual preferences. However, the impact of the exogenous threat did not change the institutional trajectory at the Community level. The EEC did not govern oil, hence, no institutional 'matter' or 'substance' in the form of secondary legal provisions could be altered. In order to influence the associated rules and change the institution's path, the institution must be endowed with competences in the first place. When sectors fall outside the institution's remit and are not embraced by the institutional framework, actors will resort to unilateral measures on a national level even during crises and when concerted action on the Community level would resolve an issue more effectively.

Suboptimal outcomes resulted from the energy crisis and laid bare the Community's ineptitude to swiftly react to exigent events and effectively regulate specific areas of the polity outside the Union's competences. Moreover, crises like the energy crisis of 1973 constitute events that lead to deep uncertainty about and distrust in the capacity of the Community to tackle serious situations to maintain and ensure the well-being of its citizens. The approach to problem-solving and decision-making, as exemplified by the actions of Member States, suggests that under severe conditions and based on an intergovernmental rationale, a 'me first!' attitude in the event of an exogenous shock serves as the common rationale for Member States – at least for those whose preferences are not aligned with the *intended goals* of the institution. Under these circumstances, Member States' proclivity for self-interest in the face of exogenous shocks is not constrained and shaped by institutional rules. Even if Member States demonstrate high integration in other policy areas and are embedded into the institutional matrix, if the affected sector is on an

intergovernmental level and penetrated by an exogenous event, national solutions will dominate decision-making in the institution.

Business as usual: post-crisis inertia

In 1974, the Commission once again proposed measures to create a Community energy policy (Council of the European Communities 1974a). The resolution stated an urgent need for a Community energy policy, as acknowledged at the Copenhagen Summit, due to the shifting structural conditions in the world's energy markets. It suggested reducing energy demand, improving energy security based on the development of nuclear power, further exploring the Community's own hydrocarbon and solid fuels resources, diversifying energy supplies, and taking measures to ensure research and development efforts. In addition, environmental protection should be considered in both energy production and consumption (Council of the European Communities 1974a). Again, the proposed measures read like a proposal for a contemporary policy initiative. As required in the resolution, the Council met again in December 1974 to "work out and implement a common energy policy as quickly as possible" (Council of the European Communities 1974b). The meeting resulted in the Council resolution "concerning Community energy policy objectives for 1985", providing a new set of *intended goals*. According to the forecasts, the Community's level of dependence on imported energy should reach 50% by 1985. As imported energy accounted for 63% in 1973, the Council approved the objective to reach this goal and, if possible, even reduce it further to 40% by 1985. The document specifically emphasised that the more ambitious goal of 40% should take priority and that the Council request that the Community institutions constantly review the progress made to achieve this objective (Council of the European Communities 1974b). From a Historical Institutionalist (HI) perspective, constant monitoring of the *policy outcome* contributes to feedback processes and increasing returns. Assessing the effectiveness of the *policy output* is an indispensable part of the policy cycle. Monitoring determines whether Member States sufficiently apply provisions or whether stricter application is necessary to reach the predefined *intended goals*. The resolution stated that:

- The Community's growth rate in total energy consumption should be curbed by 15% in 1985, compared with 1973;
- Coal production should be maintained if economically feasible (180 Mtoe by 1985);
- The Community's research and production of natural gas should be sped up, whereas 95–115 Mtoe should be secured from third countries;
- 160 GWe (Gigawatt electrical), and if possible, 200 GWe of electricity should be provided by nuclear energy (whereas electricity should cover 35% of energy consumption by 1985);
- Hydro-electric and geothermic power plants should raise their contributions to 45 Mtoe;

- Oil consumption should be restricted as much as possible and where feasible, replaced by other energy sources; research and Community production of oil should be stepped up (to 180 Mtoe by 1985);
- And imports from third countries should be cut back from 640 Mtoe in 1973 to 540 Mtoe in 1985, which translated into reducing the share of imported oil in the total energy requirements from 61% in 1973 to 38% in 1985 (Council of the European Communities 1974b).

As one can see, the proposal set forth ambitious and clearly defined *intended goals* to tackle challenges in the aftermath of the Arab oil crisis. Shortly thereafter, in February 1975, the Council underpinned its willingness to support the development of a Community energy policy. The objectives, as laid out in the resolution of December 1974, required the "implementation of appropriate measures at Community level as well as by each Member State" (Council of the European Communities 1975: 1). The Council, therefore, invited "the Commission to periodically recommend long-term guidelines on energy for the pursuit of these objectives, covering in particular any type of investment which such activities may involve. Such guidelines (were) to help Member States to take the appropriate decisions" (Council of the European Communities 1975). The resolution also stated that for hydrocarbons, exchanges of information and concerted action between public authorities and consultations between public authorities and industry should be facilitated – and when necessary, the means to act should be provided. From an HI perspective, the exchange of information and the acquisition of knowledge contributes to learning effects as it creates transparency and a more level playing field. Hence, it creates adaptive expectations between different (private) actors and public authorities and improves policy alignment between the various stakeholders.

Moreover, the Council agreed to review whether Community rules should be laid out in the event of supply difficulties to ensure the balanced supply of the energy market "and the maintenance of its unity in observance of the provisions of the Treaty" (Council of the European Communities 1975). However, as one can see, the wording is rather vague and leaves room for broad interpretation. As with previous documentation (see "Necessary progress in Community energy policy"; European Commission 1972c), the term 'public authorities' could be interpreted in various ways and political actors at the national or supranational level could be meant.

Again, to the detriment of a unified energy policy, no significant changes materialised as a result of these ambitious proposals. The main obstacle to a Community-wide energy policy was Britain, which joined the EEC in 1973 (together with Denmark and Ireland) and was committed to keeping energy policy at a national level, vetoing deeper integration. The UK enjoyed a surplus of energy resources (coal, oil, and gas), producing more than it consumed, constituting a novelty amongst the other Member States. When coal production declined between the late 1960s and 1970s, the country increased its oil and gas production. The discovery of large reserves off the British coast (in the North Sea) meant the UK could meet most of its energy demands for both oil and gas – although Britain continued to

import crude oil and petroleum products (McGowan 2011). This development was exemplified in 1974 when the British Secretary of Energy stated that the UK had little to gain from any common European energy policy, thus underlining that Britain preferred a national approach over a Community policy, based on a self-interested set of preferences, purely rational calculations and a focus on utility-maximisation.

From a Historical Institutionalism (HI) perspective, the sluggish progression of a unified approach to energy policy during this period can be attributed to several key factors. Despite the Commission's persistent efforts to foster a Community-centric strategy to level the playing field among Member States, such development was stymied by the veto powers held by individual Member States. This situation offers a direct corroboration of Scharpf's 'joint decision trap', particularly given the requirement for unanimous agreement on secondary legislation. High institutional 'stickiness', or institutional lock-in, exerted substantial countervailing pressures against change, rendering institutional evolution virtually impossible without a catalytic event, such as a critical juncture. While the Council did reach a consensus on a specific set of objectives (specific 'intended goals'), as delineated in its December 1974 resolution, enduring resistance from Member States ultimately thwarted the Community's efforts to articulate a coherent stance. The UK, in particular, became a key veto player in energy policy reasoned through its predominant position as one of Europe's leading producers. In order to defend its interest in shielding the North Sea oil and gas reserves from foreign influence, Britain protected its national champions like British Petroleum. It sought Community-wide policies that would not weaken its position in the energy markets (Ciambra & Solorio 2015). British energy policy was based on a strong concern for supply security and "broader energy objectives" (McGowan 1996: 5). The government had a direct influence on the energy sector, which was based on the purchase of shares that would later become British Petroleum and the establishment of a corporation managing the electricity grid (McGowan 1996). In the aftermath of the oil crisis, the UK used its (veto) powers to selectively leverage and hamper any further advancement of the EEC energy agenda.

> In a context in which the Commission still lacked any resources and formal power in this policy field, and France agreed to undermine the scope of a collective response by the Community, the United Kingdom effectively managed to phase out any sensible advance in energy policy from the formal agenda.
>
> (Ciambra & Solorio 2015)

The British government constantly intervened in energy markets and affairs to protect their interests and preferences: to attain the goals of reconstruction and to develop new technologies and resources.

France's protectionist stance towards a Community policy was another dampener for developing a comprehensive energy policy, much like the UK's. The reason for the reluctance to shift powers to the supranational level can be found in France's development of energy policy that followed a similar historical

development to the UK's. France had a long tradition of participating in the oil sector, the energy sector in France was nationalised after the Second World War and public firms were subsequently utilised to attain energy policy objectives. Both the Ministry of Industry and Finance were responsible for energy policy, the former for strategic development of the sector and the latter for financing, investment, and pricing (McGowan 1996).

Conclusion

In this chapter, we have empirically substantiated that national interests predominantly steered policymaking within the European Communities during the 1960s and 1970s. The evidence demonstrates how numerous legislative proposals were stymied due to the proclivity of certain Member States to retain energy policy within their sovereign purview. Moreover, when the Community faced threats to their energy supply based on the oil crisis, no solidarity and unity were shown at the Community level; ideational factors did not play a role in the institutional context, which was characterised by the self-interested rationality of Member States. The institution was locked-in, and policy development was severely hampered and reduced to an absolute minimum. The institutional lock-in – as a consequence of high institutional stickiness – is reasoned through Scharpf's joint decision trap and measured with the help of the proxy variable of the voting system. As unanimous voting was the decision rule, the policy area proved almost impossible to change, and the process of further integration was starkly impaired. The institution remained steadfast on its institutional path, a rigidity fundamentally attributed to the consensus-based voting requirements for any substantive alteration in its governance structure, thereby reinforcing its pre-established, albeit inflexible, institutional trajectory. Even incremental change was reduced to a very low degree and almost absent, as feedback mechanisms were hampered from the outset. To recall Scharpf's argument, the "pathologies of substantive public policy" are based on two institutional conditions: "first, the fact that national governments are making European decisions and, second, that these decisions have to be unanimous" (Scharpf 1988: 267). In addition, and equally intriguing is the proposition that in an ongoing joint-decision system, in which unanimity applies, the 'default condition' of the institutional arrangement pre-empts institutional development if an agreement is not achieved. This means that in non-agreement, the *continuation* of existing policies entrenches actors and creates the adverse condition that they must stick to institutional commitments even in the event of sub-optimal outcomes.

From a Historical Institutionalist perspective, feedback mechanisms and increasing returns are essential to institutional development, which create incremental steps and gradual change. Far-reaching changes to the institutional matrix are only instigated through critical junctures. However, the fundamental requirement for institutional development is contingent on the prerequisite that actors must share a common understanding of what functions the institutions should fulfil, enshrined in primary and secondary law. Moreover, decisions should be made without any actors having the option to veto during decision-making to serve their own interests

and hamper further advancement unilaterally. Such assertions seem to be rather obvious, but the importance becomes salient when we look at the development of energy policy in the 1970s. From the outset, policy assessments, suggestions, and proposals for legislation were on the table, and *intended goals* were clearly defined (e.g. High Authority 1964a; European Commission 1968; Council of the European Communities 1974a; Council of the European Communities 1974b). Energy matters were a significant part of the political discourse in the Community as the decline of coal, the ascent of oil and gas, and the stark import dependence on third-party suppliers lent substance to the necessity of a common approach (High Authority 1964b). Nevertheless, the biggest stumbling block was that the Community had no competences in matters that surpassed policies that addressed coal and nuclear energy. "The community institutions were never given any explicit jurisdiction over oil and, later, natural gas, not to mention any general competence in the area of energy policy" (Duffield & Birchfield 2011: 3). The Community was trapped in a situation where high institutional stickiness made it impossible to alter the institution.

Markets alone do not provide optimal outcomes and are prone to market failure. They may not allocate resources efficiently or equitably on their own. Therefore, institutions need to be able to regulate markets in order to function effectively, efficiently, and correct for market failures. However, for institutions to make meaningful change possible, competences must be conferred to the institution. Actors must demonstrate a degree of political will to attain the intended goals by shifting powers to the institution during a critical juncture, thus creating the necessary primary law for an institutional framework that triggers feedback mechanisms. For instance, the agreement in 1951 to shift powers to the European Coal and Steel Community to govern all matters concerning coal instigated processes of increasing returns and path dependence. This commitment created a robust institutional framework enshrined in primary law, triggered learning effects, coordination effects, and adaptive expectations, and required large set-up and fixed costs (Archer 1994: 112). Competences were initially transferred to the supranational level, thereby establishing a distinct institutional trajectory that subsequently facilitated progress in institutional development.

In the absence of basic institutional settings that provide the capacity to change the trajectory incrementally, deeper integration (or any integration) is obstructed even if actors are willing to improve the regulatory framework from time to time. Veto players can lock in the institution and hinder institutional development based on unilateral preferences. The factor that obstructs the development of a starting point for change through secondary legislation is that, under such conditions, no common denominator can be found due to actors' divergent preferences on salient issues. Unlike under qualified majority voting, where a majority must be persuaded to alter or maintain a policy, the unanimity rule requires only a single actor to obstruct policy change. Therefore, no path-dependent mechanisms/processes allowing incremental change can be triggered. To reiterate, a model of incremental policy change hinges on several key components: intended goals, policy output, policy outcome, and monitoring processes that subsequently inform a new set of

intended goals. A point of departure must be agreed upon, like creating the ECSC to govern coal and steel, from which policy development can be expected. If there is no such understanding and no competences are shifted to the supranational level, policy development is seriously hampered and basically non-existent. Even if *pro forma* agreements among actors to solve institutional shortcomings are in place, actors are too concerned with protecting their national interests rather than finding common solutions regardless of the severity of an issue. If a policy area can be found in the intergovernmental domain, and primary law does not provide the slightest capabilities to address policymaking in the specific sector, the 'default condition', the status quo is almost endlessly perpetuated (with only some minor exceptions). In this case, adaptive expectations and coordination effects are not triggered, and due to the absence of increasing returns, different actors do not become 'bound' to the institution in a specific policy area.

Hence, based on the empirical evidence, the first hypothesis is confirmed: if no critical juncture occurs in a setting of high institutional stickiness, low integration can be expected. 'Small' critical events did not affect the institution during the 1960s and 1970s. Even when actors were willing to push for deeper integration, the institutional design pre-empted the possibility of reaching an agreement. Therefore, based on a HI rationale and further tested as a second hypothesis, this research posits that a locked-in institution needs a critical juncture to instigate change in primary law and escape a suboptimal institutional trajectory. Due to the highest form of institutional inertia, the institution was severely dysfunctional and incapable of correcting the institutional nuisances itself, leading to suboptimal outcomes for all stakeholders. As we recall, although the French and the British governments tried to escape the (socio-)economic 'avalanche' that the oil crisis initiated, in the end, they eventually found themselves in the same boat as the other Member States – they had to bear the same high prices for oil as other European countries. Along these lines, although France and Britain acted from a rational standpoint to absorb the price hike, in the end, the locked-in institution produced negative outcomes for them and all the other actors involved.

Notes

1 See, for instance, Manners' (2002) claims when applying his framework of Normative Power Europe, in which the EU plays a unique role in promoting universal values.
2 Apart from Decision 77/706/EEC of 7 November 1977 on the setting of a Community target for a reduction in the consumption of primary sources of energy in the event of difficulties in the supply of crude oil and petroleum products

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4 The Single European Act

A critical juncture for a common energy policy

Introduction

We now shift our focus to the Communities as a locked-in institution, while also examining the events that led to a critical juncture. The Council resolution of December 1974 (Council of the European Communities 1974b) took two years to evolve into concrete legislation, underscoring the sluggish and contentious nature of energy policymaking in the Community. Member States resisted ceding authority over energy policy to the supranational level, reflecting their preference for intergovernmental solutions. In May 1976, the Council finally enacted legislation that initiated a Community procedure for information exchange and consultation concerning crude oil prices and key petroleum products (Council of the European Communities 1976a). This was followed by a regulation concerning the communication of information on the state of the Community's energy supplies (Council of the European Communities 1976b). The regulation was implemented to ensure that energy supply in the Community was made more transparent, to enable the adjustment of supply structures to changing market conditions, and to diminish the impact of possible supply challenges or disruptions. In addition, in February 1977, the Council passed a decision to regulate exports between Member States in the event of difficulties in the supply of crude oil and petroleum products. This measure was conceived to ensure that "the burden of deficits in supplies of oil and petroleum products must be fairly distributed among the Member States" (Council of the European Communities 1977).[1]

Britain remained a major obstacle to any attempts for deeper energy policy integration in the Community. In October 1977, the UK refused to accept proposals for emergency measures to be taken in the event of a supply crisis unless it was granted veto powers to shield British national interests if deemed necessary (George 1996). Another proposal by the Commission to reduce refinery capacity, which had substantially increased during the oil boom, was also opposed because Britain wanted no interference by the Community in its refinery capacity regarding North Sea oil production. A third proposal, made in October 1978, to fund joint oil exploration within the Community was also halted, although Britain would have benefitted economically. From a rational choice perspective, since the other Member States did not consent to finance the increase in British resources without getting any

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returns on their investment, the proposal also did not result in any legal provisions (George 1996).

In addition to the impediment of Member States to find common ground, the Community also faced the challenge of attaining previously agreed targets. In 1974, the Community set targets for a standard energy policy to be achieved by 1985 (a new set of intended goals as set out in Chapter II) and the Member States' heads of government, who met in Paris on 9–10 December 1974, called upon the Community institutions to implement this policy "as quickly as possible" (Council of the European Communities 1974b: 1). In 1977, however, the Commission acknowledged the unattainability of these objectives: nuclear power had yet to solidify its role as the primary means for electricity generation, while oil continued to maintain its dominance as an energy source. Moreover, although oil imports had reduced due to the oil crisis, they rose to the levels just before the Yom Kippur War of 1973. The Commission emphasised the need for solidarity as a normative impetus among Member States to tackle energy problems effectively. It stated that,

> [t]he necessities of our balance-of-payments and the loss of growth leave us no choice. We need: development of our own sources of energy, energy saving measures, solidarity of all members of the Community.
>
> (European Community Information Service 1977)

In June 1979, the Commission published a communication on the energy objectives of the Community for 1990. The Commission invited the Council to consider the new Community objectives with a "view to their early adoption" (European Commission 1979c: 5). The Commission emphasised that there were substantial differences between Member States' practical applications of the 1985 objectives (see Council of the European Communities 1974b). Energy-saving programmes were different in scope and intensity. In most cases, the degree to which coal and nuclear energy were used to bring down oil dependency regarding electricity generation was likely to be insufficient, and pricing policies did not ensure that consumer prices reflected long-term supply costs (European Commission 1979c). Again, following objectives similar to those in 1974, the Commission called for more intensive energy saving, more use of coal and nuclear energy, and an increase in the production of hydrocarbons (European Commission 1979c). In order to achieve the targets of limiting oil consumption in the Community, specific actions should be taken to limit 1985 oil imports to their 1978 levels. In addition, the Commission invited the Council to urgently consider specific measures to achieve medium- and long-term energy policy goals and review the development and implementation of "effective and convergent energy policies within the Community" (European Commission 1979d: 5). The Commission stressed the critical need for a comprehensive approach to the energy situation. Interestingly, the Commission also instigated the distribution of public information on energy problems. Moreover,

> [t]here will be a permanent system for monitoring and ensuring the convergence of the Member States' policies in respect of these objectives. The

> Community could take appropriate steps to back up and supplement these efforts and to ensure greater coherence.
>
> (European Commission 1979c: 1a)

The Commission's undertaking to disperse information to the public and create a permanent monitoring system points to evidence that the Commission tried to instigate learning and positive feedback processes based on adaptive expectations. Moreover, the Commission sought to establish a governance structure grounded in ideational factors, particularly the principle of solidarity, to address economic repercussions. According to our theoretical framework, ideational factors exert a pervasive influence on the institutional matrix, thereby guiding individual actors' behaviour and decision-making processes. As discussed in Chapter 2, Pierson (2000) clarifies that actors who engage in highly complex political environments are heavily biased regarding how they filter information. On the one hand, information that tends to confirm and reinforce the prevailing institutional trajectory will be incorporated; conversely, disconfirming information will get filtered out. Thus, social interpretations of complex political environments instigate network effects and adaptive expectations, as they are frequently shared with other actors and, as a consequence, induce increasing returns. Hence, adaptive expectations are one of the reasons for positive feedback mechanisms (Pierson 2000: 258).

However, the Commission's efforts to instigate adaptive expectations and feedback processes did not lead to the desired outcome. According to the theoretical approach, this ineptitude can be explained due to the locked-in institutional framework, which substantially hampered all efforts to create processes of increasing returns (Arthur 1994: 112): no learning effects (acquired knowledge leading to higher returns), coordination effects (benefits increasing with the number of actors), or adaptive expectations (prospects about joint usage among actors reinforcing a choice) were triggered. This volume proposes that path-dependent processes, conceived as a form of institutional stickiness that is substantially lower than in the context of a locked-in institution, are heavily dependent on a framework that allows actors to reach decisions based on qualified majority voting (QMV). An institution that displays low stickiness can nevertheless change its institutional trajectory incrementally due to its capacity to be progressively altered – based on its voting system and feedback processes. Actors reach decisions more quickly, and veto players (as in the case of Britain and France) do not have a chance to block agreements even in the light of policy measures not aligning with their preferences.

In the period under consideration, decisions on oil policies – arguably the most critical component of the energy mix – required unanimous voting, thereby inhibiting the evolution of path-dependent processes. As depicted in Table 4.1, the combined gross consumption of oil and natural gas, over which the Community had no jurisdiction, constituted nearly three-quarters of the total energy mix. Consequently, the significance of hydrocarbons, coupled with the institutional lock-in that thwarted initiatives in this sector, rendered the institutional trajectory highly inflexible, thereby preventing the institution from initiating any processes that would yield increasing returns.

Table 4.1 Shares of different fuels in the energy mix by Mtoe (1978 estimates)

Energy Source	*Domestic production*	*Net imports*	*Gross consumption*	*%*
Solid fuels	*172.8*	*25.6*	*203.2*	*21*
Oil	*64.5*	*470*	*541.7*	*55*
Natural gas	*135.1*	*30.8*	*163.4*	*17*
Nuclear energy	*28.3*		*28.3*	*3*
Others	*32.7*	*2.7*	*35.4*	*4*
Total	*433.4*	*527.1*	*972*	*100*
%	*46*	*54*	*100*	

Source: European Commission 1979c

The second oil shock

During the second oil crisis in 1979, triggered by the Iranian revolution and continued due to the Iran/Iraq war, the European Council discussed the global energy situation, which remained very serious. The difficulties arose in the first half of that year due to the unforeseen interruption of oil supplies from Iran, coupled with a harsh winter and high energy demand. The need for a common approach was pressing, much as during and after the first oil embargo as a result of the Yom Kippur War. The Commission warned that,

> [a]s recent events have shown, the Western public is extremely sensitive to the effects of even minor and temporary energy shortages. More fundamentally, the standards of public services and the level of business activity and hence employment can decline or remain at an unacceptably low level if the energy situation is such as to jeopardise world trade and economic growth. In these circumstances social tensions can appear or be exacerbated, and political and social norms can be challenged.
>
> (European Commission 1979a: 2)

In the first half of 1979, supplies to the Community were 3% short (nevertheless 6% higher than in 1978) – although net imports of crude oil increased by 4% and domestic crude oil production by 40%. The shortfall was not evenly distributed between Member States. Oil prices rose to 18–23.5 dollars per barrel, which led to an average increase of 57% in the price of imported crude oil (European Commission 1979a). As energy prices increased, the security of supply and production were in jeopardy, and the structure of the world oil market changed fundamentally. The European Council emphasised the need to create greater stability in producing and consuming countries: "In the light of these needs the Community for its part must now develop a more effective energy policy" (European Commission 1979b: 9).

Once again, the Community was urged to develop indigenous energy resources, particularly coal, nuclear energy, and hydrocarbons, and promote research and development regarding renewable energy sources. However, much like during the first oil shock, the institution was in a deadlock and incapable of implementing

effective policies. On 9 June 1980, a Council Resolution concerning Community energy policy objectives for 1990 and the convergence of the policies of the Member States was passed. While the Council Resolution laid out ambitious energy policy objectives, the result was more a drop in the ocean than a transformative shift. The document, in total merely one and a half pages long, set out some basic guidelines:

- efforts to save energy and reduce oil consumption,
- a request for Member States to submit their respective energy programmes annually up to 1990, and
- requesting the Commission to assess these programmes.

In addition, the resolution indicated in one short paragraph that 70–75% of primary energy requirements for the production of electricity should be provided utilising solid fuels and nuclear energy (Council of the European Communities 1980). As Table 4.2 shows, the figure for nuclear energy was quite optimistic when comparing the estimate for 1978 with 1990. With a scant 25.2 million tonnes of oil equivalent (Mtoe) comprising the actual share of nuclear energy in the Community's energy mix and considering the knowledge of lethargic progress of nuclear development since Euratom's inception – hampered by prohibitive costs and technological challenges – the 1990 projection for nuclear power capacity markedly overstated its realistic potential.

On 12–13 June 1980, the European Council met in Venice to discuss international political questions regarding the situation in the Middle East. The meeting concerned the serious international situation and economic problems resulting from the energy crisis. A couple of months earlier, at the European Council meeting in Luxembourg, the Community had slid into a severe deadlock over Britain's contribution to the Community budget. However, an agreement on energy would have

Table 4.2 Sources of electricity production, 1978–1990

Country	*1978 Solid fuels*	*1978 Oil*	*1978 Nuclear energy*	*1978 Other*	*1990 Solid fuels*	*1990 Oil*	*1990 Nuclear energy*	*1990 Other*
D	46.5	7	7.4	16.8	52.7	7.1	58.2	25.6
F	12.9	11.9	6.4	18.7	6.8	6.4	70	17.8
I	1.6	21.1	0.9	14.9	6.8	24	45	16.2
N	1.1	2.3	0.8	9.4	5.8	7.4	2.7	4.6
B	2.4	3.9	2.6	2.3	3.7/7.0	2.6/5.3	7.9	2.6
UK	45.3	13.1	7.1	2.2	58	15.0/17.0	20	3.0/1.0
IR	0.7	1.6	0	0.1	2.6	1.9	0.8	0.7
DK	2.9	2.2	0	0	4	0.7	3.4	
EEC (3)	113.4	63.1	**25.2**	64.4	140/144	65/70	**208**	70/68

Source: European Commission 1979d

been of "utmost importance" (European Commission 1980c: 10). The European Council meeting was considered a disappointment as not much progress was made regarding the pressing energy problem(s). As many observers have remarked, at the meeting in Venice, the European Council was forced to return to its original role of providing political stimulus and general guidelines and leave the solution of economic and technical problems to the Council. A solution to the issue of Britain's contribution to the Community budget was found by the Council on 29–30 May 1980 (European Commission 1980a).

As one can see, energy policy was firmly in the grip of the Member States. The gap in their respective approaches to energy policy widened, and the institution remained locked in. The Community faced the second oil crisis within six years, understood as the second severe exogenous shock to the institution in a decade. Although the crisis represented another serious threat to the security of supply, the economy more generally, and the well-being of European citizens, Member States could not align their preferences to overcome their internal differences. It was hoped the European Council meeting would eventually generate enough endogenous momentum to deploy institutional change. However, these hopes were shattered by the gridlock caused by different Member States' preferences. Roy Jenkins, the president of the Commission urged for a thorough overhaul of Member States' approach towards the Community's energy policy, stating,

> [t]he Commission firmly believes in the necessity of Community action other than dispersed action by the Member States. National responses to successive oil crises since 1973 have actually widened differences in the Community. I fear this will continue unless we can agree on a common framework of policy comprising energy prices and necessary additional investment. It is therefore important that the Council of Energy Ministers gives a thorough examination to all the elements in the Commission's proposal' of 20 March and concludes its work before the end of this year.
>
> (European Commission 1980a: 12)

A year after the Commission's initial recommendations in 1979, no common solution had been found to tackle energy problems caused by the suspension of oil imports from Iran and Iraq, let alone implementing a comprehensive European energy policy for the Communities. By late 1980, the Council reviewed a communication by the Commission, sent on 10 November 1980, addressing a more flexible approach regarding the oil supply. The provision would have been within the regulatory framework of Directive 73/238/EEC – the measures to mitigate the effects of difficulties in the supply of crude oil and petroleum products (Council of the European Communities 1973), which was already in force, in order to prepare the EEC for the following months. It set out a range of possible policy instruments, for instance: measures to discourage oil companies from making purchases at excessive prices, a reduction of demand, a stock management policy, efforts to increase the Community's own production, coordinated oil sharing at Community level, and price policies (European Commission 1980b).

None of the ambitious proposals striving for a common and coherent energy policy materialised into concrete legislation, apart from the sectors in which the Community already had competence. As of 1982, the Community had enacted only minor secondary provisions related to nuclear energy, coal, and energy savings. Conversely, provisions concerning petroleum products were scant and limited mainly to registration procedures and information exchange for imports.[2] These were minor and rather tenuous developments, given the envisioned scope and depth of a coherent and comprehensive European approach formulated in the numerous proposals in the decades before. Surprisingly, the energy crises of 1973 and 1979, which had severe (socio-)economic repercussions for the Community, failed to serve as catalysts for significant institutional change. One would expect that such severe exogenous shocks would have acted as catalysts for transforming the governance structure of the Community. Again, the question is: why did both shocks not punctuate the trajectory of the Communities and instigate fundamental change in policy regarding hydrocarbons or measures to reconcile the policy field as a whole?

As outlined in the section on the first oil embargo, the exogenous shock initiated by the oil shortage did not affect the institution and the corresponding legislation on energy policy, as the institutional rules under concern were not part of the overarching institutional framework; rules concerning oil and gas were still subject to unanimous voting in the Council and sternly defended by Member States' interest in keeping these sectors under sovereign control. The evidence suggests that even if the Member States shared some common understanding of how a community energy policy could look, the institutions' design forestalled any alterations and policy changes. The obstacle to reaching an agreement over the scope and depth of a common energy policy, in the form of high institutional stickiness, measured through the proxy variable of the voting system, made it impossible to alter the institution. Institutions are only equipped to react to external shocks if the requisite competences for mitigating such shocks are transferred from the Member States to the institutional level. In the absence of such governance mechanisms – specifically, clearly defined rules and a mutual agreement about those rules – external events have minimal impact on the institution. One could argue that, due to the economic severity of the crises and the repercussions for production and the whole economy of the Community, momentum could have been created that could have spilled over into the energy sector (see Haas 1958). However, this argument does not hold as Member States regarded oil as a sovereign issue, something they would not want to be regulated by the institution. This scenario implies that external shocks are unlikely to influence secondary legislation when only a minimal set of rules governs an institutional sector and when decision-making authority lies primarily with the Member States.

Agency is a crucial factor in the devolution of powers to an institution, and this shift in authority must be formalised in primary legislation. This implies that actors must consciously decide to transfer specific powers to an institution, which are then codified into primary law. For instance, decisions made at the inception of the European Coal and Steel Community (ECSC) and the Euratom Treaties

clearly delineated powers related to coal and nuclear policies. Consequently, these areas experienced greater flexibility and adaptability compared to sectors where such pre-emptive decisions were not made. Once these powers are shifted to the supranational level, structural forces take over, leading to entrenched positions and path-dependent processes that influence policy evolution. Based on this logic, one can assume that when actors confer specific capacities to the institutional matrix and when exogenous events occur, they have a much more significant impact on the institution and can alter the institutional trajectory in the form of amendments to secondary law. In Chapters 5 and 6, I present empirical evidence corroborating these claims, highlighting the EU's later acquisition of competences that rendered it better equipped to enact comprehensive energy policies via instruments such as the internal market programme and competition provisions. The energy crises undeniably punctuated the trajectory of coal and nuclear policies as many secondary provisions were implemented for both sectors. However, the issue was that those sectors were not as important for developing a common energy policy as the actors had hoped. As shown in Table 4.1, solid fuels accounted for 21% of total consumption and nuclear energy for only 3% [sic!]. Although policies regarding these sectors were altered, the impact was relatively marginal and did not substantially change energy policy.

In addition, as a consequence of a decade that saw two energy crises, the Community faced a problem regarding its identity and the ability to govern the polity effectively. Gaston Thorn (1981), the president of the Commission, expressed his concerns about the state of the Community. Not only did the crisis pose a severe threat to energy security and the economy, but the Community gradually slid into a crisis that affected the entire institution. He claimed that,

> [t]he Member States are faced with a dire economic and social situation. So far we have failed to overcome the crisis and pull ourselves out of it. Nationalist attitudes are resurfacing and threatening Community solidarity. The achievements of the Community and the European ideal are in danger. The prevailing climate is one of doubt, disparagement and confusion. If we do not halt the downward slide soon, we shall lose control, and the whole European edifice will be swept away.
>
> (Gaston Thorn as cited in European Commission 1981a: 8)

No single proposal materialised into concrete legislation due to the crisis apart from the sectors in which the Community had competence. Despite the relatively meagre output of the Community in the aftermath of the crisis, the Commission tried to instigate endogenous momentum. The Community was the world's largest oil importer, embedded in an international context that was very unstable, and hence, the Community needed to shield itself from further risks associated with possible supply price increases to safeguard the European economy. The Community economy was severely hit by the oil crisis in 1979, which caused oil prices to double (European Commission 1981c). The Commission believed that to diminish the Community's vulnerability, steps needed to be taken on the demand side via

energy savings and the rational use of energy and on the supply side via the diversification of sources of supply. The success of these measures was largely dependent on what was done externally (European Commission 1981b). Energy policy's internal and external dimensions are highly interwoven and characterised by an interconnected relationship. Imports not only impact the security of supply but also influence the functioning and efficiency of the internal energy market. This relationship calls for a holistic approach to harmonising internal and external policy frameworks to achieve sustainable energy security and market stability.

In 1981 the Commission published a communication on the 'Development of an Energy Strategy for Europe'. The communication emphasised that although the two Council Resolutions of 1974 and 1980 had provided some foundation for common objectives, such as the reduction in oil dependence and a broader diversification of the energy supply, the implementation of an overall strategy comprising of action by the Community, the Member States, producers, and the consumers had not occurred. In the document, the Commission highlighted the inadequacy and inconsistency of action undertaken by the actors concerned (European Commission 1981c). In alignment with the theoretical framework and to achieve the *intended goals*, the communication emphasised the imperative to ensure that more rapid progress was made towards improved consistency and coherence between Member States. Interestingly, the Commission introduced a novel approach to addressing energy concerns within the Community. It enticed Member States with a proposal that left room for individual approaches on a national level, making Community-wide energy policy more attractive (European Commission 1981c). By proposing a framework that accommodated individualised national approaches, the Commission made the prospect of a Community-wide energy policy more appealing. However, the Commission was keen to underscore that this should not merely be lip service, akin to the initiatives of the 1970s; rather, the energy policies of each Member State should transparently signify a commitment to common objectives.

The Single European Act

Between 1981 and 1985, the Commission made several proposals addressing a common energy policy approach. In 1983, oil prices fell, helping to recover the economic situation of the global markets and to ease the supply situation regarding hydrocarbons. The Council managed to adopt a regulation on the method of formulating natural gas prices and tariffs in the Community, which followed a similar recommendation adopted on 27 October 1981 on fixing electricity prices and tariffs (European Commission 1983a). Apart from these rare successes, the Council did not manage to make further progress in bringing together the different dimensions of energy policy and reconciling the preferences of Member States. Consequently, energy ministers met on 21 April 1983 and requested the Commission prepare a progress report on the energy strategy for the attainment of the Community's 1990s objectives and conceded that these undertakings were "a matter of the greatest importance" (European Commission 1983a: 45). Prompts like these were nothing new but made throughout the 1960s and 1970s (for instance, see High Authority

1964a; High Authority 1964b; European Commission 1968; Council of the European Communities 1974a, 1974b, 1975). On 7 June, the Commission sent a communication to the Council based on former proposals and objectives adopted on earlier occasions. As one might expect, individual preferences and self-interested behaviour impeded any meaningful policy. The communication evaluated the progress made in realising the Community's energy objectives for the 1990s (see Council of the European Communities 1980) and outlined the changes needed to achieve these goals. The Commission concluded that the policies adopted were insufficient to attain the *intended goals*, mainly due to the lower oil prices in 1983, which had slowed the initial momentum of the energy strategy (European Commission 1983b). The Commission referred back to the meeting on 21 April and underlined that, while the Council had agreed to address specific risks (for instance, issues associated with security of supply), the lack of progress regarding measures to create a comprehensive, Community-wide energy policy, reflected the doubts of some Member States about the value of Community action, as opposed to national measures (European Commission 1983c). The conclusion of the analysis confirmed the need to

- provide incentives for investments in the efficient use of energy;
- establish coherent pricing systems;
- increase efforts in research, development, and demonstration projects;
- promote the use of solid fuels;
- extend nuclear programmes;
- increase the security of supplies of natural gas; and
- ensure a satisfactory level of compulsory stocks of crude oil and oil products.

Proposals like the aforementioned Community strategy of 1981 and 1983 were made throughout the 1980s. One can observe that the content and the issues that were addressed in the first 30 years of energy policy are in the proposals for the Energy Union: energy security, solidarity, and trust; a fully integrated European energy market; energy efficiency contributing to moderation of energy demand; and a focus on research, innovation, and competitiveness (European Commission 2015a) were all issues within the energy domain that the Commission tried to improve in the 1970s and 1980s. Hence, the challenges and issues that contemporary proposals try to tackle are not new but were components of the energy domain from the outset and can be conceptualised as recurring central motifs in energy policy. The reluctance of Member States to shift competences to the Community was the predominant and compelling force that locked the institution in, much as Scharpf's (1988) joint-decision trap proposes. In the early to mid-1980s, the Commission sent some proposals to the Council that could have initiated fresh endogenous momentum, "which the Council politely welcomed and subsequently ignored. Real progress was rare and difficult to identify" (Schubert et al. 2016).

Intriguingly, in line with Historical Institutionalist (HI) assertions, the Commission was aware of different factors that would contribute to processes of increasing returns, especially regarding network effects and adaptive learning. In the proposal

of 1983, they listed factors that would enhance the Community dimension of the energy domain, especially in sectors where it was more economical and more effective to do so. Analysed from a HI perspective, such measures would have helped to set a stable institutional path leading towards deeper integration based on incremental steps. For instance, taking advantage of economies of scale, such as pooling scientific and financial resources in research and development, would have pre-empted the duplication of often heavy expenditures associated with R&D. In addition, economies of scale would have improved the Community's financial instruments to borrow under the most favourable market conditions (European Commission 1983c). Learning effects would have been addressed through efforts to pool knowledge and experience, both of energy technologies and systems and of policy measures in specific sectors. As suggested by an HI framework, learning effects among different actors, once initiated, improve the efficiency of the institutional framework and as contractual agreements with other institutions are made, coordination between actors increases. Expectations about future events lead to stability in the system (North 1990: 95). Community programmes, as envisioned by the Commission, should have provided a framework for fast and efficient dissemination of knowledge and outcomes of programmes to develop energy technologies and techniques. Such community programmes should also draw on the experience and best practices regarding energy policies in different Member States and be available for the Community as a whole. Hence, all Community members would have gained from undertakings regarding the pooling of knowledge and benefitted from the experience of others and the evaluation of already implemented policies.

Another critical step was the vision to expand the scope of the internal market in energy products. Community programmes should encourage energy price transparency, eliminate distorting factors, and promote a more uniform approach towards energy taxation. Additionally, norms and standards should be harmonised regarding energy-consuming equipment and pollution control (European Commission 1983c). From an HI standpoint, the assertion to address norms and standards in energy policy pointed to the Commission's endeavour to create ideational momentum regarding the envisioned institutional trajectory. How can such behaviour be explained? Institutions provide moral and cognitive templates, allowing for individual construction of possible action (Hall & Taylor 1996). The actors are deeply embedded in these institutions, which transport norms, values, symbols, and scripts, and these ideational factors create filters for interpretation and define possible action. Actors not only gauge the situations but also assess *themselves* and their actions within a given context. Institutions provide strategically useful information about possible choices, *and* they shape the identities, self-images, and preferences of actors (Hall & Taylor 1996).

On the one hand, the Commission is the 'consciousness' (also in a normative sense) and policy vanguard of the institution, constantly striving to formulate policy in line with the overarching Community interest. On the other hand, the Commission acts like a broker between Member States' interests or competing sectoral interests and builds consensus between the different actors (Padgett 1992). The interest

in decreasing pollution levels and implementing environmental policies to address sustainability issues is evidence of the Commission's role as a normative policy vanguard. Promoting sustainability in various policy areas is an overarching goal of the Community that indeed deploys a strong ideational notion, and the Commission tried to embed such normative components into the institutional matrix.

In addition, the Commission endorsed a more integrated infrastructure that would enhance the flexibility of the energy supply. From a HI perspective, the development of infrastructure starkly contributes to processes of path dependence as the creation of infrastructure not only enhances capabilities in terms of trading energy products in the Communities but also *physically binds* the actors to each other. Hence, adaptive expectations unfold as actors become part of an interconnected energy grid. First, actors are embedded within a larger network, which fosters the development of self-fulfilling expectations. Second, these actors aim to maximise returns on their investments while maintaining long-term commitments to these endeavours.

Moreover, unlike markets not bound to physical grids and networks, energy markets associated with infrastructure help create regimes based on strong institutional rules that need to be reliable and stable. Energy products serve as crucial pillars within the economies of Member States and wield substantial influence over various dimensions of social welfare. Once these infrastructure projects are created and long-term contracts between different actors are made, path-dependent processes are initiated, not only because these contracts are concluded on a long-term basis but also because coordination and network effects unfold (Pierson 2000). Network effects refer to the increasing value or utility of belonging to a network as more actors (individuals, organisations, or even nations) join or endorse the same institutional arrangement. The more actors adopt or work within a particular institutional framework, the more valuable or effective that framework becomes – this is true for electricity grids and gas networks. The more actors become part of the system, the more the system increases in value; coordination effects evolve as procedural and operational standards must be aligned to guarantee the smooth operation of the network and associated markets. Moreover, the Commission suggested that the Community should improve collective contingency arrangements to protect Member States' economies against future energy supply and price crises. All Member States, even those with significant indigenous energy resources, would be affected by the economic disruption triggered by future energy crises, no matter how comprehensive national arrangements were (European Commission 1983c).

These ambitious ideas are evidence of the Commission's attempt to create a solid institutional path, consolidate the Community's capabilities, and reinforce the institutional matrix. The proposals encompassed policy instruments the applied theoretical framework identifies as potent factors contributing to path-dependent processes. However, such efforts petered out due to the lack of a supporting institutional design enshrined in primary law. In addition, and as a reaction to exogenous factors, the Commission tried to overcome institutional shortcomings concerning the correction of (socio-) economic problems triggered by the energy crises by implementing secondary provisions based on new ideas and approaches.

Steinmo (2008) understands ideas as "creative solutions to collective action problems" (Steinmo 2008: 131). As explored in the empirical analysis, the Community faced collective action problems after both energy crises in 1973 and 1979 due to diverging preferences of the different Member States. As a consequence of the joint-decision trap, the institution was severely locked in. The Commission attempted to overcome the institution's inability to deal with and react to imminent problems with ambitious policy proposals and innovative ideas. This implies that institutional change happens when powerful actors have the ability and the political will to change the institution in favour of new ideas (Steinmo 2008). However, as the evidence suggests, although the Member States agreed to important *intended goals* with regard to the formulation of a comprehensive energy policy on a Community level, in reality, the Community fell short of any successful attempts to implement new ideas that could have made a real difference.

Assessing a critical juncture

In addition to the lack of institutional capacity to form a coherent and Community-wide energy policy, the Community faced a severe institutional crisis. When analysing the driving factors that contributed to the critical juncture discussed in the following section, exogenous *and* endogenous factors must be examined and accounted for. Critical junctures altering primary law are understood as those events that affect the institution as a whole. Such critical junctures are the institutional 'big bangs', so to speak, that provide enough momentum to generate a force that punctuates the institutional trajectory in its entirety. Based on this understanding, it is posited that the creation of the European Coal and Steel Community (ECSC), the European Economic Community (EEC) and the European Atomic Energy Community (EURATOM), and at this point in the historical analysis, the Single European Act (SEA), represent critical junctures for the entire institution. These critical junctures created and altered primary legislation, which formed the basis for further institutional development.

The driving factors influencing the SEA can be reasoned through exogenous and endogenous factors. A rational choice explanation suggests that preferences are exogenously given. Following this logic, economic underperformance regarding market competition or an institutional crisis triggered by oil shocks would explain how specific preferences were formed. However, the empirical evidence examined so far suggests that when analysing critical junctures for primary legislation, not only exogenous but also endogenous factors played a role. Therefore, when we analyse the mechanisms that led to the implementation of the SEA, we must also incorporate an analysis of endogenous factors as possible determinants of institutional change. This can be reasoned through the following proposition: during a critical juncture, actors' preferences are exogenously given but might also have an endogenous momentum based on ideational factors (Steinmo 2008: 131; Hall & Lamont 2013; Dietrich & List 2012). We will examine the factors contributing to the critical juncture instigating the SEA.

Preferences based on exogenous factors

In the case of the Single European Act (SEA), the economic underperformance of the Community was evident before its adoption, corroborating the premise that exogenous factors can be identified as a possible cause for the institution to fall into disequilibrium, therefore diminishing material interests of Member States. The growth rate of trade between the Member States declined proportionally to increased trade with the rest of the world. More importantly, Member States began to lose their share of the Community market concerning many industrial products. To exacerbate things further, American and Japanese manufacturing became dominant forces in the global markets, and Member States were unable to respond to the increase in competition (Milward 2000). As Europe could not keep pace with its Japanese and American counterparts, Japanese and American manufacturing took a growing share of markets in the Community. The loss of Member States' market shares was an unhealthy development for the EEC. European manufacturing fell behind in high technology sectors where economies of scale were supposed to be greatest and reinforced by the common market (Milward 2000). As a result of these developments, non-tariff barriers in the form of state subsidies and the creation of national monopolies were introduced, distorting intra-West-European trade. As a matter of fact, the Community was less integrated by 1981 than it was in 1973, which diminished its international competitiveness (Milward 2000).

By the early 1980s, extreme pessimism took hold in the Community; the often-cited 'Eurosclerosis' was evidence of an economic downturn that affected the institution. The impetus for change came from growing concerns about competition from Japan and the United States, but also from the Community itself (Matlary 1997). Indeed, exogenous factors in the form of increased economic competition from outside of the Community had a considerable impact on the institutional trajectory of the EEC. When considering GDP, the economy in Europe was growing much slower in the 1970s and early 1980s than in the 1950s and 1960s.[3] The recession was also visible in the labour market, with the unemployment rate continuously increasing from 5.5% in 1978 to 11.5% in 1985, whereas in the United States after 1982 it fell to about 7%. The labour market situation starkly contributed to 'Eurosclerosis' (Giersch 1985).

A sense of frustration permeated the Community in the 1980s, particularly among political elites in France and Germany, who were dissatisfied with the institution's lack of development. Initiatives to complete the internal market rapidly gained traction, driven by economic imperatives. While economic elites shaped the architecture of these new economic measures, their implementation fell under the purview of political elites. An unprecedented and new acceptance of deregulation to create functioning markets formed the basis for such undertakings. This new trend was palpable on the national level with the exceptions of Tory Britain and Francois Mitterrand's socialist France, creating economic momentum on the Community level. The underlying rationale was that a more efficient and better-integrated market would create growth and minimise costs (Matlary 1997). "There was a shared understanding of the economic problems as well as an ideological vision of the political cure" (Matlary 1997: 19).

Preferences based on endogenous factors

Before analysing the dynamics that forced the institution onto a new institutional path, let us explore the endogenous institutional factors which, in conjunction with the exogenous factors, evoked the critical juncture that caused the institution to fall into disequilibrium. As previously discussed, a significant factor that led to the critical juncture was the pervasive sense of 'Euro-fatigue' within the EEC, resulting in institutional stagnation colloquially known as 'Eurosclerosis.' German economist Herbert Giersch coined this term in his seminal 1985 paper (1985). This 'Eurosclerosis' represented the immanent "institutional malaise" (Moravcsik 1991: 33) the EEC had to endure in the 1970s and 1980s and presented itself as an endogenous force that had a remarkable influence on the EEC and its ideological direction.

To fully understand the dynamics that led to the impasse, the Empty Chair Crisis and its remedy, the Luxembourg Compromise, must be considered, as these two events set the stage for institutional inertia in the broader historical context. France initiated an institutional crisis in 1965 by not attending Council meetings due to internal disagreement in the Council over the Common Agricultural Policy (CAP), claiming it would be against France's interests. The deadlock was eventually resolved by the Luxembourg Compromise, which required unanimity in decision-making if national interests were at stake. In practice, this meant that even minor decisions often necessitated unanimous approval in the Council. Consequently, the institution became 'locked-in', even in policy areas where qualified majority voting (QMV) was the designated procedure. Although decisions by QMV gradually increased between 1966 and 1984, the Community was cautious not to invoke any similar preconditions that would lead to the paralysis of the EEC and the traumatic experience of the Empty Chair Crisis (Good 1988). Although the Community expanded decisions that could be taken by QMV, in practice, the Council was caught in a joint decision trap, and the "unanimity requirement hindered the ability of the Council to make decisions efficiently throughout the 1970s" (Good 1988: 307).

In addition to this structural impasse, the Community also suffered from an ideational crisis based on the perception of its own political identity, an institutional impasse based on endogenous factors. The vision "to lay the foundations of an ever closer union among the peoples of Europe" (EEC Treaty preamble) and to give the Communities a political dimension/to create a closer political union was an aim already conveyed in the EEC Treaty. In practice, however, the framework of the EEC did not provide any institutional means to foster a political union. The European Parliament, especially after its members were directly elected from 1979 onwards, expressed its frustration concerning the slow development of the EEC into a political institution (Murphy 1989). Pressure for reform grew within Community institutions between 1980 and 1985. Notably, the European Parliament, the European Court of Justice, and the Commission, led by President Jacques Delors and Internal Market Commissioner Lord Arthur Cockfield, urged for a reform of the institutional design (Moravcsik 1991). Weiler (1983) states that "[i]n the late 1970's and early 1980's, crisis became a way of life, and the Community has seen a plethora of reports and proposals for tackling the problem" (Weiler 1983: 129),

"advancing the concept of a political European union" (Murphy 1989: 339–340). In fact, not only supranational institutions advocated for a union. As early as 1972, government leaders also saw the creation of a European Union as a beneficial goal and "set themselves the major objective of transforming, before the end of the present decade and with the fullest respect for the Treaties already signed, the whole complex of the relations of Member States into a European Union" (European Commission 1973: 16).

Among the proposals for unification (see Weiler 1983; Murphy 1989 for further information), the three most important attempts were the *Genscher-Colombo Draft European Act*, the *Solemn Declaration*, which both are sometimes regarded as the precursors of the SEA (Moravcsik 1991) and the *Draft Treaty establishing the European Union* (Dinan 2012), which created endogenous momentum for institutional development.

In order to tackle the institutional malaise and economic recession, the *Genscher-Colombo Plan* (the *Draft European Act*), advocated by German Foreign Minister Hans-Dietrich Genscher and his Italian counterpart Emilio Colombo in 1981, endorsed a strategy towards European unification. In essence, the rationale behind the proposed act was based on three symptoms: a pervasive shortcoming of effectiveness regarding the Community decisional process, a potential for enlargement of the scope and impact of traditional Community policies, and a decline in the ideology and spirit of European integration (Weiler 1983). Both Genscher and Colombo frequently referred to the necessity of "relaunching of the European Ideal, the need "to strengthen the political will of Europe", and this with the objective of "spurring on the creation of the [European] Union", "boosting the idea of a European Union" (Genscher and Colombo as cited in Weiler 1983: 138–139). The Draft European Act was not only based on the rationale to tackle economic recession (Moravcsik 1991), but the initiative also strongly referred to setting up a renewed vision of the European Communities together with the proposition to instigate the relaunch of the European Union idea in order to solve the endogenous, institutional malaise (Moravcsik 1991). Moreover, the act would have made the European Council the controlling political organ within a unified Europe (Murphy 1989). However, due to disagreement between Member States, the Genscher-Colombo initiative did not show the envisioned progress towards European unity. This was especially the case for France, whose interest in Europe was limited to sporadic proposals to facilitate a socialist Europe, and Britain, for whom negotiations over the budget were the most critical issue (Moravcsik 1991). As we can see, the Genscher-Colombo Plan aimed to catalyse momentum based on endogenous preferences within the European Communities by addressing institutional inefficiencies, expanding traditional policies, and rejuvenating the spirit of European integration. However, it ultimately faltered due to divergent national interests.

In response to the Draft European Act, the European Council issued the *Solemn Declaration on European Union* (or Stuttgart Declaration) in June 1983, which accepted the goal for a political union but imposed no obligations on Member States to work towards that goal and envisioned a political union based on the existing EEC Treaty (Murphy 1989). It covered a wide range of institutional and

policy issues, including completing the internal market and procedural and institutional reform (Dinan 2012). National leaders promoted the declaration at their summit in Stuttgart in June 1983, but subsequent British, Danish, French, Greek, and Irish objections reaffirmed the Luxembourg Compromise and brought a halt to any further developments. In addition, the Stuttgart Declaration was attacked by French Prime Minister Pierre Mauroy, hence reinforcing the veto right (Moravcsik 1991). Nevertheless, the Solemn Declaration impacted further institutional development as it convinced the European Parliament of the futility of achieving a political union through intergovernmental negotiations (Murphy 1989).

As a follow-up to the Solemn Declaration, the *Draft Treaty Establishing the European Union*, adopted in 1984, resulted from the first directly elected European Parliament. This important institutional factor provided further endogenous momentum for European unification. Under the patronage of veteran Italian Eurofederalist Altiero Spinelli, a founding father of the EC, and endorsed through the so-called Crocodile Group (named after the Strasbourg restaurant where they first met), the European Parliament produced an ambitious proposal for unification. The Draft Treaty sought to substitute the existing treaty establishing the European Communities with a single European Union. As laid out in the document, the EU would maintain its basic institutional structure and legal competence. However, the decision-making procedure would be strengthened, and some of the Union's competences would be enhanced in the economic, social, and political domains. The purpose of the decision-making reform was to improve the efficiency of reaching agreements and tackle a perceived democratic deficit at the European level of governance (Dinan 2012).

The Draft Treaty was a bold attempt at unification, proposing a federalist type of union among Member States of the EEC, and would have dramatically increased the powers of the European Parliament at the expense of the European Council. This initiative would have had a more significant impact on Member State sovereignty compared to the original EEC Treaty, as it proposed common citizenship and fundamental human rights protections for citizens of signatory states. Moreover, the Draft Treaty would have bestowed legal personality upon the Union (European Commission 1984). It goes without saying that the Draft Treaty was controversial among Member States (Murphy 1989) due to its far-reaching alterations to the institutional design. Nevertheless, it was still endorsed by national legislatures from Belgium, Denmark, France, Italy, Luxembourg, and West Germany. Given that there were ten Member States at the time, this serves as evidence that these Member States perceived an urgent demand for profound institutional change. The Draft Treaty was too ambitious in scope as it was never ratified by all Member States. However, it nevertheless catalysed further discussions and initiatives aimed at European unity.

In response to the Draft Treaty of the European Parliament, the European Council set up an ad hoc Committee for Institutional Affairs at the Fontainebleau meeting to advance European integration. The efforts of the Committee subsequently led to the so-called Dooge Report in March 1985 (Good 1988). The report emphasised that, although its promising start after the Second World War as an unprecedented

legal entity based on the principles of pluralist democracy and the respect for human rights, the Community was in a severe endogenous crisis and suffered from serious deficiencies (European Commission 1985c). Member States had become entangled in differences and, hence, could not benefit from the financial and economic advantages a common market and economic union would provide. In addition, unlike the United States and Japan, Europe had not achieved a growth rate sufficient to reduce the disturbing figure of almost 14 million Europeans in unemployment. The Dooge Report urged the Community to recover faith in itself based on a new joint venture: the formulation of a genuine political entity among European States – a European Union. To draw up a simple catalogue of measures was not enough for such an undertaking, as such exercises had been completed in the past without achieving any progress. Instead, the common political will of Member States was henceforth needed in order to foster European unity.

It can be inferred from the data that endogenous momentum for institutional change was robust in the Dooge Report. As prominently endorsed in the report, it stated that ambitions to create a European Union demanded not only cooperation based on economic reasons but also required the Member States to cooperate in fields other than economic areas (as the Community already did to a certain degree). Hence, the Committee proposed that an *intergovernmental conference* should be convened to negotiate a draft European Union Treaty based on the *acquis communautaire*, the Dooge Report, the Stuttgart Solemn Declaration on European Union, and in spirit and method of the Draft Treaty voted by the European Parliament (European Commission 1985c) – which is somewhat surprising, given that the Draft Treaty was endorsed by the European Parliament (Murphy 1989).

The solution for an institution in crisis

At the meeting in Brussels in March 1985, the European Council emphasised the completion of the internal market and called upon the Commission to draw up a detailed programme with a specific timetable (European Council 1985a). Before the adoption of the SEA, the Commission focused on the Single European Market (SEM) programme as its successful realisation would "fundamentally alter the face of Europe" (European Commission 1985a: 18). Within seven years, the market programme would then remove the Community's physical, technical, and tax frontiers to create a genuine common market (European Commission 1985a). A White Paper, designed to spell out the programme and the timetable, and based on European Council recommendations, set out the "action to achieve a single large market by 1992 thereby creating a more favourable environment for stimulating enterprise, competition and trade" (European Commission 1985b: 3). Remarkably, as a reflection and consequence of past energy policy failures, the Commission did not include energy in the initial agenda for the SEM. Energy was indirectly affected by more general market provisions (McGowan 1989). However, the White Paper emphasised that the four major sectors, energy, transport, water, and telecommunications, were not covered by Directives at that time and, hence, the document

suggested that by 1988, energy should be included in the internal market programme as well (European Commission 1985b).

On a different note, contributing to the willingness of Member States to agree to complete the internal market was also a wide-ranging *change in economic ideologies* in different Member States, which led to experimentation regarding the privatisation of specific sectors and the deregulation of the economy in general. Drawing on Hall and Lamont (2013), Blyth et al. (2016) argue that new neoliberal ideas play a pivotal role in governing markets and, in this context, steering institutional change. The new liberal sentiment was triggered by the aforementioned issues regarding Member States' competitiveness vis-à-vis Japan and the United States, the return of stark unemployment, paired with very high inflation rates. Although these novel economic approaches were applied at different times in the various Member States, in the end, they nevertheless shared a common objective on a European level: to return to the growth rates of before 1974. As a consequence of this new Community spirit, and together with the shared willingness to end the institutional malaise on a Community level, the European Council decided at the Milan conference in June 1985 to complete the single market (Milward 2000) and to overhaul the institutional design (European Council 1985b). In the run-up to the summit, proposals began to multiply, and Jacques Delors, then Commission president, began to link internal market liberalisation to qualified majority voting, "stressing that the first was unattainable without the second and that neither was possible without an intergovernmental conference to amend the Treaty of Rome" (Moravcsik 1991).

Recommendations in the Dooge Report and the White Paper were intensively discussed at the summit. The White Paper was unanimously accepted by all the Member States (Moravcsik 1991). With considerable internal momentum and fresh Community spirit based on innovative ideas governing the institution, the European Council engaged in a comprehensive discussion. Topics included enhancing the Council's decision-making procedures, expanding the European Parliament's role, and increasing the Commission's administrative powers, all aimed at swift implementation. Additionally, the Council discussed the fortification of political cooperation as part of the EEC's transition to a European Union. The European Council emphasised the need to improve the operation of the Community to reach its *intended goals*, especially concerning the completion of the internal market and measures to advance a technological Europe (European Council 1985b). Per Article 236 of the EEC Treaty, the Council convened an intergovernmental conference, as suggested by the Dooge Report, to deliberate on the amendments to be made to the treaties of the European Community (Good 1988). From there, things moved quickly.

As stated by Capoccia and Kelemen (2007), from a Historical Institutionalist perspective, the duration of the critical juncture must be briefer than the path-dependent process it incites. However, it is also important to mention that this proposition concerns the actual *decision-making process,* which must be short, and not the timespan and events that contribute to evoking the institution to fall into dis-equilibrium, which usually takes a longer period of time. A draft of the SEA

was written during the first month of the intergovernmental conference, and the remaining issues were resolved in five meetings between the heads of state and foreign ministers between October and December 1985 (Moravcsik 1991). The SEA was signed on 17 February (Luxembourg) and 28 February (The Hague) 1986 (European Commission 1986), came into force on 1 July 1987, and set the overarching goal to complete the Single European Market (SEM) in the Community by 1992 (Single European Act 1987). As laid out in the Treaty, "[t]he internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty" (Single European Act 1987: 7). Indeed, the SEA was the first significant revision of the 1957 Treaty of Rome that initially founded the European Economic Community. It also introduced qualified majority voting in some policy areas to streamline decision-making and reduce the ability of individual countries to veto proposals. Additionally, the Act expanded the European Parliament's powers and formalised European Political Cooperation, the precursor to the European Union's Common Foreign and Security Policy.

Conclusion

The Single European Act Treaty can be understood as a critical juncture since it marked a turning point for the institutional trajectory and the development of a common energy policy. It opened the door for creating an internal energy market and paved the way for an increasingly efficient and effective decision-making process. The most significant change in the SEA was the transition from unanimous voting to qualified majority voting on matters concerning the internal market to enable the adoption of approximately 300 directives necessary for its facilitation (Matlary 1997). Due to the changes brought about by the SEA, the Community could reach decisions and adopt measures much more quickly and effectively than before, and energy policy was no exception. As the evidence has shown, many proposals collapsed owing to the requirement that their implementation was dependent on unanimous voting in the Council. Hence, the Single European Act and the associated rule of qualified majority voting in the Council represented a significant change to the Community's framework and provided the institution with the capacity to free itself from the pathological lock-in that had plagued it during the preceding years.

Energy policymaking in the Community had previously relied on the political will of national governments to cooperate, and the Commission was allocated a subordinate and goal-setting role as a 'henchman' of the Member States (Tonini 2015). The Commission's policy endeavours were not central to Member States' own policies, and much less so regarding the development of a common energy market. The self-interested behaviour of Member States characterised policymaking; rational decision-making and utility maximisation dominated the energy sector; the institutional design foreclosed any advancement and change of its regulatory capacity. At best, energy policy was "largely indicative, consisting of information gathering, target setting and enabling activities" (McGowan 1989:

549). However, under the new market-based approach introduced by the SEA, the Commission strengthened its powers vis-à-vis intergovernmental institutions and became more proactive concerning policymaking. The Commission's new role was closely associated with the revivification of the Community as the SEA strengthened supranational authority in several policy areas (Tonini 2015). The institution reinforced its capacity, and actors became more embedded in the institutional framework. As mentioned before, deriving its authority from the SEA and the blueprint in the 1985 White Paper, the SEM programme did not include energy. However, positive steps were taken from 1987 onwards (Padgett 1992) – as also suggested in the White Paper.

From a Historical Institutionalist standpoint, the treaty change in the form of the SEA serves as valuable evidence for a critical juncture that affected the whole institution and changed the institutional trajectory. The alteration in primary law thus increased the institution's responsiveness to both minor exogenous and endogenous events, owing to its newly augmented adaptive capacity. Moreover, the SEA introduced the potential for incremental change in secondary law through increasing returns and path-dependent processes, as seen in the forthcoming chapters. The evidence presented in this chapter suggests that exogenous factors only impact an institution or a specific policy area if relevant competences have already been ceded to the institution. This constitutes a key finding emerging from the present investigation. If actors are reluctant to shift powers to the institution, or if there are no rules implemented that govern a specific sector in the first place – especially if the sector is associated with security concerns, high politics, and the survival of the state as in the case of energy policy – the exogenous event will not have the capacity to alter the institutional path. As also shown in Chapter 3, if the institution is only made up of a minimum set of rules in a specific sector (or if there are none at all), and if those rules and the associated decision-making are in the hands of Member States, exogenous events cannot unfold their full potential and, thus, cannot have an impact on secondary legislation. Institutional developments following the 1973 and 1979 oil crises support this claim.

As elaborated in the second chapter, primary law constitutes the cornerstone of the institution: the institutional matrix is, in essence, a set of rules that establishes a framework for governance. This framework regulates the behaviour of all actors embedded in and subject to the institution's rules. As the evidence suggests, the SEA is the outcome of a critical juncture for the institution, as it fundamentally altered the institutional trajectory and the performance of the EEC *due to the amendments made in primary law*. The institutional lock-in was overcome when qualified majority voting became the voting procedure in many policy domains (Matlary 1997), and the institution changed to one capable of developing processes of increasing returns in the energy sector. As the second hypothesis proposes, due to the critical juncture caused by exogenous and endogenous factors punctuating the institution, primary legislation was amended: *moderate integration* of primary law occurred as high institutional stickiness encountered a critical juncture. Therefore, the second hypothesis can be confirmed. The enduring institutional inertia, a legacy of the design choices made from the 1950s through the 1980s, constrained the

potential impact of the critical juncture. Had there been less institutional stickiness, the juncture could have realised its full transformative potential. Consequently, the result was a moderate outcome for energy policy. Although deeper integration was evident – the institutional framework was comprehensively overhauled – energy policy was not directly part of primary law but had to be addressed through market provisions.

Notes

1 See also: Directive 75/339, [1975] OJ L153/50020 on minimum oil stocks; Directives 75/404 and 75/405, [1975] OJ L178/24 limiting the use of oil and gas in thermal power stations; and Regulations on community support to alternative energy sources and energy savings.
2 For instance, see: Council Resolution of 18 February 1980 on fast breeder reactors; Medium-term guidelines for technical coal research; Council Decision of 28 April 1981 adopting a programme of research and development for the European Atomic Energy Community; Council Recommendation of 28 July 1982 concerning the encouragement of investment in the rational use of energy; Council Regulation (EEC) No 481/81 of 24 February 1981 introducing registration for crude oil and petroleum product imports in the Community; and Commission Regulation (EEC) No 301/82 of 9 February 1982 regards the communication to the Commission of information concerning crude oil or petroleum product imports.
3 Annual GDP growth had fallen from 4.8% in 1973 to 2.1% in 1983, and between 1981 and 1985 the EEC showed an annual growth rate of 1.1%, which was only half the rate of the US economy and only a quarter of the Japanese.

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5 The three energy packages and the external dimension

Path dependence and incremental change

Introduction

We will now turn to an assessment of policy development during a time characterised by a process of path dependence and incremental change. This chapter examines the third proposition, founded on the understanding that qualified majority voting (QMV) was applied to secondary legislation on energy markets after the establishment of the Single European Act (SEA), which jolted the institution out of the joint decision trap. In a scenario of low institutional stickiness without a critical juncture, moderate integration can be anticipated; integration is likely to occur as incremental modifications to secondary legislation. Nevertheless, minor internal and external events can influence the balance of the institution, creating opportunities to modify the trajectory of a particular part of secondary law.

Shortly after the Single European Act was adopted, and after the 1986 oil price collapse and the Chernobyl nuclear accident, the Council established new Community energy policy objectives for 1995 and the convergence of Member States' policies. The Council once again emphasised that the secure availability of energy on a stable economic basis remained a requirement for attaining social and economic goals. Therefore, if necessary, progress to restructure the energy economy should be reinforced at the Community level, and the coordination and harmonisation of national energy policies should be realised through a framework established by Community objectives (Council of the European Communities 1986). The Council underlined that such concerted action would demonstrate to consumers, producers, and investors that the EEC was determined to improve their energy supply conditions. However, the Council emphasised that such undertakings had to be in accordance with national policies in light of Member States' specific possibilities and constraints. These objectives were meant to be "indicative guidelines . . . without taking the form of rigid planning instruments" (Council of the European Communities 1986: 1).

Propositions like these were not new, as many of the previous conclusions endorsed similar action concerning Community-wide objectives.[1] However, this time, the far-reaching alterations to primary legislation, under the SEA, made it possible to actively pursue common goals and spark the development of an internal energy market. At the Council meeting on June 2, 1987, the discussion revolved

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around the prospects for establishing a common energy market, framed against the backdrop of previously outlined policy objectives for 1995. Within these objectives, the focus was on examining national policies. An exchange of views also occurred on completing the internal market. The Commission was subsequently tasked with drawing up an inventory of existing obstacles hindering the realisation of an internal market and was asked to submit proposals to the Council for the removal of these barriers by the end of 1992 (Council of the European Communities 1988: 61). This request by the Council was the initial spark that ignited the overarching project of energy market liberalisation, based on the major Treaty revision of the SEA. In May 1988, the Commission duly took on the task and presented an inventory of existing obstacles and an action plan to realise an internal market.

The Single European Market and the internal energy market

The report *The Internal Energy Market* (European Commission 1988) was the first important step towards liberalising the energy market. Poignantly, the Commission started the communication by stating that "considerable barriers to trade in energy products within the Community" still existed and that "[i]f this state of affairs does not alter and if a common energy market is not achieved in the near future, the degree of integration achieved in this sector may well be jeopardised" (European Commission 1988: 2). These opening words are from a communication that the Commission sent the Council in 1968. It is noteworthy that the Commission commenced its communication with rhetoric that, at the time, was already two decades old, suggesting it was the Commission's intention to emphatically remind the Council that little progress had been made to integrate energy markets since 1968.

Regarding the Commission's findings, all Member States were asked to submit their comments, together with a hundred or so organisations and enterprises. All energy sources were considered, and producers and consumers submitted their contributions. Hence, the document was extensive in scope and addressed many different facets and dimensions of energy policy. The scope and depth are owed to the fact that the energy market was not a homogenous sector but highly diverse in terms of traded products and end-users. There was considerable diversity regarding energy market operators, ranging from small to medium-sized enterprises to multinationals and political traditions. Taxation habits and energy resources also diverged from one Member State to another. The very nature of energy products and the conditions under which they are produced and consumed constitute the variation between Member States (European Commission 1988). The rationale for creating the single market was based on the Community's need to become more competitive globally. A better integrated internal energy market would reduce energy costs, benefiting the individual consumer and various industries. Industries would become more viable and increase their competitiveness, and economic growth would, in turn, positively affect employment. The internal energy market would improve the cost structure and rationalise energy production, transmission, and distribution activities.

Furthermore, the security of supply would be significantly enhanced, and better interconnections would increase solidarity between Member States and positively impact the flexibility of the industry. An increase in trading between Member States at a lower price point was expected. The Commission emphasised that the "establishment of a more integrated energy market is of vital importance to the future of our Community" (European Commission 1988: 6). The communication estimated that the omission of an integrated energy market, the "*cost of non-Europe*" (European Commission 1988: 6) as it was termed, would cost the Community around 0.5% of the Community's GDP.

Hence, the Commission proposed a fourfold, comprehensive plan for action. First, based on the 1985 White Paper, the harmonisation of legally binding rules and technical norms and the opening up of public procurement were addressed. Second, the application of Community law concerning the free movement of goods, state monopolies, rules of competition, and state aid to eliminate obstacles laid out in the Treaties should be enforced to create a level playing field for all market participants. Third, provisions addressing the protection of the environment and health and safety standards needed to be harmonised. Lastly, to positively influence the development of energy trade, the differences between Member States concerning energy costs, prices, and tariffs needed to be harmonised and energy infrastructure for electricity and gas improved (Padgett 1992). More generally, the Commission instigated a twin-track approach to energy policymaking – the predominant approach ever since – based on aligning provisions regulating the energy market and using its competition powers against states and market participants that infringed on those rules. The SEA unblocked the legislative path, and the Commission began to take advantage of its competition powers by launching a series of anti-trust cases, which brought an end to the legal monopolies certain states held concerning the import and export of energy (Buchan & Keay 2015; Eikeland 2011).

Preferences informing the internal energy market

In general, Member States could not oppose new policy initiatives, although most states demonstrated resistance to change (Eikeland 2011). From a Historical Institutionalist (HI) standpoint, these developments are of great interest as they provide strong evidence that actors had become highly entrenched in an institution and were subjected to unintended consequences (Pierson 1996; Fioretos 2011). Once the SEA had resolved the adverse situation of the Luxembourg Compromise, where unanimity was the quasi-voting rule, and with renewed momentum regarding the European project and the commitment to the completion of the internal market, Member States did not have the powers to oppose new policy initiatives in energy policy as they had done in the 1970s and early 1980s. Since Member States agreed to the SEM programme, they could not escape the gravitational pull the amendments in primary law evoked. Indeed, as Fioretos (2011: 380) contends, "[i]stitutional designs with unexpected consequences are typically attributed to the cognitive limitations of those with power to shape designs during founding

moments or to complex interaction effects that emerge later". The new institutional design firmly bound Member States to the concessions they gave two years earlier and deprived them of veto powers in the wake of the renewed market-based approach triggered by the SEA. Of course, Member States were divided in terms of their preferences. As we will see, the institution constrained the options available to Member States more and more over time. Consequently, they agreed to policy proposals further along a sequence of policy initiatives they would not have agreed to at an earlier stage. In sum, from a HI perspective, unintended consequences for policymaking gradually evolved.

The empirical evidence also shows that most Member States were sceptical of the envisioned goals and the policy proposals published by the Commission, each for their own reasons (Schubert et al. 2016). Germany and the Netherlands hoped for a broader European approach, and Denmark opposed the idea of harmonising markets. This resistance stemmed from Denmark's commitment to nuclear-free electricity generation, a policy that a common market could undermine since the control over electricity production would be removed in an open market. Spain feared losing income from transit charges on electricity transfers between France and Portugal. Meanwhile, Greece worried about domestic coal production and its competitiveness in a free market. The energy industry, in general, was concerned regarding new gas and electricity transit proposals, with France and the UK being the only exceptions. The underlying rationale was that the UK had already liberalised its domestic energy market in the preceding years, and France envisaged selling its overproduced nuclear-generated electricity (Schubert et al. 2016).

Nevertheless, from an HI standpoint, since market principles played such a significant role in the new overarching institutional framework, Member States had to subjugate their individual national preferences and streamline them with other Member States to enhance policymaking on the EU level, based on rational decision-making and institutional constraints. If they did not, the "cost of non-Europe" (European Commission 1988: 6) looming in case of non-realisation of the internal energy market (IEM) was too high, and all the positive effects market liberalisation would bring for different EU industries and consumers would have been lost. Member States could not challenge and contest the validity of market integration within the institutional setting, as market integration was the predominant norm, the backbone of European integration, and the dominant economic policy doctrine at the time (Eising 2002).

The Commission's proposals reflected the dominant policy approach in the institutional setup of the EU, with market rationale at its core. However, a comprehensive understanding of the institution's structure also necessitates consideration of the role of institutional norms within the institutional matrix, as ideational factors hold considerable significance in shaping the system. In addition to the cost-benefit analysis of Member States concerning the IEM (confirming that the decision-making of Member States was rooted in the calculus approach, with the institution acting as an arbiter between actors), Eising (2002) shows how endogenous institutional norms also influenced the institutional trajectory in terms of decision-making procedures in energy policy. Such considerations greatly enrich HI's assumptions

about institutions and how preferences are endogenously created within the institutional setup. Norms shape actors' orientations and perceptions about the institution and, hence, "what constitutes the EU's legitimate claim to make binding decisions" (Eising 2002: 103). For instance, the inclusion and participation of different EU bodies, societal actors, and the consensus principle within the Council bridge the gap between the different actors and stakeholders, and their respective preferences. Even though qualified majority voting (QMV) was increasingly common following the Single European Act (and later the Maastricht, Amsterdam, and Nice Treaties), the decision-making process was based on a consensus principle that tried to find acceptable solutions for all Member States (Eising 2002). Certainly, QMV created the conditions to reach decisions much more efficiently, but the peculiarity of the mutual interests to reach a decision via consensus shows that normative factors also influence decision-making.

To recall Scharpf's joint decision trap: the "pathologies of substantive public policy" are based on the condition that "decisions have to be unanimous" (Scharpf 1988: 267). In this context, the application of unanimous voting rules, as opposed to qualified majority voting, tends to render policy choices rigid and unresponsive to change and "have an inherent (non-accidental) tendency to be sub-optimal" (Scharpf 1988: 267). After the SEA, QMV became an essential feature of the Community in many of its activities. In practice, however, most decisions were reached by consensus. Nevertheless, reaching a consensus in a policy area under the shadow of *a vote* is altogether different to reaching a consensus under the shadow of *a veto* (Weiler 1983). From an institutional standpoint, institutions deploy structural preconditions that shape and influence actors' behaviour and the underlying factors that determine how decisions about specific policy choices are reached.

Furthermore, and crucially from an HI point of view, institutions and institutional choices made in the past constrain actors later in time (Pollack 2008). Hence, institutions play a vital role in structuring, organising, and governing different levels of political processes through *formal* and *informal* rules/constraints (North 1990). The introduction of qualified majority voting (QMV), coupled with the normative imperative to reach consensus among Member States on their respective preferences and policy choices, corroborates the notion that informal rules can significantly influence institutional dynamics. The structural design of the institution facilitates and upholds such behaviour. As Weiler (1991) elaborates,

> [t]he possibility of breaking deadlocks by voting drives the negotiators to break the deadlock without actually resorting to the vote. And . . . the power of the Commission as an intermediary among the negotiating members of Council has been considerably strengthened.
>
> (Weiler 1991: 2461)

Based on this logic, the mere *prospect of a QMV vote* effectively constrains and shapes the policy options for Member States because they are more inclined to make compromises due to the prevalent institutional setup. The potential repercussions of being outvoted on critical matters are prohibitively high. Consequently,

it is often more advantageous to seek compromise on contentious issues than to unilaterally adopt an intransigent position, a strategy that heightens the risk of an actor's particular preferences being entirely overlooked. Under unanimous voting, the option for Member States to instigate a deadlock is ultimately feasible and an efficient strategy, as veto players, dependent on their unilateral preferences, can stop any decision-making process altogether. Hence, the norm to resort to a consensus not only constitutes a form of comprehensive protection against unwanted repercussions, for instance, being outvoted on critical issues like the internal energy market. It also ensures that Member States search for an acceptable outcome for all Member States from a normative standpoint so that decisions are perceived as adequate, appropriate, and fair (see March & Olsen 1989 'logic of appropriateness'). This, in turn, also ensures that Member States comply with negotiated rules, and the Council hence makes strong efforts to produce outcomes that every Member State can accept (Eising 2002).

The Commission elaborated on different decision-making procedures for the gas and electricity sectors, traditionally dominated by vertically integrated national oil companies (NOCs), to liberalise these markets and provide fair competition for all market participants. The first suggestion was the application of competition rules (at that time, it was Articles 85 and 86 of the EEC Treaty) to dismantle dominant market players and utilities. The second possible option was instigating infringement procedures based on Article 169 EEC. Third, specific directives would need to govern the gas and electricity sector. These directives could either be unilaterally formulated by the Commission according to Article 90 (3) EEC-Treaty or, fourthly, in accordance with Article 100a EEC, which was a consensus-based decision-making procedure, which would allow other EU bodies to decide on the space and scope regarding policy measures to liberalise energy markets (Eikeland 2011). As energy was widely regarded as a public good, a large part of the Commission (including the energy policy department), the Council, and the European Parliament preferred a stepwise, consensus-based approach to decision-making that allowed for incremental change (Eising 2002), which is an interesting observation from an HI perspective.

Meanwhile, the Directorate General for Competition (DG COMP) strived for a faster breakup of the NOCs by using competition rules and Article 90 (now Article 86 of the EC Treaty). Under these provisions, they could initiate legal action unilaterally. DG COMP started infringement procedures against some of the Member States to maintain a high degree of pressure and swiftly achieve a single market in energy (Eikeland 2011). However, as previously noted, most Commission directorates favoured a consensus-based approach, opting for compromise among institutional actors. They were reluctant to endorse the more aggressive strategy advocated by DG COMP, instead suggesting a stepwise procedure for policymaking. However, as already stated, most of the Commission directorates refused to support the aggressive approach of DG COMP and instead proposed a stepwise procedure for policymaking.

In the end, following a European Court of Justice (ECJ) ruling, the abrasive competition policy route envisioned by DG COMP was waived for the more inclusive

approach of a co-decision procedure that required both the European Parliament and the Council to agree to a new directive and to consult energy utilities, so that all voices would be considered. The consensus-oriented approach ensured that all actors retained a high degree of control over the outcome and a more appropriate regulatory environment than a purely legal strategy would provide (Eising 2002). Most importantly, the consensus norm was not only confined to the choice of the decision-making procedure but also applied to decision-making in the Council. The co-decision procedure allowed for QMV in the Council. However, due to the heterogeneity of national energy structures and the economic relevance of energy, the Member States were unwilling to outvote each other on salient issues. Even prominent antagonists like Germany and France agreed not to isolate one another during the Council negotiations but instead to search for a consensual solution acceptable to all Member States (Eising 2002). As the evidence suggests, endogenous normative factors played a significant role in the institutional design, supporting the claim that institutions provide not only formal rules but also moral and cognitive templates, allowing for individual construction of possible action (Hall & Taylor 1996). Actors are deeply embedded in institutions, which transport norms and values, and hence, their actions are also shaped by and grounded in a logic of appropriateness.

The First Energy Package: the road towards market liberalisation

As an outcome of these considerations, the recommendations promoted in *The Internal Energy Market* (European Commission 1988) led to the first legislative package adopted at the beginning of the 1990s (Andoura et al. 2010). As already stated, the electricity and gas sectors were viewed as particularly challenging as, most of the time, they were nationally dominant, vertically integrated utilities. Hence, breaking up these structures was pivotal to creating free and fair competition and a level playing field for all actors involved (Eikeland 2011). The Directives were the first step towards the liberalisation of energy markets but were not broad in scope. Directive 90/377/EEC concentrated on the transparency of gas and electricity prices (Council of the European Communities 1990a), Directive 90/547/EEC and Directive 91/296/EEC addressed the transit of electricity (Council of the European Communities 1990b) and gas (Council of the European Communities 1991) through the main transmission grids, and Directive 94/22/EC addressed the liberalisation of specific activities (prospection, exploration, and production) related to hydrocarbon products (EP/Council 1994).

The launch of the market programme coincided with a drop in oil prices in 1986, which remained low for the next couple of years. It subsequently rose, however, only to fall again in the late 1990s. The price drop, in turn, created a favourable economic environment, bolstering the market programme, alleviating economic issues associated with the structural reforms, and creating more winners than losers in all sectors. Exogenous factors helped to give energy policy and the single market programme significant momentum. Due to the eased supply conditions, Member States did not focus on energy security as they had in previous years. This made it

much easier for Member States to accept any market liberalising policy measures without constantly worrying about the impact of these policies on their respective security situation and national energy policy in general (Buchan & Keay 2015). Moreover, due to the exogenous factor of the oil price collapse, which impinged European governance, energy companies tried to reduce their costs to remain competitive, whilst low-cost energy sources flooded the market, especially from the Middle East. The inefficiencies of state-owned industries and the unwillingness of governments to continue to support the big NOCs made the liberalisation of energy markets easier (Stern 1998).

Nevertheless, the SEM initiative gave rise to an intense debate within the European gas and electricity sectors on the merits of market liberalisation and liberalising access to networks, with the dominant domestic players in continental Europe fiercely opposing any changes in the status quo. The prevalent view of the gas and electricity industries was that the involvement of Brussels was neither necessary nor welcome. Some views were based on the fear of losing substantial profit; others simply reflected fear of change (Stern 1998). To take full advantage of energy markets, the Commission sought to invigorate them through two different processes: increasing competition and liberalising energy markets. The former was driven by changes in the supply/demand balance and by aspirations of new entrants to the gas sector; the latter was driven by national and European Union commitments to open markets, greater efficiency, and consumer choice (Stern 1998). The passage of the first directives concerning price transparency and the gas and electricity transit directives paved the way for subsequent secondary legislation, as information about price levels and energy infrastructure in different Member States allowed for a more systematic analysis of the possible benefits of market liberalisation (Brutschin 2016). Hence, path-dependent processes gradually evolved, and monitoring, learning, and coordination effects unfolded.

Based on these successes, the Commission strived for bolder moves towards serious liberalisation, which still needed to be solved. The Commission created a consultative committee for the gas and electricity sectors, which reported their findings in 1991. It soon became evident that the electricity sector conceded that market liberalisation would bring efficiencies and advantages to the system. In contrast, the gas sector "regarded the introduction of liberalisation as the equivalent of the end of civilisation. As far as the Commission was concerned, the gas gatekeepers were the ultimate liberalisation refuseniks" (Stern 1998: 91). In this regard, the proponents of market liberalisation in the gas sector consisted of the UK (where markets were already liberalised), Denmark, Ireland, and Portugal, whereas France, Belgium, and Luxembourg were sceptical (Brutschin 2016). In the electricity sector, similar preconditions were prevalent, with the UK and the Scandinavian countries supporting liberalisation, as they had already opened their energy markets through national legislation, and France and Germany acting in tandem to prevent Brussels from reshaping the structure of their energy industries (Buchan 2009).

In February 1992, the Commission released a draft directive that established common rules for the internal market in electricity and natural gas (European

Commission 1992). This directive aligns with the policy cycle framework advocated in this book as it introduces new sets of intended goals. The issue of non-discriminatory access to pipeline networks by market participants that do not own the physical infrastructure for transmission – so-called third-party access (TPA) – was conceived as the key to enhancing competition in energy markets and on the agenda of the European Community since 1988 (European Commission 1992). TPA was deemed the ultimate solution for dismantling natural monopolies and deployed as the spearhead principle of energy liberalisation. "Almost all of the other proposals emanating from Brussels are simply designed to make TPA happen" (Buchan 2009: 21). The second important pillar to facilitate market liberalisation was separating the management and accounting of production, transmission, and distribution activities. So-called unbundling was proposed to ensure the transparency of operations of vertically integrated companies (European Commission 1992). In basic terms, unbundling creates a conflict of interest within vertically integrated firms. Unbundling is necessary because by allowing access to the network, the distribution/transmission branch of the company creates competition for the supply arm, which will affect the company's overall return (Talus 2013).

The separation of energy supply and generation from the operation of transmission networks was a means to ensure that the transmission and distribution functions were managed in a neutral way and that discrimination against competitors was avoided. However, ownership structures should not be affected by such undertakings. The Commission proposed a gradual development of the energy markets based on a step-by-step approach to give the electricity and gas industries sufficient time to meet the new requirements of the markets (European Commission 1992). However, with intense opposition from industry, it soon became clear that the draft directive could not succeed. For instance, the European Union of the Natural Gas Industry (EUROGAS) criticised that spreading TPA over several steps might be a political compromise but would not change the measure from an economic point of view. The argument was that the introduction of TPA would lead to the fragmentation and weakening of the European gas sector, compromise supply security, the further development of gas markets, and the contribution of natural gas to environmental protection. EUROGAS contended that TPA might bring a temporary cost advantage to some large gas users but at the expense of other consumers and of market penetration. Moreover, the legislation proposed would lead to more significant regulation and a stricter regulatory regime. According to EUROGAS, experience in the United States, for example, showed that TPA led to creeping regulation, generating much litigation instead of liberalisation (Agence Europe 1992).

The issue of unbundling could have been resolved. However, the serious stumbling block was the question about granting TPA to companies outside the EC. The critical conclusion drawn during the negotiation process was the realisation that the gas and electricity industries would need to be separated in terms of the liberalisation process (Stern 1998). As one might assume, the Gas and Electricity Directive were watered down from the Commission's initial proposal (Eikeland 2011). However, the value of the gas directive lay not so much in the specific legal provisions but rather in the fact that it "establishe[d] both the principle of access to networks,

and the assurance that the opponents of competition and liberalisation [could] not indefinitely procrastinate in the opening up of their markets" (Stern 1998: xvii).

An important observation, particularly from a Historical Institutionalism (HI) perspective, is that once initial steps towards liberalisation were undertaken – despite lingering objections from some Member States – path-dependent processes and incremental change were set in motion. Consequently, a gradual and incremental shift in the *policy output* towards deeper integration did occur. Yet, as Stern observes concerning the first gas directive, "those who expected anything more concrete to emerge from the Directive will almost certainly be disappointed" (Stern 1998: xvii). He clarifies, however, that energy liberalisation had to be addressed henceforth and could not be discounted as had been the case previously (Stern 1998). Based on this logic, both directives must be valued not so much for their respective impact on energy policy (although they introduced measures for liberalisation) but rather because they established a gravitational pull towards the institution and further policy development thereinafter. Moreover, and as a factor not to be underestimated, even if the directives were less ambitious than the Commission had hoped, it allowed those Member States who were in favour of liberalisation of their energy markets to proceed without being slowed down by the more critical states (Andoura et al. 2010).

The first Directive 96/92/EC (EP/Council 1996), which addressed the internal electricity market, required integrated companies to keep separate accounts for their generation, transmission, and distribution activities ('unbundled accounts'). Concerning the access to transmission systems, Member States[2] were given a choice between three different institutional approaches: they could either opt for negotiated access (negotiated between the incumbent and the new entrant), a single buyer option, or Regulated Third Party Access. Negotiated Third Party Access (NTPA) meant that all electricity producers and suppliers and all eligible customers could sign supply contracts with each other. The modalities and terms of grid access, particularly the transmission price, should be negotiated between the parties to the contract and the network operator. The negotiation with the grid operator was the defining feature of this model of access to the network. Due to the contingency of the negotiation process, which had to be done for every single case, negotiations led to different prices for transmission (Bier 1999).

Conversely, the single buyer option (SB) required Member States to designate a so-called 'single buyer' who set a non-discriminatory tariff for the use of the transmission and distribution system. A single buyer was defined as "any legal person who, within the system where he was established, was responsible for the unified management of the transmission system and/or for centralised electricity purchasing and selling" (EP/Council 1996: 23). The single buyer was obliged to supply all customers with electricity within the territory concerned. Eligible customers, however, were free to conclude supply contracts with producers and supply undertakings inside and outside the territory covered by the system. The single buyer was then obliged to buy the contracted quantities from producers – at a price equal to the sale price offered by the single buyer to eligible customers, minus the price of the published tariff (EP/Council 1996).

The Regulated Third Party Access (RTPA), which was the third option Member States could opt for, gave eligible customers the right of access based on published tariffs for the use of transmission and distribution systems (EP/Council 1996). Ten Member States opted for the RTPA system, two for the single buyer, and two for the NTPA system. Since the SB and the RTPA system featured the same regulatory approach, where the regulator set a uniform transmission tariff, leading to the same net payment flows, it became clear that the RTPA and the SB were virtually identical (Bier 1999).

Although the directive set out the basic regulatory regime for organising market liberalisation, more guidance was needed on how to issue tariffs (they had to be transparent and non-discriminatory) and what methodology should be used to calculate them (Stern 1998). Directive 96/92/EC only referred to a 'competent authority' that should be set up to resolve disputes between parties concerning contracts, negotiations, and refusal of access or refusal to purchase. In addition, the directive set deadlines for opening the retail market for large users and distributors: by February 1999, 26% of the market had to be open; by February 2000, about 28% of the market had to be opened; and by February 2003, about 33% of the market had to be open. Member States were given some leeway about interpreting this, and consumers could include retail supply companies (Thomas 2005).

As for the gas sector, Member States were divided in terms of their preferences regarding appropriate instruments for liberalisation, and with incumbent firms vehemently opposed to TPA, it took two years before Member States could agree on a regulatory regime for liberalising gas markets. Around the same time as the final decision was made on the Electricity Directive, the Irish Presidency circulated a draft proposal for a Gas Directive endorsing a new set of *intended goals*. As endorsed by the Council conclusions, there was a convergence of views by Member States on the public service and unbundling aspects of the liberalisation of gas markets. However, significant divergence persisted over the approach to access to networks and long-term 'take-or-pay' contracts. France, Belgium, and Luxembourg were especially critical of liberalising gas markets. France, for instance, contended that,

> it is imperative for the states to be allowed to impose strong public service obligations on gas undertakings, notably in relation to secure supplies, environmental protection and equalisation of prices (guaranteeing equal treatment for all consumers).
>
> (Agence Europe 1996)

Hence, the proposal was met with stark opposition by some Member States. However, Germany, the United Kingdom, and the Netherlands warned against the danger of public service obligations preventing the development of real competition in energy markets (Agence Europe 1996). France, Belgium, Spain, and Greece, primarily dependent on gas supplies from outside the EU, opposed liberalisation on the grounds of long-term contracts with third countries – so-called take-or-pay (TOP) contracts (Agence Europe 1996).

TOP contracts are very common in the energy sector. They are provisions written into a contract to either buy a predefined quantity of (a) energy product(s) or pay a specific amount to compensate for the loss. Customers must buy an agreed amount of energy over a specific period. However, they can opt to pay compensation if they decide that, due to the market's volatility, the commodity is not needed to the extent anticipated. Overhead costs for suppliers are very high in the energy sector; therefore, long-term TOP contracts ensure that energy suppliers have an economic incentive to expend capital upfront to finance upstream and downstream activities, reducing uncertainty and the risk of losing money. TOP contracts, hence, guarantee a steady income for investors even if (a) specific product(s) are not sold on the market. Due to such long-term commitments, France, Belgium, Spain, and Greece contended that, under the regime of a new Gas Directive, Member States should be able to comply with the TOP contracts agreed with third-country suppliers. Meanwhile, the UK and the Netherlands (the two largest gas producers), partly supported by Germany, were against any form of provision in gas contracts that could hinder free competition (Agence Europe 1996).

After lengthy negotiations, Directive 98/30/EC (EP/Council 1998) concerning common rules for the internal market in natural gas was adopted in June 1998, reflecting a new *policy output*. The directive was essentially the same as the Electricity Directive concerning the unbundling of accounts, Third Party Access, and transmission and distribution. An important difference between the Gas and Electricity Directives concerned the tendering procedure for new production facilities, a central part of the Electricity Directive. The difference was due to the fact that the location of production facilities in the gas sector is determined by physical resource location, which does not apply to the electricity sector (Thomas 2005). Moreover, Member States could only choose between a system of 'negotiated access' and 'regulated access'; the 'single buyer' option did not appear in the Gas Directive (Thomas 2005; Stern 1998). Deadlines for implementing the directive were quite relaxed, and Member States should open 20% of their market immediately, 28% five years later (in 2003), and 38% in 2018, 20 years after the directive entered into force (EP/Council 1998).

As outlined in Chapter 2, which focuses on measuring the dependent variable through policy outcomes, both the Electricity and Gas Directives had a relatively modest impact on the energy sector and were limited in their capacity to liberalise energy markets. Guided by the theoretical framework of this research, the *policy outcome* is understood as the degree to which the *policy output* proves to be effective in attaining a set of predefined goals. In this regard, the two Directives, as part of the First Energy Package, demonstrated moderate *effectiveness*. Nevertheless, when compared to the 1970s and 1980s – a period in which the process of integration was virtually absent – the regulatory framework improved, moving from a low to a moderate level of effectiveness: the level of the process of integration is measured as the difference between different levels of *policy outcomes* (*effectiveness* of the *policy output*) at different points in time. Thus, *a process of moderate integration can be identified*.

Regarding the First Energy package, the Directives were criticised for leaving integrated companies too many ways to get around the provisions that tried to break up monopolies and grant competitors non-discriminatory access to transmission/distribution networks. Integrated energy companies merely needed to make an accounting separation of their network activities and their respective retail/production/import activities. In addition, if Member States opted for the negotiated TPA, integrated companies could refuse TPA to competitors on the grounds of system security and provide companies with ample scope to avoid opening their networks (Thomas 2005).

As the First Energy Package included merely 'management unbundling' (the separation of accounts), the legal provisions were only of limited practical value. This mandatory building of 'glass walls' or 'Chinese walls' resulted, at best, in a kind of quasi-independence (Talus 2013). Both energy market directives can only be considered a first policy instrument fostering a regulatory regime capable of increasing EU-wide competition. However, even given the well-known shortcomings of the First Energy package, they represented a crucial start on the road to deeper integration of European energy policy as a part of the subsequent policy cycle defined through *intended goals*, *policy output*, and *policy outcome*. Hence, the "first internal energy market directives were the first constructive and significant steps towards restructuring the EU's energy industries and creating an internal energy market since the Treaty of Rome established the rules on the internal markets and free trade law of the EU" (Talus 2013: 237). Energy markets did not materialise to the extent envisaged, which should not necessarily be considered a failure of the institutional matrix. Instead, energy markets needed time to develop as energy is a far too strategic and politicised commodity to be susceptible to an easy legislative fix.

The Second Energy Package: sparking competition and powering change

The Commission took the First Energy Package as a starting point to promote further movement towards opening energy markets. Most countries adopted the more liberal options within the framework of the First Energy Package and opened their respective markets more than the Directives required (Thomas 2005; Andoura et al. 2010). In January 2001, Commissioner for Energy, Loyola de Palacio, stated that the results of the first Gas and Electricity Directives were encouraging but only the start for further market opening and the adoption of new accompanying measures. According to de Palacio, due to the First Energy Package, two-thirds of electricity demand and three-quarters of gas demand had been opened up to competition, and the price for industrial consumers had fallen by 25% since 1995 (Palacio as cited in Agence Europe 2001a). Hence, endogenous momentum for further policy development had been created. On 13 March 2001, the Commission proposed amending the Gas and Electricity Directives 96/92/EC and 98/30/EC to speed up the liberalisation process. The proposals sought to strengthen the provisions laid out in the First Energy Package. They were a logical step towards liberalising energy markets

based on the step-by-step approach envisioned in the first proposal of 1992 (European Commission 1992: 8).

New, ambitious *intended goals* were set. First, Member States had to ensure that an independent national regulator was created to guarantee non-discriminatory access to the network. These authorities should be wholly independent from the gas/electricity industries. They should have the competence to fix or approve terms and conditions for connection and access to national networks, including transmission and distribution tariffs for both sectors and terms, conditions, and tariffs for access to liquefied natural gas (LNG) facilities; define the rules for the regime to allocate interconnection capacity for both sectors; fix or approve tariffs, or changes in tariffs at national level, to reflect costs or revenues related to cross border transmission of electricity. Regarding unbundling, the proposal stipulated that the independence of the transmission system operators (TSOs) was of utmost importance, and the provisions on unbundling must be strengthened.

Additionally, unbundling requirements for the distribution system operators (DSOs) concerning the gas and electricity sectors should be introduced to ensure non-discriminatory access to distribution networks. The proposal endorsed that both TSOs and DSOs should be independent in terms of their legal form, organisation, and decision-making processes from other activities unrelated to transmission/distribution. Regarding Third Party Access (TPA), Member States should ensure that the implementation of non-discriminatory access to the transmission and distribution system based on published tariffs should be set by a national regulatory authority. Moreover, Member States should guarantee that all customers are free to purchase gas/electricity from the supplier of their choice and have the rights for TPA from 1 January 2005 at the latest (European Commission 2001).

As one might expect, the responses of the different Member States varied due to heterogeneous preferences. Denmark, the United Kingdom, the Netherlands, Ireland, Spain, Finland, Germany, Austria, and Sweden were in favour of accelerating energy liberalisation; Portugal, Belgium, Luxembourg, Greece and France, on the other hand, wanted liberalisation not to occur "to the detriment of the general interest" (Agence Europe 2001b: 1). Especially France did not want to set any precise dates for market liberalisation. The Second Energy Package strived for a more robust regulatory framework that accommodated a further degree of competition and, hence, set in motion a path facilitating the opening of energy markets based on a robust and ambitious array of *intended goals*.

As confirmed by Historical Institutionalism (HI), the development of an institutional trajectory is strongly influenced by initial choices. In this case, adopting the First Energy Package was the initial choice. Once the institution reaches a state of equilibrium, path-dependent processes begin to unfold, steering the institution onto a stable path. These path-dependent processes are conditioned by positive feedback mechanisms, a continuous policy cycle, adaptive expectations, and learning processes that reinforce the institutional course. Hence, from an institutionalist perspective, the First Energy Package laid the foundation for further institutional development in energy policy and created the preconditions for stepwise, incremental change. However, the crucial insight is that alterations to the institutional

matrix did not manifest as sudden bursts of entirely new and unprecedented legal provisions, radically altering the institutional setup. Instead, based on preceding developments, only incremental change is observable. Although novel provisions were introduced, they were nevertheless subordinate to the initial legal provisions' intended goals, in this case, various measures concerning market liberalisation. The Second Energy Package did not deviate from this rule. Following the regulatory foundations in the First Energy Package, alterations were made based on these preceding legal provisions and existing policy instruments.

The second important observation is that, although most of the Member States were initially against energy liberalisation (see the section on the early 1990s), due to path-dependent processes, the Member States were entrenched in and embraced by institutional (formal) rules they collectively agreed upon and from which they could not deviate. First, due to the SEA and the commitment to the completion of the SEM, and, second, as a consequence of this commitment, the assent to the First Energy Package further defined the parameters for subsequent policy choices. Whereas before the enactment of the SEA, Member States could shape energy policy depending on their (unilateral) preferences, the SEA and the change to qualified majority voting (QMV) deprived them of the opportunity to hinder deeper integration. Moreover, several factors made a complete institutional stalemate improbable. These include commitments to the co-decision procedure, the Council's (informal) rule of consensus, and most crucially, the (formal) commitment to market liberalisation, which in practice led to deeper market integration. These commitments collectively constrained and guided policy options and shaped Member States' preferences.

Initially, except for the UK, which had already liberalised its domestic markets, most Member States were against liberalising their respective energy markets and dismantling their vertically integrated energy companies in the late 1980s/early 1990s. This was reasoned through notions of supply security, the perception of energy as a public good, and a strategic and politicised commodity. However, due to the SEA and the gradual introduction of secondary law, both crucial structural factors, Member States committed themselves to continuing and further developing these specific rules. In this context, the institution steered and structurally constrained their potential policy options. The institution was advancing, albeit gradually, but it was nevertheless on a stable institutional path. Under these premises, change manifests in small, incremental alterations rather than significant shifts reserved for critical junctures. Based on this understanding of institutions and energy policy as a constituent part of the regulatory framework of the EU, the Second Energy Package was a further step up from the initial policy decision of the first Gas and Electricity Directives.

Eventually, on 26 June 2003, the Electricity and Gas Directive 2003/54/EC and 2003/55/EC (EP/Council 2003a, 2003b) were adopted to provide a new *policy output*. The Second Energy Package marked an important improvement from the previous regime (Talus 2013). In a nutshell, both Directives required the legal and functional unbundling for both transmission system operators (TSOs) and larger distribution system operators (DSOs) from any other parts and activities

of a vertically integrated undertaking (for instance, supply, generation, and production activities). The Directives state that both the TSO and the DSO "shall be independent at least in terms of its legal form, organisation and decision-making from other activities" (EP/Council 2003a: 45 & 46) unrelated to transmission/distribution. However, the legal separation should not create an obligation to separate the ownership of assets of the transmission/distribution system from the vertically integrated undertaking (EP/Council 2003a). Nevertheless, the requirement to set up a separate legal entity was an advancement of the institutional rules compared to the First Energy Package, which merely stipulated the separation of accounts. It was believed that by creating a separate legal entity, employers, including management, would increasingly be able to act independently from a parent company (Talus 2013). Empirical evidence suggests that incremental progress was made in unbundling, although it did not provide the ultimate solution to enhancing competition, as we will see later in this chapter.

Regarding Third Party Access (TPA) to the transmission and distribution systems, both Directives abandoned the possibility of negotiated TPA (it just remained as a component for storage in the Gas Directive) and, instead, regulated TPA was the only option. TPA was based on published tariffs and applicable to all eligible customers without discrimination between different system users. The single-buyer option of the First Electricity Directive was discarded entirely. Member States had to ensure that the tariffs regarding access to transmission systems, or the methodologies underlying their calculations, had to be approved by a regulatory authority. The regulatory authority had to be wholly independent of the interests of the gas/electricity industries and should "at least be responsible for ensuring non-discrimination, effective competition and the efficient functioning of the market" (EP/Council 2003b: 70). The authority was obliged to conduct essential monitoring processes, as part of the policy cycle as discussed in Chapter 2, to guarantee and safeguard further liberalisation of the energy market and to design the methodologies used to calculate transmission and distribution tariffs. Whereas in the First Energy Package, a 'competent authority' was merely responsible for dispute settlement, it was given more latitude to assess and influence the implementation of the Electricity and Gas Directive.

From a Historical Institutionalism (HI) perspective, these developments can be understood through the roles institutions play in terms of constant monitoring and the evaluation of policy implementation. Having comprehensive information about institutional performance is crucial for institutional integrity. These monitoring mechanisms serve to recalibrate how different actors and stakeholders translate the policy output and various provisions into concrete actions. In this regard, monitoring is not merely an auxiliary function but a critical component of the policy cycle that contributes to generating increasing returns. The continuum of the *intended goals*, *policy output*, *policy outcome*, and the inherent monitoring processes associated with the policy outcome constitute the basis for explaining how increasing returns can unfold and how incremental change is facilitated. Monitoring processes ensure that the policy output is executed within the prescribed legal parameters and that the information derived from such an assessment is integrated into the institutional

matrix, contributing to policy feedback. Integral parts of the policy cycle are hence based on monitoring mechanisms, which are subsumed as learning and coordination effects. Once a particular path is established, the network externalities, the learning process of institutions, and "the historically derived subjective modelling of the issues reinforce the course" (North 1990: 99). Hence, the expansion of the regulatory authority's competences was a substantial contribution to enhance the institutional framework and led to more institutional stability and deeper integration. The Second Electricity and Gas Directives were also more ambitious regarding the transpositions of the provisions than their predecessors. In terms of the level of the process of integration, the difference between the First and the Second Energy Package serves as evidence for a moderate increase in integration. The envisioned implementation of the Electricity and Gas Directive required that by 1 July 2004, at the latest, all non-household customers should be allowed to choose their retail suppliers. By 1 July 2007, all customers (including residential customers) should be allowed retail competition, meaning a market opening of 100%.

In sum, the 2003 Gas and Electricity Directives addressed the criticisms of the First Energy Package on access to the networks through new measures on unbundling and regulation and by excluding the less liberal approaches to network access. However, regarding the *policy outcome,* a criticism of the Energy Package was that the provisions were *not explicit* about breaking up the dominant national companies and wholesale markets (Thomas 2005). When assessing the *policy outcome* and the implementation of the Directives, due to the very ambitious policy provisions, Member States were slow to meet the requirements, which necessitated that industrial consumers could benefit from free supplier choice by 1 July 2004. The Commission sent letters of formal notice in October 2004 to 18 Member States asking them to speed up the process and to transpose the Directives on the internal markets into national law, providing endogenous momentum to speed up change. Loyola de Palacio, then vice-president of the Commission and Commissioner for Energy and Transport, emphasised that some Member States had partially transposed the Directives and liberalised their markets. However, the proceedings should ensure that missing elements would be included (Agence Europe 2004a). In November 2005, several infringement proceedings against different Member States were instigated, and six of them were cited before the European Court of Justice (ECJ): Spain, Luxembourg (electricity and gas), Estonia and Ireland (gas), and Portugal and Greece (electricity). Overall, progress towards market liberalisation was rather slow. Several Member States were nearly one year behind the envisioned schedule, whereas others took a minimalist approach to the transposition into national law (Agence Europe 2005). An additional factor hampering real competition was the incorrect use of existing infrastructure and, in the case of electricity, the need for interconnections between Member States. Consequently, the Commission announced that it would continue the inquiry on effective policy tools to determine which solutions would be the most appropriate to create a well-functioning internal market (Agence Europe 2005).

A thorough analysis of energy markets revealed several key findings. While the basic concepts of the internal energy market had become embedded within the

legal framework, institutional arrangements, and physical infrastructure, barriers to meaningful competition persisted in many Member States. Only uneven progress had been made, and price differences still existed. In many cases, customers simply did not have the possibility to change suppliers; even customers who changed suppliers were often not satisfied with the range of offers they received, and stakeholders did not display a high level of confidence in the internal market. Such hindrances were based on regulated prices preventing entry of new market players, insufficient unbundling of TSOs and DSOs which did not guarantee their independence, discriminatory TPA to the network (preferential access being granted to incumbents with historical long-term contracts), insufficient competences of the regulators, and lack of information given to the Commission. Another obstacle to competition was the absence of a European regulatory framework addressing the challenge of investing in the right level of new infrastructure to support the internal market (European Commission 2007a).

As a matter of fact, the Commission launched 34 infringement procedures against 20 Member States for violation and the lack of transposition of the existing Gas and Electricity Directives (European Commission 2007a). For instance, the three biggest generators in the wholesale electricity markets still controlled more than 70% of the generation capacity in 15 Member States. A moderate concentration of the electricity market, serving as evidence for more competition, was only given in eight Member States. The situation in the gas sector was even worse as one might assume. The gas sector not only liberalised later than the electricity sector but also showed more resistance to change, as explained in the section on the First Gas Directive. Here, the three largest wholesalers controlled up to 90% of the market share in 12 Member States. For electricity retail markets, 80% in 14 Member States were controlled by the three largest companies, and for gas retail markets, the market was only moderately concentrated in one Member State (Andoura et al. 2010).

The Third Energy Package: unbundling the networks

The Commission was determined to use all available means to limit the power of energy monopolies and foster the completion of the internal market. Neelie Kroes, Commissioner for Competition, was highly critical of the limited advancement achieved in terms of competition and blamed many of Europe's top gas and electricity companies. Kroes warned that she would make full use of her powers over mergers, government subsidies, and anti-trust abuses to tackle the lack of competition in the sector (Agence Europe 2007a). Companies like RWE and E.ON in Germany, ENI in Italy, and GDF in France had been subject to the Commission's anti-trust investigations, focussing on mergers, direct and indirect state aid, and price-fixing. Hence, market concentration was a major obstacle to the success of the liberalisation process. It was not only market integration that had failed to meet expectations, but other concerns also had to be addressed. The EU was still short of an all-embracing regulatory framework suited to govern the different levels of energy policy.

The challenges of climate change, increasing import dependence, and higher energy prices all contributed to the need for a holistic approach to address energy policy in its entirety. From a Historical Institutionalist perspective, these exogenous factors impacted the institutional trajectory and contributed to creating a new set of preferences within the institution. Moreover, due to the increasing interdependence and interconnectedness of Member States in the energy sector, a power failure in one country had immediate effects on the supply situation in other countries (European Commission 2007e). Therefore, in January 2007, the Commission envisioned a reinforced institutional path by determining a new set of *intended goals*, which, as elaborated in detail in Chapter 2, is part of the institutional policy cycle.

The communication 'An Energy Policy for Europe' (European Commission 2007e) included a vast package on energy and climate change, including many proposals to transform the Union into a low-carbon economy in the long term. In total, ten documents were issued, including two on the internal market. Then President of the Commission Jose Manuel Barroso emphasised that he fully supported "the emergence of a post-industrial revolution to make the Union into a low carbon economy" (Barroso as cited in Agence Europe 2007b: 1). Within the overarching goal to fight climate change, the Commission proposed an integrated common energy policy based on three central pillars: promoting growth and jobs through an integrated energy market, combating climate change, and limiting the EU's external vulnerability to imported hydrocarbons (European Commission 2007e). To underline the urgency of a common approach and to emphasise that a common energy policy facilitating secure and affordable energy had been on the agenda but unrealised for over 50 years, the document started with a quote from the Messina Declaration of 1955 (see Chapter 3). Similar to the Commission's working document *The Internal Energy Market* (European Commission 1988), in which the Commission used a quote from the 1960s to emphasise the inertia that the institution was subjected to, the document reminded the Council that if a common energy market were not achieved, deeper integration in this sector may severely be jeopardised. Based on the Messina Declaration, the communication prominently stated that,

> (t)o these ends, the ministers have agreed on the following objectives: . . . putting more abundant energy at a cheaper price at the disposal of the European economies.
>
> (Messina Declaration as cited in European Commission 2007e: 3)

According to this communication, as a consequence of the slow advancement of liberalisation of the energy markets evident in the vast amount of infringement procedures against Member States, the Commission issued new proposals in September 2007, which addressed the shortcomings of the Second Energy Package. An assessment of the *policy outcome* based on the *policy output* highlighted several shortcomings in the effectiveness of the policy regime. Existing unbundling measures were not successfully ensuring a well-functioning energy market. Although several Member States created a separate company for network operation, others

opted to create a legal entity within a vertically integrated company. The former ensured the transmission operation was neutral; however, several issues arose when the TSO was a legal company within a company. The reasons were threefold. First, the TSO was prone to treat its affiliated companies better than competing third parties or even tried to make market entry for new participants harder. Legal and functional unbundling was not enough, as the independence of the TSO was impossible to monitor without intrusive regulation. Second, non-discriminatory access to information could not be guaranteed as there were no effective means of preventing TSOs from communicating market-sensitive information to the generation or supply branch of the integrated company. Lastly, investment incentives were distorted as vertically integrated network operators had no incentive to further create network capacities in the overall interest of the market and, hence, facilitating market entry by competitors; quite the opposite, under such circumstances, the integrated companies limited investments benefitting their competitors and were disinclined to increase interconnection or gas import capacity (European Commission 2007b, 2007c, 2007d).

In order to overcome these shortcomings, the Commission made it clear that their preferred option was full ownership unbundling regarding network operations. Barroso warned that "the less ambitious we are in terms of separation, the more ambitious we will have to be for regulations" (Barroso as cited in Agence Europe 2007b: 2). This meant that, unlike in the Second Energy Package, which required the legal and functional unbundling for transmission system operators (TSOs) from any other parts and activities of a vertically integrated undertaking, the new proposal endorsed that the same person or persons could not exercise control over both a supply undertaking and over a TSO or a transmission system (or vice versa).

Nevertheless, based on the diverse preconditions that existed between Member States, the Commission also proposed an alternative option: Member States could opt for a so-called 'Independent System Operator' (ISO). Opting for this model meant that vertically integrated companies could retain ownership of their network assets, but it required that the transmission network itself should be managed by an ISO, an undertaking or entity that was fully separate from the integrated company. The ISO was tasked with performing all the functions of a network operator and should be monitored permanently based on a regulatory framework. The Commission emphasised that, although progress towards ownership unbundling (OU) was more advanced in the electricity sector, the two options should apply to both the electricity and the gas sectors. Moreover, publicly as well as privately owned companies should be affected by the new legislation (European Commission 2007b, 2007c, 2007d). The proposals required the effective unbundling of TSOs and supply and production activities on both the national and EU levels. In addition, in terms of third-country access, addressing the external dimension of internal market provisions, the proposals made it clear that the same rules of unbundling would also apply to non-EU companies. The Commission aimed to translate the new proposals into legal provisions that would establish a market environment in which all participants respect, and act in accordance with, incumbent market investor principles.

Hence, companies from third countries would have to fully comply with the same legal regulatory system as EU-based undertakings. Consequently, EU-wide market integration would be further facilitated, and competition would be promoted. To this end, the Commission proposed that third-country actors and third countries could not acquire control over a Community transmission system or TSO without an agreement between the EU and the third country.

From a Historical Institutionalist (HI) perspective, the evolution from the First to the Third Energy Package, evident in both the subject matter of *intended goals* and the *policy output*, fully supports claims about incremental change and the establishment of an institutional environment where Member States are exposed to unintended consequences. Although it took ten years to formulate ambitious policy proposals aimed at opening energy markets, Member States had to contend with policy proposals they would never have previously considered. An assessment from an HI perspective suggests that the institution itself shaped the preferences of the actors and constrained their possible policy choices over time. This stands in contrast to an analysis based on a purely rational choice approach in which actors are presumed to have primacy regarding their institutional decisions. In this vein, the institution shaped the range of available policy options: policy proposals that would have been politically unviable a few years earlier were now up for discussion. Member States had to negotiate policy instruments that they would not have previously regarded as possible policy options after signing the Single European Act, substantiating the claim that unintended consequences unfold over time (Pierson 1996; Fioretos 2011).

Another significant policy development regarding institutional stability and the continuation of the institutional path was the proposal to create an Agency for the Cooperation of Energy Regulators (ACER). North (1990) argues that once an institution is established, learning effects apply due to the opportunity set provided by institutions, and coordination and expectations will be 'streamlined' as the prevalent contractual environment creates stability (North 1990). The proposition to create ACER serves as evidence for such coordination effects of established institutions as the regulatory agency was meant to "complement at European level the regulatory tasks performed at national level" (European Commission 2007d: 11) and "play a crucial role in the development and implementation of European gas and electricity market rules" (European Commission 2007d: 12). Path-dependent processes and incremental change were also prevalent as the agency was built on a previous institutional setting, the 'European Regulators Group for Electricity and Gas' (ERGEG). This independent advisory group on electricity and gas was established by the previous energy package in 2003 and was tasked with facilitating consultation, coordination, and cooperation between the national regulatory authorities in the Member States. However, based on the phenomenon of increasing returns – the notion that due to the institutional matrix and heightened interdependence, the political and economic output of an institution disproportionally increases (North 1990; Pierson 2000) – it became apparent that institutional capacities to regulate energy markets had reached their limits. The Commission stated that the energy sector had become "more complex and detailed and involve[d] to

a greater extent different financial interests" (European Commission 2007d: 10). Therefore, ERGEG was not suited to deploy the necessary regulatory oversight.

A solution to the shortcoming was conceived in the form of the Agency for the Cooperation of Energy Regulators (ACER). ACER was meant to provide a framework for national regulatory agencies (NRAs) to work together and streamline their respective 'grid codes', the national technical and market codes under which electricity and gas companies must operate, and which differed considerably between Member States. The Commission considered these tasks outside its remit and did not have expertise in this area. Moreover, the Commission had no legal rights to call upon the staff of NRAs to make the necessary amendments to the grid codes of the Member States. Therefore, ACER was conceived as a separate institutional body to facilitate the alignment of network codes – independent and outside of the Commission, consisting of the different NRAs of the Member States and organised in the form of a Regulatory Board.

Regarding the measures proposed by the Commission, a significant number of Member States believed that effective separation of supply/generation activities from transmission network activities could be best achieved through ownership unbundling (OU) of the TSO (Council of the European Union 2007). These Member States believed that OU was the best way to overcome the problems that arose when the TSO was a legal entity within an integrated company (Council of the European Union 2007). According to Batzella's (2017) extensive study of Member States' preferences regarding OU of gas markets, the United Kingdom, Belgium, Sweden, Denmark, Finland, Portugal, and Spain were all in favour of unbundling to break vertically integrated companies and to boost competition on European energy markets. The countries favouring OU also did not show any concern regarding the third-country provision, which stipulates that companies from third countries cannot control a transmission system or a TSO unless agreed to at the EU level. The United Kingdom, for instance, pointed out that OU would not have allowed upstream companies or third-country supplier companies to control the network in the Member States (Batzella 2017).

However, several Member States questioned "the proportionality of the proposed provisions for ownership unbundling or ISO" (Council of the European Union 2007: 4) as they believed the measures infringed on property rights. Hence, they suggested an alternative to these two options "without interfering with property rights and in line with the European Council conclusions" (Council of the European Union 2007). Germany, Austria, Bulgaria, France, Greece, Latvia, Luxembourg, and Slovakia sent a letter on 30 January 2008 containing their 'third way' addressed to the Slovenian presidency of the Council of the EU and the European Commission (Agence Europe 2008a). According to the eight Member States who opposed radical liberalisation, 'Effective and Efficient Unbundling' (EEU) was an alternative approach to OU and the ISO option that would be better suited to ensuring competition. Instead of requiring that the TSO had to be fully ownership unbundled, the EEU proposal suggested a set of measures to guarantee free access to infrastructure and the independence of investment decisions of the TSO. These measures would have gone much further than the legal unbundling provisions set

by the second internal market package, as they would have imposed strict obligations monitored by a compliance officer and public authority (Agence Europe 2008a). The rationale behind this alternative option was based on the fear of some Member States that OU would weaken the position of their national companies in relation to those of third countries. France, in particular, was anxious about these developments (Batzella 2017). Germany was also a fierce opponent of further unbundling, as it regarded such obligations as infringing on property rights due to the specific nature of transmission systems in Germany, which were privately held (Del Guayo et al. 2010). France and Germany led the faction of Member States who regarded EEU as their preferred alternative (Agence Europe 2008b). A third group of Member States were also against OU but did not join the group of Member States proposing an alternative option, including Cyprus, the Czech Republic, Estonia, Ireland, Lithuania, Poland, and Slovenia. They were concerned that OU would have a negative impact on their gas markets because they were not adequately interconnected, had centralised and limited gas markets, or were heavily dependent on one external supplier (Batzella 2017).

Interestingly, and very much detrimental to the side opposing OU as a means for 'radical liberalisation',[3] the large German energy utility E.ON announced in February 2008 that it was selling off its power grid to an operator that had no interest in the generation of electricity. This decision came after an investigation into the energy sector conducted by the Commission (DG COMP), which concluded that E.ON was guilty of anti-competitive behaviour. The largest electricity utility in Germany planned to sell its transmission network to avoid a large fine, whereby the Commission would suspend its anti-trust procedure (Agence Europe 2008c). Germany criticised the Commission's behaviour, presuming that it was in reaction to the proposed Effective and Efficient Unbundling (EEU) approach. Similarly, the German electricity giant RWE announced in May 2008 that it was selling its German gas distribution network in response to an investigation launched by the Commission in May 2007 to enhance competitive conditions in the German gas market (Agence Europe 2008d). Hence, endogenous momentum was created by large private actors who reacted to the provisions of the Commission. Andris Piebalgs, then Commissioner for Energy, pointed out that the Commission was willing to negotiate EEU under the condition that strict guarantees were respected because, as it stood, the 'third way' (EEU) did not guarantee independence of the TSO and non-discriminatory access to the network. In addition, the Commission emphasised that effective unbundling must apply to both electricity and gas (Agence Europe 2008d).

From a Historical Institutionalist (HI) perspective, the institutional design entrenched various actors and constrained the possible range of policy options available to them. In this case, although Member States were still in the process of negotiating new institutional rules, structural preconditions determined possible policy choices, which were also reinforced by powerful agents in the private sector who needed to comply with institutional rules (although unwillingly). The Commission did not dismiss EEU and the 'third way' *per se* but made it clear that specific commitments to liberalise energy markets for the electricity and gas sector had

to be fulfilled. Member States had heterogeneous preferences regarding OU, some demonstrating fierce opposition or at least a great deal of scepticism. Nevertheless, their preferences were eventually constrained and altered by institutional boundaries. Hence, as HI would suggest, institutions constrained actors and efficaciously shaped their preferences.

On 06 June 2008, the Energy Council agreed on the key points of the Third Energy Package, reaching a consensus on the effective unbundling of production/supply and network/transmission activities. The Council reached a compromise regarding the modalities of an alternative to ownership unbundling – the ITO (Independent Transmission Operator) model, which allowed vertically integrated companies to keep ownership of transmission networks on the condition that they were managed by an independent TSO, adhering to a strict set of conditions. The Council decided this option should be available for the electricity and gas sectors. Two unresolved issues remained: a clause on fair competition, creating a level playing field, and the 'third-country clause' ('Gazprom clause'), applying EU law to pipelines from third countries to the EU, which was finally resolved in October 2008 (Agence Europe 2008e).

As the Council and the European Parliament had different views on the proposals, informal talks were held between the Council, the European Parliament, and the Commission. For instance, the Parliament rejected the Commission's ISO option and endorsed the ITO model, however, incorporating a requirement that an independent Trustee should be appointed by the regulatory authority to safeguard the independence of the TSO. The Council, on the other hand, endorsed all three options: full ownership unbundling, the option of an Independent System Operator, and the option of an Independent Transmission Operator. Moreover, the Council did not endorse the appointment of a Trustee regards the ITO model. In terms of the third-country clause, the Council introduced a new article which ensured that TSOs of third countries had to respect the same unbundling rules as Community TSOs. The article also introduced the requirement that the security of energy supply should be considered when deciding whether a third-country TSO could operate in the network of a Member State (Batzella 2017).

In the end, ownership unbundling became the main stumbling block for reaching an agreement; discussions in the second reading became bogged down at the beginning of 2009. However, during a final European Parliament/Council/Commission trilogue, the five rapporteurs for the Third Energy Package reached an informal compromise under the Czech presidency in late March 2009. The Parliament aligned with the political agreement of the Energy Council from October 2008, endorsing all three options of unbundling the electricity and gas sectors. However, it obtained additional provisions for the third option (ITO) in order to ensure the independence of the TSO on matters of investment and governance. Moreover, the Parliament also obtained additional provisions to ensure greater independence of national regulators and managed to strengthen consumers' rights (Agence Europe 2009a). Finally, at the second reading in April, the Parliament agreed to the amendments concerning the five texts of the Third Energy Package

by a large majority. The vote in the Parliament validated the informal compromise reached in March (Agence Europe 2009b).

The final provisions

After almost two years of intense negotiations, the Council formally adopted the Third Energy Package on 25 June 2009 and approved all amendments adopted by the Parliament (Agence Europe 2009c). The legislative package was then published on 14 August 2009 (EP/Council 2009a, 2009b, 2009c, 2009d, 2009e). It was in force for almost 15 years and formally replaced in 2024 by the EU hydrogen and gas decarbonisation package, consisting of Directive (EU) 2024/1788 (EP/Council 2024a) and Regulation (EU) 2024/1789 (EP/Council 2024b). The hydrogen and gas package updated many of the legal provisions of the Third Energy Package and is a comprehensive and profound amendment of legislation addressing the gaseous sector. It will be discussed in detail in Chapter 7. As previously noted, the most important and controversial aspects during the negotiations were ownership unbundling (OU) and third-party access. The final *policy output* provided the following provisions. In terms of unbundling, the first option available to Member States was full ownership unbundling, as initially proposed in 2007 and favoured by the Commission. As explained, under this regime, Member States had to ensure that the same person or persons were not allowed to exercise control over a production or supply undertaking and, at the same time, exercise control over a TSO or a transmission system (EP/Council 2009a, 2009b). The second option was to designate an Independent System Operator (ISO) upon a proposal from the transmission system owner. Under this model, the vertically integrated undertaking could retain its ownership of network assets but had to leave the entire operation, maintenance and investment to an independent company (EP/Council 2009b). The last option – the 'third way', as advocated by Germany and France and six other Member States – also granted the vertically integrated company the option to keep its gas or electricity networks but to leave operation to a subsidiary. An Independent Transmission Operator (ITO) had to be tasked with such undertakings. The ITO would allow the TSO to remain part of the integrated undertaking but would provide detailed rules to ensure their independence (Del Guayo et al. 2010). The ITO had to have effective decision-making rights, independent from the vertically integrated undertaking, regarding assets required to operate, maintain, and develop the transmission system. In addition, the ITO should have the power to raise money on the capital market in particular through borrowing and capital increase (EP/Council 2009a, 2009b).

In terms of third-party access, national regulatory authorities (NRA) were responsible for the certification if a person or persons from a third country or third countries wanted to acquire control of a transmission system or the transmission system operator. The NRA could refuse permission if an undertaking did not fulfil general requirements for unbundling and did not comply with Community law. Certification could also be withheld if the security of energy supply of the Member State or the Community's energy supply was threatened. In any case, the NRA had

to inform the Commission about its decision and request an opinion from the Commission. Subsequently, and before adopting a final decision, "the national regulatory authority [should] take utmost account of the Commission's opinion" (EP/Council 2009a: 108, 2009b: 70).

In addition to OU and third-party access, the creation of an Agency for the Cooperation of Energy Regulators (ACER) was the third very important institutional change introduced with the third liberalisation package. According to the regulation, the agency should act independently from any market interests, the Commission, Member States, and any public or private entity. The Agency was conceived as a means "to fill the regulatory gap at Community level and to contribute towards the effective functioning of the internal markets in electricity and natural gas" (EP/Council 2009c: 2). ACER should ensure that regulatory functions conducted by the NRAs concerning the common rules for the internal market in gas and electricity are properly coordinated and, where necessary, completed at the Community level. Regulation (EC) No 713/2009, establishing ACER, states that the agency had to be independent from electricity and gas producers, transmission and distribution system operators, and consumers and had to ensure the conformity of its actions with Community law (EP/Council 2009c). It should monitor regional cooperation between TSOs in the electricity and gas sectors as well as the performance of the European Network of Transmission System Operators for Electricity (ENTSO-E), and the European Network of Transmission System Operators for Gas (ENTSO-G). Participating in the development of network codes, monitoring the implementation of these codes, analysing the progress regarding the creation of new interconnector capacity, and monitoring the implementation of Community-wide network-development plans fell (and still fall) within the remit of the ACER. Indeed, ACER was conceived as a new powerful institutional node which enhanced the regulatory capabilities of the institutional matrix considerably.

Another important task of the agency addresses the facilitation of cooperation between NRAs and regulatory authorities at the regional and Community levels. Moreover, ACER is tasked with monitoring the performance of the internal markets in electricity and natural gas (in particular, the retail prices), access to the network (including access to electricity produced by renewable energy sources), and compliance with consumer rights (EP/Council 2009c). By creating new institutional nodes, like the ACER, ENTSO-E and ENTSO-G, the institutional matrix was widened, conferring important institutional functions to these structures. Their operations, in the shape of coordination processes, are an integral part of path-dependent processes based on increasing returns and help to shape and monitor the implementation of the *policy output*. Coordination helps to overcome collective action problems (Pierson 2000).

To complement the assessment of the Third Energy Package, the European Network of Transmission System Operators for Electricity (ENTSO-E), and the European Network of Transmission System Operators for Gas (ENTSO-G) also offer interesting insight into how the institutional design changes over time. The inception of ENTSO-E and ENTSO-G was a means to increase cooperation between TSOs and to ensure the optimal management of the gas and electricity transmission

networks in the Community, ultimately creating a pan-European transmission system. Both associations were tasked with creating

> network codes for providing and managing effective and transparent access to the transmission networks across borders, and to ensure coordinated and sufficiently forward-looking planning and sound technical evolution of the transmission system in the Community, including the creation of interconnection capacities, with due regard to the environment.
>
> (EP/Council 2009d: 37, 2009e: 15)

The regulations set out non-discriminatory rules for access conditions to natural gas transmission systems, rules for cross-border exchanges in electricity (thus enhancing competition), rules for access conditions to LNG facilities and storage facilities, and facilitated the emergence of a well-functioning and transparent wholesale market with a high level of security of supply in gas and electricity. Regarding the network codes, upon request from the Commission, ACER is tasked with the development of a framework guideline setting out clear and objective principles which are based on a priority list created by ACER, ENTSO-G&E (hereafter ENTSO) and relevant stakeholders. Based on this framework, ENTSO is tasked with delivering a network code, which is in line with the relevant framework guideline. ACER subsequently reviews the code, during which it might consult relevant stakeholders. Based on the position of the Agency, ENTSO amends the code accordingly and re-submits it to the agency. Once the Agency is satisfied, it submits the code to the Commission and may suggest that it be adopted within a reasonable timeframe (EP/Council 2009e).

The so-called network codes are sets of complex operational and technical rules to facilitate coordination and harmonisation, integration, and efficiency of European energy markets. The codes serve to ensure a common set of operating and planning standards between the different Member States and to foster more efficient and secure energy markets. These rules can be regarded as the 'software' upon which cross-border trade depends; they are the set of formal institutional rules that increasingly bind supranational, national, and private actors, for instance, regulators and market participants, and other stakeholders to the regulatory framework of the institution, as they are required to internalise these standards and guidelines. As decision-making, operational, and technical standards converge over time, and actors become part of a connected energy grid, adaptive expectations unfold as actors endeavour to maximise their benefits according to their investment. Network codes are grouped into code families. For instance, ENTSO-E clustered them into *Connection Codes* (Demand Connection Code, High Voltage Direct Current Connections, Requirements for Generators), *Operations Codes* (System Operations, Emergency and Restoration), *Market Codes* (Electricity Balancing, Forward Capacity Allocation, Capacity Allocation & Congestion Management), and *Cybersecurity* (Network Code on Cybersecurity (ENTSO-E n.d.). Similarly, ENTSO-G has network codes (NCs) for capacity allocation, balancing, tariff structures, interoperability and data exchange, congestion management procedures, transparency

guidelines, functionality processes to reach solutions regarding operational and implementation issues, and monitoring processes (ENTSO-G n.d.).

From a Historical Institutionalist perspective, the development of these codes, the 'software' the energy system is governed by, supports the assumption that over time, the institutional structure is not only widened by new institutional nodes but also deepened with stronger institutional rules. Without going into too much detail, these network codes deliver a very powerful regulatory regime to align operational and procedural standards of the different TSOs and assure that the completion and the functioning of the internal market is promoted, that cross-border trade runs as smoothly as possible, and that the rules for access to transmission systems are set in a non-discriminatory manner. Moreover, to provide an overview of existing infrastructure and the integrated network, and an institutional platform for further operational and infrastructural development, both ENTSOs are required to develop legally non-binding Community-wide ten-year network development plans (TYNPs) on a biannual basis. As we can see, the new institutional design not only governs and monitors the existing trajectory but also sets options for possible institutional development in the future. The network development plans, which cover a ten-year horizon, should build on national investment plans, considering regional investment plans and Community aspects of network planning; integrate long-term commitments from investors regarding cross-border interconnections; and identify investment gaps of infrastructure planning (EP/Council 2009d, 2009e). In a nutshell, the objective of the TYNPs is to describe the foreseen developments of the European transmission capacities whilst assessing the ability of transmission operations to meet the requirements of the energy market to satisfy demand and to provide a secure supply of energy (ENTSO-G 2010; ENTSO-E 2010).

Based on the evidence, the Third Energy Package improved the institution structurally. It widened and deepened the institutional design after the adoption of a large set of operational, technical, and economic rules. The package introduced significant provisions regarding the governance of both the electricity and the gas sectors. Provisions addressing ownership unbundling, third-country access to energy grids, the creation of a new agency and associations, and the development of network rules all contributed to a more coherent policy package governing the internal market for energy – and therefore reinforcing the institutional path.

The external dimension of energy policy in the 2000s

After the implementation of the Single European Act (SEA), and the creation of an internal energy market (IEM) based on the Single European Market (SEM) programme, the EU "mainly used liberal tools to a liberal effect – in building and extending the Single Market for energy" (Andersen et al. 2017: 21). Energy policy was not formally incorporated within the pillar of the Common Foreign and Security Policy and no legal basis existed for the development of a common external policy (Youngs 2009). Consequently, other than the areas of energy policy that fell within the remit of the internal market, decisions had to be made unanimously; hence, based on our theoretical model, they were exposed to high institutional

stickiness. At the same time, the internal dimension (the market dimension) demonstrated low institutional stickiness and was subject to incremental change. As shown in the previous section, moderate integration of the institutional matrix was possible based on path-dependent processes and increasing returns, adaptive expectations, coordination effects, and continuous monitoring. The analysis of the three liberalisation packages and the incremental institutional change they facilitated serve as evidence of these assumptions. The packages did not introduce rapid bursts of policy innovation but rather a stepwise transformation of the institution towards deeper integration.

As the Community did not have formal competence regarding the external dimension of energy policy, the only viable approach to address relations with third countries was via internal market provisions. Therefore, policy provisions regarding the security of supply could only be subsumed under the umbrella of the liberal market doctrine and had to be incorporated within the framework of the liberalisation packages. Geopolitical concerns and supply shortages from Russia were not on the table – unlike at the time of writing – and the Community considered "a certain increase in dependence on that country" (European Commission 2000: 44) as inevitable. Supplies from the former Soviet Union, and in particular Russia, were considered a "testimony to an exemplary stability" (European Commission 2000). Hence, the market paradigm was conceived as the most potent and viable means to address concerns related to the security of supply.[4]

Towards the end of the 1990s, due to the growing energy dependence of the EU as well as the forthcoming Eastern enlargement, the Union came under more and more pressure, as the price of crude oil rose significantly and tripled within a year from 1999 to 2000. Within this context, the Commission published the Green Paper titled *Towards a European strategy for the security of energy supply* (European Commission 2000). Energy Security was now considered a crucial issue that needed comprehensive attention: it ensures the well-being of EU's citizens, guarantees the proper functioning of energy markets and the wider economy, maintains the uninterrupted physical availability of energy products on the market at an affordable price, whilst simultaneously addressing environmental concerns and sustainable development. The Commission warned that without an active common energy policy, energy requirements covered by imported energy products would rise from 50% in 2000 to 70% in 20 to 30 years. From an economic standpoint, costs were high: 45% of oil imports came from the Middle East and 40% of natural gas from Russia, which cost the Union about 240 billion Euros in 1999 and accounted for 6% of total imports. The Commission warned that the EU had too few resources and lacked policy instruments at its disposal to tackle the issues of import dependence and the erratic increase of oil and gas prices. Hence, a coherent energy policy at the community level should be promoted (European Commission 2000).

The Green Paper initiated an intense debate among Member States about the structural weaknesses and geopolitical, social, and environmental shortcomings of the EU's energy supply (European Commission 2002). The conclusions from a consultation of Member States, companies, consumer associations and NGOs were virtually unanimous in their understanding that energy consumption must

be diligently steered. Energy demand management – demand-side management (DSM) – was seen as key to improving energy security and bringing down overall energy consumption. In response, the Commission instantly made well-received proposals "involving actual legislation and not just encouraging words or exchange of good practice" (European Commission 2002: 3–4). These new provisions addressed electricity production from renewable sources, energy-saving measures in buildings, and the promotion of biofuels. Based on our theoretical model, a new set of *intended goals* was defined. However, other than in the area of DSM, the conclusions were rather vague in terms of concrete supply strategies and how to effectively approach third-country suppliers. The dialogue with Russia was conceived as a key strategy for determining the best way to deal with long-term supply and production agreements, as "representatives of the industry expressed some major concerns" (European Commission 2002: 4).

It took another two years to implement the first advancement in terms of legal provisions addressing gas security. Directive 2004/67/EC, concerning measures to safeguard the security of natural gas supply, published on 29 April 2004, introduced the initial steps that directly addressed the external dimension of energy policy and set out the path for further institutional development (Council of the European Union 2004). However, from a Historical Institutionalist (HI) perspective, the directive can be regarded as a small step rather than a huge leap towards the successful implementation of effective legislation addressing security concerns. In contrast to the packages on market liberalisation, which were decided by the co-decision procedure between the European Parliament and the Council, the directive addressed the external dimension of energy policy. As a result, it was not within the remit of the Community and was therefore decided in the Council by a unanimous vote.

Article 100 EC, under the "Approximation of Laws" chapter, was the legal basis for the directive. It required the Council, after consulting the European Parliament and the Economic and Social Committee, to decide unanimously on a proposal from the Commission. The security directive was justified on the grounds of the "completion of the internal gas market", which necessitated "a minimum common approach to security of supply" (Council of the European Union 2004: 92). This was essential for an undisrupted supply of gas to ensure the functioning of the internal market, safeguarding economic activity, and avoiding market distortions. However, due to the requirement for a unanimous vote, it only constituted the lowest common denominator, as Member States would merely have to "specify adequate minimum security of supply standards" (Council of the European Union 2004: 93). Overall, the directive was formulated quite vaguely, and policy instruments were not exhaustively discussed. Other than framing an effective policy on a supranational level, the directive claimed that "[b]ilateral agreements between Member States could be one of the means to contribute to the achievement of the minimum security of supply standards" (Council of the European Union 2004: 92). The Commission was given a rather minor role: it should monitor the overall supply situation based on reports from Member States and conduct administrative tasks.

External factors influencing the institutional trajectory

The reason why the policy was formulated in such a vague manner is owed to the fact that at the time of negotiating Directive 2004/67/EC, interruptions of the gas supply were unimaginable. Therefore, the Commission's first proposal was met with complete opposition and underwent substantial amendments (Brutschin 2016). However, things changed when, in March 2005, a gas dispute between Russia and Ukraine started to unfold. Ukraine was not only the most important transit country for Russian gas but also a significant gas producer itself. Both Ukrainian gas import prices and transit fees for Russian exports to Europe were set in bilateral agreements and at prices below European levels. Throughout 2005, Moscow accused Kyiv of refusing to negotiate seriously on prices and, in addition, Gazprom complained that 7.8 bcm of gas had disappeared from storage facilities in Ukraine. The issue was ultimately resolved by paying for the gas. The peak of the conflict was the breakdown of negotiations on import prices for 2006. In the last three months of 2005, Gazprom officials insisted that Ukrainian import prices would be set at European levels, therefore causing the dispute to be unresolved on 1 January 2006 and leading to the suspension of gas supplies from 1 to 3 January (Pirani 2007).

The interruption of the flow of Russian gas to Ukraine and the EU demonstrated that Directive 2004/67/EC and its uneven implementation by Member States was ill-equipped to adequately prepare for and respond to a serious gas supply crisis. In addition, there was a clear risk that unilateral measures adopted by individual Member States in response to the crisis could jeopardise the functioning of the internal market (Roggenkamp et al. 2016). As a direct and instantaneous consequence of the gas dispute, the so-called 'Gas Coordination Group' (GCG), which was actually introduced by Directive 2004/67/EC, and "whose existence had almost been forgotten", convened for the first time on 4 January 2006 (Agence Europe 2006b: 1). Notably, the directive had stipulated that this group should exchange information on security of gas supply on a regular basis and "should consider aspects relevant in the context of a major supply disruption" (Council of the European Union 2004: 93). The group included representatives from all Member States and was presided over by the Commission (Agence Europe 2006b). It was reinforced and structurally improved by a Commission decision in November 2006. The decision was meant to provide the EU with the means to speak with a single voice when discussing matters of energy security with third countries, facilitate the coordination of security of supply measures at the Community level, and assist Member States in the event of a supply disruption in coordinating measures taken on a national level (European Commission 2006b).

Following the gas dispute between Russia and Ukraine, an intense and serious debate about energy security in the EU was initiated, as gas supplies fell by 40% in Hungary and by over 30% in Austria, Slovakia, and Poland (Agence Europe 2006a). The Commission published another Green Paper titled 'A European Strategy for Sustainable, Competitive and Secure Energy', initiated by European Council summits in October and December 2005. The paper urged Member States to

take prompt collective action at a community level since unilateral measures and individual energy policies by Member States were not enough to tackle new challenges in energy markets. Recognising this, a new impetus was needed, and the paper presented various options to form a new comprehensive energy policy. It advocated for the completion of the internal market (with the help of grid codes, better-connected infrastructure, etc.) and emphasised the need to diversify the energy mix and establish an integrated approach to tackle climate change. Notably, the Green Paper also proposed the development of policy instruments that would bolster solidarity between the Member States in the event of supply disruption and ensure assistance when a country's infrastructure was damaged. The Green Paper additionally proposed the re-examination of existing legal provisions on the security of supply (for instance, Directive 2004/67/EC) (European Commission 2006a).

From a Historical Institutionalist (HI) standpoint, it is intriguing to see that the institution moved away from a purely market-based approach to address supply disruptions towards one that also allowed for normativity. Incorporating 'solidarity' to tackle market failure serves as strong evidence that the institution and its associated markets could not deliver solutions based on pure market instruments during a crisis. Here, markets do not sustain Member States' economies. During a supply disruption, it is quite the opposite. Member States' economies must help each other in order to sustain the markets. In the words of a civil servant at the European Commission, Head of the Security of Supply Unit in DG Energy,

> If you have a functioning energy market, necessary cross-border connections, and if energy markets run smoothly, you can to a large extent cope with a normal crisis. But you can never exclude that there is an extraordinary event where the market stops to work. And for this event you need instruments that must be fully based on solidarity between Member States. If not, everybody goes alone.
>
> (Interview 3, 2018)

Conclusion

Comparing the *policy outcome* of the First, the Second, and then the Third Energy Package reveals that institutional change has occurred in a stepwise manner. A more substantial shift in the institutional matrix was observed between the First and the Third Package, and even more so between the Third Package and the time before the Single European Act (SEA). However, a closer examination of the transition from the First to the Second Package, and then from the Second to the Third Package, shows that the institution was gradually modified. This pattern of change aligns with my theoretical framework, which posits that the institutional matrix expands through incremental steps and not through abrupt policy change. Therefore, the third hypothesis of this book can be supported, which states that in the absence of a critical juncture within an institution subjected to low stickiness, a process of moderate integration can be observed. Change to the institutional

makeup – manifesting itself in the form of the three packages addressing market liberalisation – was not achieved by completely and abruptly overhauling the institutional design. Rather, the institutional matrix changed incrementally. Hence, when measuring the DV as the difference between *policy outcomes* at different points in time, moderate integration can be attested.

The rationale for the creation of the internal market was based on economic considerations. The preferences of the different actors concerned can be understood through the calculus approach in which institutional choices are made to overcome collective action problems (Hall & Taylor 1996). This approach employs the notion of rational choice decision-making, in which actors base their decisions on rational calculations to maximise their utility within the institutional matrix. They calculate the costs and benefits of their actions in a strategic manner to best achieve their objectives. However, we have also demonstrated that endogenous momentum – changes initiated from within the institution – in the form of novel ideas about the governance of energy systems contributed to altering institutional rules. These rules can either be strategically calculated, as suggested by Shepsle (2006), or they may have a normative origin. In other words, they can be influenced by *ideas* about specific aspects of the political sphere (see Eising 2002), or ideologies on how markets should be governed (Hall & Lamont 2013). The decision to agree to the Single European Act, and consequently to the Single European Market programme, was based on the calculus approach, reinforced through endogenous ideas of how to achieve a single European market. As suggested by Historical Institutionalism, actors had initial primacy regarding their decisions in the institutional context. However, as we have shown, over the subsequent years, and although the primacy of actors in terms of the range of possible policy choices was initially high, these specific decisions slowly entrenched the different actors over time due to the structural, institutional design. Eventually, their policy choices became more and more constrained. Unintended consequences unfolded due to initial policy choices (to liberalise the markets with the help of specific policy instruments, to strengthen certain procedural rules, etc.). These specific policy instruments gradually evolved, sometimes in ways that actors may not have anticipated at their inception. In some instances, the evolution of these policies even thwarted the original preferences of the actors involved. Indeed, policy measures became more and more stable and rigid over time. For instance, in the proposal of the Commission regarding the First Gas Directive, the Commission suggested complete ownership unbundling, a proposition which, at the time of the implementation of the directive in the late 1990s, was inconceivable and foredoomed to failure. However, ten years later, ownership unbundling became a reality, with the choice to opt for an Independent System Operator (ISO) or an Independent Transmission Operator (ITO).

As illustrated, the *policy output* Directive 2004/67/EC addressing gas security and the external dimension displayed limited effectiveness as it could not mitigate the impact of the gas dispute between Russia and then Ukraine in 2006. Secondary law, without being explicitly addressed in primary law and subject to QMV, will only reflect veto players' willingness to agree to the lowest common denominator. However, as Chapter 6 will demonstrate, the directive was overhauled and

substantially improved by the Lisbon Treaty. Indeed, the Treaty revision bestowed the institution with extended competences to counter exogenous threats and transformed the institutional environment for energy policy to a considerable degree. The following chapter will elaborate in detail on how the Lisbon Treaty shaped energy policy and expound on the policy instruments that were proposed under the umbrella of the Energy Union.

Notes

1 For instance, see Council of the European Communities 1974; Council of the European Communities 1975; Council of the European Communities 1980.
2 Of the 14 Member States (excluding Luxembourg), six were monopolies (Belgium, France, Greece, Ireland, Italy, and Portugal), four were effectively duopolies (Germany, Spain, Denmark, and the UK), and four had competitive structures of sorts (Austria, Finland, the Netherlands, and Sweden) (Thomas 2005).
3 The group spearheaded by France and Germany.
4 For instance, Directive 96/92/EC concerning common rules for the internal market in electricity, which was part of the first liberalisation package, stated that "the internal market in electricity is particularly important to increase efficiency in the production, transmission and distribution of this product, while reinforcing security of supply" (EP/Council 1996).

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6 The European Energy Union

A formative moment for institutional change

Introduction

In Chapter 5, we discussed the impact of the Single European Act (SEA) on the internal energy market, exogenous threats, and security of supply issues and identified distinct factors as the catalyst for institutional development. An initial analysis suggests that the Lisbon Treaty constituted a significant step for further institutional change. The theoretical framework applied posits that *high integration* of primary law will occur when low stickiness coincides with a critical juncture. This can be explained through the rationale that when institutions are not locked in, they are susceptible to incremental change – a state which the institution exhibited after the inception of the SEA. Consequently, critical junctures can have a high impact on an institution. The institutional framework will be amended through the non-incremental change of primary law. However, after the critical juncture, the institution will fall back into equilibrium, and a process of moderate integration will be triggered based on path-dependent processes. Low integration will persist as long as certain constituent parts of the decision-making process are still subject to unanimous voting, such as measures of fiscal nature in Article 194(3) TFEU concerning energy policy. The logic behind this phenomenon is that *high integration* can be expected when specific goals are defined and the institution provides the necessary means to attain these goals. Although certain actors, such as Member States, might not share *all* their preferences with each other, the institutional trajectory and institutional capacity create a fertile ground for effective policymaking. Of course, negotiations to settle on a policy and to reach a specific agreement might still be cumbersome and hard to accomplish. Nevertheless, the institution can generate policy outputs that are able to effectively regulate the behaviour of actors and attain collective goals (the policy outcomes).

The Lisbon Treaty

In the Lisbon Treaty, energy policy was directly and explicitly addressed in primary legislation for the first time and had its own title (Title XXI). Energy policy was now one of the Union's shared competences. Decision-making was henceforth based on the ordinary legislative procedure (formerly known as co-decision),

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which means that neither the European Parliament nor the Council may adopt legislation without the assent of the other, and the Council takes decisions by qualified majority voting (QMV) (Article 4). This has two important implications for decision-making. First, "QMV essentially means Member States do not exercise veto power" (Birchfield 2011: 247), and, second, as a vast number of policy areas are now subjected to the co-decision procedure, energy policy amongst them, "the EP has essentially obtained veto power" (Birchfield 2011: 250). Before the Lisbon Treaty, the EU had no legal competences in formulating energy policy and energy issues were addressed by linking energy policy provisions on the internal market (Article 95 EC), competition provisions (Articles 81–88 EC) and environmental protection (Article 175 EC) (Vedder 2010). Although energy legislation was implemented under internal market and environmental provisions, with the adoption of an energy chapter in the Lisbon Treaty, energy policy became a *formal competence*. This meant that "no longer could initiatives by the Commission be questioned as lacking a legal basis" (Duffield & Birchfield 2011: 6). The Lisbon Treaty set out four overarching goals for the EU's energy policy. Article 194 states that,

> Union policy on energy shall aim, in a spirit of solidarity between Member States, to: (a) ensure the functioning of the internal market; (b) ensure security of energy supply in the Union; (c) promote energy efficiency and energy saving and the development of new and renewable forms of energy; and (d) promote the interconnection of energy networks.
>
> (Article 194 TFEU)

Furthermore, Article 122 stipulates that the Council, based on a proposal by the Commission and "in a spirit of solidarity between the Member States" (Duffield & Birchfield 2011), can take measures to mitigate repercussions if severe difficulties arise in the supply of certain products, especially in the area of energy. This provision confirmed the Union's competence to take preventive measures if issues of the security of supply arose and strengthened the Union's ability to react to security threats. Hence, far-reaching measures could be expected in the case of a threat to supply security and executed in a spirit of solidarity (Braun 2011: 2). A provision that indeed proved to be effective in light of Russian aggression towards Ukraine, which instigated various policy responses within the REPower EU framework (European Commission 2022) discussed in more detail in Chapter VII.

Regarding trans-European networks, and with the aim to create an area without internal frontiers, Article 170 mandates the Union to contribute to the establishment and development of energy networks and to promote the interconnection of national networks and free access to them. Poland insisted on a new energy solidarity clause, representing one of its threats to veto a new treaty mandate. However, the reference to energy policy needing to be in accordance with a spirit of solidarity between Member States was less committal and specific than Poland wanted (Youngs 2009; Talus 2013). As one can see, the Lisbon Treaty codified several significant aspects of energy policy. However, Article 194 also "entails prominent legal shortcomings" (Braun 2011: 2) and "provides a somewhat double-edged sword in

the sense that it both strengthens the EU's competence and confirms the fact that responsibility for the energy mix is firmly at the national level" (Van Hulten & Sitter 2017: 225). This limitation is owed to the fact that Article 194 specifies that a Member State retains its right "to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply" (Article 194 TFEU). Hence, Member States retain their right to conduct their bilateral energy relations with third countries as they deem appropriate (Braun 2011). Furthermore, measures in the field of energy taxation are subject to unanimous voting in the Council (Treaty of Lisbon 2007), and the Parliament's role in the decision-making process is only advisory in nature (Van Hulten & Sitter 2017). The energy title in the Lisbon Treaty can be understood as a codification of the distribution of energy policy between EU institutions and Member States (Van Hulten & Sitter 2017). As Andoura et al. (2010) explain,

> [t]he final text of the Energy Title is a carefully crafted compromise between national sovereignty over natural resources and energy taxation on the one hand and shared EU competence for other areas on the other.
>
> (Andoura et al. 2010: 3)

Despite the shortcomings, the Lisbon Treaty paved the way for secondary legal provisions that, without the appropriate legal basis, would have been difficult to realise. A former Deputy Director-General of the Directorate General Energy (DG ENER) at the European Commission, emphasised the importance of the Lisbon Treaty, stating that,

> Article 194 is a game changer in the sense that this is our basic legal basis for all the legislation, all the measures that we are taking. The result of that was the security of supply Regulation 994/2010. Which now has been revised. When the gas crisis in 2009 happened, then immediately the Commission had to make a proposal in only 6 or 8 months after the crisis and the directive was there. And it made already a difference when we came to 2014, we were also on the edge of a gas crisis. 994/2010 needed Article 194 in the Lisbon Treaty because otherwise we would not have the legal basis to take these measures.
>
> (Interview 11, 2018)

When comparing the Lisbon Treaty to the SEA, the SEA displayed moderate integration, providing the institutional means to incrementally alter secondary law on the internal dimension of energy policy. It was incapable of effectively addressing the external dimension of energy policy to safeguard the security of supply during the first gas crisis in 2006. However, the Lisbon Treaty extended beyond the internal market, providing the means to address the external dimension more directly (Braun 2011). Hence, this chapter will now assess the secondary legislation that significantly enhanced the regulatory framework for external energy policy. These legal provisions could, for the first time, be amended by the co-decision procedure.

It is important to understand how the Lisbon Treaty altered the preconditions to address the external dimension more effectively before delving into the main topic of this chapter and exploring the proposals for the Energy Union in detail.

Ensuring gas supply security: regulation 994/2010

Although Member States were aware of the potential risks posed by supply disruptions (such as the first gas crisis of 2005/2006), it took an additional gas dispute between Russia and Ukraine as a serious external shock to reach an agreement between Member States and trigger the implementation of a regulation addressing the security of supply of natural gas. In January 2009, gas flows from Russia to the EU via Ukraine were once again interrupted due to an unresolved commercial dispute between Naftogaz (Ukraine) and Gazprom, and outstanding payments from Ukraine since late 2007. On 2 January 2009, gas deliveries to several Member States were significantly reduced, amongst them Poland, Slovakia, Hungary, and most significantly Bulgaria and Romania. The situation intensified over the following few days, culminating in all gas deliveries to the EU being stopped from 6 to 20 January 2009, engulfing the EU in a grave energy crisis (European Commission 2009).

The primary challenge to responding to the situation stemmed from a lack of crucial technical information about gas systems and gas flows on a national and EU level. There was simply not enough reliable information about gas flows, the amount of gas which was in the system, and demand patterns. As this scenario illustrates, reliable information and the exchange of data are pivotal for the functioning of the internal energy market (IEM) and for mitigating repercussions in the event of a market failure. The situation was a result of the qualitatively different systems that existed across Member States, with unequal access to information by different market players, stakeholders, and public authorities. It is important to note that the Third Energy Package had only recently been adopted, which included an obligation to publish data on gas flows and other technical information. Consequently, no provisions regarding this sort of data had yet been implemented, exacerbating the crisis (European Commission 2009).

In direct response to the severe gas crisis, Regulation (EU) 994/2010 concerning measures to safeguard the security of gas supply was enacted under the Lisbon Treaty and entered into force on 2 December 2010 (EP/Council 2010a). The content was characterised by shifting more competences to the EU level. It represented a departure from its predecessor by adopting the form of a regulation instead of a directive. The role of the Commission was enhanced, the level of detail increased – especially when comparing it to Directive 2004/67/EC – and the coordination of various issues at the regional and EU level was streamlined (Talus 2013). The distinction between a regulation and a directive was significant; a regulation is legally binding at the date of its adoption and must be applied in the same way across Member States. In contrast, a directive is a legal act that sets out overall goals to be achieved, providing Member States leeway on how to achieve them. Adopting a regulation suggests that the EU needed to create a level playing field, removing potential ambiguities, and allowing no room for interpretation.

As a recurrent motive in much of the new legislation adopted after the Lisbon Treaty, Regulation 994/2010 "buil[t] heavily on the solidarity approach" (Talus 2013: 805); it "formalize[d] the response mechanisms at state, regional, and EU level, all in the spirit of solidarity" (Talus 2013) Moreover, the institution had increased its capacity to react to exogenous factors. As already discussed, the Lisbon Treaty incorporated Article 194 on energy policy, entailing the provision to ensure the security of supply. As discussed, in order to have the capacity to respond effectively to exogenous events that compromise the external dimension, it is imperative that primary law addresses the relevant policy area, and QMV must be the voting rule. With the occurrence of the two crises as exogenous factors, the institution now had the formal capacity to amend its trajectory more effectively.

The regulation set out clear procedures and objectives to be met to enhance the security of gas supply and strengthen the regulatory framework of the institution. It established Preventive Action Plans (PAPs) and Emergency Plans (EPs) on both national and Community levels, based on risk assessments, which were conceived to remove or mitigate identified risks (PAPs), and, in case of a supply disruption, the impact of such an incident (EPs). The risk assessments should be carried out by 'Competent Authorities', who were national governmental authorities or national regulatory authorities (NRAs). These should be designated by each Member State by no later than 3 December 2011 and should ensure the overall implementation of the measures defined in the regulation. The Commission should carry out continuous monitoring of the security of supply measures implemented by Member States, through Directive 2009/73/EC (concerning the internal gas market) and based on the information provided by the risk assessments, the PAPs and EPs (EP/Council 2010a). In addition, at the request of a Competent Authority, the Commission may have declared a Union Emergency or a regional emergency for a specifically affected geographical region.

The regulation also reinforced the role of the Gas Coordination Group (GCG), consisting of representatives of Member States and their respective Competent Authorities, ACER, ENTSO-G (established by the Third Energy Package), and representative bodies of the industry. Compared with the first directive on the security of gas supply (Directive 2004/67/EC), the remit of the GCG was significantly increased. For instance, the GCG should be consulted by the Commission as the main body regarding the establishment of the PAPs and EPs. For cross-border interconnections between Member States, transmission system operators (TSOs) should submit a proposal for bi-directional capacity concerning the reverse direction (reverse flow capacity) to their Member States or competent authorities. This meant that gas could be transported in *both* directions, which would help shippers to swiftly re-route gas deliveries within the internal market if a supply disruption occurred. However, TSOs were also granted the power to request an exemption from the obligation to enable reverse flow capacities if: (a) the reverse flow capacity would not significantly enhance the security of supply of any Member State, or (b) the investment costs would offset the prospective benefits in terms of the security of supply.

In terms of infrastructure requirements, Member States or the competent authority were required to ensure the implementation of necessary measures to enhance energy security. Therefore, by no later than 3 December 2014, in the event of a disruption of the single largest gas infrastructure, the remaining infrastructure, determined by the so-called n – 1 formula, had to be able to satisfy total gas demand of the calculated area during a day of exceptionally high gas demand, occurring with a statistical probability of once in 20 years. In addition, the regulation initiated an information exchange mechanism during a possible emergency concerning the daily gas demand and forecast, and cross-border gas flows. It also required Member States to communicate existing intergovernmental agreements with third countries that had an impact on gas infrastructure and supplies (EP/Council 2010a).

As Boersma (2015) contends, the overall impact of the regulation was moderate rather than full success in terms of creating a coherent external energy policy. A unified understanding across Member States regarding a common standard of energy security did not exist. Perceptions differed between Member States, and so did the levels of their import dependence. As posited by the Historical Institutionalist (HI) framework, integration never happens in sudden bursts – unless in the event of a critical juncture – but institutions change incrementally. The empirical evidence corroborates these assertions. As outlined in Chapter 2, feedback processes are contingent on the policy cycle consisting of intended goals, policy output, and policy outcome (the effectiveness of the policy output), alongside monitoring processes that evaluate the implementation of policy provisions. The *policy outcome* of 2004/67/EC was notably very low compared to the *intended goals* that were formulated in the early 2000s, but Regulation 994/2010 significantly improved the regulatory environment. The regulation starkly contributed to increased transparency and the overall level of information shared between the different actors (Boersma 2015). The Ukrainian crisis of 2014 and the geopolitical unrest caused by the annexation of the Crimean Peninsula induced the Commission to conduct a stress test in anticipation of a possible supply disruption. Member States were generally much better prepared to face a supply crisis due to the Preventive Action and Emergency Plans and the requirement to meet a supply and infrastructure standard (European Commission 2016p). Indeed, shortcomings still existed, and the Commission addressed these in a new proposal for a regulation concerning the security of gas supply within the Energy Union package. However, we will discuss these measures in more detail later in the chapter.

Compared to the first directive concerning measures to safeguard the security of gas supply, Regulation 994/2010 was an essential step to improve the institutional framework of the EU. Not only did the regulation provide preventive action and contingency plans and strengthen the role of institutional bodies, but it also increased the EU's coherence in the case of a supply disruption. The regulation directly addressed the external dimension of energy policy, reinforced by the Lisbon Treaty, as opposed to the liberalisation packages of the 2000s, which aimed at tackling external issues via internal market instruments provided for by the SEM programme. Hence, the institutional design was strengthened insofar as the policy framework was widened – it added new components to the regulatory framework,

but it was also deepened. The regulation constituted a considerable step up from the previous directive of 2004, which proved incapable of regulating the EU's response to the gas crises of 2006 and 2009. It also further integrated actors into the structural makeup of the institution and embedded them more profoundly within the institutional framework. The regulation stipulated precise operational and technical rules to which actors were obliged to adhere, ensuring even implementation across the different Member States. This, in turn, instigated positive feedback processes: constant monitoring, the acquisition of information (and exchange between the actors), technical and infrastructural requirements (that needed considerable investment), and adaptive expectations (due to the manifold resources that various actors invested). These feedback processes, in turn, further bound actors to each other and the institution.

When assessing the process of integration between Directive 2004/67/EC and Regulation 994/2010, both addressing the external dimension of energy policy, an increase in the effectiveness of the policy output can be identified. Hence, a process of moderate integration is confirmed. The level of integration is measured and defined as the *difference between different levels of policy outcome* (effectiveness of the *policy output*) at different points in time. Whereas Directive 2004/67/EC could not govern the sector in the event of an energy crisis, Regulation 994/2010 improved the institutional capacity (European Commission 2016p). What factors contributed to the increased scope and depth of Regulation 994/2010 compared to Directive 2004/67/EC? As previously discussed, according to a senior official at the Commission, Regulation 994/2010 needed Article 194 in the Lisbon Treaty to provide the legal basis to propose new provisions (Interview 11, 2018). This supports the premise that addressing a specific aspect of a sector in primary law is the prerequisite to creating conditions that make institutional change possible, especially to respond efficaciously to exogenous factors in the form of supply crises.

In the case of Directive 2004/67/EC, such assumptions did not materialise. Under the shadow of a veto due to Article 100's requirement for unanimity, which laid the legal foundation for the directive, the Energy Council drained the Commission's proposal of any substance by omitting all the provisions meant to create a Community framework. As explored in Chapter 5, the Council changed the draft directive of the Commission from guaranteeing a strong regulation to enhance supply security of its internal gas market to merely providing an adequate supply level to the energy market. It removed all provisions on harmonising national legislation and left it to the Member States to choose the instruments they deemed appropriate to ensure supply security (Agence Europe 2003a). Via the stratagem to not *directly address* the internal market in the amended proposal, the Council was able to change the voting system based on Article 95 – co-decision and majority of votes in the Council – to Article 100, which meant that the Council decided alone by a majority of votes (Agence Europe 2003b). For the Council, the absence of provisions on the internal market in the proposal justified the change of the legal basis, resulting in a change of the decision procedure, excluding the European Parliament (Agence Europe 2004b).

The strategy of the Council to disregard the internal market in a provision that addressed the external dimension of energy policy resulted in an ineffective directive. The directive was not equipped to successfully react to the social and economic consequences of the 2006 and 2009 crises. As primary law did not address the external dimension of energy policy, and the Council strived to keep it that way, Member States were not constrained by the institutional regulatory framework regarding their policy choices. The Member States' behaviour can be interpreted as an effective strategy to exclude the external dimension of energy policy from being incorporated into the institutional framework in the mid-2000s. However, this was no longer possible under the Lisbon Treaty, as Article 194 states that "Union policy on energy shall aim, in a spirit of solidarity between Member States, to . . . ensure security of energy supply in the Union". Article 194 also refers back to the internal market and environmental policy. However, it clearly addresses the external dimension as the "Lisbon Treaty reinforces a formal European energy security mandate. . . . DG Energy now leads on the external dimensions of energy policy" (Youngs 2011: 46).

Without the energy article in the Lisbon Treaty, it would have been very difficult to implement Regulation 994/2010 in the form it was eventually realised (Interview 11, 2018). A brief counterfactual analysis can be undertaken based on the hypothetical situation whereby an energy title was already introduced into treaty law prior to the negotiations leading to Directive 2004/67/EC. Under this premise, diluting the proposal would not have been as easily accomplished, as the institutional framework, in the form of treaty law, would have constrained actors' ability to dismiss the proposal and obliged them to adhere to institutional rules. Moreover, under the Lisbon Treaty, the decision-making procedure could not have been altered as in the case of Directive 2004/67/EC; energy policy became a shared competence between the EU and the Member States, co-decision became the voting procedure, and decisions are now made by qualified majority voting in the Council. As a result of these structural amendments, the Commission's policy initiatives addressing the external dimension of energy policy could no longer be questioned.

Sharing essential information: decision 994/2012

The second significant measure to address external energy policy was the adoption of a decision concerning intergovernmental agreements (IGAs) in the energy sector.[1] As the internal market did not deliver optimal instruments to govern external affairs and respond to energy crises, such as the Russian-Ukrainian gas disputes, the European Union chose to address the external dimension of energy policy more directly. The policy discourse in the EU shifted from a purely market-based approach towards a more security-centred approach to energy supply, external energy policy, and the role of the EU in the international political economy of energy (Boersma & Goldthau 2017). The Lisbon Treaty offered new opportunities regarding external representation to advance cooperation and dialogue with third countries and regions. It delivered the legal basis for aspirations to go beyond purely internal market provisions towards presenting a political face to the external

dimension (Braun 2011). Regulation 994/2010 was the first step in this direction, delivering improvements for energy security. One of the constituent parts of the regulation was the obligation of Member States to inform the Commission about existing and future Intergovernmental Agreements (IGAs) between Member States and third countries by 3 December 2011 (EP/Council 2010a). However, a shortcoming of the provision was owed to the omission of any exchange of information *between* Member States. Hence, the regulation did not solve the issue of a lack of information and transparency on IGAs (Batzella 2018).

In order to address the consistency and coherence of the EU's external relations in energy more effectively, in February 2011, the European Council invited the Commission to submit a communication on the security of supply and international relations by June 2011. Embedded within these wider objectives, the European Council also invited the Member States to inform the Commission about all their existing and new bilateral agreements with third countries from 1 January 2012 onwards. The Commission should subsequently make this information available to all the other Member States, however, protect commercially sensitive information (European Council 2011). The Commission took on the task and, based on a public consultation, published a proposal for a decision to set up an information exchange mechanism concerning intergovernmental agreements between Member States and third countries in the field of energy. Congruent with the theoretical framework of this book, the European Council invited the Commission to propose a new set of *intended goals*. As outlined, exogenous factors, such as the gas crises, impacted the institution and played an important role in formulating these goals. Moreover, the institution strived to enhance information exchange among different actors to improve the efficacy of the institutional setting.

The proposal suggested that only clear obligations regarding the information exchange mechanism would improve the transparency required for coordination at the EU level. Voluntary measures did not prove effective in guaranteeing the type of exchange of information necessary to ensure contractual obligations between Member States and third countries were lawful. Member States should, therefore, submit all existing and provisionally agreed IGAs to the Commission, no later than three months after the decision has entered into force. The Commission should then make the documents accessible to all other Member States, excluding confidential commercial information, per request by the concerned Member State. Not only might the Commission, on request by the Member State, assist the Member State during negotiations – about which the Commission should already be notified – but also have the right to participate as an observer and be informed regularly about the ongoing negotiations (European Commission 2011).

The rationale for information exchange during the negotiations was based on the fact that once IGAs were concluded and ratified; they were very hard to alter and would need to be re-negotiated with the third country. Many of the IGAs were long-term take-or-pay (TOP) contracts with third countries: to buy a predefined quantity of gas or to pay a specific amount if the gas was not consumed to compensate for the loss. Moreover, if Member States had gas surpluses, these could not be resold. Under these circumstances, the supplier always has a hold over the buyer,

and some of the IGAs can be seen as far-reaching *adhesion contracts*. Therefore, the EU stepped in to alter this situation. The IGA decision itself was reasoned through the Third Energy Package and the functioning of the market and reinforced through the Lisbon Treaty to strengthen the external dimension (Interview 1, 2018). Most importantly and controversially, the Commission proposed an ex-ante assessment of agreements before they were concluded. This meant that after the closure of the negotiations and before the IGA was signed, the Commission, on its initiative, would have to assess the compatibility of the negotiated agreement with Union law (European Commission 2011).

Overall, the Commission proposal was highly ambitious and an important step from Regulation 994/2010 regarding the advocated provisions. It is thus no surprise that the proposal encountered strong opposition in the Council (Euractiv 2012). Krišjānis Kariņš, the rapporteur on the proposal in the European Parliament, stated that most countries did not like the proposal and, thus, it was diluted to secure a majority in the Council (Euractiv 2012). Of the EU's six largest countries (Germany, France, UK, Italy, Spain, and Poland), three were major importers of Russian gas – Germany, France, and Poland – and Germany and Italy had privileged relations with Gazprom. The only big Member State that supported the Commission's proposal was Poland, as they wanted to create a level playing field for all market participants (Interview 8, 2018). Poland sought to increase its influence in the EU and solve energy security issues with other Member States, aiming to diminish energy dependence on Russia (Badgonas 2011). However, Poland was only supported by smaller Member States, Lithuania, and Latvia. Italy, France, Germany, Belgium, and the UK opposed the Commission's original proposal (Batzella 2018). In the words of Giles Chichester, British MEP and Conservative spokesman on energy in the European Parliament, "[i]t is the worst kind of meddling by the Commission's control freaks. Our energy arrangements are Britain's own business, not the Commission's. . . . This is an attempt to control and interfere with our individual trading interests on a new and deeply worrying scale" (Chichester as cited in EP 2012a). Ultimately, the decision was considerably diluted, as Member States took a hard line during the negotiations. According to German MEP Bernd Lange,

> [he had] never witnessed anything like this before, namely that the Council has taken a heavy-handed position, seeking to blackmail Parliament by saying: take it or leave it. I have never known the Council's chief negotiator to get up and leave a trialogue before.
>
> (Lange as cited in European Parliament 2012b)

Considerable amendments were made to the final decision, and the legislation was profoundly watered down. For instance, the obligation to inform the Commission before or during negotiations on an intergovernmental agreement with a third country was omitted and replaced by a voluntary option to notify the Commission (Art. 3–3). Member States, who had to submit all existing IGAs to the Commission by 17 February 2013 (Art. 3–1), also had the freedom to indicate whether any part of the information was confidential and whether it could be shared with all Member

States or not (Art. 4–1). Access to information should be unrestricted for the Commission (Art. 4–2). Member States could also request the assistance of the Commission in negotiations if considered beneficial (Art. 5). In the case that a Member State had indicated that information may be shared, the Commission should make the information accessible to all Member States in a secure electronic form, except any confidential parts (Art. 3–3). When a Member State, under Article 4–1, notified the Commission that information should not be shared, a summary should be provided to the other Member States (Art. 3–7).

Most importantly, the ex-ante mechanism was discarded in its entirety unless a Member State explicitly asked for an assessment during negotiations (Article 6). If a Member State was unable to reach a firm conclusion on whether an IGA was compatible with Union law or not, it could ask for an appraisal by the Commission. Instead, an ex-post mechanism was implemented in Decision 994/2012, which implemented the requirement that, by 1 January 2016, a report on the application of Decision 994/2012 should be published on whether the decision promoted compliance of IGAs with Union law and whether it had an impact on Member States' negotiations with third countries (Art. 8–1&2). The decision faced stark opposition from Member States, unwilling to endow the institution with the competence to influence negotiations with third countries. This can be explained by rational choice decision-making/the calculus approach in which Member States zealously protect their interests. Nevertheless, although Member States were reluctant to concede considerable powers to the institution, they had to address the policy area, as they were obligated by primary legislation. As we will see, this, in turn, triggered unintended consequences later in the temporal sequence, as the decision was revised in 2017 with considerably stronger provisions.

Powerful Member States with beneficial relations with third countries were reluctant to renounce their advantageous positions for future contractual arrangements in favour of a more comprehensive European approach that would have allowed all Member States to enjoy a level playing field regarding gas contracts. From a utilitarian standpoint, endorsed by rational choice theory, this can be explained as individual actors were guided by material interests and striving to maximise their benefits from economic decisions. The Member States with favourable economic ties with producer countries resisted pressures to have their agreements scrutinised ex-ante by the Commission, fearing repercussions due to potential incompatibility with Union law. Consequently, ex-ante disclosure and evaluation of sensitive information before and during the negotiations for IGAs might have resulted in some Member States having to adhere more closely to Union law than in the case of an ex-post assessment. The ex-ante assessment might have considerably affected the preferential treatment that some Member States enjoyed vis-a-vis other European states in terms of lower prices and better contractual conditions. This could have decreased their expected return on investment and diminished their revenues over time, potentially affecting their economic output, given that IGAs are long-term bilateral contracts. However, once IGAs between Member States and third countries are concluded, they are subject to international trade law and, therefore, very hard to amend.

As we will see, Decision 994/2012 was reviewed within the policy package of the Energy Union. The revision of Decision 994/2012 granted Brussels a much tighter oversight over IGAs. Most importantly, the reviewed decision introduced a compulsory ex-ante compliance check with Union law before an IGA can be signed. As a result, incremental institutional change and path-dependent processes deepened the entrenchment of actors within the institutional matrix the longer they proceeded on this institutional path. Early decisions influenced the possible range of policy choices of later decisions, leading to unintended consequences. Later provisions entailed features that were initially unforeseen by Member States or were outright rejected at an earlier stage, and therefore, inadvertent *policy outputs* arose for different actors based on their preferences. For example, the choice to distinctly address the exchange of information in a dedicated article in Decision 994/2010 subsequently led to the implementation of an independent decision (Decision 994/2012) concerning the information exchange on IGAs. While Member States were initially willing to support such undertakings, in the end, and with a few exceptions, Member States displayed stark reluctance to support the ambitious proposal by the Commission. However, the decision set the institution on a particular path, limiting available policy choices. Remarkably, just five years after the implementation of Decision 994/2012, it was revised, and they agreed on conditions they initially resisted when the first decision on IGAs was negotiated. This evidence suggests that path dependence significantly influences the institutional matrix. Over time, path-dependent processes increasingly bind actors to the institution, leading the institution to deliver *policy outputs* that actors might not have agreed to in the past.

In evaluating the level of integration, based on measuring the difference in the *policy outcome* over time, it is evident that the new decision showed moderate integration: the *policy output* was not particularly effective in attaining its *intended goals*. A concerning fact was that around one-third of the notified IGAs did not comply with EU law regarding the Third Energy Package and competition law. Moreover, no Member State could terminate or renegotiate the non-compliant IGAs under scrutiny (European Commission 2016d). As outlined in Chapter 2, the *policy outcome* is the degree to which the *policy output* effectively attains a set of predefined goals. In this context, the *policy outcome* of Decision 994/2012 showed moderate *effectiveness*. Compared with the situation in the mid-2000s, where virtually no exchange of information on IGAs occurred, the regulatory framework progressed from a low to a moderate level of effectiveness. Thus, a process of moderate integration can be identified from the mid-2000s to 2012.

The Energy Union: transforming energy governance

To understand the rationale behind the proposal for the Energy Union, several key factors come into play: the need to eventually complete the internal market, the imperative to decarbonise the economy, and to enhance energy efficiency. As discussed in the previous chapters, these goals were rooted in former policy instruments that the Energy Union project sought to reinforce. Path-dependent processes led to the further development of these provisions. However, an exogenous threat

was the most compelling impetus for the initial proposal to create an Energy Union and for profound institutional change. Geopolitical instability in Ukraine inflamed through the annexation of Crimea by the Russian Federation raised concerns about supply security once again and emphasised the EU's stark dependence on imports of gas from Russia. In 2014, the EU imported 53% of its energy, worth around 400 billion euros (more than € 1 billion a day), making it the largest energy importer in the world (European Commission 2015a). As for the gross inland energy consumption, petroleum products accounted for the most significant share (34.4%), followed by gas (22%), solid fossil fuels (16.1%), nuclear heat (13.6%), and renewables, which account for 13% (Eurostat 2017b). As expounded in the European Energy Security Strategy, energy imports accounted for more than a fifth of total EU imports. Energy import dependency is related to oil (almost 90%), natural gas (66%), solid fuels (42%), and nuclear fuel (40%) (European Commission 2014a). Starkly contributing to the ambitions to form a European Energy Union, and as shown in Figure 6.1, Member States like Estonia, Bulgaria, Finland, Latvia,

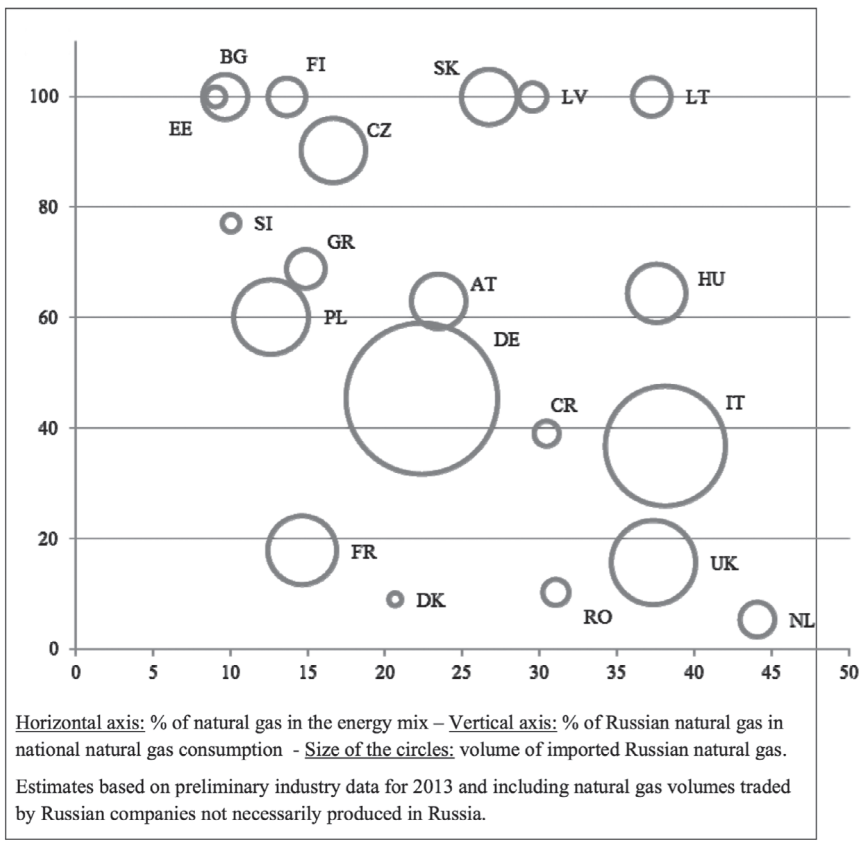

Figure 6.1 Dependency on natural gas supplies from Russia

Source: European Commission (2014a)

Lithuania, and Slovakia imported 100% of their gas requirements from Russia, and three of them used natural gas for more than a quarter of their total energy needs.

Other Member States, like the Czech Republic, Slovenia, Greece, Poland, Hungary, and Austria, also imported more than 50% to various degrees (European Commission 2014a). Total Russian gas imports declined from 34.6% in 2005 to 26.8% in 2010. However, in 2013 they peaked again at 32.4% and were just below 29.7% in 2014 (Eurostat 2017a) when the Crimea crisis took place. Thus, Russia's 'gas leverage' over the EU was considerable, creating the possibility that Russia might exploit this dependence to pursue its own geopolitical ends. The adverse effects of this dependence might not only be triggered by apparent reasons like the possible disruption to supply due to geopolitical instability in transit countries. The dependence on one supplier might also cause market distortions and could weaken the EU's ability to react to geopolitical events, exposing the EU's policymaking to ascendancies from outside of the EU and external influences (Austvik 2016). The relevance of these observations is starkly evident at the time of writing: the Russian-Ukrainian war serves as an empirical example of a disruptive exogenous factor rooted in geopolitical tensions par excellence. The developments in the Ukraine were a stark reminder of the vulnerability of the EU regarding energy security and the stable supply of gas. As far as energy efficiency in relation to supply security is concerned, the Commission estimated that every additional 1% increase in energy savings would cut gas imports by 2.6% (European Commission 2014b).

Beyond geopolitical concerns, several other factors should be mentioned as they complete the picture of why the need for an Energy Union emerged. First, electricity retail prices for end consumers were high. Although wholesale electricity prices in the EU were relatively low, they were still 30% higher than in the United States, and post-tax electricity prices for households increased by over 4% from 2012 to 2013 alone (European Commission 2015a), highlighting the dysfunction of energy markets. Second, many (new) gas-fired power plants were mothballed as priority was given to Renewable Energy Sources (RES) regarding grid access and support schemes paid for by the end consumer (Vinois 2017). Third, gas prices were too high, together with low carbon prices, provoking the re-emergence of coal. Finally, national policies based on security concerns and consumer protection became more numerous and, thus, infringed on the common objectives of an internal market (Vinois 2017).

Proposing a new framework

From a Historical Institutionalist (HI) perspective, the Energy Union was the culmination of pre-existing legal frameworks, following a specific institutional path and increasing institutional capacities in incremental steps. The Lisbon Treaty codified the EU's obligations to secure energy supply and the functioning of the Internal Energy Market (IEM) and laid the foundations for concerted action and more ambitious steps to create a common policy approach. Notably, the decision to form the Energy Union did not occur in a vacuum; instead, it was built upon an established institutional framework that addressed varying aspects of energy policy. Therefore, the Energy Union project represents not merely an ad hoc response to

geopolitical instability but a manifestation of the EU's evolving institutional roles and capacities. As mentioned, substantial impetus to create an Energy Union was instigated through geopolitical unrest in the Ukraine, fuelling energy security concerns. Based on the insights in the previous chapters, this book contends that exogenous events can only have an impact on the institutional matrix if the institution is endowed with the capacity (enshrined in primary law) to react to such events.

Against this backdrop, in April 2014, Donald Tusk, then Prime Minister of Poland, proposed an Energy Union, which, in essence, should resemble the European Banking Union or the EU's Atomic Energy Community, Euratom. At the heart of this union, based on solidarity and common economic interests, Tusk suggested the creation of a single European body in charge of buying gas from third-country suppliers. He envisioned that the Commission should take part in and supervise all new negotiations. Solidarity between Member States should be strengthened, the EU's energy infrastructure should be enhanced as some Member States were dependent on a single supplier, and Europe should fully use its fossil fuels, including coal and shale gas, but do so sustainably. In addition, Tusk suggested engaging with new partners and emerging suppliers and harnessing LNG technology to transform supply security on the IEM. He also promoted the goal to strengthen and extend the Energy Community eastwards to boost energy security not only for the EU but also for Europe as a whole (Tusk 2014). Tusk's proposal was starkly based on security concerns and the implications these have on energy markets and political stability in Member States. Member States should transfer considerable decision-making powers to supranational institutions. Although the single buyer idea found little favour among Member States, decision-makers perceived the need to address energy policy more coherently as "wider developments acted as a catalyst for renewed thinking about the EU's role in energy" (Buchan & Keay 2015: 2).

As Austvik (2016) points out, the Central and Eastern European Countries (CEECs) welcomed Tusk's proposal for the Energy Union and its inherent call for more interventionist measures. Issues of supply security, solidarity among Member States, and concerns regarding Russian gas imports were paramount for CEECs. From an HI standpoint, the formation of CEEC's preferences can be explained as being endogenously created and displaying a strong normative component, highlighted by the explicit reference to solidarity between Member States. As outlined in Chapter 2, institutions are, apart from arbiters between actors' different interests, carriers of ideas about how actors perceive the world, providing a link between institutional and cognitive factors (Fioretos et al. 2016). Therefore, institutions can serve as forums where new ideas about governance are developed and where beliefs, values, norms, and ideologies shape collective action and decision-making.

However, Western European countries framed the issue differently, based on exogenously given preferences, emphasising markets and institutions (Austvik 2016). Their primary goal was the completion of the IEM, the transition to a low-carbon economy, and ensuring environmental sustainability. The heterogeneous preferences among Member States were based on the fact that Western European energy markets were more developed. Thus, they faced less security of supply issues. Moreover, their relations with Russia were more distant, geographically

speaking, than those of the Member States, who were part of the former Soviet Bloc (Austvik 2016). Thus, formulating a common policy for energy was challenging due to variations in the size of economies, import independence, the size of major energy companies, and strategic relationships with suppliers. Member States were first concerned with their national supply security, closely associated with political stability. Only after addressing these primary goals were they willing to turn their attention to other energy policy strategies, such as environmental issues or the proper functioning of the internal energy market (Pointvogl 2009).

Tusk's proposal shifted the approach to energy policy from focusing on the single market and economic aspects towards strengthening energy security with the help of domestic fossil fuels. These aspirations were supported by an ideational framework that evoked strong normative considerations. In his initial proposal, security concerns were emphasised over environmental issues as "we need to fight for a cleaner planet but we must have safe access to energy resources and jobs to finance it" (Tusk 2014). Perceptions of Member States showed considerable variation as, for instance, the United Kingdom and the Czech Republic addressed the Energy Union in a non-paper calling for less supranational powers in energy policy. Germany, on the other hand, stressed the need to collaborate closely in the fields of energy efficiency and climate change in another non-paper (Zachmann 2015).

Ultimately, Tusk's original propositions to completely shift energy issues towards the domain of energy security did not materialise, as the final proposal emphasised the imperative to "move away from an economy driven by fossil fuels" (European Commission 2015a: 2). Moreover, the option of collective gas purchasing during a crisis, especially when Member States were dependent on a single supplier, was modified as a voluntary option. This step also brought the proposal in line with prevailing legal provisions set by the WTO and EU competition rules (European Commission 2015a). Hence, joint purchasing was framed as a regional option for those Member States that feared being blackmailed by Gazprom. Germany, the United Kingdom, and Western European countries in general were sceptical about the joint gas purchasing facility (Oroschakoff 2015), as this would have marked "a break with EU's fundamental liberal idea of an internal market with competition, and free movements of goods and services as a premise" (Austvik 2016: 379).

The energy industry held diverse views on the issue. Some West European energy companies had solid long-term contracts with Gazprom and, therefore, wanted as little involvement of the Commission as possible. Nevertheless, the proposal was generally well-received by the industry, given that the diversification of supply could open business opportunities in Europe's Mediterranean neighbourhood – a view that was echoed by the CEO of Italy's energy company Eni, Claudio Descalzi. Several CEEC companies also welcomed the prospect of the Commission's potentially enhanced bargaining power (Oroschakoff 2015). While some agendas made it into the final proposal of the Commission, others were reframed. Nevertheless, Tusk's bold call for the Energy Union drew attention to the EU's stark dependence on Russian gas and, consequently, the need for diversification of energy suppliers and strengthening security measures.

On 25 February 2015, the Commission proposed the Energy Union, based on three Communications forming the "Energy Union Package": "A framework strategy for a resilient Energy Union with a forward-looking climate change policy" (European Commission 2015a), "Achieving the 10% electricity interconnection target: making Europe's electricity grid fit for 2020" (European Commission 2015b), and "The Paris Protocol – A blueprint for tackling global climate change beyond 2020" (European Commission 2015c). In essence, the Energy Union was based on three main objectives that have shaped the EU's energy policy over recent decades. First, it should address issues regarding the security of supply to ensure the reliable provision of energy to every part of the EU; second, to create a competitive environment for energy providers to ensure affordable prices for households, businesses, and industry; and third, to tackle sustainability issues, which translates into lowering greenhouse gas emissions, pollution, and fossil fuel dependence (European Commission 2017a). To reach these goals, five mutually supportive and closely interrelated dimensions were addressed in the proposal. While each dimension represents a recurring theme of the EU's energy domain, this was the first time they had been embraced by one single proposal. Drawing on the theoretical model discussed in Chapter 2, these dimensions represent a new set of *intended goals*:

(1) *Energy security*, *solidarity*, *and trust* to be facilitated through the diversification of supply (energy sources, suppliers, and routes); close collaboration between Member States, transmission system operators (TSOs), the energy industry and related stakeholders to facilitate a high level of energy security for citizens and companies and to improve the EU's economic weight on global energy markets; more transparency on Intergovernmental Agreements (IGAs) related to the buying of energy from third countries. (2) *A fully integrated European energy market* to be created through an improvement of electricity and gas transmission systems, especially with regard to cross-border connections; strict enforcement of existing energy legislation, especially the full implementation of the Third Energy Package with regard to the unbundling and independence of regulators; enhanced regional cooperation; a wider choice of suppliers for consumers to choose from; and to diminish energy poverty. (3) Increasing *energy efficiency contributing to moderation of energy demand* to reach 27% of improved energy efficiency in 2030 (compared to the projected energy use in 2030). This goal should be attained by focusing on energy efficiency in the building sector and an energy-efficient transport sector, as this sector represents 30% of final energy consumption in Europe. (4) *Decarbonising of the economy* by 40% domestic reduction in greenhouse gas emissions compared to 1990 and by utilising the EU Emissions Trading System (ETS); and becoming the world leader in renewable energy with a share of 27% of renewable energy consumed in the EU in 2030.[2] (5) Finally, focusing on *Research, Innovation and Competitiveness* should help bring about the next generation of renewable technologies and storage solutions. Moreover, harnessing and further improving smart grid and smart home technology, clean fossil fuel and clean transport, and the world's safest nuclear generation should facilitate economic growth, jobs, and competitiveness. A better coordinated and aligned research strategy of the Member

States and the EU would help to achieve common goals and deliverables more effectively (European Commission 2015a).

The proposal for the Energy Union suggested a holistic approach towards energy policy, facilitating close collaboration of Member States and information sharing to improve energy security and trade, empowering consumers to take full advantage of the internal market, addressing fuel poverty and the social dimension of energy, improving measures to enhance environmental sustainability, and taking advantage of technological innovations and smart technology in the energy sector. The institution based the project around energy security, markets, and trade, while strengthening ideational components like environmental sustainability, solidarity and collaboration, and social concerns. The proposal built on preceding steps and policy instruments. According to a senior official in DG Energy, "[we were] not founding something genuinely entirely new compared to what [we had] before, but we re-evaluated policies and labelled it Energy Union" (Interview 4, 2018). These assertions align with the theoretical framework of this book, which contends that institutional change is incremental and rests firmly on path-dependent processes. These claims were also substantiated by the former Prime Minister of Latvia, Arturs Krišjānis Kariņš, who was part of the Committee on Industry, Research and Energy (ITRE) in the European Parliament.

> I think what has been going on for a good number of years is based on infrastructural development – cross border connections strengthening the connection of different regions – and the regulatory environment: starting with the Third Energy Package, where the big state monopolies were dismantled, and competition was introduced. The way I see it is that the proposals for the Energy Union are just a continuation of these measures. . . . And the ultimate goal is to open up the markets even more.
>
> (Interview 2, 2018)

In order to achieve these goals, the Commission proposed a coherent plan for an integrated governance and monitoring process as part of the policy cycle discussed in Chapter 2 to ensure that actions taken at European, regional, national, and local levels all contribute to the Energy Union's objectives. Moreover, annual reports on the state of the Energy Union to the European Parliament and the Council should address key issues and foster dialogue between the different institutions and stakeholders (European Commission 2015a). Ultimately, the intended goals of the Energy Union were rooted in the policy goals of previously implemented legislation. As Europe faced risks to energy security due to geopolitical tensions between Russia and Ukraine, the Energy Union was initially aimed primarily at energy security. However, the dichotomy in preferences among Central and Eastern European Countries (CEECs) and Western European states illustrates how endogenous and exogenous factors influenced policy preferences. Energy security concerns and the historical context for CEECs endogenously shaped preferences for a more interventionist Energy Union. Meanwhile, Western European states based their policy choices on economic considerations and exogenously given preferences, focusing on the completion of the SEM and environmental sustainability.

The Summer Package: advancing renewable energy and emissions reduction

In July 2015, the Commission presented the so-called energy 'Summer Package', the first set of proposals to launch the redesign of the European electricity market, revise the EU Emissions Trading System (ETS), update energy efficiency labelling, and deliver a new deal for energy customers. The revision of the ETS scheme was justified through the 2030 Climate and Energy Policy Framework (European Parliament 2015a) and endorsed in the conclusions of the European Council in October (European Council 2014). The European Council promoted a binding EU target of at least a 40% reduction of greenhouse gas emissions by 2030 compared to 1990 (which in practice meant a 43% reduction of GHG emissions in sectors covered by the ETS and 30% in non-ETS sectors). The essential tool for achieving this was a reformed and well-functioning ETS scheme. Thus, the annual factor to reduce the cap on the allowed permissions should be changed from 1.74% to 2.2% from 2021 onwards (European Council 2014) to increase the carbon price and encourage investment in renewable or low-carbon energy sources. In addition, under the summer package umbrella, energy labelling was revised to make it easier for consumers to make well-informed purchasing decisions (European Commission 2015e). Regarding the demand side, energy consumers should become better informed through transparent billing rules, price comparisons and enhanced bargaining power to take full advantage of the internal market. Lastly, a redesign of the energy market would improve cross-border connection, encourage greater investment in energy infrastructure, promote and integrate renewable energy sources, harmonise retail and wholesale prices, improve the EU's regulatory framework and ensure supply security (European Parliament 2015a). As an interviewee contended,

> Energy infrastructure is an essential part of the functioning of the internal market. However, in some cases it seems that powerful lobbying groups of some Member States try to hamper the development of infrastructure in order to protect their own share in domestic markets.
>
> (Interview 2, 2018)

This statement underlines the proposition that powerful political actors can use their power to change the rules of the game or to maintain the status quo, as proposed by the theoretical framework in the second chapter of this volume (Pierson 2000; Lockwood et al. 2017). Nevertheless, the proposals were an "important step towards implementing the Energy Union strategy with a forward-looking climate change policy" (European Commission 2015d: 1) and gave "prominence to the 'energy efficiency first' principle and put households and business consumers at the heart of the European energy market" (European Commission 2015d). Here, we can see normative factors playing a key role in policy development. The term 'Efficiency First' denotes the fundamental principle around which the European energy system should be designed, underpinning the entirety of the Energy Union project. Energy efficiency should be treated as an energy source in its own right, measured

through the value of energy it saves (European Commission 2015a). Efficiency First is understood as a policy measure,

> [to consider] the potential value of investing in efficiency (including energy savings and demand response) in all decisions about energy system development – be that in homes, offices, industry or mobility. Where efficiency improvements are shown to be most cost-effective or valuable, taking full account of their co-benefits, they should be prioritised over any investment in new power generation, grids or pipelines, and fuel supplies.
>
> (European Climate Foundation n.d.: 2)

The Commission emphasised energy efficiency as a central principle of the Energy Union, as it is an effective way to cut greenhouse gas emissions, helps all customers to save money, and enhances the EU's supply security due to decreased imports (European Commission 2015d).

Monitoring the Energy Union: the State of the Energy Union I

The proposal for the Energy Union sets requirements to closely monitor energy-related actions at the European, regional, national, and local levels and to annually inform the Parliament and the Council on the state of the Energy Union in order to define key issues and foster a policy debate (European Commission 2015a). Based on the theoretical framework, monitoring mechanisms are essential to help readjust how the policy output (albeit here understood as progress towards implementing legislation addressing the Energy Union) is translated into concrete action by various actors and stakeholders. Monitoring is an essential part of the policy cycle and is responsible for creating increasing returns. Integral parts of the policy cycle are based on monitoring mechanisms, subsumed as learning and coordination effects.

Therefore, the Commission presented a communication titled "State of the Energy Union 2015" on 18 November 2015 (European Commission 2015f). Maroš Šefčovič, then Vice President of the European Commission and in charge of the Energy Union, in a speech at the European Parliament on the state of the Energy Union on 24 November 2015, set out four key issues that needed special attention. The EU must retain its position as a global leader towards a low-carbon society and further develop financing instruments. Second, to make the transition towards an Energy Union feasible, it must be socially just and consumer-centred. Moreover, geopolitical matters remained a concern for an integrated energy policy, therefore, such issues must be tackled with well-adjusted policies towards suppliers, transit partners, and routes. Regarding Nord Stream 3 and 4, Šefčovič emphasised that "[t]hese pipelines, if built, will have to comply fully with EU law" (European Parliament 2015b, para. 3). Moreover, he pointed out that the Nord Stream Project will not become a project of common interest (PCI) as it would make the EU more reliant on Russian gas, which in turn would adversely affect the EU's Energy Security Strategy (European Parliament 2015b). Without going into detail, Nord Stream 2 was a contested pipeline that

should transport gas from Russia to Germany, bypassing the Ukraine.[3] In this regard, from a Historical Institutional perspective, unintended consequences unfolded for Member States partaking in the project as, over time, resistance towards the project emerged due to institutional constraints and formal rules. Finally, Šefčovič introduced a governance mechanism that should bring transparency and predictability to investors and businesses through an annual State of the Energy Union report, biannual reports on National Energy and Climate Plans, and sector-specific legislation (specifically concerning the 2030 targets) (European Parliament 2015b).

In sum, the first State of the Energy Union Report assessed the progress made and defined further *intended goals* regarding the five core dimensions addressed in the proposal for the Energy Union. The report set out the way forward in these dimensions concerning the decarbonisation of the economy, energy efficiency, and moderation of demand, a fully integrated energy market, energy security, solidarity and trust, and research and innovation and competitiveness (European Commission 2015f). To this end, the implementation of the Energy Union should be facilitated through national energy and climate plans, which were deemed necessary tools for a more strategic approach to planning and achieving the 2030 targets. Therefore, Member States should present National Plans in 2017, with a view to finalising their National Plans in 2018[4] so that they could be fully operational by 2021. To track the progress, the Commission proposed a coherent methodology for measurement, and a transparent monitoring system "based on key indicators" (European Commission 2015f: 16). Alongside the State of the Energy Union report, several other Energy Union deliverables and reports were adopted and published; among them a second list of project of common interest, an oil stock summary, a report on the implementation of the EU Energy Security Strategy, a climate action and an energy efficiency progress report (European Commission 2015h). In essence, monitoring is an integral part of the realisation of the Energy Union. Learning effects, coordination effects, and adaptive expectations unfold in established institutions and generate powerful driving factors that reinforce their stability and further development. However, this adaptive learning is also heavily biased towards institutional continuity (Pierson 2004: 260). Hence, positive feedback processes unfolded. To recall the policy cycle which contributes to increasing returns: the formulation of a new set of intended goals stands at the beginning, followed by the adoption of legally bindings acts, which in turn create policy outputs based on the transposition of provisions into concrete action by stakeholders, followed by monitoring processes that evaluate the outcomes.

The Sustainable Energy Security Package: ensuring transparency and resilience

The next incremental step for delivering the Energy Union was the Sustainable Energy Security Package presented in February 2016, a collection of proposals addressing the security of gas supply, transparency of Intergovernmental Agreements, EU strategy on LNG and gas storage, and the EU strategy on Heating and Cooling (European Commission 2016a). The energy security dimension is one of the cornerstones of the Energy Union's strategies. As proposed by the theoretical framework, incremental

steps lead to policy change and institutional development. Hence, all the legislation addressing the security dimension was strengthened and reinforced to endow the institution with greater capacities. The package contains a revision of the provisions on the security of gas supply 994/2010 (European Commission 2016b). The proposal itself is framed under Article 194 TFEU, which "recognises that a certain level of coordination, transparency and cooperation is necessary as regards EU Member States' policies on security of supply" (European Commission 2016b: 3). The Commission proposed stronger regional coordination facilitated through closer collaboration between Member States within their regions when conceiving security of supply measures. The respective action plans and emergency plans should then be peer-reviewed and approved by the Commission. Although the original regulation 994/2010 improved the security of gas supply, serious shortcomings were still identified regarding the cooperation between the Member States, as the predominately national measures were not well suited to deal with supply disruptions. A stress test conducted in the summer of 2014 revealed that disruption of gas supplies from the east would heavily affect the EU (European Commission 2014c).

As illustrated in Figure 6.2, the stress test conducted by ENTSO-G confirmed that South-Eastern European, Central-Eastern, and Baltic states were starkly reliant

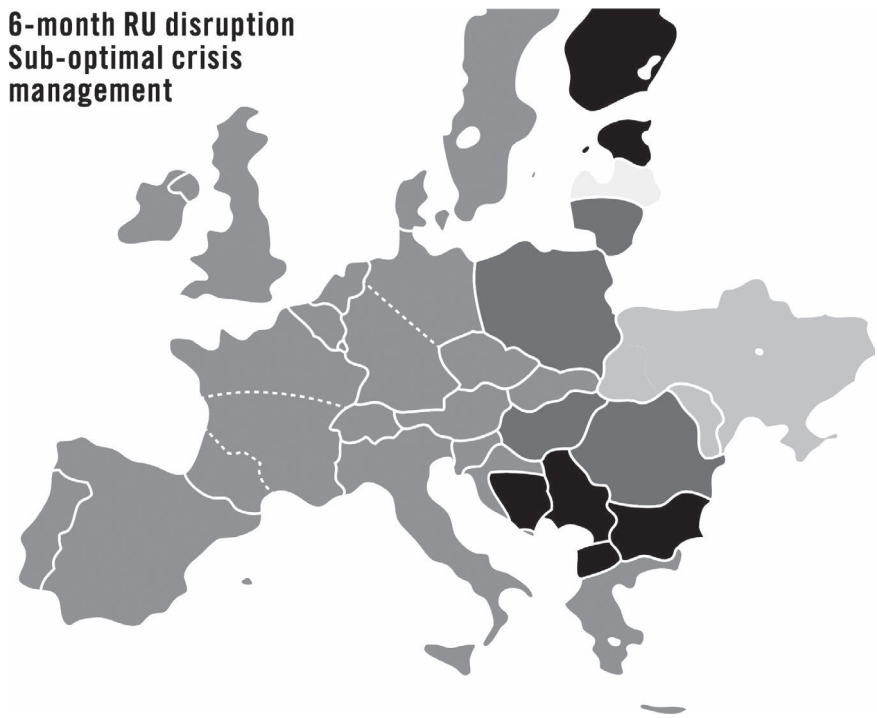

Figure 6.2 Modelling approach: six months Russian supply disruption under a non-cooperative scenario

Source: ENTSOG (2014)

on imported gas from Russia (ENTSOG 2014). The Commission's communication 'On the short-term resilience of the European gas system' (European Commission 2014c) stated that in the absence of cooperation between Member States, supply shortages of 40% (in some cases up to 100%) could affect Bulgaria, Serbia, Romania, and the former Yugoslav Republic of Macedonia and Bosnia and Herzegovina in both scenarios of a Ukraine transit and a full Russian supply disruption. Finland, Estonia, and Lithuania would be affected to almost the same degree if Russian gas imports were to cease. However, Poland and Hungary would also be affected slightly less, still accounting for 20% and 30% of shortfalls, respectively (European Commission 2014c). The Commission also emphasised the need to improve physical infrastructure. During the gas crisis of 2009, the Member States would have had the necessary gas capacities available. However, transferring gas to the affected Eastern European Member States was impossible.

Member States should, therefore, fulfil the so-called N-1 rule (an obligation introduced with Regulation 994/2010 and fully implemented on 3 December 2014), which requires Member States dependent on a single import pipeline to be still able to satisfy demand on extremely cold days in case of a failure of the main infrastructure.[5] Although 20 Member States already provided the necessary interconnections (Sweden, Luxembourg, and Slovenia were exempt due to their small and isolated gas markets), Greece, Bulgaria, and Lithuania did not fulfil the obligation in 2013 (European Commission 2014d).

The second tool addressing infrastructure shortcomings was further implementing the permanent bi-directional capacity, the so-called physical reverse flows. Physical reverse flows mean that gas can be transported in *both* directions, which helps shippers to swiftly re-route gas deliveries within the internal market if a supply disruption occurs. Here, the empirical evidence shows how initial policy steps in Regulation 994/2010, which introduced bi-directional capacity, further deepened the policy framework. These empirical findings support the theoretical framework of this book, which posits that institutional transformation is the product of incremental adjustment and gradual change. The amount of bi-directional cross-border interconnectors increased from 24% in 2009 to 40% of all interconnection points in 2014. However, the Commission emphasised that the flexibility of the gas grid still left room for improvement (European Commission 2014d). Similarly, the proposal for a revision of regulation 994/2010 called for further extension of the *infrastructure standard* (the N-1 rule) to not only account for a capacity-based approach but also provide a more thorough analysis to capture gas flows, creating a further set of intended goals. It also promoted extending the provisions on reverse flows to enable a permanent reverse flow capacity of interconnection points (European Commission 2016b).

The proposal additionally incorporated a new 'solidarity principle' to the *supply standard* to ensure a continued supply of energy to protected customers,[6] in the event a Member State declares a state of emergency. Under this principle, neighbouring countries would be obliged to supply gas to the distressed Member State, potentially reducing their own supply to non-protected customers, such as large-scale enterprises. Here, a strong normative stance based on ideational factors can

be identified, corroborating assumptions of the proposed theoretical framework that endogenous preferences permeate and influence the institutional matrix. Member States were not only encouraged but also would be *legally obliged* to help each other in the event of an energy crisis. Furthermore, supply contracts between natural gas companies and third-country suppliers were not sufficiently transparent, and the Commission called for additional transparency measures to create coordination effects within the institution. Gas companies would be required to notify the national competent authority and the Commission when contracts relevant to the security of supply are signed or amended. This applies to contracts that together (or on their own) concern more than 40% of the annual gas consumption in the Member State (European Commission 2016b).

The Sustainable Energy Security package also proposed an amendment of Decision 994/2012 regarding International Governmental Agreements (IGAs) in the field of energy (European Commission 2016c), as "[a]n important element in ensuring energy (and in particular gas) security is full compliance of agreements related to the buying of energy from third countries with EU law" (European Commission 2015a: 7). Based on the theoretical framework addressed in Chapter 2, strong path-dependent processes were visible as the revision called for a much stronger regulatory regime. The intriguing point here is the fact that actors must face unintended consequences regarding their policy choices as they might be constrained by previously established norms and regulations, which can limit their ability to attain goals based on specific preferences. The revision would contribute to the proper functioning of the internal market and energy security and enhance the cost-effectiveness of the EU's energy supply and solidarity between Member States (European Commission 2016c). Adopting Decision 994/2012, setting up an exchange mechanism for information, obliged Member States to inform the Commission about existing and new bilateral energy agreements with third countries. However, the critical issue with the first legislative act was that in the case of new agreements, Member States were required to provide the exact modalities to the Commission only *after* these agreements had already been concluded. Around one-third of the notified IGAs did not comply with EU law with regard to questions of the Third Energy Package (for instance, unbundling, third-party access, and tariff setting) and competition law (prohibition of market segmentation). However, no Member State was able to terminate or renegotiate the non-compliant IGAs under scrutiny. This predicament arises from the complex legal nature of IGAs. Once these agreements are signed, they are legally binding under public international law. Hence, it is nearly impossible for the concerned Member State to terminate or renegotiate the IGA without the agreement of the third country, especially in the absence of a termination or suspension clause. This legal stumbling block practically tied the hands of the Commission even if a contract infringed on compliance with EU law (European Commission 2016d). Hence, the proposal for an amendment of Decision 994/2012 concluded that the IGA Decision in its current form was inefficient-in particular, due to the legally binding *ex-post* assessment of IGAs – and did not transform non-compliant IGAs into compliant ones.

Moreover, no Member State submitted a draft agreement to the Commission for a voluntary *ex-ante* check. The Commission considered Decision 994/2012 ineffective and, hence, proposed the Commission's involvement *before* agreements were concluded. An ex-ante assessment was therefore introduced to remedy potential conflicts between the obligations of Member States under international treaty law and EU law. Member states should, therefore, not conclude proposed IGAs or amendments until the Commission informs the Member State of any doubts and its opinion. Afterwards, the Member State "shall take utmost account of the Commission's opinion" (European Commission 2016c: 8).

A third proposal within the package addressed an EU strategy for liquefied natural gas and gas storage. Due to geopolitical challenges and the EU's stark dependence on gas imports, the Commission highlighted the requirement to take full advantage of gas storage and international LNG markets to make the supply system more flexible and resilient. Missing infrastructure for both LNG and gas storage hampered such aspirations; regional differences existed in terms of access to LNG gas supply, and some Member States were dependent on a single supplier. Improvements in the infrastructure creating access to international LNG markets, the completion of the internal market to attract LNG and investment in infrastructure, and to engage in close cooperation with international partners to promote free and transparent markets were conceived as a means to exploit the growing international LNG market and to attract new investment (European Commission 2016e). In addition, and interlinked with LNG, the EU's gas storage facilities needed to be improved in order to balance the system and enhance gas security and the resilience of the gas supply (particularly in regard to supply disruptions). Therefore, several key projects of common interest (PCI) were identified, including transmission, LNG terminals and storage, to end single-source dependency and to give all Member States access to LNG. As only a limited number of Member States had sufficiently developed LNG markets, Member States, together with national regulatory authorities (NRAs), should aim to complete the internal market, remove the remaining regulatory, commercial, and legal barriers, and provide equal access to these markets for all participants. Moreover, transmission tariffs to and from storage varied substantially between Member States and therefore EU-wide network codes should be adjusted and further developed (European Commission 2016e).

Lastly, the Commission presented a fourth proposal concerning an EU strategy on heating and cooling. This focused on the decarbonisation of buildings, as heating and cooling consume half of the EU's energy, and 75% of its fuel comes from fossil fuels. The goal should be achieved through the renovation of existing building stocks, together with increased efforts in energy efficiency and renewable energy, bolstered with the help of green electricity and district heating (European Commission 2016f). The communication set out solutions based on reviews of existing legislation, the Energy Performance of Buildings Directive (EPBD) (EP/Council 2010b) and the Energy Efficiency Directive (EED) (EP/Council 2012b). The reviews sought to improve further national energy efficiency action plans to reduce demand for heating and cooling and to enhance the energy performance of building stocks. The review of the EED also strived to ameliorate metering and

billing information for consumers on energy consumption, as the frequency of metering and billing information may still not be sufficient to provide consumers with accurate real-/near-time consumption data (European Commission 2016f). This would enable consumers to make better-informed decisions about their energy consumption and effectively regulate their energy use. Intelligent metering systems also enable frequent billing based on actual consumption (EP/Council 2012b). In addition, the review of the Renewable Energy Directive (EP/Council 2009a), together with the EED and the EPBD, sought to promote renewable energy to speed up a replacement of fossil fuels used in boilers, district heating and combined heat and power (CHP) (European Commission 2016f). Smart systems, smart grids, smart metering, and smart homes and buildings should complement the measures to tackle decarbonisation and should be promoted by a modern market design.

The Winter Package: enhancing market integrity and climate change mitigation

To complement the Sustainable Energy Security Package, the Commission presented another important package of measures on 30 November 2016 to create a stable framework necessary to facilitate a clean energy transition. The proposed measures should significantly contribute to creating the Energy Union, consisting of eight different proposals. The comprehensive package aimed to speed up growth and job creation in the energy sector. The objectives of the winter package were subsumed in the Commission's communication 'Clean Energy for all Europeans' (European Commission 2016o). The package should bring about EU leadership in clean energy technology and renewable energies; it should enable the EU to deliver the commitments agreed upon in the Paris Agreement ratified on 5 October 2016, put energy efficiency first, provide a fair deal for customers and improve the competitiveness of the whole economy. By mobilising 177 billion euros of public and private investment per year, from 2021 onwards, the package should generate an increase of up to 1% of GDP over the next decade and create 900.000 new jobs (European Commission 2016o).

The proposals can be grouped into three different categories: proposals amending existing market provisions, proposals addressing existing climate change provisions, and proposals for entirely new measures (Hancher & Winters 2017). Some of the proposals were so-called 'recasts', meaning a full revision of the legal provision was intended. The first category entailed a proposal for a new directive addressing the internal electricity market and repealing Directive 2009/72/EC (Electricity Directive) (European Commission 2016g), a regulation addressing the internal electricity market and repealing Regulation 714/2009 (E-Regulation) (European Commission 2016h), and a new regulation on the Agency for the Cooperation of Energy Regulators (ACER), repealing Regulation 714/2009 (European Commission 2016i). These legal acts were all part of the Third Energy Package, adopted in 2009. The three recast acts should enhance ". . . legal clarity. Recourse to an amending act may have been inadequate to address a wide set of new provisions. The choice of the instrument thus called for a revision of rules already

adopted and implemented, as a natural evolution of current legislation" (European Commission 2016g: 12).

The second set of legal provisions addressed climate change goals and how these should interact with the new market design (Hancher & Winters 2017). This set entailed a proposal for a new Energy Efficiency Directive amending Directive 2012/27/EU (European Commission 2016j) and a revised Renewable Energy Directive amending Directive 2009/28 (European Commission 2016k). In addition, a proposal for a directive concerning the energy performance of buildings was put forward, amending existing Directive 2010/31 (European Commission 2016l). The third set of proposals implemented entirely new measures. A proposal for a regulation on risk-preparedness in the electricity sector was published (European Commission 2016m), as well as a regulation on the governance of the Energy Union (European Commission 2016n). The winter package can be seen as a substantial step towards the realisation of the Energy Union, as it introduced novel legal provisions and provided the legal instruments for a redesign of Europe's electricity market, hence deploying a new set of intended goals for the sector.

Monitoring: the State of the Energy Union II

Shortly after the Winter Package was published, the Commission published the Second Report on the State of the Energy Union on 1 February 2017 (European Commission 2017b). The report highlighted the progress made since the publication of the first State of the Energy Union in November 2015, representing the monitoring process within the policy cycle, as explained in Chapter II. In addition, the Commission published an accompanying document, a staff working document (SWD), that refined a set of specific key indicators that were conceived to monitor and analyse the progress on meeting the Energy Union objectives. The monitoring approach and methodology in this document are built on a former SWD, which was initially developed for the first State of the Energy Union package and can be understood as a progression of initiated feedback processes. It was a first attempt to "aggregate a set of relevant key indicators to quantify and measure progress on EU energy and climate objectives and targets" (European Commission 2017c: 6). The new SWD built on these initial steps and was based on feedback from Member States and stakeholders. It modified and amended the list of indicators and highlighted where new indicators and better statistical data were needed (European Commission 2017c). Overall, the working document served as a powerful tool to coherently and uniformly assess the progress made in every Member State regarding the five key dimensions defined in the Energy Union proposal.

The second State of the Energy Union report highlighted significant trends and policy observations for attaining the Energy Union. The report emphasised that overall, good progress was made in delivering the Energy Union goals, particularly regarding the 2020 energy and climate targets. It underlined that the Energy Union should be about more than energy and climate alone, but a holistic project striving to accelerate the modernisation of the EU's entire economy, making it low carbon and energy efficient in a socially fair manner (European Commission 2017b). In

this sense, it serves as a blueprint and complementary tool for the European Green Deal. From an institutional standpoint, this can be understood as a widening and deepening of the institutional matrix over time based on an expanding set of institutional rules. In addition, the report emphasised the stark importance of the recurring theme of external energy policy as a fast-changing and volatile geopolitical environment that required a coherent approach to energy diplomacy to secure the long-term economic interests and the well-being of Europe and its citizens (European Commission 2017b).

In terms of greenhouse gas emissions, in 2015, they were 22% below the 1990 level, and despite a short peak in 2015, carbon emissions followed a decreasing trend. Regarding the renewable sector, based on data from 2014, 16% of the EU's gross final energy consumption was generated by renewables (European Commission 2017b), and an estimated share of close to 16.4% in 2015. Thus, the EU was well on its way to reaching its 20% target by 2020. However, the Commission urged Member States to maintain momentum to reach their national goals. For the EU, renewable energy played a key role in the EU economy, with a turnover of 144bn euros in 2014 and employing more than one million people (European Commission 2017d). A further significant trend was that the EU continued to decouple its economic growth from its greenhouse gas emissions. According to the report, during the period from 1990 to 2015, the EU's gross domestic product (GDP) grew by 50%, whereas carbon emissions, as already mentioned earlier, decreased by 22% (European Commission 2017b). With regard to reaching the 20% energy efficiency target, the EU managed to lower its energy consumption significantly, as final energy consumption (the use of energy by end users such as residential consumers, industry, and the services sector *excluding* energy used by the energy sector) had reached its 2020 target by this point. In 2014, the EU consumed 1062 Mtoe, which was already 2.2% below the targeted 1086 Mtoe as proposed in the 2020 goals (European Commission 2017e).

However, the report also stressed the necessity to empower consumers more effectively, as many still could not participate in the market, and additional measures had to be provided to protect vulnerable customers. An infrastructure assessment revealed that certain interconnections and internal lines to integrate the internal market further were still missing or underused (e.g. in Germany, Poland, and the Czech Republic). In addition, the next State of the Energy Union report (the third) should single out projects of common interests (PCIs) where insufficient progress had been made. The report also stressed the need to intensify investment efforts to reach the EU's climate and energy targets, as about 379 billion euros would be needed every year. To this end, different investment funds – including the European Fund for Strategic Investment (EFSI) and the European Structural and Investment Funds (ESIF) – and other flexible investment platforms should help to advance the work on investments. On the external dimension, not only should global leadership be attained in the field of climate action, but its rule-based liberal market principles should be strengthened in multilateral fora and bilateral agreements to endorse the functioning, integration and reform of international energy markets (European Commission 2017b).

The Clean Mobility Packages: transition to sustainable transportation

The subsequent building blocks of the Energy Union Project were two 'Clean Mobility Packages' (European Commission 2017f; European Commission 2017g), published on 31 May 2017 and 8 November 2017, respectively. Although these proposals shall not be thoroughly assessed, as they lie outside the scope of this volume, they are mentioned briefly to depict the multileveled nature of the Energy Union and the high issue density it created. The "consequence of issue density is the oft-cited process of spillover: the tendency of tasks adopted to have important consequences for realms outside those originally intended" (Haas 1958 as cited in Pierson 1998: 40). Pierson elaborates further that the integration of certain aspects of complex modern societies begets integration in other components, as it proves hard to isolate one unit from the other effectively. In addition, the more tightly coupled different policies are, the higher the likelihood of unanticipated effects and that policy actions in one realm will affect another. "As the density of EC policy-making increases, such interaction effects become more prevalent, unintended consequences multiply, and the prospect of gaps in member-state control will grow" (Pierson 1998: 41). Moreover, as Keohane puts it, "one substantive objective may well impinge on another and regimes will achieve economies of scale, for instance in negotiating procedures that apply to a variety of potential agreements within similar substantive areas of activity" (Keohane 1982: 340).

Analysing the two sets of proposals makes the interconnectedness of different policy areas visible. The first set of proposals from March 2017, labelled 'Europe on the Move' (European Commission 2017f), proposed a comprehensive set of initiatives that would make traffic safer, encourage smart road charging, reduce CO2 emissions, air pollution and congestion, cut red-tape for businesses, fight illicit employment and ensure proper conditions and rest times for workers. Ultimately, the "long-term benefits of these measures will extend far beyond the transport sector by promoting growth and job creation, strengthening social fairness, widening consumers' choices and firmly putting Europe on the path towards zero emissions" (European Commission 2017f: n.p.). The second set of proposals, from November 2017, addressed the reduction of CO2 emissions of new passenger vehicles and vans to accelerate the transition to low and zero-emission vehicles. Along these lines, the average CO2 emissions of new cars and vans would have to be 30% lower in 2030 compared to 2021 (European Commission 2017g). The proposals were grounded in the Energy Union strategy, which set the transition to a low-carbon, energy-efficient transport sector as one of its key areas, illustrating the spillover into other policy areas.

Monitoring: the State of the Energy Union III

The Third Report on the State of the Energy Union was published on 23 November 2017 (European Commission 2017h). It highlighted that the Commission had nearly published all proposals necessary to strengthen the EU's leadership in climate action, the energy efficiency first principle, and to provide a good deal

for energy customers. In this regard, the share of renewable energy in the overall energy mix of the EU was still on track to deliver the 20% target in 2020. The cost of renewables was falling (onshore and offshore wind, photovoltaic), which was a sign of investors' confidence in technological progress, well-conceived policies, and electricity market reforms. Moreover, the decoupling of gross domestic product (GDP) and greenhouse gas emissions continued. Between 1990 and 2016, the EU's GDP increased by 53%, whereas total emissions fell by 23% (European Commission 2017h), compared to a 50% GDP growth and 22% emission decrease between 1990 and 2015 (European Commission 2017b). Final energy consumption – the use of energy by end users such as residential consumers, industry, and services sector – had already reached its 2020 goal in 2014 (European Commission 2017e). Moreover, the report highlighted that primary energy consumption decreased by 2.5% compared to 1990; however, between 2015 and 2020, the EU still needed to decrease its primary energy consumption by 3.1% to reach the 2020 energy efficiency target.[7]

The Commission warned that, although many positive developments occurred in the energy sector, a transition to clean energy may be hindered due to fossil fuel subsidies. These distorting practices comprise subsidies to uneconomic coal mines, capacity mechanisms for emission-intensive power plants, tax relief for diesel fuel or company cars, and other similar measures. In addition, subsidising fossil fuels also increased the risk of investment in stranded assets, which needed to be replaced before the end of their lifespan (European Commission 2017h). According to the report, further important action would be needed to complete the Energy Union as the project had reached a "critical juncture" (European Commission 2017h: 17).[8] Member States should, therefore, accelerate their respective integrated national energy and climate plans to create a hospitable environment for investors, hence generating certainty and confidence in the markets, and the co-legislators should accelerate their efforts to reach a swift agreement concerning the proposals. Maroš Šefčovič, Vice-President of the European Commission for the Energy Union under the Juncker Commission, emphasised that the focal point should be placed on the European Parliament and the Council negotiations based on the Commission's proposals to ensure that the Energy Union was "no longer a policy but a well-framed reality" (Politico 2017). Miguel Arias Cañete, the Commissioner responsible for climate action and energy, also stressed the necessity to step up and stated that "[w]e, at the moment, are in the most difficult part, in acting like honest brokers between the Council and the Parliament" (Politico 2017).

Since the publication of the third State of the Energy Union report, five further State of the Energy Union reports were adopted to evaluate the progress of the Energy Union. Based on the proposed framework of this book, the reports are a central component of realising the intended goals and contribute to the policy feedback and monitoring processes, thus creating increasing returns. Adaptive expectations unfold based on former experiences, learning effects occur between actors, and the effectiveness of a diverse array of policy tools is assessed and monitored. The processes contribute to increasing returns as various actors' expectations are streamlined, and they put stock in the framework to provide effective outcomes

and maximise utility. Whilst an analysis of every report would create a plethora of empirical data, the important takeaway for the reader should be the appreciation of the reports in terms of the endogenous institutional momentum they create. The reports are a central component of policy feedback processes, and their influence on implementing various policy instruments is considerable.

Path dependence at work: illustrative case studies

By early 2024, 45 legislative acts and policy initiatives had been adopted within the framework of the Energy Union. Some of them were subsequently amended under the European Green Deal (EGD) and the REPowerEU framework. However, the crucial insight is that most of the energy provisions under the EGD and REPowerEU were the continuation of the existing governance framework and not institutional innovations. All the new energy legislation is comprehensively addressed in Chapter 8. Regarding institutional endowments, a Member State official stated that "[t]he project of the Energy Union considerably strengthens the powers of the Commission. It gives them an additional reference point, an additional argument. And I wouldn't say that it strengthens the position of the Member States. It's rather used as a vehicle to transfer more competence to the EU level" (Interview 9, 2018). Thus, the Energy Union not only strengthens the institution but also perpetuates an efficient institutional path. As the empirical evidence suggests, the Energy Union seems to provide benefits for Member States, not only from a security standpoint, furthering normative obligations (as discussed earlier in this chapter), but also from a market perspective. A Member State official from the Central and Eastern European region contended that

> [t]he Energy Union project as such is a very important achievement. We see a lot of benefits that an Energy Union can give us. Our energy policy and our own views are aligned with the topics of the Energy Union and how to move forward, and we also believe in the importance of regional cooperation. And we see a lot of benefits in it. Not only in security of supply but also in costs. If we work together, we can produce cheaper energy. If our neighbours produce renewable energy much cheaper, and more efficiently, why should we do it in our own country if it is expensive? We want to do it in a cost-efficient way.
>
> (Interview 10, 2018)

Two case studies serve as evidence of how institutional processes constrained Member States and how incremental policy change was facilitated. Among the adopted provisions for the Energy Union is a revision of Decision 994/2012, the information exchange mechanism on intergovernmental agreements between Member States and third countries in the field of energy. As the proposal for Decision 994/2012 faced fierce resistance by Member States, the case provides invaluable insight into how path-dependent processes entrenched actors deeper within the institutional makeup, as explained in detail in Chapter 2. Moreover, Decision 994/2010 concerning measures to safeguard the security of gas supply was also revised.

Both provisions serve as excellent examples of the incremental change of institutional rules according to a Historical Institutionalist (HI) framework, highlighting the gradual expansion of formal rules, sometimes against the specific preferences of Member States or where they cede to maintain regulatory oversight. Their content covers sensitive issue areas, which the co-legislators came to terms with following demanding negotiations, and which helped bolster the Energy Union framework with promising results. These legal provisions are especially suited to analyse how certain assumptions of Historical Institutionalism play out in practice and how policy development unfolds over time within an institution in terms of the process of path dependence, the short-time horizons of policymakers – where they cannot address future developments based on present opportunities, and the inability of Member States to foresee how decisions at a certain point in time might affect and shape decisions in the future – the phenomenon of unintended consequences.

Provisions regarding the security of gas supply

As discussed in this chapter, Regulation 994/2010 was not a game-changer. From an HI perspective, it was a moderate step in granting the Commission more competence to influence the external dimension of energy policy and supply security. The regulation did not yield the anticipated outcomes, and there was still considerable scope to strengthen the EU's preparedness and ability to effectively respond to a gas supply crisis (European Commission 2016p). An impact assessment in 2016 identified several issues affecting energy security: behavioural biases based on purely national approaches when designing security of supply policies; external factors such as the oversight of third-country suppliers' behaviour (exemplified by the ongoing Russo-Ukrainian war at the time of writing); the lack of commercial information about the emergency situations hindering the realisation of appropriate measures; and technical issues, including insufficient and inadequately protected infrastructure. As a consequence, the gas system remained vulnerable to external shocks. Additionally, some of the deadlines prescribed in Regulation 994/2010 were not adhered to, especially regarding the submission of Preventive Action and Emergency Plans. Concerning the reverse flow obligation, 32 interconnection points were still not equipped with bi-directional capacity (out of 53 in total). The proposal for revising the provisions on the security of gas supply 994/2010 (European Commission 2016b) addressed these issues.

The revision of the Regulation on Gas Security of Supply (EU) 994/2010 was one of the actions identified and framed within the dimension of 'energy security, solidarity and trust', one of the five key dimensions in the Energy Union package (European Commission 2016p). Regulation (EU) 2017/1938 (EP/Council 2017b) was signed on 25 October 2017 and entered into force on 1 November. The legal text is of considerable scope compared to its predecessor; the document is more than double the size of Regulation 994/2010. Provisions concerning the various aspects of supply security are addressed in great depth, including a considerable amount of complexity and a much broader scope than its former incarnations.

In a nutshell, all the policy instruments of the former regulation were incorporated in Regulation 2017/1938. However, provisions were formulated in greater detail and with less leeway for misinterpretation. Thus, path-dependent processes can be confirmed: the depth and scope of earlier legal provisions were enhanced, and Member States faced a broader set of obligations. The regulation reinforces the role of 'Competent Authorities' (Article 3) and the Gas Coordination Group (GCG) (to facilitate the coordination of measures of Member States concerning the security of gas supply) (Article 4). Article 5 addresses the infrastructure standard (the N-1 formula and bi-directional capacity) with a much more complex methodology and a high degree of technical specifications regarding their calculation (as further specified in different annexes). Proposals for enabling or enhancing bi-directional capacity or seeking exemption must be accompanied by detailed cost-benefit analyses based on multiple indicators. Investment decisions are taken by all Member States if bi-directional capacity is not required by the market but is considered necessary for the security of gas supply purposes. To harmonise risk assessments and the Preventive Action and Emergency Plans in different Member States (which were submitted in 2019 and which were a hindrance to the effectiveness of Regulation 994/2010), the regulation puts forward specific provisions that have to be strictly fulfilled. For instance, it includes a Union-wide simulation of gas supply and disruption scenarios.

Additionally, action and emergency plans must be clearly defined, transparent, proportionate, and non-discriminatory (Articles 6–10). Regional cooperation is fostered as, based on identifying major transnational risks to the security of supply, 13 regional risk groups are established, reflecting the main European gas supply routes. These groups should serve as the basis for enhanced regional cooperation and carry out a common assessment on the 'risk group level' (Article 7–2). Different levels of crises – three in total, with different levels of impact – were defined to ensure that the response to a crisis is appropriate (Article 11). From a Historical Institutionalist standpoint, these regional groups provide a mechanism for developing further feedback processes based on coordination effects. Various actors develop a shared understanding of their actions and mutual behaviour, resulting in the adaptation of expectations regarding the performance of the institution – in this case, how to behave in an emergency to maintain supply security.

Most intriguingly, an article on solidarity was introduced in the regulation. Based on this solidarity principle – in turn founded on Article 194 in the Lisbon Treaty – in the event of a severe gas supply crisis, neighbouring countries would have the legal obligation (as a binding legal mechanism) to assist each other to guarantee the secure supply of gas to protected customers, including households.[9] This example highlights the significant influence of ideational factors on the institutional setting, even in areas traditionally dominated by market forces and security concerns. These areas are often associated with 'high politics' – sectors which are critical to national security and economic stability – underscoring the pervasive nature of ideational influences. Moreover, under such circumstances, Member States who provide another Member State with gas must "take the necessary measures to ensure that the gas supply to customers other than solidarity protected customers

in its territory is reduced or does not continue to the extent necessary and for as long as the gas supply to solidarity protected customers in the requesting Member State is not satisfied" (Article 13). Hence, a Member State is legally obliged to decrease the supply to its own commercial entities to satisfy the gas demand of protected customers in another Member State. Indeed, it is a powerful provision that instigates ideational momentum and displays a strong normative connotation. Of course, such measures are only to be taken as a last resort and when market-based measures and measures defined in emergency plans are exhausted. From an economic standpoint, it is intriguing that in terms of the exchange of information, the regulation also requires Member States to communicate all contracts with suppliers that account for 28% of annual gas consumption in a specific Member State. This obligation also applies to commercial undertakings, however, the "notification obligation shall not cover price information" (Article 14). Self-evidently, the Commission must monitor the implementation of Regulation 2017/1938, report the outcome to the European Parliament and the Council, and, when necessary, recommend the amendment of the regulation (Article 17).

Even when viewed critically, it is evident that the new legislation is significant and more potent than its predecessor. The regulation serves as the forefront of efforts to foster the security of supply, enabling the Union to respond to a supply crisis and provide concerted action. When comparing the first security of supply *decision* of 2004 to this *regulation*, the first policy instrument appears weak, with almost no added value for the institution. The second regulation of 2010 already endowed the institution with more capacity to act. However, the revision of 2017 considerably strengthened various obligations and rules. Consequently, from a Historical Institutionalist point of view, the gradual and incremental development regarding instruments addressing the security of supply serves as invaluable evidence of incremental institutional change and path-dependent processes.

Provisions concerning intergovernmental agreements

As already mentioned, the provisions on the information exchange mechanism on intergovernmental agreements (IGAs) and the security of gas supply regulation offer especially fascinating cases for further examination. These provisions directly affect the EU's ability to shape the external dimension of energy policy and the contractual relations of Member States with third-country suppliers. Both considerably strengthen the legal powers at the EU's disposal and touch upon energy policy apprehended as *high politics*. They address specific aspects of supply security, for instance, the dependence on gas supply from Russia and energy prices associated with the supply contracts. Given the economically sensitive information these contracts contain, some Member States have vested interests in keeping them within the intergovernmental sphere of energy policy. These contracts not only directly address and affect the core functions of a Member State but also determine whether certain Member States receive more favourable conditions than others. These contracts heavily affect energy prices for both wholesale and retail markets. They directly correlate with the productivity of Member States, impact prices on the

retail sector, with vulnerable consumers amongst them, affect the attractiveness for investors, and play a significant role in the welfare of a Member State in general. In this regard, both decisions constrain Member States' possible options regarding how to engage with third-country suppliers, and they help to create a level playing field for all 28 Member States.

In order to fully understand the importance of Decision (EU) 2017/684 (EP/Council 2017a), we must focus on its predecessor, Decision 994/2012. In hindsight, an assessment of the effectiveness of Decision 994/2012, establishing an information exchange mechanism regarding IGAs with third states, which the Council and the European Parliament adopted on 25 October 2012, shows quite mixed results. As laid out in a previous section, the decision obliged Member States to inform the Commission about all *existing* bilateral agreements with third-state suppliers. Decision 994/2012 should have enhanced transparency and created solidarity and confidence between Member States. The decision was conceived to ensure that IGAs are strictly aligned with EU law, respect and follow existing internal market rules and that IGAs bolster and reinforce the EU's energy security strategy. After submitting an IGA to the Commission, the Commission would then have nine months to assess whether the agreement was in line with existing legal provisions. In addition, Member States "should have the option of informing the Commission of a new intergovernmental agreement with a third country before or during the negotiations thereof" (EP/Council 2012a: 14). The Commission should also have the option, on its request, to participate as an observer, however, only if the Member State under scrutiny agrees. Member States, on their part, should have the possibility to invite the Commission to assist them during negotiations with third countries. The decision also obliged the Commission to report the effectiveness of Decision 994/2012 to the European Parliament, the Council and the European Economic and Social Committee. The primary limitation of Decision 994/2012 was its *ex-post* assessment of IGAs, where Member States had to report the IGAs only *after* the agreements were finalised. Under the regime of Decision 994/2012, if an IGA, governed by international law, was found to violate EU energy law, it was very challenging, if not impossible, to renegotiate it due to political factors and international trade law.

Based on an impact assessment carried out by the Commission as required by Decision 994/2012 (Art. 8), around one-third of the notified IGAs, which were highly relevant, contained provisions that were not compliant with EU law.[10] In addition, some of these non-compliant IGAs created very complex legal situations within Member States, between Member States, and with third countries (European Commission 2016q). In terms of the effectiveness of the IGA decision as the *policy outcome*, based on the policy cycle elaborated on in Chapter 2, the Commission concluded that while the decision was generally useful in identifying IGAs that were incompatible with EU law (European Commission 2016q), it did not manage to transform concluded non-compliant IGAs into compliant ones. Moreover, the decision did not directly impact Member States' negotiations with third countries (European Commission 2016d).

Member States fiercely opposed the decision as they deemed it to heavily infringe on their sovereignty, given the delicacy of the subject matter during the negotiation

process, and they worked hard during negotiations to retain their power (Interview 1, 2018). As we can see, Decision 994/2012 was a double-edged sword in terms of its effectiveness. On the one hand, the Commission tried to 'get a foot in the door' regarding Member State's agreements with third countries. It established a legal provision that shifted energy policy from a market-centred approach, which addressed the external dimension of energy policy via the internal market to one that empowered the Commission with a more assertive role on the external dimension. On the other hand, the mandatory assessment revealed that, although the provision was novel in terms of its content, it demonstrated no effectiveness in creating a level playing field for market participants, as the IGAs could not be altered in hindsight. Solidarity, a binding force emphasised in the provision, needed to be addressed appropriately. The revised version on IGAs, Decision (EU) 2017/684 (EP/Council 2017a), represented a significant improvement in this regard. According to Roeben (2018),

> the Commission's oversight has been strengthened, procedurally and substantively. The reformed decision provides for obligatory *ex-ante* review of binding agreements on gas and oil, which will have a suspensory effect. Member States remain able to sign the agreement but will have to take the 'utmost account' of the Commission's opinion.
>
> (Roeben 2018: 222–223)

This development strongly supports the Historical Institutionalist claim that unintended consequences affect actors when embedded within an institutional setting. Some powerful Member States, with Germany, Italy, and France amongst them, *opposed* an ex-ante assessment of IGAs during the initial negotiations of the first decision in 2012. However, due to the Energy Union project 2015, which was heavily strengthened by the conclusions of the European Council in December 2015 (European Council 2015), the revision was much more ambitious than its predecessor. The European Council decision of December 2015 made unmistakably clear that *all* further legislation must be aligned with the Energy Union goals and that "[a]ny new infrastructure should entirely comply with the Third Energy Package and other applicable EU legislation as well as with the objectives of the Energy Union" (ibid: 7). Moreover, the decision strengthened the obligation to embrace the notion of solidarity where energy provision was concerned. The Parliament also pushed for strong provisions in the decision. Thus, formerly reluctant Member States had no choice but to agree to the proposed amendments of the Commission. As a Member State official stated,

> The Energy Union project is more than the sum of its constituent parts. And the European Council decision of December 2015 was the catalyst to help the IGA decision come to life.
>
> (Interview 8, 2018)

Decision (EU) 2017/684 was adopted on 5 April 2017 (EP/Council 2017a) and improved the institutional framework to a considerable degree. This time, due to

constraints of possible policy options, it did not face the strong opposition from Member States that it had encountered during the negotiations of the first decision. The reviewed decision introduced a mandatory ex-ante assessment of IGAs concerning their compatibility with EU legislation by the Commission (Article 3–2). The European Parliament suggested a broader approach in terms of its application, addressing all IGAs related to gas, oil, and electricity. However, a compromise was reached. Only IGAs related to electricity would be subject to ex-post compliance checks for the moment, however, a review clause left room to introduce ex-ante checks at a later stage (European Parliament n.d). As a senior official at DG Energy, who took part in the legal design of the decision, stated,

> The key revision is the mandatory ex-ante mechanism for gas and oil. The mandatory ex-ante mechanism was certainly the most difficult part to negotiate. Because you have to see that it is very important and a powerful tool. Compliance with our EU law ensures the security of supply, so it is not purely a legal exercise. The revision ensures that the IGAs not only comply with the Third Energy Package but also with other pieces of EU acquis.
>
> (Interview 5, 2018)

In contrast to the first decision, Member States now have the obligation to inform the Commission *before* they enter into negotiations with third countries to conclude or amend an IGA (for both gas and oil) and have to keep the Commission up to date about the progress made (Art. 3–1). When a Member State gives the Commission notice of negotiations, the Commission has the option to provide it with advice on how to ensure compatibility with Union law; such advice might also include optional model clauses and guidance (Art. 4–1). As soon as an agreement has been reached, but before the closure of the formal negotiations, the full text should be sent to the Commission for an ex-ante assessment (Art. 3–2). Consistent with the first decision, the obligation to notify the Commission does not apply to commercial entities (Art. 3–6). The Commission should then inform the Member States within five weeks whether it has any doubts as to the compatibility with Union law (Art. 5–1). The Member State shall not sign, ratify, or agree to the draft IGA until the Commission has informed the Member State of any doubts (Art. 5–4). "The Member State concerned shall take utmost account of the Commission's opinion" before signing, ratifying, or agreeing to an IGA (Council/EP 2017a: 8). In the words of a senior official at DG Energy,

> [r]egarding the intergovernmental agreements, we strengthened our role because now Member States must notify us before they conclude an agreement. I think we can work with the revision. Not all IGAs were compatible with our Third Energy Package in 2013. And we were preparing infringement procedures. That was the first shock and the Russians made a big fuss. Decision 994/2012 was also based on Article 194 of the Lisbon Treaty, as is all energy legislation. If you have the competence internally then you can exercise it externally.
>
> (Interview 11, 2018)

As the evidence suggests, Decision (EU) 2017/684 turned the tide in favour of the Commission and strengthened the institutional matrix.

Conclusion

This chapter has demonstrated that the institution once again needed a critical juncture to catapult itself out of the institutional path to become more responsive to exogenous events. Hence, the empirical evidence supports the fourth hypothesis that high integration can be expected if a critical juncture occurs within a setting of low institutional stickiness. Integration coincided with a non-incremental change of primary legislation in the form of the Lisbon Treaty. The Treaty altered the institutional trajectory to a significant degree as different dimensions of energy policy were incorporated into the institutional matrix. After the critical juncture occurred, the institution fell back into institutional equilibrium and a process of moderate integration of secondary law was triggered. Secondary law was amended, for instance, by revisions of the gas security regulation and the decision on the information exchange mechanism concerning IGAs. A thorough discussion of various legislative acts will be provided in Chapter 7. Moreover, the Lisbon Treaty strengthened institutional capacities as exogenous factors could be directly addressed, ultimately leading to the Energy Union project. As the empirical evidence suggests, and in line with the fourth hypothesis, high integration in the form of non-incremental change of primary law can be confirmed. When comparing the Lisbon Treaty to the SEA, the SEA displayed moderate integration, providing the institutional means to incrementally alter secondary law concerning the internal dimension of energy policy. However, it proved incapable of effectively addressing the external dimension of energy policy, as evident in the policy outcome of Directive 2004/67/EC to safeguard the security of supply during the first gas crisis of 2006. In contrast, the Lisbon Treaty provided the Commission with legal tools that extended beyond addressing the internal market, offering the means to address the external dimension more directly (Braun 2011).

As the empirical evidence further demonstrates, the intended goals of the Energy Union were multi-dimensional, however, rooted in the policy goals of previous legislation. Initially, the Energy Union was aimed primarily at energy security, particularly as Europe faced risks to energy security due to geopolitical tensions between Russia and Ukraine. The dichotomy in preferences among Central and Eastern European Countries (CEECs) and Western European states presents an excellent case study of how endogenous and exogenous factors influenced and colluded with policy stances and specific preferences. For CEECs, energy security concerns and the historical context endogenously shaped preferences for a more interventionist Energy Union. Western European states, on the other hand, made their policy choices based on economic considerations and exogenously given preferences, focusing on the completion of the SEM and environmental sustainability.

An essential takeaway is that after the initial change of primary law in the Lisbon Treaty, energy policymaking could no longer be confined to internal market legislation. Now, the external dimension could be directly addressed as well: the obligation to ensure the security of energy supply in Treaty Law left less ambiguity

and room for interpretation. Nevertheless, policymaking was again characterised by a stepwise, incremental alteration of secondary law. This time, however, legal provisions were bundled under the Energy Union umbrella, representing a holistic governance tool to address energy policy in its entirety. Before the Energy Union, different sectors were governed by specific provisions without taking full advantage of synergies and functional overlaps between different legislative acts, market rules and foreign policy considerations. Henceforth, energy was conceived as a multidimensional policy field that had to be governed by a web of legal instruments. The Lisbon Treaty, and the commitments to the Energy Union, bolstered by different proposals and various State of the Energy Union reports, bound the Member States further into the institutional makeup and left them with less room to manoeuvre and follow unilateral preferences. For instance, the revisions of the gas security regulation and the decision on the information exchange mechanism on intergovernmental agreements of 2017 considerably strengthened various obligations and rules for Member States. Consequently, from a Historical Institutionalist perspective, the gradual and incremental development of these policy instruments serves as invaluable evidence of incremental institutional change and path-dependent processes binding various institutional nodes together more tightly. It shows how bolder and more effective provisions were initiated and how institutional reform instigated unintended consequences for various actors over time. Provisions that the Member States would not have considered before the Lisbon Treaty and the genesis of the Energy Union framework eventually needed to be addressed and were signed off by the Member States.

Notes

1 Intergovernmental Agreements (IGAs) are binding agreements/contracts between two countries that define the exact terms and conditions for producing, delivering, and transporting energy commodities. As energy can be regarded as a strategic good, which influences the functioning of economies and the well-being of citizens IGAs must comply with EU law.
2 The EU's 2030 energy and climate targets were revised on 14 July 2021 as the Commission adopted a series of legislative proposals on how to achieve climate neutrality by 2050, including the intermediate target of at least 55% net reduction in greenhouse gas emissions by 2030
3 At the time of writing the project was completely relinquished as a consequence of the Russian-Ukrainian war.
4 Effectively, the plans submitted by Member States were finalised between late 2019 and 2020.
5 More specifically, the technical capacity of a gas infrastructure to satisfy the total gas demand in a particular region in case of the disruption of the single largest gas infrastructure during a day of exceptionally high gas demand occurring with the statistical probability of once in 20 years.
6 The term was introduced by decision 994/2010 and denotes households and essential services. For instance, healthcare and district heating.
7 Primary energy consumption is the energy supplied to industry, households, transport, agriculture and transport, *including* the energy transformation sector and the energy industries themselves (European Commission 2017e).

8 Not to be understood as the same sort of critical juncture used in the theoretical model proposed in the second chapter of this book.
9 The first bilateral solidarity agreement was signed between Germany and Denmark on 14 December 2020, while other 5 agreements were signed by Germany and Austria on 2 December 2021; Estonia and Latvia on 4 January 2022; Lithuania and Latvia on 10 March 2022; Italy and Slovenia on 22 April 2022; Finland and Estonia on 25 April 2022. In a proposal of December 2021 to amend the Security of Gas Supply Regulation ((EU) 2017/1938), the Commission introduced harmonised clauses directly applicable when needed in the absence of a bilateral arrangement.
10 For instance, those related to energy infrastructure or the supply of energy commodities.

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7 Energy law under the Energy Union and European Green Deal

Introduction

The Energy Union deepened and widened the institutional matrix of the EU and the energy *acquis*. The development of energy law followed a path-dependent rationale, where most of the energy provisions under the Energy Union Strategy (European Commission 2015a) and the subsequent revisions under the European Green Deal (European Commission 2019b) followed from former decisions in the form of updated legal acts which enhanced the institutional matrix. As discussed in the previous chapters, these developments can be traced back to provisions implemented after the Single European Act, in the late 1990s and early 2000s. Based on the theoretical model, this chapter demonstrates that many advances in terms of novel legal provisions were made in a stepwise manner. Hence, most legislative acts were rooted in former legislation, and institutional innovation followed a path-dependent rationale. Although new provisions and policy ideas were introduced, they formally and thematically built on previous legislative acts and did not materialise out of the blue based on completely new ideas about energy governance. To provide analytical nuance, Wolfgang Streeck and Kathleen Thelen's (2005) concept of 'layering' is used at this point to engage with the idea that institutional change is facilitated by gradual and transformative processes which compel institutions to evolve very slowly over time. Based on the work of Schickler (2001), layering occurs when new rules are added to existing ones through seemingly small adjustments, revisions, alterations, and additions that influence how an institution operates. In the words of Streeck and Thelen (2005: 24), "[l]ayering involves active sponsorship of amendments, additions, or revisions to an existing set of institutions". However, unlike Schickler (2001), who emphasises the way in which new institutional layers might create incongruence between old and new rules, they endorse a process of layering that fosters the "introduction of new elements setting in motion dynamics through which they, over time, actively crowd out or supplant by default the old system" and the extent to which the "fringe and the core can peacefully coexist, or whether the fringe can attract enough defectors from the core eventually to displace it" (Streeck & Thelen 2005: 24).

Under these premises, this chapter provides an overview and analysis of the legislation published under the Energy Union umbrella and under the European

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Green Deal to complement the assessment of the various factors that contributed to the creation of the policy package in the previous chapter. At the time of writing, 45 different legislative acts had been adopted and published in the *Official Journal of the European Union* as part of the Energy Union. In turn, many legislative acts have been revised under the European Green Deal and in response to the ongoing war in Ukraine, the associated geopolitical instability, and the EU's policy initiative through the REPowerEU Plan (European Commission 2022b). This chapter provides an overview and analysis of successful efforts for cross-sectoral energy policy integration. The comprehensive policy framework materialised through various regulations, directives, decisions, and Council resolutions over recent years that govern the energy affairs in the 27 Member States.

This chapter will also address the legislative acts that are part of the European Green Deal (European Commission 2019b), and which explicitly consider energy matters. The EGD was presented on 11 December 2019 and introduces various policy tools that aim to achieve climate neutrality in the EU by 2050. The ultimate goal is that there should not be any net emissions of greenhouse gases (GHG) in 2050. The EGD endorses a circular economy in which economic growth is decoupled from resource use to transform the EU into a fair and prosperous society. It aims to protect, conserve, and enhance the EU's natural capital and protect the health and well-being of citizens from risks related to the environment. This transition towards a sustainable economy should be achieved in a just and inclusive manner (European Commission 2019b). It covers all sectors of the economy – energy, industry, buildings, transport, and agriculture – and is reinforced by the European Climate Law under **Regulation (EU) 2021/1119** (EP/Council 2021b), published on 9 July 2021.

The European Climate Law makes the EU's climate neutrality target legally binding and raises the 2030 ambition by setting a target of at least 55% net emission reductions by 2030 compared to 1990. It includes measures that track the progress made by Member States and provides policy tools to adjust the actions of Member States if necessary; for instance, via the National Energy and Climate Plans (NECPs) under the Governance **Regulation (EU) 2018/1999** (EP/Council 2018f), regular reports by the European Climate Agency, and by the latest scientific evidence on climate change and its impacts. In line with the European Climate Law, the EU's "Fit for 55" package (European Commission 2021), unveiled in July 2021, is an ambitious set of legislative proposals that bolsters measures to reduce carbon emissions. The package comprises revisions of the EU Emissions Trading System, the Effort Sharing Regulation, the Renewable Energy Directive, the Energy Efficiency Directive, and other important legislation – all aimed at streamlining the EU's policies with its goal of reducing greenhouse gas emissions by 55% by 2030. It also endorses the implementation of a newly created Carbon Border Adjustment Mechanism aimed at reducing carbon leakage. The package, in turn, is part of the European Green Deal and is a critical component in the Union's strategy to achieve climate neutrality by 2050.

The Fit for 55 package can be perceived as the successor of the 2030 climate and energy framework adopted by the European Council in October 2014 (European Council 2014) (40% GHG emission reduction target in the EU compared to 1990 levels – 43% in the ETS sectors and 30% in the non-ETS sectors, 27% share of renewable energy, 27% improvement in energy efficiency), which in turn was updated by legislative acts under the Energy Union (40% GHG reductions, 32% share for renewable energy, 32.5% improvement of energy efficiency). The 2030 climate targets now comprise a 55% GHG reduction target under the European Climate Law (EP/Council 2021b), a 42.5% share of renewables aiming for 45% (EP/Council 2023i), and, based on the REPower EU initiative, a 38% energy efficiency target of final energy consumption, and a 40.5% reduction in primary energy when compared to the 2007 EU Reference Scenario projections for 2030 (EP/Council 2023h). As the realisation of the EGD requires substantial amounts of investment, a European Green Deal Investment Plan (European Commission 2020a) – also known as the Sustainable Europe Investment Plan – was conceived to mobilise at least €1 trillion in sustainable investments over the next decade through the EU budget and other public and private sources. As part of the investment plan, a Just Transition Mechanism was established, including a Just Transition Fund based on **Regulation (EU) 2021/1056** (EP/Council 2021a), to support those regions that rely heavily on fossil fuels and to help them to speed up the transition to a climate-neutral economy in a fair and just manner.

Nevertheless, this chapter will not diverge into a complete analysis of the EGD. Instead, it will show how energy policy is tightly interwoven with various efforts instigated under the EGD to reduce GHG emissions, create a circular economy, and enhance the security and resilience of the energy system. Lastly, this chapter will also address the Russian-Ukrainian crisis, examining how the conflict and the deliberate halt of Russian gas imports to the EU affect energy matters and markets. In response, EU leaders in the European Council agreed in March 2022 to minimise its dependence on Russian energy and asked the Commission to devise a detailed REPowerEU plan (European Commission 2022b).

The provisions under the Energy Union can be grouped into seven discrete categories that can be discerned as legislation addressing energy efficiency, the security of energy supply, the full integration of energy markets, climate action and greenhouse gas emissions reduction, renewable energy, Europe on the move and clean mobility, and legal texts that are not classified but which have relevance for energy governance in general (e.g. COP 21 – Paris Agreement; Regulation on Governance of the Energy Union and Climate Action). Different categories will be discussed, accompanied by key information regarding the different legal acts. The only exemption was the exclusion of any transport-related legal acts, as these fall outside the scope of this book. The different sectors are, in turn, based on the five interrelated dimensions of the Energy Union as laid out in the original Energy Union proposal: energy security, solidarity, and trust; a fully integrated European energy market; energy efficiency to moderate energy demand; decarbonisation of the economy; and research, innovation, and competitiveness (see Table 7.1).

Table 7.1 Revisions of EU energy legislation under the Energy Union framework and European Green Deal

Energy Efficiency	*Security of Energy Supply*
EU Strategy On Heating And Cooling: Revisions of the Energy Efficiency Directive (2012/27/EU), the Renewable Energy Directive (2009/28/EC) and the Energy Performance of Buildings Directive (2010/31/EU)	**Security Of Gas Supply Regulation Review**: Regulation (EU) 2017/1938 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010
Energy Efficiency Labelling Review: Regulation (EU) 2017/1369 setting a framework for energy labelling and repealing Directive 2010/30/EU	**Energy-Related Intergovernmental Agreements**: Decision (EU) 2017/684 on establishing an information exchange mechanism with regard to intergovernmental agreements and non-binding instruments between Member States and third countries in the field of energy, and repealing Decision No 994/2012/EU
Energy Performance Of Buildings Directive Review: Directive (EU) 2018/844 amending Directive 2010/31/EU on the energy performance of buildings and Directive 2012/27/EU on energy efficiency; Directive (EU) 2024/1275 on the energy performance of buildings	**Comprehensive Strategy For LNG And Storage**: European Parliament Resolution on EU strategy for liquefied natural gas and gas storage (2016/2059(INI))
Energy Efficiency Directive Revision: Directive (EU) 2018/2002 amending Directive 2012/27/EU on energy efficiency; Energy Efficiency Directive (EU) 2023/1791	**Common Rules For Gas Pipelines Entering The EU Internal Market**: Directive (EU) 2019/692 amending Directive 2009/73/EC concerning common rules for the internal market in natural gas (no recast)
	Risk-Preparedness In The Electricity Sector: Regulation (EU) 2019/941 on risk-preparedness in the electricity sector and repealing Directive 2005/89/EC

Climate Action and Greenhouse Gas Emissions Reduction	
EU ETS Aviation - Implementation of the 2016 ICAO Agreement: Regulation (EU) 2017/2392 amending Directive 2003/87/EC to continue current limitations of scope for aviation activities and to prepare to implement a global market-based measure from 2021.	**Market Stability Reserve for the EU ETS**: Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and amending Directive 2003/87/EC.

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Table 7.1 (Continued)

Climate Action and Greenhouse Gas Emissions Reduction	
Safeguard Measures for EU Emissions Trading System: Commission Regulation (EU) 2018/208 amending Regulation (EU) No 389/2013 establishing a Union Registry.	**Greenhouse Gas Reduction Targets for International Maritime Shipping**: Regulation (EU) 2015/757 on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport, and amending Directive 2009/16/EC.
Revision of the EU ETS 2021–2030: Directive (EU) 2018/410 amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments, and Decision (EU) 2015/1814; (revision of the EU-ETS: under Green Deal revision). **LULUCF Regulation**: Regulation (EU) 2018/841 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework, and amending Regulation (EU) No 525/2013 and Decision No 529/2013/EU. **Effort-Sharing Regulation** (sectors not included in the EU ETS); complements LULUCF: Regulation (EU) 2018/842 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013.	
Full Integration of the EU Energy Market	
European Statistics on Natural Gas and Electricity Prices: Regulation (EU) 2016/1952 on European statistics on natural gas and electricity prices and repealing Directive 2008/92/EC	**New Electricity Market Design**: Regulation (EU) 2019/943 on the internal market for electricity (former Regulation 714/2009-recast); Regulation (EU) 2024/1747 amending Regulations (EU) 2019/942 and (EU) 2019/943 as regards improving the Union's electricity market design

(*Continued*)

Table 7.1 (Continued)

Full Integration of the EU Energy Market	
Communication on Achieving a 15 % Electricity Interconnection Target: Communication on strengthening Europe's energy networks COM(2017) 718 final (15% electricity interconnection target)	**Consumers in Internal Market in Electricity**: Directive (EU) 2019/944 on common rules for the internal market for electricity and amending Directive 2012/27/EU (former Directive 2009/72/EC-recast) / focusing on consumer's role; Directive (EU) 2024/1711 amending Directives (EU) 2018/2001 and (EU) 2019/944 as regards improving the Union's electricity market design
Reinforcement of the Agency for the Cooperation of Energy Regulators: Regulation (EU) 2019/942 establishing a European Union Agency for the Cooperation of Energy Regulators (former 713/2009-recast); Regulation (EU) 2024/1747 amending Regulations (EU) 2019/942 and (EU) 2019/943 as regards improving the Union's electricity market design	

Renewable Energy	*Not Specified*
European Statistics on Natural Gas and Electricity Prices: Regulation (EU) 2016/1952 on European statistics on natural gas and electricity prices and repealing Directive 2008/92/EC	**COP 21 - Paris Agreement under the United Nations Framework Convention on Climate Change (UNFCCC)**
Transition to Second Generation Biofuels: Directive (EU) 2015/1513 amending Directive 98/70/EC relating to the quality of petrol and diesel fuels and amending Directive 2009/28/EC on the promotion of the use of energy from renewable sources	**Energy Union Governance Post 2020**: Regulation (EU) 2018/1999 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013
	Mid-Century Zero Emissions Strategy for the EU

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Table 7.1 (Continued)

European Green Deal	
Energy System Integration Strategy	**EU Regulation on Gas Storage**: Regulation (EU) 2022/1032 amending Regulations (EU) 2017/1938 and (EC) No 715/2009 with regard to gas storage
EU Strategy for Offshore Renewable Energy Sources	**EU Solar Energy Strategy**
A Hydrogen Strategy for a Climate-Neutral Europe: Commission Delegated Regulation (EU) 2023/1184 addresses the categorisation of hydrogen; Commission Delegated Regulation (EU) 2023/1185 establishing rules for calculating life-cycle GHG emissions for RFNBOs	**REPowerEU**
Revision of the TEN-E Regulation for Energy Infrastructure: Regulation (EU) 2022/869 on guidelines for trans-European energy infrastructure, amending Regulations (EC) No 715/2009, (EU) 2019/942 and (EU) 2019/943 and Directives 2009/73/EC and (EU) 2019/944, and repealing Regulation (EU) No 347/2013	**The Hydrogen and Gas Decarbonisation Package**: Directive (EU) 2024/1788 on common rules for the internal markets for renewable gas, natural gas and hydrogen, amending Directive (EU) 2023/1791 and repealing Directive 2009/73/EC (recast); Regulation (EU) 2024/1789 on the internal markets for renewable gas, natural gas and hydrogen, amending Regulations (EU) No 1227/2011, (EU) 2017/1938, (EU) 2019/942 and (EU) 2022/869 and Decision (EU) 2017/684 and repealing Regulation (EC) No 715/2009 (recast)

Energy efficiency

The dimension of energy efficiency is comprised of four different legal acts adopted under different proposal packages. Moderating energy demand was recognised as a key action in the European Energy Security Strategy (European Commission 2014), and the '**energy efficiency first principle**' was ultimately bolstered by the Energy Union Framework Strategy (European Commission 2015a). As discussed in Chapter 6, the energy demand reduction is treated as an energy source, which significantly increases the energy system's resilience. The Energy Union strategy in general, and the *Clean Energy for all Europeans* package (European Commission 2016b) in particular, gives prominence to the 'energy efficiency first' principle. The term 'efficiency first' denotes the fundamental principle around which the European energy system should be designed, underpinning the entirety of the Energy Union project. Under this principle, energy efficiency should be treated as an energy source in its own right, measured through the value of energy it saves. Energy efficiency is a key sector in the EU's energy strategy and can be traced back to the first Energy Efficiency Directive (EED) of 2012. However, the EED did not emerge in isolation; other legislative acts also addressed, reinforced, and expanded the policy area, as we will see in the discussion. Policy feedback and positive feedback processes facilitated incremental change – constant monitoring of the *policy outcome* created new sets of *intended goals*, resulting in revisions of regulations and directives and the introduction of new policy strategies. Over time, these were implemented, creating incentives for various actors to reinforce the established institutional path.

EU strategy on heating and cooling

The EU strategy on heating and cooling (European Commission 2016a) is a non-legislative communication from the European Commission – as part of the sustainable energy security package of February 2016 – that addresses the energy used for heating and cooling in buildings and industry, which accounted for 50% of the EU's final annual energy consumption in 2012. The strategy was also the central policy package that provided the impetus for the inclusion of specific measures in the revisions of the Energy Efficiency **Directive 2012/27/EU** (EP/Council 2012), the Renewable Energy **Directive 2009/28/EC** (EP/Council 2009c), and the Energy Performance of Buildings **Directive 2010/31/EU** (EP/Council 2010b). Although heating and cooling are gradually moving to clean, low-carbon energy, 75% of the fuels it uses come from fossil fuels (nearly half from gas). The strategy identifies a couple of crucial areas which should be addressed under the Energy Union framework: (a) the buildings sector (residential, industry, and services) should be improved regarding various energy efficiency measures (also in terms of energy renovation and refurbishing) as two-thirds of the EU's buildings were built when energy efficiency requirements were limited or simply not in force; (b) consumers should make the most out of innovations regarding heating and cooling technologies and solutions (for instance, shifting to heat pumps, solar or geothermal heating

or waste heat); (c) addressing energy efficiency in the industry more thoroughly and harnessing synergies between the industry and heating and cooling; (d) linking heating and cooling with electricity networks.

Energy efficiency labelling review

Regulation (EU) 2017/1369 (EP/Council 2017b) setting a framework for energy labelling came into force on 1 August 2017 and buttresses the regulatory framework for governing energy efficiency proposed under the so-called energy 'Summer Energy Package' of 2015 (European Parliament 2015). The goal was to enhance the effectiveness of any new provisions implemented under the energy labelling framework compared to its predecessor, **Directive 2010/30/EU** (EP/Council 2010a). In order to equip the EU with a potent and effective policy toolkit, the choice was made to replace the former *decision* with an unambiguously formulated *regulation* to impose clear and detailed rules. This helps to preclude divergent transposition by Member States and harmonise measures across the Union to create a level playing field, reduce costs for manufacturers and ensure the free movement of goods. In principle, energy labelling (introduced in 1992 for specific household appliances and amended in 2010) improves the energy efficiency of products. It sets common standards to eliminate the least-performing products from the market. It allows customers to choose between energy-efficient products to save on their annual household energy bills. Therefore, producers are keen to see their products in the highest categories of the labelling scheme. The new labelling regulation simplifies the scale used to classify products to make it easier for consumers to distinguish between different efficiency bands. Moreover, 'rescaling' was introduced, making the framework more stringent (e.g. a former A+++ could be classified within the C band) and encouraging producers to drive innovation using more energy-efficient technologies.

Energy performance of buildings review

Within the building sector, the Energy Performance of Buildings **Directive 2010/31/EU** (EP/Council 2010b) (EPBD; which is still in force), together with the 2012 Energy Efficiency Directive 2012/27/EU (EP/Council 2012), aimed to boost the energy performance of buildings. Collectively, buildings in the EU are responsible for 42% of energy consumption and 36% of annual greenhouse gas emissions, mainly stemming from construction, usage, renovation, and demolition. Therefore, the directives in tandem aim to achieve a highly energy-efficient and decarbonised building stock by 2050, create a stable environment for investment decisions, and enable consumers and businesses to make more informed choices to save energy and money. The EPBD set out the provisions (Article 1) to develop a general methodology to calculate the energy performance of buildings regarding the application of minimum requirements to the energy performance of existing (through renovations and retrofitting) and new building stock; develop national plans for increasing the number of nearly zero-energy buildings; and develop energy certification of

buildings or building units, which must be stated in advertisements when buildings/building units are for rent/sale.

The new Energy Performance of Buildings **Directive (EU) 2018/844** (EP/Council 2018e), which had a transposition deadline of 10 March 2020, introduces novel policy instruments built on provisions laid out by its predecessor. For instance, Member States must develop long-term renovation strategies to facilitate the cost-effective transformation of existing buildings into nearly zero-energy buildings. These strategies should set out a roadmap with measures and measurable progress indicators together with indicative milestones for 2030, 2040, and 2050. The strategies must be based on solid financial measures (effective use of public funding, aggregation, de-risking), and such measures should be part of integrated **National Energy and Climate Plans** (NECPs).

Moreover, as with the 2010 Directive, EU countries must set cost-optimal minimum energy performance requirements for new buildings and take the necessary measures to ensure these are met. Each Member State shall establish a long-term renovation strategy for existing buildings to become nearly zero-energy buildings by 2050 – a reduction target of GHG emissions in the Union by 80–95% compared to 1990. Measures concerning the replacement, retrofit, and upgrade of technical building systems and building elements like heating and cooling systems, roofs and walls are addressed to improve the overall energy performance of buildings. In addition to these measures, the new directive reinforces technical standards and monitoring routines.

As part of the 'Fit for 55' package, the Directive was revised; the Energy Performance of Buildings **Directive (EU) 2024/1275** (EP/Council 2024a) entered into force on 28 May 2024. The revision supports better air quality and digitalisation of energy systems and accelerates the roll-out of crucial infrastructure for sustainable mobility. It gives Member States some discretion in terms of renovation measures best suited to their specific national context depending on existing building stock, geography, and climate. They can also apply for exemptions for specific categories contingent on special architectural or historical merit. Each Member State needs to devise a national building renovation plan to ensure the renovation of the national stock of residential and non-residential buildings, both public and private, into a highly energy-efficient and decarbonised building stock by 2050. The directive contributes to the objective of reducing GHG emissions by at least 60% in the building sector by 2030 compared to 2015; all new buildings from 2030 must be zero-emission (from 2028 for all new buildings owned by public bodies), and existing buildings should be transformed into zero-emission buildings by 2050. Member States must set Minimum Energy Performance Standards (MEPS) for non-residential buildings with specific renovation requirements tied to cost-optimal levels of energy efficiency. They are an essential regulatory tool to trigger the renovation of existing buildings on a large scale. The introduction of minimum energy performance standards should lead to a gradual phasing out of the worst-performing buildings and a continuous improvement of the national building stock. Member States will have to ensure a reduction in the average primary energy used in residential buildings of at least 16% by 2030 compared to 2020 and in a range between at least 20% and 22% by 2035.

Revision of the directive on energy efficiency

The 2012 Energy Efficiency Directive (EP/Council 2012) established a common framework of measures for the promotion of energy efficiency to support the EU's binding 20% target in energy efficiency within the 2020 framework. EU energy consumption should be no more than 1474 million tonnes of oil equivalent (Mtoe) of primary energy or 1078 Mtoe of final energy. To this end, it implemented provisions to remove barriers in the energy market and to overcome market failures that impeded efficiency in the supply and use of energy. It required EU Member States to set indicative National Energy Efficiency Targets (NEETs) and introduced a set of binding measures to help Member States achieve them. Member States were required to develop long-term strategies for mobilising investment in renovating the national stock of residential and commercial buildings. The Directive required a yearly reduction of 1.5% of the annual national energy sales to final customers by volume (annual final energy consumption) between 2014 and 2020. High-quality energy audits were to be made available for all final energy customers, carried out by accredited experts and supervised by independent authorities under domestic law. Following the directive, Member States were obliged to report annually on the progress achieved towards national energy efficiency targets. Hence, the directive established the requirement to develop National Energy Efficiency Action Plans (NEEAPs) every three years, including significant energy efficiency improvement measures together with expected and achieved energy savings, complemented by extensive promotion of smart meters for electricity and gas and the development of energy labelling schemes. Moreover, Member States were required to make 3% of governmental buildings energy efficient and devise renovation strategies for building stock.

Within the Clean Energy for All Europeans Package, **Directive (EU) 2018/2002** (EP/Council 2018h) on energy efficiency represents the revised directive on energy efficiency and defines the policy framework for 2030 and beyond. In a nutshell, energy efficiency is an effective way to cut greenhouse gas emissions, help all customers save money, and enhance the EU's supply security by reducing the need for energy imports. The new Energy Efficiency Directive sets out a 32.5% headline efficiency target, expressed as the reduction of primary and/or final energy consumption compared to projections made in 2007 regarding the expected energy use in 2030. A 32.5% reduction results in 1,273 Mtoe of primary energy consumption and 956 Mtoe of final energy consumption in 2030, respectively.[1] Each Member State must set indicative (rather than binding) national energy efficiency targets based on either primary or final energy consumption, primary or final energy savings or energy intensity. According to the directive, there are no binding targets at the Member State level in the 2020 and 2030 frameworks, and the freedom of Member States to set their national contributions should continue to be respected. However, Member States are expected to take the EU's overall primary (-26%) and final (-20% compared to 2005 levels) energy consumption targets for 2030 into account when setting their national energy efficiency contributions (as stated earlier, this equals 1,273 Mtoe of primary energy

and 956 Mtoe of final energy consumption). Individual energy efficiency targets and the strategies and measures to achieve them will be fleshed out in National Energy and Climate Plans (NECPs). Regarding energy savings, from 1 January 2021 to 31 December 2030, Member States are expected to ensure a reduction of at least 0.8% of annual final energy consumption. Additionally, the directive defines stricter rules on metering and billing. It mandates Member States to provide transparent, publicly available national rules on allocating the cost of heating, cooling, and hot water consumption. The directive also calls for monitoring efficiency levels in new energy generation capacities and requires a general review of the Energy Efficiency Directive by 2024.

While the 2020 energy efficiency targets were met – also due to the COVID-19 pandemic – national contributions, as communicated in the individual NECPs, fell short of the Union's 2030 goal to meet the headline 32.5% efficiency target. Market forces, the organisation of markets, and technology development alone would not bring about the desired change, and further measures were needed (European Commission 2021). Hence, already in July 2021, as part of the 'Delivering on the European Green Deal' package, the Commission proposed a recast of the Energy Efficiency Directive. The revised directive proposed a new, obligatory EU energy efficiency target of a 9% reduction by 2030, compared to predictions from the 2020 Reference Scenario. The EU's primary energy consumption should be no more than 1,023 Mtoe and 787 Mtoe in final energy consumption. It raised the level of ambition of the energy efficiency target further, obliging Member States to collectively reduce the EU's primary energy consumption by 39% and final energy consumption by 36% compared to the 2007 reference scenario for 2030 (translating into 1,023 Mtoe and 787 Mtoe, respectively) (European Commission 2021). Furthermore, ambitions were additionally strengthened through the REPowerEU initiative, instigated by the Russian-Ukrainian war.

On 10 March 2023, the European Parliament and the Council came to a preliminary agreement, and the Parliament adopted the revised directive on 11 July 2023 and the Council on 25 July 2023. The new **Energy Efficiency Directive (EU) 2023/1791 (EP/Council 2023h),** published on 20 September 2023, significantly raises the EU's ambition on energy efficiency. It sets a decrease of primary and final energy use by 11.7% in 2030 compared to the level of efforts under the 2020 Reference Scenario, which translates into 992.5 Mtoe primary and 763 Mtoe final energy consumption in 2030 (1,124 Mtoe of primary energy consumption and 864 Mtoe of final energy consumption without any measures). These numbers correspond to a reduction of 40.5% for primary and 38% for final energy consumption when compared to the 'old' 2007 Reference Scenario projections for 2030. The new goal requires that EU Member States achieve cumulative end-use energy savings for the entire period up to 2030. This begins with a target of 0.8% of final energy consumption up to 31 December 2023 and at least 1.3% as of 1 January 2024, 1.5% as of 1 January 2026, and 1.9% as of 1 January 2028. The 'energy efficiency first' principle, discussed in previous sections, was considerably reinforced and serves as a guiding principle with legal applicability not only for energy policy but also for governance in other sectors. Member States must update their indicative national

contributions, taking into account new methodologies (e.g. GDP-per-capita, energy intensity, cost-effective energy savings potential, reduction of energy intensity). The 55% GHG emission reduction goal by 2030 compared to 1990 on the EU level is legally binding, however, Member States are free to set their national contributions. The directive also addresses energy poverty to a larger extent, focuses on the crucial role of consumers, and expands the scope of energy audit obligations, the role of technical expertise of professionals, and the monitoring of investment in energy efficiency.

Assessing the *policy output* between the different legislative acts reveals a gradual tightening of procedural rules and obligations. In the case of energy efficiency, the implementation and evolution of measures followed a strong path-dependent rationale due to policy feedback processes. This feedback, based on increasing returns, learning and coordination effects, and adaptive expectations by all actors involved, allowed for incremental change to occur. According to the theoretical model, initial legislative measures established a path that subsequent policies tended to follow, creating a layering effect whereby new institutional provisions and processes were built upon previous ones. These, in turn, continued to adapt to new requirements and incrementally widened the scope for strategic responses to energy challenges. For instance, Directive (EU) 2018/2002 amended Directive 2012/27/EU and was in turn amended by Energy Directive (EU) 2023/1791. Hence, new policies and institutional arrangements were added to existing structures rather than replacing them entirely. The interesting observation is that all the legal acts remained in force and, thus, were stacked on top of each other to create a denser institutional environment with increased complexity and less room for ambiguity. A similar pattern is observed with the directives on the energy performance of buildings: Directive (EU) 2018/844 amended Directive 2010/31/EU and was amended by Directive (EU) 2024/1275. The only exception is the energy efficiency labelling review, where Regulation (EU) 2017/1369 repealed Directive 2010/30/EU. However, this does not mean that incremental change was absent; rather, this case shows that a conscious choice was made to replace the former *decision* with an unambiguously formulated *regulation* to impose clearer and more detailed rules. Lastly, the EU Strategy on Heating and Cooling created a new set of intended goals, which strived to create new policies aligned with existing ones, promoting synergies between different energy policy sectors and energy efficiency.

Security of energy supply

Chapter 6 illustrated that a considerable aspect of the Energy Union framework was based on concerns regarding the provision of a secure energy supply into the EU at an affordable price. Whereas the discourse surrounding energy policy in the early 2000s centred around the liberalisation of energy markets, the focus shifted towards energy security triggered by the two gas crises in 2006 and 2009. These incidents initiated a new impetus to address security of supply concerns, similar to the oil supply shocks of 1973 and 1979. The Lisbon Treaty, treated in this volume as a major critical juncture for the institutional development of EU energy policy,

formally institutionalised energy security in treaty law. This means that Union policy must provide a reliable and secure supply of energy based on solidarity among Member States. Notably, ideational factors informed much of the discourse on energy security. In the event of a supply squeeze, Member States may be reliant on their neighbours to guarantee a steady supply of energy, facilitated through cooperation and collective action, policy coordination and emergency plans, interconnections and cross-border infrastructure, bi-directional capacity, and the sharing of crucial information. Therefore, energy security aptly falls into the remit of the dimension of 'energy security, solidarity and trust', which is one of the five key dimensions in the Energy Union package. This contrasts starkly with the approach marked by the period of liberalisation of the 2000s in which the EU regarded market mechanisms as the best way to alleviate supply issues. As seen during both crises, this approach did not materialise in effective action. Member States are now *legally obliged* to support each other. Hence, solidarity plays a crucial role in the formulation of energy law and the interaction between Member States. This analysis aligns with the theoretical assumptions of this volume, which posits that both material factors, based on rational decision-making, and ideational factors permeate the institutional matrix. For instance, in the previous chapter, we discussed the implementation of the Revision of Decision 994/2012/EU on energy-related Intergovernmental Agreements (IGAs) in the form of **Decision (EU) 2017/684** (EP/Council 2017a) and the Review of the Security of Gas Supply Regulation (EU) No 994/2010 as **Regulation (EU) 2017/1938** (EP/Council 2017c), highlighting the most crucial aspects of both legal acts. Consult the previous chapter for more information.

Common rules for gas pipelines entering the EU internal market

In November 2017, the Commission adopted a proposal to apply key objectives of **Directive 2009/73/EC** (EP/Council 2009e) (the natural gas directive) to all cross-border pipelines coming into the EU from third countries. The rationale behind the proposal was to ensure that current, planned, and future infrastructure projects would not distort the internal energy market or jeopardise the security of gas supply. The revised directive can be regarded as a response to the Nord Stream II pipeline between Russian-owned Gazprom and Germany. The project was ultimately halted due to the war in Ukraine and an act of sabotage with explosives, ripping apart the USD11 billion pipeline. The revision was a move of the EU and the Commission to keep Russian influence over gas imports into the EU in check and to foreclose any attempts by Russia to utilise natural gas as a means for its geopolitical ends. However, the proposal also aimed to clarify future energy relations between the EU and the United Kingdom. In its former iteration, while EU law generally applies to territorial waters and the exclusive economic zone, gas Directive 2009/73/EC did not explicitly set out a legal framework for gas pipelines to and from third countries. Following a legal analysis, defining and specifying the regulatory framework that should form the basis for the governance of pipelines coming to and from third countries was necessary. The goal was that the gas directive should become

applicable in its entirety (together with legal acts like the Gas Regulation, network codes and other specific guidelines) to pipelines connecting Member States and third countries – including provisions on third-party access, tariff regulation, ownership unbundling and transparency to provide the necessary legal background to ensure that EU energy law applies to gas pipelines to and from third countries.

The European Parliament endorsed the ITRE committee's report (the issue was allocated to the EP's Committee on Industry, Research and Energy) in April 2018, and although it was challenging to find common ground between Member States due to legal reasons and political considerations, the Council adopted a general approach on 8 February 2019. Trilogue negotiations took place on 12 February 2019, and the Council and the European Parliament endorsed the final text in April 2019. **Directive (EU) 2019/692** (EP/Council 2019a) concerning common rules for the internal market in natural gas entered into force on 23 May 2019. The directive required that Member States with the first interconnection point were responsible for enforcing EU rules regarding pipelines with third countries, and EU lawfully applied to pipelines from third countries. Rules on derogations and exemptions were considerably tightened vis-à-vis the 2009 directive. However, Member States were entitled to grant exemptions and derogations as long as these did not impede the functioning of the internal market in natural gas or the security of supply in the Union (or if a pipeline was completed before the directive entered into force). In addition, derogations should be limited to 20 years but could be renewed if justified. For instance, for the recovery of investment made or for the security of supply. The applicability of the directive remained confined to the territory of the Member State and to territorial waters where the first interconnection point with the Member States' network was located.

Moreover, the Commission was granted more powers to supervise the negotiation process of Member States and third countries. Member States had to inform the Commission about any planned negotiations, which the Commission needed to approve in advance, and the Commission had to be kept informed of the progress and results of the negotiations. Finally, the Commission had to authorise the Member State to sign and conclude the agreement after reviewing the final text. Legal loopholes were closed by Directive (EU) 2019/692, and consequently, pipelines coming from third countries (including offshore import pipelines connecting a Member State with a third country) were subject to European energy law. Thus, the Commission played a more pronounced role during the different stages of the planning/negotiation process. The Directive was updated in 2024, which will be discussed later in this chapter.

A comprehensive strategy for liquid natural gas and storage

Based on the Sustainable Energy Security Package of 16 February 2016 (which was discussed in Chapter 6), the Commission published a non-legislative strategy for liquified natural gas and gas storage in order to make the EU gas system more diverse and flexible, hence contributing to the key Energy Union objective of a secure, resilient, and competitive gas supply. On 25 October, the Parliament voted

in plenary on the **Resolution on EU strategy for liquefied natural gas and gas storage** (European Parliament 2016), which contained several main themes: issues regarding the use of LNG infrastructure, the diversification of the supply of gas, the completion of the internal gas market and how the EU should engage with trading partners on international LNG markets, and how LNG could contribute to sustainability and be used as an alternative fuel in transport, heat, and power. More specifically, the Parliament emphasised the need to use existing LNG infrastructure before commissioning new projects to avoid stranded assets and that regional cooperation with market-based solutions is paramount when planning/building any new infrastructure. In order to make the EU an attractive market for LNG, Member States should not only fully implement the Third Energy Package and the various gas network codes but also ensure that well-connected liquid gas hubs are in place, warranting that gas can freely flow across borders in line with competitive market price signals. Cross-border accessibility of gas storage was identified as a critical factor in improving energy solidarity between Member States during energy shortages and emergency crises, emphasising the role of the immediate and highly flexible services that gas storage provides during crises. In addition, the resolution also highlights the need to foster deeper regional cooperation between Member States to provide an adequate level of interconnections and remove any internal bottlenecks, as well as to harmonise transmission tariff structures across the EU to enhance the effectiveness of the internal market.

Risk-preparedness in the electricity sector

Within the so-called Winter Package (the 'Clean Energy for all Europeans' package) (European Commission 2016b), the European Commission published on 30 November 2016 a proposal for a regulation on risk-preparedness in the electricity sector as the former directive of 2005 no longer reflected the reality of interconnected electricity markets where the likelihood of crises situations affecting several Member States at the same time is on the rise. Several issues were identified in an accompanying impact assessment:

- Crisis plans and actions remained solely national.
- There was a lack of information-sharing and transparency.
- There was no common approach to identifying and assessing risks.

The regulation should complement the provisions of the Third Energy Package, which were revised in parallel. **Regulation (EU) 2019/941** (EP/Council 2019b) on risk-preparedness in the electricity sector and repealing Directive 2005/89/EC was voted in plenary in the European Parliament on 26 March 2019, and the Council voted on it on 22 May 2019. In a nutshell, the regulation introduces specific rules regarding the cooperation between Member States and how to prevent, prepare for, and manage electricity crises, ensuring more transparency in the preparation phase and warranting that measures are taken in a coordinated and effective manner. It requires Member States to cooperate on a regional level (but also bilaterally) to

enhance solidarity between them. The regulation also sets out common provisions for the assessment of risks, the establishment of risk-preparedness plans, how to manage electricity crises, and the creation of an ex-post evaluation and monitoring framework. Along these lines, Member States must establish a risk-preparedness plan based on regional and national energy crisis scenarios and update this plan regularly. The regulation furthermore established the so-called Electricity Coordination Group, a forum for the exchange of information between national government authorities and NRAs/ACER/ENTSO-E, which is tasked with not only monitoring and sharing best practices and expertise on the security of supply issues but also assisting the Commission in designing policy initiatives.

Full integration of the energy market

As illustrated in Chapter 5, the Internal Energy Market (IEM) has its roots in the Single European Market (SEM), which was introduced via the Single European Act (SEA). The SEA was the first important revision of the 1957 Treaty of Rome, which initially founded the European Economic Community. It paved the way for an increasingly efficient and effective decision-making process. The most significant change instigated by the SEA was the transition from unanimous voting to qualified majority voting on matters concerning the internal market – from a historical institutionalist perspective, a transition from high to low institutional stickiness. Although the Commission did not include energy in the initial agenda for the SEM, energy was indirectly affected by more general market provisions via deeper market integration, regulatory oversight, and later through the development of trans-European networks (TENs) in the Maastricht Treaty. As discussed in previous chapters, both the SEA and the Lisbon Treaty constituted critical junctures for the development of energy policy in the EU. The former through the impetus for internal market provision, the latter for the formal institutionalisation of energy in primary law. After the critical junctures, the institution fell back into equilibrium, under which path-dependent processes developed. The First, the Second, and the Third Energy Packages marked the period after the SEA, characterised by market liberalisation policies and the creation of powerful institutional actors like ACER, ENTSO-E&G, and strengthening the role of national regulatory agencies (NRAs). Following the Lisbon Treaty, path dependency manifested in enhancing the breadth and depth of market provisions, linking them more tightly to security and environmental concerns. Initiatives like the Energy Union, the European Green Deal, and REPower EU were instrumental in structurally enhancing the institutional matrix. In essence, interconnection and infrastructure requirements were upgraded, monitoring functions were augmented (a central component to creating positive feedback loops and path dependency), the powers of institutional actors were increased, and the market design and operational rules for electricity were improved. Indeed, different policy provisions were subjected to layering effects, resulting in policies being stacked on top of each other, creating a more resilient regulatory institutional environment. We now look into the different policy areas that were addressed through various Commission proposals and revised based on existing policies.

Communication on achieving a 15% electricity interconnection target

Electricity interconnection targets set specific goals in the EU to interconnect the electricity production capacity of Member States, meaning that a Member State should have transmission capacity readily available to potentially export a set percentage of its production to neighbouring countries and beyond. Already in 2002, the European Council set a 10% electricity interconnection target (which eventually was prolonged until 2020), which the European Council reaffirmed in October 2014 and by a Commission communication in February 2015 (European Commission 2015b) as part of the Energy Union package, further extending the electricity interconnection target to 15% by 2030. Bolstered by the European Council conclusions of 2014, the communication of 2015 clarifies that there are missing interconnection links between Member States and that this deficiency must be swiftly alleviated to achieve the common objective of a fully functioning and connected internal energy market. The interconnection targets should be realised through implementing the Projects of Common Interests (co-called PCIs; the PCI list is updated every two years), and priority should be given to those projects where the capacity is well below the 10% objective. PCIs are designed and implemented by both transmission system operators and private promoters.

The underlying infrastructure planning and implementation should be governed by the trans-European energy networks **Regulation (EU) 347/2013** (TEN-E Regulation) (EP/Council 2013a) – which was updated in 2022 by **Regulation (EU) 2022/869** (EP/Council 2022a) – as it addresses the specific issue of projects that cross borders or that have an impact on cross-border flows. A further communication assessed the progress that was made in integrating and modernising the European energy network and the progress that was made to achieve the 10% interconnection target, which was also accompanied by a report of an expert group to advise on the achievement and operationalisation of the 15% interconnection target for 2030. Based on the expert group's recommendation, the Commission proposed to operationalise the 15% interconnection target through a set of additional and more specific thresholds, measured through the level of market integration, the security of supply, and the installed capacity of renewable sources, which served as indicators for Member States to take specific action (European Commission 2017). The target was formally extended by the **Regulation (EU) 2018/1999** on the Governance of the Energy Union and Climate Action (EP/Council 2018f), setting a mandatory 15% electricity interconnection target for 2030. In 2021, 16 countries reported being on track to reach the target by 2030 or having reached the target already. See further down for a detailed discussion of **Regulation (EU) 2022/869**.

Review of common rules for the internal market in electricity focusing on consumers

The review of **Directive 2009/72/EC** (EP/Council 2009d) – initially adopted with the Third Energy Package and specifically addressed ownership unbundling (OU) and third-party access – was proposed by the Commission within the 'Clean Energy

for all Europeans' package on 30 November 2016. After trilogue negotiations took place in the second half of 2018, **Directive (EU) 2019/944** on common rules for the internal market for electricity (EP/Council 2019e) was signed on 05 June 2019. The extensive document represents a considerable step up from the previous directive. It touches upon many different aspects of the governance of the internal electricity market to update the electricity market design, strengthen customer rights, and address decarbonisation efforts and new technological developments. It defines common rules "for the generation, transmission, distribution, energy storage and supply of electricity, together with consumer protection provisions, with a view to creating truly integrated competitive, consumer-centred, flexible, fair and transparent electricity markets in the Union" (EP/Council 2019e: 139). For instance, Member States must ensure that national law does not restrict cross-border trade and consumer participation, that prices reflect actual demand and supply, and that interconnection targets as set out in **Regulation (EU) 2018/1999** on the Governance of the Energy Union and Climate Action (EP/Council 2018f) are taken into account. Customers should be free to purchase their electricity from the supplier of their choice and have more than one electricity supply contract at once. Switching contracts for household customers should not impose any switching fees and should be carried out within three weeks after a request was made (by 2026 within 24 hours). Regulatory authorities and Member States should encourage the introduction of smart metering systems to promote energy efficiency and empower the final customer. In addition, household customers should have access to tools, including websites, to compare suppliers' offers, including offers for dynamic electricity price contracts.

Member States should ensure that final customers are entitled to become active customers, meaning that all customer groups (industrial, commercial and households) should have the right to generate electricity, adjust their consumption according to market signals, have access to electricity markets and be able to consume, to store and to trade their flexibility and self-generated electricity, thus providing flexibility to the system. Customers should also be able to take advantage of the aggregation of production and supply over larger regions and benefit from cross-border competition. Aggregation is likely to become an essential part of competitive energy markets. It denotes the grouping of the energy consumption of several customers or electricity generation in order to sell, purchase, or auction electricity. These tasks are performed by an independent aggregator who increases or moderates the consumption of a group of consumers or operates on behalf of a group of consumers, producing their own electricity. Moreover, citizens should be able to engage in energy communities to provide affordable energy (for instance, via renewable energy) for their members and shareholders rather than engaging in profit-orientated traditional electricity undertakings. Directive (EU) 2019/944 also addresses the protection of vulnerable customers and energy poverty, requires Member States to set out specific criteria to monitor the number of households in energy poverty, and take appropriate measures to ensure the necessary energy supply to vulnerable customers.

In terms of ownership unbundling, the decision allows for full ownership unbundling of transmission systems and transmission system operators (TSOs), the

designation of an Independent System Operator (ISO; independent at least in terms of its legal form, organisation and decision-making but a supply company can own physical network assets) or of an Independent Transmission Operator (ITO; lowest threshold of unbundling; a company can retain the network assets but must adhere to strict rules to ensure that transmission is entirely independent), similar to **Directive 2009/72/EC** (EP/Council 2009d). In addition, the decision requires TSOs to cooperate with neighbouring TSOs and the newly introduced regional coordination centres, whose recommendations they should take into account. Moreover, rules on the procurement of ancillary and balancing services are laid out to ensure the operational security of the electricity grid.

Regarding distribution system operators (DSOs), the directive sets out an extended set of rules and tasks to be fulfilled, addressing the operation, development, and maintenance of a secure, reliable, and efficient electricity distribution system. DSOs must develop transparent network development plans at least every two years and provide non-discriminatory data access, for instance, where smart meter systems were deployed. Moreover, if a DSO is part of a vertically integrated undertaking, it needs to be independent, at least in terms of its legal form, from other activities not relating to distribution (provisions were already introduced in Directive 2009/72/EC). Lastly, rules for the operation of National Regulatory Authorities (NRAs) were refined; especially, provisions on regional cooperation between NRAs and ACER were strengthened, and rules regarding the duties and powers of NRAs concerning regional coordination centres were introduced, addressing issues of regulatory oversight.

In turn, **Directive (EU) 2024/1711** (EP/Council 2024b) revised the aforementioned Directive to improve the EU's electricity design. Under Article 66a, the new Directive enables the Council to declare an electricity price crisis at a regional or Union level following a proposal from the Commission in the event of very high prices on the wholesale electricity market. In addition, the legal provisions should ensure better protection of consumers, creating an increased availability of fixed-price and fixed-term contracts, as well as dynamic electricity price contracts. Furthermore, customers should receive better information regarding their energy products and key contractual terms and conditions. Suppliers engaged in aggregation should provide the key information about energy offers to consumers in a concise and easily understandable manner before the conclusion or extension of a contract. The Directive also sets specific measures to protect vulnerable customers and households at risk of energy poverty from extreme price hikes, and Member States must ensure that vulnerable customers are fully protected from electricity disconnections. It furthermore empowers specific market participants (e.g. households, small and medium-sized enterprises, public bodies) to become 'active customers', meaning that they can produce, store, and sell electricity and participate in energy sharing in a non-discriminatory manner. The Directive also sets rules for customers to become more flexible, allowing them to have multiple suppliers for individual premises and actively engage in demand response programmes. Therefore, customers should be allowed to have more than one metering and billing point covered by the single connection point for their premises.

Review of the internal market for electricity: a new electricity market design

Another important legislative act that was adopted as part of the Clean Energy Package was the adoption of **Regulation (EU) 2019/943** (recast) on the internal market for electricity (EP/Council 2019d). Trilogue negotiations were held between June 2018 and December 2019, and the final act was signed on 5 June 2019. Similar to Directive (EU) 2019/944 regarding electricity market rules, Regulation (EU) 2019/943 significantly extended provisions on the electricity market design and strengthened the energy acquis. It addresses many different aspects regarding the operation of electricity markets; for instance, defining general rules in terms of balance responsibility and the balancing market (all market participants should be responsible for any imbalances they cause), trade provisions and general rules for day-ahead, intraday markets, and forward markets, technical bidding limits, specific rules addressing dispatch, which should be market-based, prioritising renewable energy sources, and relying on transparent and non-discriminatory criteria, and redispatch. The regulation also requires Member States to create bidding zones that do not contain any structural congestions; long-term structural congestions should be identified, and bidding zones should be re-configured if needed to maximise economic efficiency and cross-zonal trading opportunities. If congestion is identified, the Member State should develop an action plan with the regulatory authority to reduce the structural congestion within four years. The regulation also extended provisions regarding charges for access to networks, which should be cost-reflective and transparent, taking into account the need for network security and flexibility. Tariff methodologies should provide appropriate incentives to increase efficiencies, including energy efficiency, to foster market integration and security of supply, and to support related research activities.

The regulation also defines rules for congestion income. The regulatory authority should review the procedure for distributing these revenues and should not distort the allocation process of capacity nor provide disincentives to reduce congestion. In terms of resource adequacy, the capacity to meet demand at any given point in time, Member States need to monitor their resource adequacy based on specific rules laid out in the 'European resource adequacy assessment', and given they identified shortcomings, they should develop an implementation plan to eliminate any identified regulatory distortions or market failures. In addition, Regulation (EU) 2019/943 sets out rules for capacity mechanisms, which need to be approved by the Commission and should be in place for no longer than ten years. Moreover, the capacity mechanisms should not create undue market distortions, not go beyond what is necessary to address the adequacy concerns and select capacity providers employing a transparent, non-discriminatory, and competitive process. Member States shall ensure that capacity providers located in another Member State should have the opportunity to participate in the same competitive process as domestic capacity, and they should ensure that domestic capacity is not prevented from participating in the capacity mechanisms of other Member States.

Like its predecessor, the regulation defines tasks and specific rules for the operation of the European network of transmission system operators for electricity

(ENTSO-E). Amongst many different aspects related to the governance of electricity markets, ENTSO-E shall develop network codes, adopt, and publish ten-year network development plans (biennially) and the European resource adequacy assessment, adopt recommendations regarding the cooperation between EU and third-country TSOs, and develop a framework for the cooperation and coordination between regional coordination centres. ACER is tasked with monitoring the operation of ENTSO-E and should also monitor the implementation of network codes. Moreover, transmission system operators (TSOs) should establish regional cooperation with ENTSO-E and develop biennial regional investment plans.

A novel institutional development is the requirement to establish so-called regional coordination centres (RCCs) which should consist of transmission system operators of a specific system operation region (SOR). RCCs are required to ensure system security and efficiency through coordinated governance of the (cross-border) electricity grid, for instance, through coordinated capacity calculation and security analysis, the creation of common grid models, supporting the consistency of TSOs' defence and restoration plans, carrying out adequacy forecasts, and various other measures to ensure the smooth operation of the electricity grid in the system operation region. Lastly, the regulation also sets out rules for the creation of a European entity for distribution system operators (EU DSO) under which distribution system operators (DSOs) should cooperate at the EU level in order to promote the completion and functioning of the internal market (e.g. promoting operation and planning of distribution networks; facilitating the integration of renewable energy sources, distributed generation, and other resources such as energy storage; facilitating demand side flexibility and response and distribution grid users' access to markets).

As a consequence of the REPower EU Plan, measures under the European Green Deal, and very high prices and volatility in electricity markets following the Covid pandemic and the Russian war of aggression against Ukraine, the Commission published a legislative proposal to improve the EU electricity market design. After negotiations, **Regulation (EU) 2024/1747** (EP/Council 2024c) was published on 26 June 2024 and entered into force on 16 July 2024. The new market design aims to achieve affordable and competitive electricity prices for all consumers, shield them from price spikes, and make electricity prices less dependent on volatile fossil fuel prices. As such, the reform should benefit not only households but also the competitiveness of the Union's industries via the promotion of clean technology and the deployment of renewable energy sources (RES). Here, intraday markets are of particular importance to adapt to the participation of variable renewable energy technologies. Since variable renewable energy generators are only able to accurately estimate their production close to the delivery time, they must have the possibility to maximise their trading opportunities via access to a liquid market as close as possible to the time of delivery of the electricity. Hence, nominated electricity market operators (NEMOs), who perform the single day-ahead and single intraday coupling, should ensure that market participants can trade energy as close as possible to real-time across and within all bidding zones. To ensure the efficient integration of electricity generated from RES, and reduce the need

for fossil-fuel-based electricity generation in situations of regional or Union-wide electricity price crisis, Member States should be able to request system operators to propose the procurement of a peak-shaving product. A peak-shaving product denotes a service where specific market participants (usually large consumers or energy storage operators) are financially incentivised to reduce their energy consumption or supply stored energy during peak demand periods. The new market design also emphasises the importance of forward markets as effective tools for both consumers and suppliers to cover their long-term price exposure and decrease their dependence on short-term prices. Therefore, the Commission should assess the impact of possible measures to improve the functioning of the Union's electricity forward markets by 17 January 2026.

Another important policy tool is the deployment of specific investment incentives, encouraging the uptake of power purchase agreements (PPAs) and direct price support schemes in the form of two-way contracts for difference. A PPA denotes a (long-term) contract under which a natural or legal person (e.g. a utility, large business, or industrial consumer) agrees to purchase electricity – at a fixed price for a defined period of time – from an electricity producer (e.g. renewable energy producer) on a market basis. The primary goal is to provide financial certainty, lock in energy prices, and provide stable revenue for the producer. Member States should, therefore, remove unjustified barriers and disproportionate or discriminatory procedures to provide price predictability and reach the objectives set out in their integrated national energy and climate plans. Two-way contracts for difference (CFDs) as direct price support schemes should also help to promote the uptake of new low-carbon and non-fossil fuel power-generating facilities. Two-way CfDs ensure that when market prices exceed the PPA strike price, the generator returns excess profits to the public entity, but when market prices fall, the generator is compensated.

Reinforcement of the agency for the cooperation of energy regulators (ACER)

Creating an Agency for the Cooperation of Energy Regulators (ACER) was a significant institutional measure introduced by the Third Energy Package. According to the regulation (as revised in 2019), ACER should act independently of any market interests, the Commission, Member States, and any public or private entity to fill the regulatory gap at the Community level and to contribute towards the effective functioning of the internal markets in electricity and natural gas. **Regulation (EU) 2019/942** (EP/Council 2019c) establishing a European Union Agency for the Cooperation of Energy Regulators strengthens the rules governing the agency, warranting more institutional powers in terms of regulatory oversight, and sets out specific tasks that need to be fulfilled. The agency provides a framework that warrants the uniform application of provisions addressing the internal market for electricity and gas, and it has been granted the power to adopt individual decisions on issues affecting more than one Member State. ACER's decision-making power should cover technical and regulatory issues, for instance, those concerning the implementation of network codes and guidelines, cooperation with regional

coordination centres, regulatory decisions to monitor wholesale energy markets effectively, decisions addressing electricity and natural gas infrastructure connecting at least two Member States, and potential exemptions from market rules concerning new electricity interconnectors and new gas infrastructure. In addition, ACER's increased institutional role encompasses participating in developing network codes and guidelines and monitoring whether the codes have been implemented accordingly. The monitoring of network codes and guidelines is a crucial function of ACER and is an integral part in terms of the implementation of market rules.

Moreover, ACER should make sure that regulatory functions performed by the national regulatory authorities (NRAs) concerning the common rules for the internal market in gas and electricity are fulfilled and properly coordinated (NRAs need to cooperate on a regional and Union level). It should monitor the execution of the tasks of ENTSO-E and ENTSO-G (the ENTSO for gas), and monitor retail markets of electricity and natural gas. ACER should also monitor the regional cooperation between transmission system operators, nominated electricity market operators (NEMOs; tasked with day-ahead and intraday electricity market coupling), the execution of tasks of the European Entity for Distribution Systems Operators (the 'EU DSO entity'), and in close cooperation with NRAs and ENTSO-E, should monitor and analyse the performance of regional coordination centres. Indeed, ACER was conceived as a very powerful institutional actor to strengthen the regulatory framework of European energy markets beyond what could be achieved on a domestic level.

European statistics on natural gas and electricity prices

Directive 2008/92/EC (EP/Council 2008) concerning a Community procedure to improve the transparency of gas and electricity prices charged to industrial end-users addressed the issue of gathering data on natural gas and electricity prices in the EU. However, the directive only concerned industrial end-users; data gathering in the household sector by national authorities was voluntary. Due to the growing complexity of the internal energy markets, which made it increasingly difficult to obtain reliable and up-to-date price data on natural gas and electricity in the household sector, the Commission proposed on 18 November 2015 a regulation to ensure the reporting of high-quality price data for the household sector and the non-household sector. Swiftly after the proposal was published, the Council and the European Parliament reached an agreement at the first trilogue meeting in June 2016, and the regulation was signed on 26 October 2016. **Regulation (EU) 2016/1952** (EP/Council 2016) on European statistics on natural gas and electricity prices requires Member States to compile data on natural gas and electricity prices and their components and sub-components concerning network costs, taxes, fees, levies and charges, and on consumption volumes, using statistical surveys, administrative sources, and other available statistical estimation methods. Member States must provide the Commission (Eurostat) with the acquired data sets, following a specific methodology per the regulation.

Climate action and greenhouse gas emissions reduction

Various legislative acts addressing the reduction of greenhouse gas (GHG) emissions are an important part of the Energy Union framework, the EGD and the 'Fit for 55' package. In terms of institutional development, path dependence was strong in environmental policy and concerned primary law. The EU first addressed environmental issues at the Paris Summit in October 1972, when the six founding Member States, together with Great Britain, Denmark, and Ireland, pledged that economic expansion was not an end in itself but that its first aim should be to reduce disparities in living conditions, and that particular attention should be paid to the protection of the environment. Subsequently, the Single European Act (SEA) formally incorporated environmental policy into primary law, laying the treaty basis for environmental action in the EU through a dedicated 'Environmental Title'. Subsequent treaty revisions strengthened the institutional framework and the EU's commitment to environmental protection. The Maastricht Treaty made the environment an official EU policy area, introducing the co-decision procedure and QMV in the Council. The Treaty of Amsterdam integrated environmental policy into all sectorial policies, emphasising sustainable development. Finally, the Lisbon Treaty granted the EU legal personality to conclude international agreements, and Article 191 of the Treaty on the Functioning of the EU (TFEU) made combating climate change an explicit objective of EU environmental policy. From a Historical Institutionalist perspective, environmental policy followed a stringent and compelling institutional path. The recognition of environmental issues at the Paris Summit of 1972, and later the SEA, laid the groundwork for institutional development and created strong path-dependent processes, embedding environmental considerations into the institutional matrix. In contrast to energy policy, which was not formally addressed until the Lisbon Treaty, environmental considerations have been explicitly part of the institutional makeup since the SEA. The EU played a crucial role during the negotiations and implementation of the Kyoto Protocol and, based on these commitments, launched the European Climate Change Programme (ECCP) in 2000 to identify and develop all elements necessary for the implementation of the Kyoto Protocol.

Furthermore, the introduction of the EU Emissions Trading System (EU ETS) in 2005 (signed in 2003) significantly shaped the EU's climate policy trajectory, creating strong positive feedback. Since 2005, the EU ETS has been regularly updated and broadened to also include aviation and maritime shipping and a market stability reserve. Over the years, efforts to combat climate change were bolstered via different initiatives and policy provisions. For instance, '20-20-20 targets' were implemented in 2007 to be realised by 2020 and updated by the 2030 climate and energy framework of 2014, setting a GHG reduction target of 40% by 2030 relative to 1990 levels, which, in turn, was amended by the European Climate Law in 2021 as part of the EGD, setting a reduction target of 55%. As we will demonstrate, various legal acts were updated and amended over the past years, setting higher ambitions, and reflecting a path-dependent trajectory that reinforces institutional commitments.

Revision of the EU emission trading system and the market stability reserve

In October 2014, the European Council committed to reducing the overall greenhouse gas emissions of the EU by at least 40% below 1990 levels, amounting to a reduction of 43% below 2005 levels by 2030. As stated in **Directive (EU) 2018/410** (EP/Council 2018b), which was signed on 14 March 2018, all sectors of the economy should contribute to achieving those emission reductions, and the target should be delivered most cost-effectively through the European Union emission trading system (EU ETS). The legislative basis for the EU ETS is **Directive 2003/87/EC** (EP/Council 2003), which sets out the legal foundations for the system for greenhouse gas emission allowance trading within the EU. Article 191(2) of the Treaty on the Functioning of the European Union requires that Union policy is based on the premise that the polluter should pay, and Directive 2003/87/EC provides for a transition to full auctioning over time.

Directive (EU) 2018/410 builds on these provisions and incorporates new features into the institutional framework. It refers to the Paris Agreement, which was adopted on 12 December 2015 under the United Nations Framework Convention on Climate Change (UNFCCC), which sets out the goal to hold the increase in the global average temperature well below 2°C and aspires to limit the increase to 1.5°C above pre-industrial levels. In order to realise the envisioned 40% emission reductions, the EU ETS market is the main policy instrument to achieve this goal, utilising an annual linear reduction factor of 2.2% from 2021 onwards (which means that the cap on emission allowances decreases annually by 2.2%). From 2021, the share of allowances to be auctioned should be 57%, and the rest should be provided for free to be distributed to the industry.

In order to preserve the environmental benefits of emissions reductions in the Union and reduce the relocation of production outside the EU, free allocation should be distributed to sectors at risk of carbon leakage. Different sectors and subsectors are at risk of carbon leakage to varying degrees, and as experience has shown during the operation of the EU ETS, free allocation to sensitive sectors has prevented carbon leakage in the past. Moreover, for solidarity, growth, and interconnections, 10% of the allowances should be distributed among those Member States with the lowest GDP. In addition, the directive requires the creation of a Modernisation Fund, which should be established from 2% of the total quantity of allowances to support ten lower-income EU Member States in their transition to climate neutrality by helping them to modernise their energy systems and to improve energy efficiency. The directive also specifies modalities to create an innovation fund to support innovation in low-carbon technologies and processes.

The EU ETS system was revised as specified in the 'Fit for 55' package, presented by the European Commission on 14 July 2021. The European Parliament adopted the revision on 18 April 2023; the Council adopted it on 25 April 2023. **Directive (EU) 2023/959** (EP/Council 2023g) increases the ambition of the ETS, and GHG emissions in the sectors covered by the EU ETS must be reduced by 62% by 2030 compared to 2005 levels (43% under the 2018 directive). In addition, the EU-wide quantity of allowances should be reduced by 90 million in 2024 and by

27 million in 2026; the linear reduction factor will be 4.3% from 2024 to 2027 and 4.4% from 2028. As a novelty, the new EU ETS also included sectors that were formerly outside of the remit of the directive. Maritime shipping was included, and the regulation envisions a gradual introduction of obligations for shipping companies to surrender allowances. In addition, the regulation creates a separate new ETS II for fuel for road transport and buildings that will put a price on emissions from these sectors and be established by 2027 (ETS II could also be postponed until 2028 if energy prices are extremely high). In order to address the distributional and social effects of the transition in low-income countries, an additional 2.5% of the EU-wide quantity of allowances between 2024 and 2030 should be utilised to help the transition in countries whose GDP is below the EU average.

Moreover, the scope of the Modernisation Fund should be extended to support innovation in low- and zero-carbon technologies. The Council and Parliament agreed to phase out free allowances for sectors under the Carbon Border Adjustment Mechanism (CBAM) over nine years from 2026 to 2034, including cement, aluminium, fertilisers, electricity, hydrogen, iron and steel, some precursors and select downstream products. The Market Stability Reserve (MSR) will be enhanced by extending the 24% annual intake rate of allowances beyond 2023 and setting a cap at 400 million allowances. Moreover, free allocation beneficiaries must meet conditionality requirements, like energy audits and climate neutrality plans for some installations.

Together with the EU ETS Directive, the **Market Stability Reserve (MSR)** was revised under the 'Fit for 55' package of 14 July 2021 and under provisions set by the 'European Green Deal' of 11 December 2019. The MSR was initially created to address the surplus of emission allowances, as around 2 billion had built up in the EU ETS since 2009. The surplus of allowances, created due to the economic crisis and high imports of international credits, led to low carbon prices, undermining the incentives to reduce GHG emissions. Therefore, **Decision (EU) 2015/1814** (EP/Council 2015c) established a market stability reserve in 2018 within the Energy Union framework, which has been operational since January 2019, improves the system's resilience to major shocks on the carbon market by adjusting the supply of allowances to be auctioned. In essence, it creates a mechanism that takes a specific portion of ETS allowances off the market if the surplus exceeds a certain threshold and puts them into the reserve. Allowances could also be taken out of the reserve in the opposite case. Nine hundred million allowances deducted from the auctioning volumes from 2014 to 2016 were placed in the reserve rather than auctioned in 2019 and 2020, and unallocated allowances were also put into the reserve. **Directive (EU) 2018/410** (EP/Council 2018b) amended the decision: whereas the former version set the minimum amount to be placed in the reserve at 100 million allowances and the intake rate at 12% (the percentage from the total number of allowances in circulation (TNAC) which is put in the reserve), the legislative act of 2018 doubled the intake rate until 2023 to 24% of the cumulative surplus going to the reserve and to 200 million allowances as the minimum number. Regarding the number of allowances to be placed in the market stability reserve, **Decision (EU) 2023/852** (EP/Council 2023b) maintains the currently increased annual intake rate

of 24% allowances and the minimum number of 200 million until 2030. This is to ensure market stability by absorbing the historical surplus of allowances more quickly.

Safeguarding measures for the EU Emissions Trading System (Brexit)

The UK's decision to leave the EU also impacted the EU Emissions Trading System (EU ETS). Had the UK left the EU without an agreement on its continued participation in the EU ETS, emission allowances – EU Allowances (EUAs) – issued in the UK would have remained valid throughout the EU, while the obligation of UK operators to surrender allowances for their emissions would have lapsed (the obligation of participants of the EU ETS to compensate for their emissions from the previous year; each allowance represents one tonne of greenhouse gas emissions). Consequently, the Commission issued a legislative proposal to amend Regulation (EU) No 389/2013 (EP/Council 2013b) establishing a Union Registry that would require EU allowances created from 1 January 2018 to be identified by a country code and to be made distinguishable according to the year of creation. **Commission Regulation (EU) 2018/208** (EU/Council 2018a), which amended Regulation (EU) No 389/2013 establishing a Union Registry, was formally adopted on 12 February 2018 in order to close the loophole and to ensure the accurate accounting of transactions under the EU ETS. As the UK opted out of the EU without an agreement to partake in any activities in the internal market, the UK Emissions Trading Scheme (UK ETS), also a cap-and-trade system, replaced the UK's participation in the EU ETS on 1 January 2021.

Greenhouse gas emissions from land use, land use change and forestry (LULUCF) in the 2030 climate and energy framework

The Paris Agreement set out the long-term commitment to keep the global temperature increase well below 2°C (ideally 1.5°C) pre-industrial levels, and land use, land use change and forestry (LULUCF) play a crucial part in attaining climate mitigation objectives. Bolstered by the EU 2030 climate and energy framework, adopted by the European Council in October 2014 (European Council 2014), the Commission published a legislative proposal to include the LULUCF sector to mitigate climate change. The sector had not previously been included in the fight against greenhouse gas emissions. After trilogue negotiations, the Parliament formally adopted the agreed text on 17 April 2018 and the Council on 14 May 2018. **Regulation (EU) 2018/841** (EP/Council 2018c) defines specific rules for Member States for the LULUCF sectors to attain the goals defined by the Paris Agreement and the EU's 2030 framework, particularly by reducing emissions and enhancing sinks and carbon stocks. The regulation also specifies the rules for the accounting of emissions and removals from LULUCF and for checking the compliance of Member States with those commitments (via accounting for afforested land, deforested land, managed cropland, managed grassland, managed forest land, managed wetland). The LULUCF Regulation of 2018 requires each Member State to comply

with the so-called no-debit rule, which means that they must ensure that accounted carbon dioxide emissions from LULUCF are compensated for by an equivalent removal of carbon dioxide from the atmosphere by other LULUCF activities. If a Member State creates higher emissions than are removed, they can use allocated emissions from the Effort Sharing Regulation (EU) 2018/842 (EP/Council 2018d) to offset the emissions.

Additionally, Member States can buy and sell net accounted removals from and to other Member States. As with other legal provisions, the regulation was revised as part of the 'Fit for 55' package of 14 July 2021. The act was published in the Official Journal on 21 April 2023. **Regulation (EU) 2023/839** (EP/Council 2023a) tightened procedural rules and set an overall EU-level objective of 310 Mt CO2 equivalent of net removals in the LULUCF sector in 2030. For the period from 2021 to 2025, Member States should ensure that GHG emissions do not exceed GHG removals (adhering to the non-debit rule), and from 2026 to 2030, each Member State will have a *binding* national target for 2030 for the increase of GHG removals, and they commit to achieving a sum of net GHG emissions and removals ('the budget for 2026 to 2029'). A range of flexibilities will remain at the disposal of Member States, for instance, trading surplus allowances in case removals exceed emissions or using revenues generated by transfer to tackle climate change in the Union or third countries. In addition, the new regulation improves the monitoring, reporting, and verification of emissions and removals by using more accurate geographical data and remote sensing.

Aviation in the EU emission trading system

The EU and Its Member States have strived to promote an international agreement to reduce GHG emissions from the aviation sector since 1997. The EU Emission Trading System (EU ETS), governed by **Directive 2003/87/EC** (EP/Council 2003), was amended through **Directive 2008/101/EC** (EP/Council 2009a) in order to include aviation activities in the EU ETS and was operational from 2012 after a ruling by the European Court of Justice. As the implementation of the provisions faced much criticism from international stakeholders, the directive only applied to intra-European Economic Community flights to give the International Civil Aviation Organization (ICAO) time to develop a market-based measure for international aviation emissions (derogations from the EU ETS were adopted three times for extra-EU flights). The ICAO reached an agreement in October 2016 at the 39th Assembly, and the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) became operational in 2021. It was implemented via a pilot phase (2021–2023), a first voluntary phase (2024–2026), and a second phase (2027–2035), which will be compulsory.

The directive was further amended in 2017 by **Regulation (EU) 2017/2392** (EP/Council 2017d), adopted by the Council and the European Parliament on 12 December 2017, which entered into force on 29 December 2017. The regulation sets out that emissions from flights between airports located in the European Economic Area (EEA) continue to be covered by the scheme. However, emissions

from flights to and from airports located outside the EEA remain excluded from the scheme until a global market-based measure comes into effect. Aircraft operators must monitor and report their emissions following specified guidelines defined in the regulation, and competent authorities are responsible for verifying and approving the reported emissions data. Each year, aircraft operators must surrender a number of allowances equivalent to their GHG emissions. These allowances are distributed through an annual allocation system, and some allowances are allocated for free by Member States. If polluters do not have enough allowances to cover their emissions, they can purchase additional permits at auction from other companies that created a surplus. Allowances are reduced yearly to drive up the permits' price and incentivise the reduction of emissions. In addition, the regulation prepares to implement a global market-based measure for aviation emissions from 2021 onwards and provides the necessary legal framework to align the EU ETS with the global measure. As discussed, the EU ETS was revised under the 'Fit for 55' package to ensure the aviation sector contributes to the more ambitious GHG reduction goal of 55% by 2030. A decision was reached by Parliament on 18 April and adopted by the Council on 25 April 2023, and the final act was signed on 10 May 2023.

Directive (EU) 2023/958 (EP/Council 2023f) set out rules regarding the phasing out of free emission allowances for the aviation sector (25% in 2024, 50% in 2025, and 100% from 2026 when full auctioning will apply). Furthermore, it specifies provisions regarding allowances for the use of sustainable aviation fuels. A provision of 20 million free allowances has been established to bolster the adoption of sustainable aviation fuels to cover part or all of the price differential between fossil kerosene and the relevant eligible aviation fuels. The level of support provided varies based on the type of fuel used and the departure location. In addition, the directive continues to enforce the use of the EU ETS for flights within the EEA, including those to and from the UK and Switzerland. Conversely, the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) will apply to flights beyond the borders of the EU. In addition, it specified that the current derogation from EU ETS obligations should be extended until 31 December 2026 for aircraft operators to and from third countries not covered by CORSIA. Member States must implement CORSIA from the start of the pilot phase 2021–2023.

Binding greenhouse gas emission reductions for Member States 2021–2030: effort sharing regulation

Within the Energy Union package, the Effort Sharing Regulation (ESR) 2021–2030 (**Regulation (EU) 2018/842**) (EP/EC 2018d) sets binding annual GHG emission targets for Member States from 2021 to 2030, to reach the EU's target of reducing its GHG emissions by 30% below 2005 levels, for the sectors of the economy not covered under the EU ETS, including buildings, agriculture, waste management, small industries, and transport, which accounted for more than 60% of total GHG emissions in 2014. The regulation can be perceived as a policy tool complementing the land use, land use change and forestry (LULUCF) emission

reduction **Regulation (EU) 2018/841** (EP/Council 2018c), as well as **Directive (EU) 2018/410** (EP/Council 2018b) regarding the establishment of a system for GHG emission trading in the EU (EU ETS). It defines obligations for Member States regarding their contributions to the EU-wide binding annual GHG emission reductions in 2030, which are set as a percentage of emission levels of 2005 (from 0% to 40%). The regulation moreover specifies that Member States with a high GDP per capita have higher emission reduction targets. However, to avoid excessive costs for higher-than-average GDP per capita countries, as these would need to take on a higher share of emission reductions, the targets are adjusted relatively to reflect cost-effectiveness in a fair and balanced manner. Member States receive annual emission allowances, which decrease yearly. In addition, Member States are granted some flexibility regarding how to reach their emission targets. For instance, they can borrow up to 10% from their annual emission allowances for the following year, bank excess allowances for future use, or transfer them to other Member States.

Moreover, Member States can utilise some net accounted removals from LULUCF, and some Member States can use a specific amount of EU ETS allowances for fulfilling ESR obligations. In addition, the Effort Sharing Regulation was also revised under the 'FIT for 55' package to meet the GHG emission reduction goal of 55%. As the former regulation required the reduction of GHG emissions by 30%, **Regulation (EU) 2023/857** (EP/Council 2023c) set the goal to reduce emissions by at least 40% compared to 2005 levels in sectors not covered by the EU ETS. General provisions and the architecture of the revised regulation essentially stayed the same. However, the updated regulation set more ambitious targets for Member States, now between 10% and 50% compared to 2005 levels, and restricted their flexibilities to meet their targets. The updated targets reduce the range of Member States' emissions per capita in 2030 compared to the current levels. The Commission monitors the progress made by the different Member States and, in case a Member State is not on track, must submit an action plan to remedy any shortcomings.

Monitoring maritime transport greenhouse gas emissions

Regulation (EU) 2015/757 (EP/Council 2015a), also known as the EU MRV (Monitoring, Reporting, Verification) Regulation, was signed by the European Parliament and Council on 29 April 2015 and published in the Official Journal on 19 May 2015. The regulation was established in order to monitor, report, and verify CO2 emissions from maritime transport, and also made changes to Directive 2009/16/EC on port State control (EP/Council 2009b). The aim of Regulation (EU) 2015/757 is to promote the reduction of greenhouse gas emissions in the maritime sector by increasing transparency and encouraging ships to improve their energy efficiency. The regulation applies to large ships (above 5,000 gross tonnages) irrespective of their flag, when they are operating within EU waters or during activities to or from ports under the jurisdiction of an EU member state. Ship owners are required to monitor and report their vessels' CO2 emissions, as well as

other relevant information. Independent verification bodies accredited by national authorities are required to verify the accuracy of the monitoring and reporting. The system entered into force on 1 March 2018, and reporting started in 2019.

The regulation was updated in 2023; the European Parliament reached a decision on 18 April 2023, the Council adopted the act on 25 April 2023, and the final act was signed on 10 May 2023. **Regulation (EU) 2023/957** (EP/Council 2023e) continues to address maritime transport and includes the sector in the EU ETS. The regulation establishes a framework to provide monitoring, reporting, and verification rules that are necessary for an extension of the EU ETS to maritime transport activities. The regulation applies to ships of 5,000 gross tonnage and above in respect of the greenhouse gas emissions released during their voyages for transporting for commercial purposes. In addition, from 1 January 2025, the regulation will also be applicable to general cargo ships below 5,000 gross tonnage but not below 400 gross tonnage.

Renewable energy

Provisions addressing renewable energy constitute a cornerstone of the EU's efforts to tackle greenhouse gas (GHG) emissions reduction targets and ensure a reliable and secure supply of energy. These commitments have been reinforced through the REPowerEU plan, which aims to phase out supply from Russian fossil fuels. The first legislative acts specifically targeting renewable energy were Directive 2001/77/EC on the promotion of electricity produced from renewable energy sources in the internal electricity market (Renewables Directive), and Directive 2003/30/EC on the promotion of the use of biofuels or other renewable fuels for transport (Biofuels Directive). Since the introduction of these directives, the development of renewable energy has been driven by path-dependent processes, policy feedback, and institutional dynamics characterised by constant updating and monitoring of the *intended goals*. As Historical Institutionalism suggests, ideas around climate change and energy security served as potent endogenous factors to gradually change the institutional course, adding new layers of governance to the institutional design and instigating incremental but sustained policy development. However, not only did endogenous factors play a crucial role in the development of the policy trajectory, but exogenous factors also created compelling momentum for further alterations to the institutional matrix. Most notably, pledges under the Kyoto Protocol and the Paris Agreement to reduce GHG emissions, as well as the supply crises of 2006 and 2009, the annexation of the Crimean Peninsula in 2014 and the start of the war in Ukraine in 2022, prompted more ambitious targets and served as catalysts for an ever-expanding array of legal provisions.

Review of renewable energy directive: EU 2030 climate and energy targets

The 2018 Renewable Energy **Directive (EU) 2018/2001** (RED II) (EP/Council 2018g) revised the directive of 2009 (EP/Council 2009c). It establishes a new binding energy target for the EU as a whole of at least 32% of gross final energy

consumption to be met by renewables by 2030, with a clause for a possible upward revision by 2023 (Article 3). The gross final consumption of energy from RES is calculated as follows:

a) gross final consumption of electricity from renewable sources;
b) gross final consumption of energy from renewable sources in the heating and cooling sector; and
c) final consumption of energy from renewable sources in the transport sector.

Although the binding target is set at the EU level, Member States must set their own targets; these are not binding, but Member States must ensure they stay within their 2020 targets. Member States must notify the Commission of their contributions to the 2030 target in their Integrated National Energy and Climate Plans, as required under the Governance Regulation (see the section on Governance regulation). These set out general principles for the design of renewable support schemes that are cost-effective, non-discriminatory, transparent, and market-based (Article 4). The Directive provides renewable electricity generators to access support schemes in other Member States, which will be introduced gradually (Article 5). The permit process was streamlined and accelerated to make procedures more efficient, reducing administrative costs (Article 16). Guarantees of Origin were introduced to demonstrate to final customers the share or quantity of energy from renewable sources in an energy supplier's energy mix (Article 19). It includes provisions requiring Member States to achieve an annual average increase of 1.3% in the share of renewable energy in their heating and cooling supply. The exact measures are at the discretion of each country (Article 23). In addition, it requires EU transport fuel suppliers to provide an increasing share of renewable and low-carbon fuels to ensure that the share of renewable energy within the final energy consumption in the transport sector is at least 14% by 2030 (Article 25). The Directive also sets rules on how renewable gas should be certified (Articles 29 and 30). Moreover, citizens should play an active role in the development of renewables through participation in energy communities, and energy communities should be able to produce, consume, store, and sell renewable energy, including through renewable power purchase agreements. The RED Directive was also revised under the 'Fit for 55' package. A provisional agreement was reached on 30 March 2023 in trilogue negotiations between the Parliament, the Council, and the Commission.

The final act was published in the official journal on 31 October 2023 and entered into force on 20 November 2023. **Directive (EU) 2023/2413** (RED III) (EP/Council 2023i) updates a vast number of provisions already laid out in the Directive of 2018 and strengthens the regulatory framework. It increases the overall Union renewable energy target to 42.5% to significantly accelerate the current pace of deployment of renewable energy, thereby accelerating the phase-out of the Union's dependence on Russian fossil fuels by increasing the availability of affordable, secure and sustainable energy in the Union. Beyond that mandatory level, Member States should endeavour to collectively achieve an overall Union renewable energy target of 45% in line with the REPowerEU Plan (European Commission 2022b). In

addition, the Parliament and Council have reached a consensus on various sector-specific goals in areas such as industry, transport, buildings, heating, and cooling. Some of these targets are mandatory, while others are indicative. The Directive also tightens and extends the rules on the certification of renewable gas. Provisions about the sustainability of biofuels have been strengthened, and the processes for granting permits for renewable energy have been expedited, aligning with the REPowerEU plan.

Directive on transition to second-generation biofuels

Directive (EU) 2015/1513 (EP/Council 2015b), also known as the 'ILUC Directive' (ILUC – Indirect Land Use Change), adopted on 9 September 2015, introduces amendments to two existing directives: **Directive 98/70/EC** (EP/Council 1998), which relates to the quality of petrol and diesel fuels, and **Directive 2009/28/EC** (EP/Council 2009), which promotes the use of energy from renewable sources. The main objective of Directive 2015/1513 is to establish stricter environmental standards for petrol and diesel fuels and encourage the use of renewable energy sources. This directive was primarily established to address concerns over Indirect Land Use Change (ILUC). ILUC occurs when land previously used for food crops or other non-energy purposes is converted to biofuel production, causing the displacement of food or feed production to non-cultivated areas. This can lead to land-use changes such as deforestation, which can release significant amounts of carbon dioxide and thus potentially negate any greenhouse gas savings from using biofuels. Therefore, the directive sets out rules to promote advanced biofuels, such as those made out of wastes or algae, which provide high greenhouse GHG emissions savings with a low risk of causing indirect land-use change. In order to limit the amount of biofuel produced from agricultural crops and from crops grown for energy purposes on agricultural land (first-generation biofuels), no more than 7% of the final consumption of energy in transport in the Member States in 2020 should come from these sources – given that at least 10% of the final energy consumption in the transport sector should come from renewable sources.

The directive was updated under the recast of **Directive (EU) 2018/2001** (Renewable Energy Directive – RED II) (EP/Council 2018g), which requires each Member State to ensure that the share of renewable energy within the final consumption of energy in the transport sector is at least 14 % by 2030 (minimum share). The directive defines and sets limits on high ILUC-risk biofuels, bioliquids, and biomass fuels with a significant expansion in land with high carbon stock, affecting the amount of these fuels that Member States can count towards their national targets. The directive requires a gradual phase-out of high ILUC-risk biofuels produced from food or feed crops after 2023 to reach zero by 2030 at the latest. The directive also introduces low ILUC-risk biofuels where it is demonstrated that the production feedstock comes from unused land or that it is additional to what would have been produced according to business-as-usual scenarios. In addition, advanced biofuels and biogas as a share of final energy consumption in the transport sector should be at least 1% in 2025 and at least 3.5% in 2030. It was

furthermore updated by the Commission Delegated Regulation (EU) 2019/807 (supplementing Directive (EU) 2018/2001) (European Commission 2019a), which *sets out specific rules* for high ILUC-risk feedstock and certifying low ILUC-risk biofuels, bioliquids or biomass fuels.

Non-specified legislation

This section contains legislative acts and policy initiatives that constitute very broad and general policy tools for governing the Energy Union and are the basis for the European Green Deal (EGD). More specifically, they constitute the backbone for policy development and, based on the theoretical model, represent the initial sets of *intended goals* that informed the *policy output*. Under these premises, the Paris Agreement served as the initial prompt for the Union to change the institutional course in terms of GHG emissions. It can be conceived as a critical juncture for EU climate policy as it reinforced the EU's renewable energy policies and GHG reduction targets. In tandem with the Energy Union package, pledges under the Paris Agreement constitute the underlying foundation for any legislation that has altered institutional rules and secondary law. Both can be considered as formative moments that starkly influenced the decisions which were subsequently enshrined in the rules to govern the institution – the *policy output*. Along similar lines, the Governance Regulation (EU) 2018/1999 (EP/Council 2018f) established a resilient overarching regulatory framework for the Energy Union and created a mechanism for policy feedback through regular reporting and monitoring, ensuring that Member States' efforts remain continuously aligned with EU targets.

COP 21 – Paris agreement

The Paris Agreement is an international treaty adopted in 2015 under the United Nations Framework Convention on Climate Change (UNFCCC), which the Union formally endorsed on 5 October 2016 (Council of the European Union 2016). While it is a binding multilateral agreement addressing climate change, the EU has played an important role in reaching the agreement and has been actively implementing its goals. The EU has implemented provisions of the Paris Agreement in multiple ways: it strengthened the EU's climate policy approach via different policy tools, which were updated and revised, for instance, in the form of the Emission Trading System (EU ETS) and the Effort Sharing Regulation (ESR). However, the EU more generally reinforced the institutional framework in the form of the Energy Union and the European Green Deal, as they serve as the fundamental justification for all legislative acts that were adopted (addressed in this chapter). The Paris Agreement helped the EU to mobilise greater investment in clean energy projects via the **Commission Implementing Regulation (EU) 2020/1294** (European Commission 2020f) on the Union renewable energy financing mechanism, European Green Deal Investment Plan (EGDIP), the Just Transition Mechanism (JTM), the European Investment Bank and the European Fund for Strategic Investments (EFSI),

the EU's Cohesion Fund, the Connecting Europe Facility, the European Regional Development Fund, the InvestEU Programme, the LIFE: Clean Energy Transition programme, the Modernisation Fund, the Innovation Fund, and the European Energy Programme for Recovery.

Regarding climate change goals, the Paris Agreement aims to limit global temperature levels below 2°C pre-industrial levels, with a further target set to limit the temperature increase to 1.5°C above pre-industrial levels. The EU committed to reducing its greenhouse gas (GHG) emissions by at least 55% below 1990 levels by 2030, enshrined in the 'Fit for 55' legislative package, and committed to achieving a net zero emission economy by 2050 – to become a climate-neutral society and economy by 2050. The EU was one of the first signatories to ratify the Paris Agreement and has been very active in implementing the agreement's provisions through legislation adopted/amended within the Energy Union framework and the European Green Deal (see this chapter for detailed information on various legislative acts), including the establishment of Nationally Determined Contributions (NDCs), which outline each country's climate change action. The ambitious policy cycles of the Paris Agreement serve as the blueprint for the Regulation on the Governance of the Energy Union (Regulation (EU)2018/1999), which sets out common rules for planning, reporting, and monitoring of energy and climate policy. Member States needed to submit National Energy and Climate Plans (NECPs) to address the five dimensions of the Energy Union: decarbonisation, energy efficiency, energy security, internal energy market, and research, innovation, and competitiveness.

The Paris Agreement has accelerated the EU's transition towards renewable energy sources (RES), set a target of at least 42.5% of its total energy consumption from renewables by 2030 (via the latest Renewable Energy Directive of 2023 RED III up from 32% under RED II), and bolstered the EU's aspirations to become more energy efficient. This has spurred increased investment and greater uptake, support, and promotion in the field of renewable energy: for instance, via promoting technologies such as wind power, solar energy, hydropower, ambient heat (heat pumps), tidal energy, biofuels, and geothermal energy. The goal was increased from 32% under RED II to 40% under the Fit For 55 package and then further increased through the REPowerEU plan, instigated by the Russian military aggression against Ukraine, to 42.5%. In terms of energy efficiency, which the Paris Agreement also strengthened, the Energy Efficiency Directive of 2018 set out a 32.5% headline efficiency target. The efficiency target was also revised under the EGD and later via the REPowerEU plan. The new target is 40,5% for primary energy consumption and 38% for final energy consumption compared to the 2007 EU Reference Scenario projections for 2030.

Energy Union governance post-2020

Introduced with the 'Clean Energy for all Europeans' package, the Governance **Regulation (EU) 2018/1999** (EP/Council 2018f) was conceived as a powerful institutional tool for regulatory oversight, covering all five dimensions of the

Energy Union framework. In this respect, it can be regarded as the regulatory software of the EU Energy Union in the form of a legislative foundation that enables reliable, inclusive, cost-efficient, transparent, and predictable governance of the Energy Union and Climate Action. These provisions were set out in line with the 2030 and long-term objectives of the EU and the Paris Agreement in the field of GHG emission reduction, energy from renewable sources and energy efficiency. Achieving GHG emission reductions requires boosting efficiency and innovation in the economy, ultimately creating jobs and improving air quality and public health. Moreover, the framework should significantly reduce the administrative burden for Member States and relevant stakeholders by reducing administrative costs for governments and stakeholders, simplifying coordination between Member States and ultimately implementing rules more effectively, contributing to institutional coherence. The Regulation is based on integrated **National Energy and Climate Plans (NECPs)**, covering ten-year periods from 2021 to 2030, EU and national long-term strategies, integrated reporting, monitoring, and data publication. The underlying logic is to streamline planning, reporting, and monitoring within existing sectoral law in the energy and climate fields to avoid overlaps and insufficient considerations of synergies and improve cost efficiency. NECPs are, therefore, the central component of the governance mechanism. They are integrated mid-term planning tools that each Member State must prepare, laying out how intended goals will be attained. NECPs must follow a binding structure provided by a mandatory template defined in Annex I-XIII in the Governance Regulation to ensure comparability and policy consistency. They must reflect the logic of the five dimensions of the Energy Union. Each dimension must be addressed individually: targets, objectives, and contributions must be defined, and policy measures for subsequent goal attainment must be conveyed for each dimension. NECPs should set out how Member States will achieve the targets and provide investment certainty to the energy industry. Plans from 2021 to 2030 should pay particular attention to the EU's 2030 targets for GHG emission reductions, renewable energy, energy efficiency, and electricity interconnection and contribute to achieving the United Nations Sustainable Development Goals.

Mid-century zero emissions strategy for the EU

In terms of an overall emission strategy of the EU, the European Parliament resolution of 4 October 2017 asked the Commission to prepare a mid-century zero emissions strategy for the EU, on the basis of the agreed targets of the Paris Agreement and realised in a cost-efficient manner. This initial prompt was bolstered by the European Council on 22 March 2018, asking the Commission to draft a strategy for long-term GHG emission reduction in the EU, resulting in the communication 'A Clean Planet for all' (European Commission 2018); the European Council, the Council of the European Union, and the European Parliament assessed the strategic paper and adopted their opinions, ultimately leading to the Commission's communication 'A European Green Deal' (European Commission 2019b), which will be addressed in the next section.

European green deal

We now turn our attention to the European Green Deal (EGD) and the effects it had on the energy domain. The European Green Deal can be regarded as a major stepping stone for the EU, which affected various policy areas, integrating them into a comprehensive governance framework. In this sense, it transcends a single policy area but represents a holistic approach that links different sectors to reach carbon neutrality by 2050. From a Historical Institutionalist standpoint, the EGD provides evidence that, over time, the institutional matrix continuously expanded and broadened, based on positive feedback processes and increasing returns. Indeed, once various institutional actors agreed to initiate and follow a specific institutional path, the relative benefits – compared to alternatives – rose with every step, and the cost of exit increased. The EGD also illustrates that layering effects are inherently present in the design of the framework. Various provisions were subject to gradual adjustments rather than radical shifts. New elements were added to existing institutional frameworks, leading to a cumulative change over time. Strong synergies between different policy sectors were created, harnessing cumulative benefits that make the EGD more than the sum of its parts.

Different endogenous and exogenous factors contributed to the initiation of the EGD, such as the EU's thorough commitment to GHG emissions reduction, historically through the Kyoto Protocol and, more recently, the Paris Agreement, and the imminent environmental challenges of climate change. However, geopolitical concerns also shape its agenda: through reducing dependency on fossil fuel imports and the diversification of supply, the ambition to demonstrate leadership in climate change mitigation and standard setting, trade and economic relations with third countries, and driving technology innovation and R&D. Endogenous factors, like various treaty provisions and secondary law, Commission efforts to initiate new ideas about environmental governance, monitoring processes and policy feedback, network effects, coalitions of powerful actors, and learning and coordination effects, established the alignment of different policy areas and lead to significant advancements in environmental governance and energy policy.

The European Green Deal (EGD) is

> a new growth strategy that aims to transform the EU into a fair and prosperous society, with a modern, resource-efficient and competitive economy where there are no net emissions of greenhouse gases in 2050 and where economic growth is decoupled from resource use.
>
> (European Commission 2019b: 2)

Announced in December 2019, the package includes initiatives covering the climate, the environment, energy, transport, industry, agriculture, and sustainable finance – all of which are strongly interlinked (European Council and Council of the European Union n.d.). The communication by the Commission presented an initial roadmap of the key policies and measures needed to achieve EGD. It strives to make Europe the first climate-neutral continent by 2050, with an interim reduction

goal of 55% by 2030, bolstered by the 'Fit for 55' package. The EGD outlines investments needed and financing tools available, explaining how to ensure a just and inclusive transition. The EGD strives to provide clean, affordable, and secure energy through a decarbonised energy system, to mobilise industry for a clean and circular economy by promoting new clean technologies, and to create a sustainable products policy that uses resources more efficiently (realised via the so-called Circular Economy Action Plan). Another central aspect of the policy framework is to promote energy efficiency in the construction and renovation of buildings and to increase renewable energy use in all parts of the economy. It furthermore promotes a 'Farm to Fork' strategy for sustainable food (European Commission 2020c) and a Biodiversity strategy (European Commission 2020b) for 2030 to protect nature and reverse the degradation of ecosystems. The EGD also aims for a zero-pollution ambition via systematically identifying and revising cross-sectoral policies to prevent and remedy pollution. It furthermore sets rules to endorse sustainable mobility to reduce emissions in the transport sector, aiming at a 90% reduction in transport emissions by 2050. These intended goals should be realised through various financial instruments – for instance, via the European Green Deal Investment Plan (EGDIP) (European Commission 2020a), also referred to as the 'Sustainable Europe Investment Plan' (SEIP) – and bolstered by funds to stimulate innovation in research and development. In total, about €1.8 trillion in investments will be needed. The EGD furthermore supports a Carbon Border Adjustment Mechanism under **Regulation (EU) 2023/956** (EP/Council 2023d) to tackle the issue of unfair competition due to carbon leakage where production is transferred from the EU to countries with lower ambitions in emission reductions or where EU products are replaced by more carbon-intensive products. The Just Transition Mechanism (JTM) is a key tool to ensure that the transition towards a climate-neutral economy happens in a fair way, leaving no one behind. It provides targeted support to help mobilise around €55 billion over the period 2021–2027 in the most affected regions to alleviate the socio-economic impact of the transition.

Energy system integration strategy

The EU Strategy for Energy System Integration (European Commission 2020d) was presented in July 2020 as part of the European Green Deal. Energy system integration, understood as the "coordinated planning and operation of the energy system 'as a whole', across multiple energy carriers, infrastructures, and consumption sectors" (European Commission 2020d: 1), was identified as a crucial policy tool to effectively de-carbonise the EU's economy. The plan sets out a path towards accelerating the transition to a more integrated energy system and, at the same time, strengthening energy security, protecting health and the environment, and promoting growth, innovation, and global industrial leadership. The strategy was complemented by the communication "A hydrogen strategy for a climate-neutral Europe" (European Commission 2020e).

In order to deliver low-carbon, reliable, and resource-efficient services, the strategy endorses three complementary and reinforcing concepts. First, a more

'circular' energy system should be created, in which energy efficiency is promoted and in which the least energy-intensive choices are prioritised, unavoidable waste streams are reused for energy purposes, and synergies are exploited across sectors. Second, a greater direct electrification of end-use sectors should be harnessed. The transition to using renewable electricity should be promoted, for instance using heat pumps for space heating or low-temperature industrial processes, electric vehicles for transport, or electric furnaces in certain industries. Third, the use of renewable and low-carbon fuels, including hydrogen, for end-use applications where direct heating or electrification are not feasible should be promoted. Renewable gases and liquids produced from biomass, or renewable and low-carbon hydrogen, can help to store the energy produced from variable renewable energy sources, and exploit synergies between the electricity sector, the gas sector, and the end-use sectors. This means utilising carbon-neutral or low-carbon fuels in sectors that are difficult to electrify, such as heavy-duty road and rail transport and aviation. The strategy identifies six pillars which are essential to address the existing barriers to infrastructure integration: (a) via a more circular energy system, with 'energy-efficiency-first' at its core; (b) accelerating the electrification of energy demand, building on a largely renewables-based power system; (c) promoting renewable and low-carbon fuels, including hydrogen, for hard-to-decarbonise sectors; (d) creating trustworthy and efficient markets fit for decarbonisation and distributed resources; (e) a more integrated energy infrastructure with enhanced physical links between energy carriers; and (f) a digitalised energy system to increase cooperation and ease market management.

EU strategy for offshore renewable energy sources

The European Parliament adopted on 16 February 2022 a resolution on a European strategy for marine renewable energy (European Parliament 2022), stressing the need to tackle climate change with the increased promotion of offshore renewable energy. Considering that numerous Member States were trailing behind in terms of implementing renewable energy and the required infrastructure, Member States should invest significant efforts to tap into their complete potential for renewable energy. In terms of technological maturity and levelised costs (LCOE), offshore wind produces clean electricity that competes with and is sometimes cheaper than existing fossil fuel-based technology. LCOE of electricity for offshore wind decreased by 44% in ten years, reaching 45–79 €/MWh in 2019. The EU27 held a 42% (12 GW) share of the worldwide offshore wind market, with the UK (9.7 GW) and China (6.8 GW) trailing behind in cumulative installed capacity. Therefore, European companies are key players in the global offshore wind market; however, they are facing increased competition from Asian companies. Offshore renewable energy holds one of the highest potentials for expansion among renewable technologies. At the time of writing, with an installed offshore wind capacity of 12 GW, the Commission aims to achieve a minimum installed capacity of 60 GW from offshore wind (should be 70–79 GW) and at least 1 GW from ocean energy by 2030.

The long-term objective is to reach installed capacities of 300 GW and 40 GW from offshore wind and ocean energy, respectively, by 2050, together with a 55% reduction in emissions by 2030. Hence, Member states are urged to fulfil their renewable energy potential, with the Commission asked to revise public procurement and state aid rules to support a cost-competitive transition. The untapped energy potential of seas like the Atlantic, Mediterranean, Baltic, and Black Seas is noted. The strategy paper highlights the need to improve and expand existing infrastructure to integrate electricity from offshore renewable energy sources, with a potential of around 800 billion euros required for large-scale deployment by 2050. To mobilise large amounts of public capital, the Next Generation EU recovery plan offers a unique opportunity in addition to private investment. The approval of permits and maritime spatial plans should be made more accessible, public trust-building measures should be launched, and maritime spatial planning should be aligned with National Energy and Climate Plans (NECPs). The strategy emphasises the need for an efficient market design that supports the development of offshore wind energy, including a review of the regulatory framework for EU's electricity markets, and the potential role of the Connecting Europe Facility in mobilising necessary funds.

A hydrogen strategy for a climate-neutral Europe

Hydrogen is viewed as a key component to decarbonise the European energy sector and to reach climate neutrality by 2050, especially in areas where renewable energy has its limits and where it faces challenges – for instance, when it comes to storage, heavy-duty transport, and energy-intensive industries. Therefore, renewable energy and hydrogen provide synergies that make the energy system flexible, resilient, and more secure in terms of supply capacities (European Commission n.d). To promote the use of clean hydrogen in the energy sector, the Commission presented 'A hydrogen strategy for a climate-neutral Europe' (European Commission 2020e) on 8 July 2020, and a resolution was adopted by the European Parliament on 19 May 2021 (European Parliament 2021). In addition, the Council adopted conclusions entitled 'Towards a hydrogen market for Europe' on 11 December 2020. The "European Strategy for Hydrogen" is part of the European Green Deal and the EU's strategies towards reducing carbon emissions and achieving carbon neutrality by 2050.

Hydrogen is highly versatile in terms of its application: it can be used as a feedstock, a fuel, or an energy carrier and storage, and has many possible applications across industry, transport, power, and buildings sectors. The most important feature is that it does not emit CO_2 and almost no air pollution when used (European Commission 2020e). However, across the EU, hydrogen only plays a minor role in contributing to the energy mix and is mostly produced from fossil fuels such as natural gas and coal. Investment in hydrogen will foster sustainable growth and jobs, and Europe is highly competitive in clean hydrogen technologies manufacturing and well positioned to benefit from clean hydrogen development. Nevertheless, renewable and low-carbon hydrogen are not cost-competitive yet compared

to fossil-based hydrogen. In addition, the strategy stresses the need to set out clear rules regarding the classification of different forms of hydrogen.

Consequently, on 10 February 2023, the Commission adopted two delegated acts to the Renewable Energy Directive (RED) 2018/2001 related to the production and certification of renewable hydrogen. **Commission Delegated Regulation (EU) 2023/1184** (European Commission 2023a) addresses the categorisation of hydrogen; it defines when hydrogen-based fuels or other energy carriers can be considered as a renewable fuel of non-biological origin (RFNBO), essentially indicating when it can be considered as 'green' hydrogen. The delegated act holds significance for those involved in the development of wind and solar parks and hydrogen facilities, as the stipulated conditions can influence the schedule, placement, and business models associated with these projects. The other delegated act, **Commission Delegated Regulation (EU) 2023/1185** (European Commission 2023b), establishes rules for calculating life-cycle GHG emissions for RFNBOs. Furthermore, the adopted hydrogen strategy emphasises the need to increase the capacity of electrolysers and to ramp up hydrogen production, driven by a well-integrated hydrogen market based on a comprehensive regulatory framework, and to develop more infrastructure for hydrogen production, storage, and transport. Given that the main lead markets for hydrogen demand are industry, air, maritime, and heavy-duty transport, the strategy stipulates that for these sectors, roadmaps for demand development, investment, and research needs should be established at the EU level. The role of citizens in the implementation of a fair and inclusive energy transition is also highlighted, and renewable energy communities could potentially play a role in the production of hydrogen. Overall, the EU's Hydrogen Strategy seeks to establish a comprehensive approach to growing the hydrogen economy, emphasising the need for technological advancement, standardisation, infrastructure development, and stakeholder engagement.

Revision of the TEN-E regulation for energy infrastructure

Regulation (EU) 2022/869 on guidelines for trans-European energy infrastructure (TEN-E Regulation) (EP/Council 2022a), which was published in the Official Journal of the EU on 3 June 2022, amends the original TEN-E Regulation of 2013, **Regulation (EU) No 347/2013** (EP/Council 2013a), which set out rules for the development of cross-border energy infrastructure within the EU. The objectives of the 2013 TEN-E Regulation addressed the functioning of the internal energy market and the security of energy supply within the Union, energy efficiency and energy savings, the development of new and renewable forms of energy, and the promotion of interconnection of energy networks. An essential part of the TEN-E Regulation is the identification of projects of common interest (PCIs), which are infrastructure projects with pan-European relevance, connecting the energy systems of different EU countries, and which can benefit from expedited permitting procedures and EU funding to further develop the internal energy market (IEM). Although the 2013 Regulation improved the integration of energy networks across the EU, in many cases, the cross-border cost allocation did not reduce the financing

gap of the projects, and some permitting procedures were still lengthy. Moreover, the upgraded Union 2030 targets for energy and climate and the 2050 climate neutrality objective under the European Green Deal required a revision of the regulation so that climate mitigation and climate adaptation objectives are adequately reflected in the trans-European energy networks framework.

In essence, **Regulation (EU) 2022/869** updated the guidelines for implementing a trans-European energy infrastructure based on the doctrine to decarbonise the energy system, thus ending fossil fuel-based infrastructure projects. Hence, the regulation ends EU support for new natural gas and oil projects and introduces mandatory sustainability criteria for all projects. Instead, it supports the funding of hydrogen projects – hydrogen from renewables is the preferred option, however, other forms of low-carbon hydrogen can also be utilised to decarbonise existing hydrogen production – and encourages the further development of offshore electricity and hydrogen networks. The regulation addresses smart gas grids, electrolysers (which must have at least 50 MW capacity), CO_2 transport and storage projects, and PCI support can be used to convert existing gas networks to carry hydrogen (their eligibility for PCI status expires 31 December 2027, and they can carry hydrogen until 31 December 2029).

Furthermore, permitting and authorisation procedures should be accelerated, and national competent authorities must ensure permit-granting processes are at most 42 months. The regulation also introduces 'projects of mutual interest' (PMIs), which denote infrastructure projects that are promoted by the EU in cooperation with third countries and which will have access to EU funds and benefit from accelerated permit granting processes as long as they are sustainable and able to demonstrate significant net socioeconomic benefits at Union level. The roles of ACER, ENTSO-E, and ENTSO-G are strengthened in terms of regulatory oversight. The ENTSOs are tasked with network development planning and the preparation of joint scenarios used in the biennial Union-wide ten-year network development plans (TYNDPs), which in turn are used to identify PCIs. In contrast, ACER shall prepare Framework Guidelines (ACER's TYNDP Scenarios Guidelines), ensuring the TYNDP scenarios align with the EU's overall energy and climate goals. Additionally, the regulation enhances the role of relevant stakeholders, and their opinions should feed back into the preparation of TYNDPs.

New EU regulation on gas storage

The necessity for **Regulation (EU) 2022/1032** (EP/Council 2022b) with regard to gas storage can be reasoned through the Russian aggression in Ukraine, prompting serious concerns about the secure supply of gas to the EU; disruptions could severely harm citizens and the economy of the EU as the EU still is, to a significant extent, dependent on external gas supplies. The escalation of the Russian military aggression against Ukraine since February 2022 led to unprecedented price increases, which in turn might have changed the incentives to fill underground gas storage facilities in the EU, thus severely jeopardising the secure supply of gas. Therefore, the regulation sets out Union-wide measures to tackle the large-scale

supply disruption. Although **Regulation (EU) 2017/1938** (EP/Council 2017c) concerning measures to safeguard the security of gas supply ('Gas SoS Regulation'; discussed in Chapter 6) introduced a solidarity mechanism in the event of a supply crisis, the magnitude of the supply crisis instigated by the Russia-Ukraine war showed that the existing legal framework was not apt to respond to sudden major changes in the geopolitical situation. Therefore, **Regulation (EU) 2022/1032** (EP/Council 2022b) on gas storage mandates that Member States must ensure their underground gas storage was at least 80% full prior to the winter of 2022/2023 and needs to be 90% full before subsequent winters. Given the wide disparity in gas storage capacities and national situations, Member States will have the flexibility to partially fulfil this storage target by counting stocks of liquefied natural gas (LNG) or alternative fuels. In consideration of Member States that possess significantly larger storage capacities relative to their domestic gas consumption, the requirement to fill underground storage will be capped at a volume corresponding to 35% of their average annual gas consumption over the preceding five years. Furthermore, as some Member States do not have underground storage capacity on their territory, the regulation introduces a burden-sharing mechanism and provides that they should ensure to store at least 15% of their annual domestic gas consumption in stocks located in other Member States.

EU solar energy strategy

As will be explored in the next section, the REPowerEU plan (European Commission 2022b) was an EU initiative designed to end the dependency of the EU on Russian fossil fuels by swiftly deploying renewable energy, with solar energy being at the core of the policy framework. Solar energy is the fastest-growing energy source in the EU as the cost of solar power decreased by 82% between 2010 and 2020, making it the most competitive source of electricity in many parts of the EU. As part of the REPowerEU plan, the Commission adopted in May 2022 an EU solar energy strategy, which identifies remaining barriers and challenges in the solar energy sector and outlines initiatives to overcome them and accelerate the deployment of solar technologies (European Commission: n.d.). The strategy aims "to bring online over 320 GW of solar photovoltaic by 2025 (more than doubling compared to 2020) and almost 600 GW by 2030. These frontloaded additional capacities displace the consumption of 9 bcm of natural gas annually by 2027" (European Commission 2022a: 1). Several key measures are at the core of the governance framework, which should help to establish solar energy as an important part of the clean energy transition, by accelerating solar energy deployment up to 2030, which translates into 45 GW additional generation capacity per year to reach the 2030 target for renewables.

The European Solar Rooftops Initiative aims at utilising the solar generation potential of rooftops. Therefore, the installation of rooftop solar energy will be compulsory for (a) all new public and commercial buildings with a useable floor area larger than 250m^2 by 2026; (b) all existing public and commercial buildings with a useful floor area larger than 250 m2 by 2027; (c) all new residential

buildings by 2029. As Solar energy technologies have high upfront costs but low operational costs, attractive financing conditions need to be created through various EU financing tools. In addition, permitting procedures for photovoltaic (PV) deployment should be streamlined and made shorter and simpler via a legislative proposal, recommendation, and guidance. Moreover, the strategy examines measures to ensure the availability of a qualified workforce capable of producing and deploying solar energy. Finally, a European Solar PV Industry Alliance should be created, which will "bring together industrial actors, research institutes, consumer associations and other stakeholders with an interest in the solar PV sector, including the emerging circularity industry" to drive the expansion of the industry (European Commission 2022a: 19). The manufacturing capacity should be increased to create economies of scale capable of delivering 20 GW of solar PV at each step of the value chain in 2025. All in all, the solar energy strategy offers holistic planning tools to realise the further implementation of solar energy into the energy mix of the EU.

REPowerEU

Russia's military action against Ukraine severely impacted the global energy system, leading to higher energy prices and security concerns due to the EU's overreliance on Russian fossil fuel imports. This situation, in turn, has enabled Russia to finance its warfare in Ukraine. In response, EU leaders in the European Council agreed in March 2022 to minimise its dependence on Russian energy and asked the Commission to devise a detailed REPowerEU plan (European Commission 2022b). Launched in May 2022, the core aim of this plan was to replace Russian fossil fuels by accelerating the clean energy transition, bolstering energy system resilience, and creating a true Energy Union. Building on the 'Fit for 55' package, and in line with the European Green Deal, the REPowerEU plan puts forward specific policy strategies, including measures to promote energy efficiency and energy saving, the diversification of energy supply, substituting fossil fuels with cleaner energy sources and accelerating the green transition, and strategically investing and reforming the entire energy system. The aim is to considerably cut down on Russian fossil fuel dependency, thereby expediting the energy transition, and specific key areas were identified to attain this goal to secure affordable energy supplies.

First, the Commission proposed to increase the binding Energy Efficiency Target from 9% to 13% compared to projections of the expected energy consumption in 2030 (2020 Reference Scenario) to address the energy crisis and reduce bills. As subsequently agreed, the Energy Efficiency **Directive (EU/2023/1791)** (EP/Council 2023h), published on 20 September 2023, sets a decrease of primary and final energy use by 11.7% in 2030 compared to the level of efforts under the 2020 Reference Scenario. In addition, short-term behavioural changes should cut gas and oil demand by 5%. Member States should also make full use of supporting measures such as reduced VAT rates for high-efficiency heating systems and for insulation in buildings and other energy pricing measures, which encourage switching to heat pumps and purchasing more efficient appliances.

Second, the EU was working extensively to diversify energy supplies, with efforts from the Commission to develop a 'joint purchasing mechanism' that should negotiate and contract gas purchases on behalf of participating Member States. 'AggregateEU', the EU mechanism enabling demand aggregation and joint gas purchasing at the European level, was formally adopted on 19 December 2022 under **Council Regulation (EU) 2022/2576** (Council of the European Union 2022). This initiative combines the gas demand from companies in the EU and the Energy Community and then connects this demand with competitive supply offers from the global market. After issuing a call for tender, companies have the option to voluntarily enter into purchasing contracts with gas suppliers, either on their own or together with other companies.

Third, a significant acceleration in the rollout of renewable energy was proposed, including increasing the 2030 target for renewables from 40% to 45%. Under **Directive (EU) 2023/2413** (EP/Council 2023i) (REDIII), a target of 42.5% renewables by 2030 was agreed with a possible extra 2.5%, potentially raising the total to 45% and bringing the RED III directive in line with the REPowerEU plan (European Commission 2022b). REPowerEU also addresses implementing a Solar Strategy and Solar Rooftop Initiative (European Commission 2022a), bolstering offshore wind capacity, doubling the rate of deployment of heat pumps, and setting a target of 10 million tonnes of domestic renewable hydrogen production and 10 million tonnes of hydrogen imports by 2030.

Fourthly, the Commission aims to reduce greenhouse gas emissions and strengthen the security of supply and competitiveness by replacing coal, oil, and natural gas in industrial processes, increasing energy efficiency in the transport sector and the share of zero-emission vehicles in public and corporate car fleets. Finally, an additional investment of €210 billion is needed by 2027 to meet the REPowerEU objectives on top of what is needed to realise the objectives of the 'Fit for 55' proposals. The Commission, therefore, proposed various measures, for instance, via amendments to the Recovery and Resilience Facility (RRF) and dedicated REPowerEU chapters in national Recovery and Resilience Plans (RRPs) to support this goal. It also allocates additional funding from the auctioning of allowances of the Emissions Trading System ('ETS') held in the Market Stability Reserve.

The hydrogen and gas decarbonisation package

The EU Hydrogen and Decarbonised Gas Market Package is a comprehensive amendment of the Third Energy Package of 2009. It addresses the gaseous energy sector and aligns it with wider goals defined under the European Green Deal and the European Climate Law. It consists of **Directive (EU) 2024/1788** (EP/Council 2024d) and **Regulation (EU) 2024/1789** (EP/Council 2024e) and was published in the EU Official Journal on 15 July and entered into force 20 days later. The package updates specific rules set out in **Directive 2009/73/EC** and the **Gas Regulation 715/2009**, which were extensively discussed in Chapter 5. The package addresses the decarbonisation of the gas market, promoting renewable and low-carbon gases,

including hydrogen, while ensuring consumer rights protection and strengthening market transparency. Member States will have until mid-2026 to transpose the provisions into national law. The package aims to facilitate the transition to renewable gas, low-carbon gas, and hydrogen, and to enable a shift away from fossil gas to play a key role in achieving the Union's 2030 climate objectives and climate-neutrality by 2050. The Directive sets out:

- a common framework for the decarbonisation of the markets for natural gas and hydrogen;
- common rules for the transmission, distribution, supply and storage of natural gas using the natural gas system, and consumer protection provisions to create an integrated, competitive, and transparent market for natural gas in the EU;
- common rules for the transport, supply, and storage of natural gas and the transition of the natural gas system towards an integrated and highly efficient system based on renewable gas and low-carbon gas;
- common rules for the transport, supply and storage of hydrogen using the hydrogen system; it establishes rules for the organisation and the functioning of the hydrogen sector, market access, criteria, and procedures for the granting of authorisations for networks, supply, and storage of hydrogen;
- a framework for the progressive establishment of a Union-wide interconnected hydrogen system.

Member States must ensure that all customers are free to purchase natural gas and hydrogen from the supplier of their choice and are free to have more than one supply contract for natural gas or hydrogen at the same time. They must ensure that the right to switch supplier or market participant is granted to customers in a non-discriminatory manner. Suppliers shall be free to set the price at which they supply natural gas and hydrogen to their customers. Member States must safeguard effective competition between suppliers to ensure reasonable prices between final customers. During a natural gas price spike, the Council can, upon a proposal from the Commission, declare a regional or Union-wide natural gas price crisis. Under these circumstances, Member States may apply temporary interventions in price setting for natural gas supply to small and medium-sized enterprises (SMEs), household customers and essential social services. No long-term contracts for the supply of unabated fossil gas shall be concluded with a duration beyond 31 December 2049.

Member States must protect customers affected by energy poverty and vulnerable household customers and ensure adequate support measures. They can also instigate 'public interventions' in the price setting for the supply of natural gas to these customers. Furthermore, Member States and regulatory authorities shall promote and facilitate the cooperation of natural gas transmission system operators and hydrogen transmission network operators at a regional level.

In terms of ownership and access to an EU-wide hydrogen network, the existing rules for the governance of natural gas networks will be applied to decarbonised gases and for hydrogen networks (e.g. ownership unbundling of transmission system operators, Third Party Access (TPA) to natural gas and hydrogen grids).

However, a Member State might apply exemptions from TPA until 31 December 2032 to encourage the development of the network.

At least every two years, all transmission system operators and hydrogen transmission network operators shall submit to the relevant regulatory authority a ten-year network development plan based on existing and forecast supply and demand after consulting the relevant stakeholders. There shall be one single network development plan per Member State for natural gas and one for hydrogen. In addition, hydrogen transmission network operators should closely cooperate with electricity transmission system operators and electricity distribution system operators to coordinate joint infrastructure requirements, such as the location of electrolysers and the relevant transmission infrastructure. The Directive also further details how to certify 'low-carbon gases' – an addition to the recast Renewable Energy Directive EU (RED) 2023/2413 (EP/Council 2023i).

Regulation (EU) 2024/1789 (EP/Council 2024e):

- establishes non-discriminatory rules for access conditions to natural gas and hydrogen systems taking into account the special characteristics of national and regional markets;
- facilitates the emergence and operation of properly functioning and transparent markets for natural gas and hydrogen with a high level of security of supply and provides mechanisms by which to harmonise the network access rules for cross-border exchanges in natural gas and hydrogen.

As an institutional novelty, the Regulation defines rules for a 'European Network for Network Operators of Hydrogen' (ENNOH) to promote the development and proper functioning of the internal market for hydrogen and cross-border trade. Along these lines, the ENNOH should cooperate closely with the ENTSO for Electricity (ENTSO-E) and the ENTSO for Gas (ENTSO-G) to identify synergies and foster system integration across energy carriers. The ENNOH will develop network codes, in some cases with ENTSO-G, and adopt and publish, every two years, a non-binding Union-wide ten-year network development plan for hydrogen. As discussed, like the Directive, most rules governing the existing gas networks will remain in force for decarbonised gases and also be implemented for hydrogen. Tariffs and the methodologies used to calculate them, applied by the transmission system operators and approved by the regulatory authorities, shall be transparent and applied in a non-discriminatory manner. National regulatory authorities (NRAs) must consult the neighbouring national regulatory authorities on the envisioned tariff methodology and submit it to the Agency for the Cooperation of Energy Regulators (ACER). Each NRA will maintain the right to set its own tariffs. When setting tariffs, a discount of 100% for renewable gas and 75% for low-carbon gas should be applied in order to scale up their deployment. By 5 August 2029 and every five years thereafter, the Commission shall re-examine the level of the discounts.

In terms of energy security, the Gas and Hydrogen Markets Regulation enhances various aspects of the Gas Security of Supply (SoS) **Regulation (EU) 2017/1938** (2017c). Supporting the market development of hydrogen should be perceived as

a means to phase out existing dependence on natural gas supplies from the Russian Federation and avoid new dependence. In addition, the Regulation enhances provisions on regional cooperation and solidarity measures, discussed in the previous chapters, which are essential to ensure the Union's resilience in the case of a serious deterioration of the supply situation. Hence, to ensure the proper and continuous functioning of the internal market for gas, exceptional measures are to be implemented when the market can no longer deliver the gas supplies required. The so-called Preventive Action Plans (PAPs), as defined by the Gas SoS Regulation, should now also implement appropriate measures related to cybersecurity. Although not mandatory, the Gas and Hydrogen Markets Regulation also includes provisions on a mechanism for demand aggregation and the joint purchasing of natural gas.

Note

1 Projections made in 2007: primary energy consumption in 2030 of 1,887 Mtoe and final energy consumption of 1,416 Mtoe without any measures in place.

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8 Conclusion

Historical Institutionalism and the integration of EU energy policy

Introduction

This book has addressed how the institutional design and concomitant path-dependent processes of EU energy policy shape the capabilities of the various actors involved in the policymaking process. In order to understand these dynamics, it utilised various theoretical assumptions developed by Historical Institutionalism (HI) to answer the following question: *under what conditions does integration occur in the policy area of energy over time*? Four cases were explored to answer the question based on four hypotheses derived from theory. The question, which was broad in its scope, sought to identify general preconditions that must be met in order to facilitate further development of the institutional matrix in EU energy policy. Most importantly, an emphasis was placed on the temporal processes and how historical contingency influences policymaking in the energy sector, as opposed to focusing on analysing decisions at a specific moment in time. As such, this volume offers a significant theoretical contribution to the literature on Historical Institutionalism in three distinct areas. First, it develops a succinct approach to operationalising key concepts, specifically the notions of path dependence, increasing returns and positive feedback, institutional stickiness, and institutional lock-in. Second, this research offers a typology for critical junctures. And, third, it advances a framework that incorporates rational choice and normative factors as determinants of energy policy decision-making.

Historical Institutionalism

Although several Historical Institutionalists have explored concepts of path dependence (see Arthur 1988; North 1990; Thelen & Steinmo 1992; Pollack 1996, 2008; Pierson 2000, 2004; Peters et al. 2005; Fioretos et al. 2016), attempts to operationalise these processes have often fallen short of methodological rigour. Moreover, different scholars attribute different meanings to each concept or use some of the terminology interchangeably. Thus, to address these challenges, this book's first contribution to HI theory is the development of a typology of institutional stickiness and a systematic approach to operationalising path-dependent processes. It offers a means to operationalise a complete institutional lock-in (Scharpf

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1988), where the institution is incapable of altering its institutional trajectory, and a way to demonstrate path dependence, in which the institution is still inert but capable of slow and gradual change. Chapter 2 developed a comprehensive methodological approach to measuring path dependence by creating a model of an entire policy cycle, dependent on the analytical dimensions of *intended goals, policy output* and *policy outcome*, and their relationship with positive feedback processes involving monitoring and different institutional players. The framework advances an approach to operationalise increasing returns, which are themselves based on learning effects, coordination effects, the development of adaptive expectations, and network effects. The model demonstrates how the institutional matrix and specific institutional players instigate such developments, and these phenomena, in turn, contribute to path dependence.

The second contribution to the advancement of Historical Institutionalism is the development of a model that distinguishes between different forms of critical junctures. Critical junctures, which play an essential role in many contributions to Historical Institutionalism and are part of the notion of a punctuated equilibrium, are a valuable approach to conceptualising institutional change (Collier & Collier 2002; Capoccia & Kelemen 2007; Capoccia 2015). This research shows that different forms of critical junctures exist. In this sense, the theoretical model moves away from a binary conceptualisation in which a critical juncture occurs or does not occur. As this volume demonstrates, critical junctures exist on different levels. They can affect the institutional framework in its entirety and, as a consequence of their impact, amend primary legislation and lead to fundamental reform of the institutional matrix. However, smaller critical junctures also exist for specific sectors. They can impact the lower level(s) of an institution but will keep the wider institutional framework the same. These smaller critical junctures are important for a specific policy area but do not lead to an amendment of the institution and its rules in the form of primary legislation. Consequently, they will lead to an amendment of secondary law but will leave the overall institutional framework unaltered. For smaller critical junctures to unfold their full potential, primary law must address the affected sector. External shocks (for instance, oil crises) can create critical junctures that impinge on secondary legislation. However, it is important to note that the institution's capability to absorb/react to these external factors and shocks, thus creating a critical juncture for a policy sector, depends on primary legislation.

The third contribution to HI is its advancement of a framework that bridges the dichotomy of rational versus ideational motivations regarding preference formation, which has created a long-standing rivalry between Rational Choice Institutionalism and Sociological Institutionalism. These considerations greatly enrich our understanding of institutional continuity and change, and the kind of logic that informs the formation of preferences during the decision-making process. How preferences are formed is a central question within the institutional literature, as it explains whether actors make specific choices based on calculated self-interests (the calculus approach) or whether decisions are informed by ideational factors, norms, and values (the logic of appropriateness). This research has shown that the formation of preferences depends on the *context* of a specific situation. For instance,

in the early days of energy policy, we saw a highly rigid institutional framework based on primary legislation, which structured the behaviour of actors. Decision-making was very much based on rational calculations of actors who behaved in a self-interested manner. In addition, events like the oil shock of 1973/74, together with the prevalent institutional framework, created a situational context in which strategic calculations informed the formation of actors' preferences. Member States deemed bilateral agreements more advantageous than strengthening the institutional framework and acted accordingly. However, this situational context changed over time, most notably via institutional amendments in primary law.

The introduction of qualified majority voting (QMV) made the institution more agile, flexible, and responsive to exogenous factors and endogenous ideas. Under new institutional rules in the form of the SEA and later the Lisbon Treaty, the situational context changed considerably and, by addressing the external dimension under the normative notion of *solidarity* in Article 194 TFEU, broadened the scope of what could be achieved at the EU level. Hence, the normative obligation to demonstrate solidarity in times of crises represented a significant shift in this respect. Reacting to the gas crisis in 2009 was more manageable than during the first two oil shocks in the previous decades when virtually no solidarity existed. Moreover, the Energy Union project was framed around solidarity between Member States and the obligation to work together to improve energy security. Thus, the analysis in this volume has shown how the situational preconditions (the institutional context but also exogenous factors) define whether actors base their decisions on self-interested calculations or whether ideational factors, such as solidarity, also guide them.

Historical Institutionalism and EU energy policy: four cases

The empirical analysis of EU energy policy was structured around four hypotheses that tested assumptions about the factors that lead institutions to be rigid at times and susceptible to change at other times. Chapter 3 tested the first hypothesis, which posited that, in the absence of a critical juncture, a locked-in institution – displaying high institutional stickiness measured with the help of the proxy variable of unanimous voting – will rigidly stay on its institutional path. This hypothesis was confirmed. The evidence analysed shows that the institution was incapable of generating *almost any policy output* from the 1950s to the 1980s, although *intended goals* were defined. Interestingly, although exogenous events in the form of two severe gas crises impacted the institutional matrix, they had a limited impact on the regulatory framework. The reason identified in the analysis is that the energy sector, apart from coal and gas, was subject to unanimous voting in the Council. Hence, almost all far-reaching policy proposals were bogged down, making it impossible to implement a common policy approach.

Chapter 4 tested the second hypothesis, which proposed that moderate integration of primary law can be expected when a critical juncture occurs within a setting of high institutional stickiness. Supporting this hypothesis, the evidence highlighted that both exogenous and endogenous factors led to a critical juncture and the SEA

as an outcome and a change of primary legislation. This finding is significant as it enhances our understanding of the constituent parts leading to critical junctures for primary law in the context of the EU. Exogenous factors presented themselves as economic pressure exerted by fierce competition outside of the Communities on global markets and a second oil shock that contributed to insecurity of energy markets. Endogenous momentum was present in the form of 'Eurosclerosis' (Giersch 1985), the institutional malaise which took hold of the entire institution and contributed to an inefficient institutional setting. The Luxembourg Compromise led to institutional rigidity and triggered an ideational crisis, by instituting a requirement for unanimous decision-making, as it challenged the evolving political identity of the European Communities. At this critical juncture, the SEA was the solution to the institutional malaise for decision-making in energy policy and for the institution in general. Moderate integration in the form of non-incremental change of primary legislation under the SEA can be attested. The hypothesis was confirmed through the empirical evidence that, although energy policy could henceforth be addressed through market provisions and secondary legislation, it was not directly addressed in primary legislation.

Chapter 5 tested the third hypothesis, which proposed that if no critical juncture occurs in a setting of low institutional stickiness, a moderate level of the integration process can be expected. The hypothesis was confirmed. Integration occurred in incremental change of secondary legislation, and no critical junctures punctuated the institution. Based on the empirical evidence, *intended goals* were formulated, leading to *policy output* that addressed the predefined set of goals. The effectiveness of the policy output was measured, and it was shown that early decisions had less impact on the policy output than later decisions. Regarding the three energy packages, a gradual increase in the *policy outcome* understood as the effectiveness of the *policy output*, can be measured. Hence, a moderate increase in integration over time was identified. The institution developed structural constraints and entrenched actors more and more into the institutional matrix. Although some Member States showed varying degrees of resistance to policy measures, they ceded more and more powers to the institutional framework over time, agreeing to enhance the institutional matrix.

Chapter 6 tested the fourth and final hypothesis, which proposed that a critical juncture in a setting of low institutional stickiness leads to high integration in the form of change in primary legislation. This last hypothesis was also confirmed. As the analysis illustrates, the outcome of the critical juncture was the Lisbon Treaty, which overhauled the institutional framework. For the first time, energy policy was mentioned in primary legislation and was given its own title. Thus, measuring the difference in the level of integration between the SEA (where energy policy could be addressed but was not explicitly mentioned) and the Lisbon Treaty (where energy became a *formal* competence of the EU) shows that a high level of integration took place. Decisions addressing the dimensions of the internal market, energy security, energy efficiency, and the promotion of renewables and energy networks can now be made via the ordinary legislative procedure. However, after the critical juncture, the institution fell back into equilibrium, and a process of medium

integration was initiated. As the analysis has shown, an incremental increase in the effectiveness of the policy output (the policy outcome) can be measured. Secondary legislation was altered stepwise, based on former policy instruments, without introducing completely novel provisions. Moreover, unintended consequences unfolded for Member States as the institution slowly tightened the institutional framework and entrenched actors over time, meaning Member States agreed to provisions and policy measures they would not have accepted earlier in the sequence.

The last empirical chapter, Chapter 7, systematically set out all the legislation adopted under the Energy Union, which was updated by the European Green Deal (EGD), and provisions under the REPowerEU framework. Indeed, the focus of this chapter was to apply the theoretical framework of HI to the empirical evidence and to provide the reader with a comprehensive and consolidated overview of what has been achieved regarding energy legislation in recent years. The chapter's findings suggest that every piece of legislation followed a similar route in terms of its development – namely, that specific provisions did not materialise out of nowhere but instead were rooted in former decisions and, therefore, presented only incremental change. Incremental change took place through a process of layering (Streeck & Thelen 2005: 24), as new rules, practices, or structures were implemented on top of or alongside existing ones. This process gradually altered the overall functioning and outcomes of the institutional matrix over time while the old structures remained in place, coexisting with the new institutional rules.

Discussion of key contributions

This volume contributes to the broader debate about (European) integration, the functions that institutions fulfil, the motives of actors complying with institutional rules, and the factors that contribute to continuity on the one hand and account for change on the other. In a narrower sense, the research analysed energy policy as a particular part of the institutional matrix which, although demonstrating low levels of integration at the beginning of the European Communities, became an essential constituent part of the institution over time, culminating in the inception of an Energy Union framework and the European Green Deal. A significant driving factor for integration was the demand for an integrated market and a secure energy supply, which was steered and constrained by the institution. Derived from this book's empirical insights and theoretical contributions, a picture that explains institutions based on their inherent inclination to generate path-dependent processes addressing markets and security concerns can be drawn. Considering the findings regarding this research's contribution to our understanding of the conditions under which policymaking takes place in the energy sector, several points warrant further discussion. Five analytical units will be emphasised as they were identified as the most important for policy development: the formation of preferences, institutional continuity, institutional change, unintended consequences for actors, and critical junctures.

Explaining preferences, institutional continuity, and change

As the analysis has shown, decisions in EU energy policy were very much dependent on earlier decisions. The empirical evidence presents a policy framework subject to incremental change or, at times, even no change at all. Historical Institutionalism understands developments in the political world as events that have their roots in the past, which shape, enable, and constrain the range of possible choices of decision-makers in the future. The analysis of 70 years of EU energy policy confirms this proposition: the energy sector is no exemption from this rule. Contemporary policy instruments always had their roots in former decisions. Another important insight is the observation that decision-making is structured by, and contingent on, institutions that deliver functions based on formal rules that mediate between different actors and their interests (and preferences) but also on informal rules that help to shape actors' views about appropriate behaviour and enable actors to create new ideas about how to alter the path of the institution from within.

This is a highly contentious topic within the scholarly debate on Institutionalism as some researchers regard institutions as governed by a logic of consequence/rationality (for instance, North 1990; Milner 1997; Pollack 2008; Shepsle 2008; Woll 2008). In contrast, others emphasise that institutions provide moral and cognitive templates for behaviour, ultimately creating the capacity to account for change from within (Hall 1989; Hall & Taylor 1996; Bulmer 1998; Marcussen 2000; Blyth 2002; Schmidt 2010; Hay 2007). However, this book goes beyond this dichotomy and aligns with the work of scholars who have widened the historical institutional framework in both directions (Pierson 1996; Thelen 1999; Katznelson & Weingast 2005; Steinmo 2008). Specifically, the framework developed on these pages sits within a growing body of HI scholarship that engages with both rationales, a more actor-centred approach (Sheingate 2003; Berk et al. 2013), and which allows for ideational values to be incorporated (Peters et al. 2005). A significant contribution of this research is to account for variations in the situational context, which defines whether actors follow rules/norms or strive to maximise their interests. As shown in the empirical chapters, how actors behave and which logic informs their preference formation very much depends on the specific *situational context*.

Moreover, and this is a significant observation, the institution always needed some form of endogenous momentum to change its structural framework: it always needed endogenous *ideas* about how to deviate from a former institutional path and instigate change. This, most importantly also applied in the context of *energy markets*, in which preferences are regarded as exogenously given and governed by rational decision-making.

Indeed, an essential motive for deeper integration was economic deliberations based on the goal-oriented behaviour of actors who were unsatisfied with the status quo in the 1980s (Giersch 1985), which led to the SEA. Since energy plays an indispensable role in modern economies and welfare states, economic calculations play a prominent role in decision-making. Market-based policy instruments were seen as the appropriate means to regulate the sector and to create a level playing field that governs both the internal and external dimensions. Indeed, the

energy packages and their regulatory capacities are effective policy instruments that administer the internal energy market. Starting as provisions that showed moderate effectiveness of the policy output, they gradually developed towards a regime that was considerably tightened, strengthened, and much more effective. Based on rational decision-making and deeper economic integration over time, the provisions in secondary legislation addressed a multitude of economic issues and technical and operational procedures to facilitate sectoral integration. Within the boundaries of institutional preconditions and constraints, policy was incrementally changed.

However, the analysed evidence also suggests that endogenous momentum, founded on ideational factors and novel ideas about governing markets, was crucial in instigating change within the institutional framework. A strong account of normative factors permeating energy policy is the notion of solidarity embedded in institutional rules. Mentioned in Directive 2004/67/EC for the first time and subsequently implemented in primary legislation, the notion of solidarity amongst Member States in crises incorporated a strong endogenous ideational building block in the regulatory framework. In times of crisis, markets reached their regulatory limits regarding energy security, yet needed to be stabilised, as energy is a strategic and politicised commodity. Not only from an economic but also socio-economic standpoint, where protected customers need to be satisfied at all times, energy must be supplied even in the most challenging scenarios. As a consequence of such deliberations, solidarity as a normative value was woven into the institutional framework to ensure a secure energy supply. Member States now have the *legal obligation* to help each other in times of crisis.

As discussed in Chapter 2, institutional change occurs when powerful actors have the political determination to alter the institution in favour of new ideas and re-interpret the institutional status quo (Hall 1989, 2010; Steinmo 2008; Blyth et al. 2016). Not only were these 'new ideas' implemented to overcome collective action problems in the case of the single market programme, but ideational factors also played a role in the form of normative implications for the institutional makeup. Ideational factors were embedded in the institutional matrix and played a role in the context of the decision-making procedure agreed upon for the implementation of the single market programme (Eising 2002; Eikeland 2011). As discussed in the section on *Preferences informing policymaking after the SEA*, in Chapter 5, it was agreed that directives concerning the gas and electricity sector should be decided per Article 100a EEC, a consensus-based decision-making procedure.

Although DG COMP strived for a much more aggressive approach based on unilateral action, large parts of the Commission, the Council and the Parliament opted for a stepwise procedure and a more inclusive approach to the co-decision procedure that required both the European Parliament and the Council to agree to a new directive. In the end, this view was shared by the European Court of Justice (ECJ), which ruled against the position of DG COMP. Moreover, this normative approach based on reaching a consensus was not only applied to the decision-making procedure but also the norm for reaching decisions within the Council. Although Member States could use QMV to outvote each other on salient issues,

the Council strived for consensual solutions that are acceptable to all actors. Hence, the evidence provides a robust account that endogenous institutional norms also influenced the institutional trajectory and must be considered for a thorough assessment of an institutional matrix.

As explored in Chapters 5 and 6, change was also not easy to facilitate after the Single European Act as the institution became rigid and developed a form of institutional inertia that contributed to resisting spontaneous alterations of the institutional framework. Merely incremental steps were possible within the institutional setting. The institutional design, initiated by actors, prohibited any swift amendments; the framework was designed in a way that pre-empted fast alterations to purposefully create more stability so that actors with diverging preferences could not easily alter it. Moreover, this institutional rigidity was based on, and reinforced by, increasing returns and path-dependent processes, which additionally entrenched actors over time. Indeed, as the analysis highlights, decisions made at an early stage shaped the possible range of policy options later in the sequence. The research shows that once actors conferred powers to the institutional matrix and initial policy decisions were made, the development of policy instruments was contingent on initial decisions and the scope of competences conferred to the institution.

If a policy area can be found in the intergovernmental domain, and primary law does not provide the slightest capabilities to address policymaking in the specific sector, the 'default condition', the status quo is almost endlessly perpetuated, with only some minor exceptions. In this case, adaptive expectations and coordination effects were not triggered, and due to the absence of increasing returns, the institution itself was locked in and dysfunctional (based on the joint-decision trap), and sovereign interests dominated policymaking. Institutional development in energy policy needed some degree of political will of decision-makers, above all, to define rules at the expense of their own sovereign powers on how to govern the sector, enshrined in primary law. This willingness was considerably heightened as a result of critical junctures. In the case of a locked-in institution, as we saw in Chapter 3, change is almost impossible to facilitate. Institutions fulfil specific purposes, reducing uncertainty, enforcing contractual arrangements, and reducing transaction costs.

However, no real momentum for institutional development was attained in the absence of willingness to cede powers to the institution, even if preliminary 'pro forma' goals were agreed on as intended goals. As demonstrated in Chapters 4 and 6, for the institution to develop, willingness to shift powers to the institution must be accounted for in primary legislation, and unanimous voting must be suspended. For instance, the Council's statement in the early 1960s that the "(e)xecutives need not confine themselves to the legal possibilities afforded by the existing treaties" (High Authority 1964: 73), and to go beyond existing legal provisions, serves as evidence for Member States' realisation that imminent issues in the energy sector had to be tackled. However, in the end, "it proved to be impossible to secure the Council's unanimous acceptance of the draft resolution" (High Authority 1964: 78).

Pollak and Slominski (2011) contend that "the existence of the joint-decision trap may help in understanding the difficulties involved in creating an internal

energy market"; however, "it cannot explain the progress which has already taken place" (Pollak & Slominski 2011: 93). They argue that "it has been the driving force of the European Commission which has been willing to exploit various formal and informal instruments at its disposal" (Pollak & Slominski 2011). Contrary to their findings, this book shows that it is not necessarily the Commission but rather the institution's design that facilitates the advancement of a policy area. If the above statement were entirely plausible, the relentless Commission proposals over almost 40 years would have been more fruitful. Endeavours to create a common approach to energy only materialised in the 1990s. While the Commission can improve the institutional rules, actors must agree to the institutional design and bestow the Commission with the capacity to instigate change. Hence, the joint-decision trap was instead a symptom of a sub-optimally designed institution, as opposed to one in which specific actors are more important than others.

In order to have the capacity to react to specific developments in the sector – for instance, to efficaciously respond to exogenous factors such as supply crises – the specific aspect of the sector had to be addressed in primary law to create preconditions that made incremental institutional change possible. This was the case for the internal dimension of energy policy, addressed by the three liberalisation packages as a consequence of the SEA. As soon as the internal dimension of energy policy was subsumed under the general internal market programme, the way was paved for the gradual development of secondary legislation on market liberalisation.

However, deeper integration was more difficult for external energy policy since external affairs were not part of the internal programme; no legal basis existed for a common external policy. Hence, the external dimension of energy policy had to be included under common market provisions. It was implicitly assumed that provisions on the internal market would also have the capacity to regulate external issues. As the analysis in Chapter 5 shows, in the case of the gas crisis of 2006, such assumptions did not materialise, and the institution stayed rigidly on its path, although exogenous factors penetrated the institution. Institutional change was difficult to achieve. However, the Lisbon Treaty solved this shortcoming and made it possible to address the external dimension more directly, resulting in a swiftly implemented Regulation on the security of supply triggered by the second gas crisis in 2009.

Challenges and caveats

One of the main challenges for this research was developing an analytical model for critical junctures. If asked whether this research has enabled the identification of critical junctures before they happen, the simple and straightforward answer would be: no. As the analysis has shown, the nature of a critical juncture and the factors that contribute to it are unique. Therefore, creating rules that could be universally applied is impossible. Every critical juncture consists of idiosyncratic constituent parts, which develop as a result of historical contingencies, and which are concatenations of events occurring in a particular sequence and within a particular context. This analytical opacity makes them challenging to grasp *ex-ante*.

Nevertheless, critical junctures can be understood *in hindsight*, as the unique factors contributing to a critical juncture become apparent, and their causal relationship can be understood. That said, as supported by the empirical evidence analysed, we can conclude that both exogenous and endogenous factors make up critical junctures for the institution in its entirety. For instance, the events leading to the SEA were based on endogenous and exogenous factors. However, such claims could be investigated further.

A second potential criticism is the focus on critical junctures affecting the institution in its entirety (leading to change in primary law) and the omission of a stocktake of critical junctures for secondary law. It could be argued that, in the case of energy policy, more critical junctures existed than are depicted in this book. However, it should be noted that the goal of the volume was not only to account for change in secondary law but to explain the institutional context, which was the prerequisite for the overall conditions under which deeper and broader integration occurred. In virtue of this understanding of the institutional core in which energy policy is embedded, the analysis focused on the structural conditions guiding the formation of formal and informal rules. Based on these research aims, parameters had to be set to ensure the project's viability. Indeed, it would not have been possible to provide a holistic overview of policy development over 70 years if greater focus had been placed on a narrower definition of the institution of energy policy.

Another potential caveat that one might identify is the need for an analysis of the effect that environmental protection and concerns had on energy policy in the early days of energy policymaking and the Internal Energy Market Programme (IEM). Based on growing pollution levels and issues of sustainability in the 1970s, environmental concerns significantly contributed to the development of an energy policy, if not as much as the market programme did to the institutional framework (see, for instance, Talus 2013; Schubert et al. 2016). In awareness of the magnitude of the policy area addressing climate change and renewable energy sources (RES), an early decision was made to exclude these prominent themes from the analysis to maintain explanatory depth to the units of analysis under investigation. Incorporating institutional rules governing climate change and environmental concerns would have considerably expanded the book's scope. Hence, these policy areas were merely touched upon every so often and not investigated in depth. The only exemption to these rules was the last chapter, which focused in detail on the development of energy policy under the European Green Deal in conjunction with provisions under the Energy Union.

EU energy policy: a research agenda

Given the possible limitations of this research discussed in the previous section, based on the insights acquired through the assessment of the empirical data, the findings of this book allude to a potential expansion of some of the analytical units. The most significant avenue for further research would be an extension of the theoretical model concerning critical junctures and their impact on the institutional matrix. As proposed by the findings, a more fine-grained definition could

be applied to generate further hypotheses about change: critical junctures affecting the whole institution and critical junctures altering smaller components of the institutional matrix. The interplay of these typologies and their distinct effects on the institutional path would be a fruitful endeavour for further analysis. In addition, as highlighted by the analysis, both exogenous and endogenous factors contributed to the punctuation of the institutional equilibrium, which led to an alteration of the path. Whether this account holds for every momentous change to the institutional setup would require further investigation. Indeed, there is scope for a clearly defined ontology of critical junctures, which could enhance our understanding of critical junctures further.

The second opportunity for further research addresses the interplay of both typologies of critical junctures and their impact on the institutional rules for energy policy in the wider context of the EU's climate policy agenda and for renewable energy sources. It would be a fruitful undertaking to analyse the interplay of the SEA, understood as a critical juncture, and the environmental dimension of the policy area based on the proposed theoretical framework of this research. A multitude of contributions to the scholarly debate argue that one of the most influential avenues for promoting EU energy policy, and a main driving factor for strengthening the institutional setup, was reasoned through the attainment of environmental policy goals.[1] A further avenue for research, therefore, could be based on examining the policy sector in the context of the environmental dimension and whether analytical units within the framework of HI could inform the generation of new hypotheses addressing this particular part of the institution. Moreover, it would be of particular interest to see whether policymaking addressing the promotion of environmental goals follows similar notions of path dependence, increasing returns, policy learning and coordination effects, and unintended consequences. Furthermore, investigating how preferences are formed, whether they are based on rational calculations or ideational factors, and which logic is ultimately most influential could yield interesting findings and complement this volume. Such endeavours could provide new insight into a policy sector, which is often said to be mainly dominated by strategic action.

Note

1 For further discussion, see Tosun et al. (Eds.) 2015.

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