Paper 3 – EU energy policy integration as embedded intergovernmentalism: the case of Energy Union governance

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Abstract: The launch of the 'Energy Union' in 2014, represented a major step to deepen EU cooperation in energy and climate policies. Yet, in energy, member states have remained particularly jealous of their sovereignty, limiting the pace and scope of integration. EU energy policy appears to fit the specifications of 'new intergovernmentalism' (NI). Member states have been keen on reinforcing cooperation in the area but have refrained from delegating further authority to supranational institutions, preferring to maintain a high level of control within the Council and European Council. However, focusing on the Energy Union Governance Regulation adopted in 2018, we argue that the sector does not fit neatly within this NI account. Although governments remain central to the process, they operate within a hybrid institutional framework combining supranational and intergovernmental elements, in which formal and informal authority distribution is unstable and contested. We suggest that this form of governance is better described as 'embedded intergovernmentalism'.

Introduction

In the past decade and a half, energy policy has moved from a marginal position to a prominent and dynamic area of European integration. Energy issues have been increasingly harnessed to climate policy and have become particularly salient internationally within the context of international climate negotiations and the urgency of an energy transition to meet Paris Agreement commitments. In Europe energy policy is also perceived as an area with the potential to reinvigorate the integration process and demonstrate the 'added value' of the EU to its member states and citizens (e.g. Andoura et al. 2010). The 'Energy Union', launched by the European Commission in 2014, is a high-profile initiative to deepen cooperation in this area.

Since its inception, EU energy policy has developed without a clearly delineated legal foundation. It has emerged out of the EU's competencies in contiguous policy areas - particularly the internal market and environmental provisions (Morata and Solorio 2012). This has meant an important role for the European Commission and the Court of Justice of the EU (CJEU). On the other hand, member states have remained particularly guarded when it comes to their sovereignty in this area, limiting the pace and scope of integration (Slominski 2016, 345). Since the entry into force of the Lisbon Treaty, the EU has formal competencies in energy. Community competencies now explicitly encompass the internal energy market, as well as clean energy and the security of energy supplies. Yet legal authority remains firmly with member states in significant areas such as national resources, the ability to determine national energy mixes, as well as taxation. Member state governments have also been at the centre of the decision-making process, within the Council and increasingly through the European Council which has significant authority to decide key energy issues such as climate and energy targets. On this account, EU energy policy appears to fit the specifications of the

so-called 'new intergovernmentalism' post-Maastricht, which sees member states as keen on reinforcing cooperation in sovereignty sensitive areas while refraining from delegating further powers to supranational authorities.

This paper examines the EU's Energy Union governance framework to answer two related questions: 1. Does the evolution of EU energy governance as part of the 'Energy Union' project continue or depart from pre-existing patterns of authority distribution? 2. Does the new EU energy and climate governance framework fit the new intergovernmentalist model of authority distribution? We examine how the key actors involved approach the distribution of authority between member states and EU institutions, and what the negotiations and their outcome tell us about where authority lies in energy policy, how this distribution is contested, and how contestation is managed in the sector.

We argue that different legal bases and roles for supranational institutions mean that the boundaries of energy policy are unclear, increasingly overlapping with climate policy, and the distribution of authority is unstable and contested. It is a hybrid area combining intergovernmental and Community modes of governance. Although member states exercise significant authority through the Council and increasingly the European Council, this takes place within the context of the EU's institutional environment.

The first section reviews critically the new intergovernmentalist agenda, discusses the limits of its application to EU energy policy, and contrasts three governance models – new intergovernmentalism, the Community method and a third hybrid model we call 'embedded intergovernmentalism' – focusing on three dimensions – decision-making and decisions; the role of supranational institutions (notably in implementation); and compliance mechanisms.

This framework is then applied to Energy Union governance, contrasting it with the pre-existing governance framework to identify and characterise shifting patterns of authority. We focus in particular on the 2018 Energy Union Governance Regulation, a central piece of the 2030 clean energy governance framework. The following section reflects on patterns of authority distribution in the Energy Union and best ways to conceptualise energy policy governance. We conclude that a better way to understand EU energy policy integration is to conceptualise it as a form of 'embedded intergovernmentalism', in which governments remain central and particularly jealous of national prerogatives, while being deeply entrenched in the EU institutional framework.

The Community method, new intergovernmentalism or embedded intergovernmentalism?

The 'new intergovernmentalism' debate

The new intergovernmentalism (NI) that has emerged after the Maastricht Treaty is characterised by 'integration without supranationalism' (Bickerton et al. 2015a, 703; 2015b). Member states have shown an appetite for enhanced cooperation while being simultaneously reluctant to delegate further sovereignty and bring sensitive areas within the realm of the traditional Community method of EU decision-making. This has been most evident in the new areas of integration that have developed after Maastricht, namely common foreign and security policy, economic and monetary union, as well as parts of justice and home affairs and social and employment policies. Here governments have privileged the search for consensus through intergovernmental fora as well as the delegation of powers to 'de novo bodies', rather than to supranational institutions (Bickerton et al. 2015). It is not clear, however, whether NI is meant

to characterise only the so-called 'new' areas of integration or the European project as a whole, including the former first pillar of the Maastricht Treaty. As Bulmer argues (2015, 294), NI rightly points to an intergovernmental tendency in European integration, but integration post-Maastricht also includes moves towards supranationalisation in certain areas.

Integration without supranationalism is attributed to changes in the political economy of member states since the 1980s with the end of the post-war Keynesian consensus, as well as change in state-society relations and increasing tensions between elites and citizens over integration (Bickerton 2012). Indeed, the growth of domestic contestation has created a form 'constraining dissensus' that limits the possibilities of functional integration (Hooghe and Marks 2009), to which intergovernmental cooperation is a response, redirecting rather than redressing legitimacy problems (Hodson and Puetter 2019).

NI is also associated with a micro theory of institutional change that Puetter (2012, 2014) has labelled 'deliberative intergovernmentalism'. In sensitive areas, national government are eager to seek commonly agreed solutions while remaining anxious of being by-passed and adamant about preserving their veto rights. This translates into the preference for consensus, which intergovernmental institutions such as the Council, European Council and Eurogroup are geared towards producing. This consensus is engineered through specific institutional features (such as more regular meetings, informality, secrecy) which aim to favour 'honest' deliberation, problem solving and cooperation (Maricut and Puetter, 2017). NI emphasises and explains consensus-seeking between European governments but, as a result, tends to overlook enduring divisions and conflict (Schimmelfennig 2015, 728) and 'largely disregard[s] the significance of coercive or institutional power' (Schmidt 2018, 1546). As Novak (2013)

contends, consensus can also be 'apparent' rather than actual, as deliberation can hide latent conflict and power relations.

Energy as a new intergovernmental area?

Energy is an area in which national traditions and prerogatives are deeply rooted. Member states' approaches and preferences to a large extent reflect their national resources, energy mixes and the structures of their national energy systems, as well as their political histories. Energy policies are still perceived as key to national sovereignty and even national security (Judge and Maltby 2017), and national governments are reluctant to cede authority to the supranational level on issues that have direct and important consequences for their citizens' welfare.

As a result, the upward delegation of authority to the EU level and supranational institutions has been limited and belated. At the beginning of the 1990s the energy sector was one of the least integrated sectors in the European Communities (Matlary 1996). However, since the mid-1990s, despite the lack of firm legal basis, energy policy cooperation has deepened within the framework of the traditional Community method, with the Commission as (formally) the sole initiator of legislation, the European Parliament (EP) as co-legislator and a role for the Court in adjudicating disputes and enforcement (see Dehousse 2011). The energy sector was included in the internal market agenda in the late 1990s (Eising 2002) and affected by the growing body of environmental legislation via the EU's wide-ranging competences in that area (Morata and Solorio 2012). The Commission has been instrumental in using its legal prerogatives in other sectors, in particular the internal market (including competition rules) to push integration forward in energy (Schmidt 1998). These developments were eventually codified in the Lisbon Treaty (art. 194) and expanded to security of supply measures, the Treaty explicitly specifying

that national resources, the energy mix and taxation remain strictly national prerogatives - a reflection of member states' enduring sovereignty concerns. However, the importance of article 194 should not be overstated as it has simply institutionalised what had developed progressively in practice (Piris 2010, 319).

Decision-making and decisions

Energy negotiations have been highly contested and member states have been at the forefront both individually and collectively (e.g. Buchan 2009). The European Council has gained influence due to the need for inter-sector coordination at the highest level to set mid- to long-term energy and climate objectives (such as the 2020 and 2030 targets) and national political authority to respond to energy crises. Thaler (2016) stresses the role of the European Council in energy policy development, as central to facilitating integration through ironing out dissensus. On this account, energy policy shares certain characteristics with the 'new areas' of intergovernmental cooperation identified by new intergovernmentalism. Member states have been keen on reinforcing cooperation in the area, while at the same time refraining from delegating authority to supranational institutions, preferring to maintain national sovereignty over key aspects. Intergovernmental fora, where consensus nominally prevails, have been central to this process.

However, Thaler's account overstates the European Council's capacity to steer the policy-making process and monitor implementation. The European Council meets relatively infrequently (usually quarterly) and discusses energy and climate policy only occasionally within these meetings. Its attention to these issues tends to peak after energy crises (e.g. the 2009 gas supply disruption) or in preparation for international climate conferences (e.g. 2007-8, 2013-4) (Alexandrova 2015). A new intergovernmentalist perspective also underplays that

intergovernmental bargaining takes place within the parameters of a supranational framework (Stone Sweet and Sandholtz 1997, 299-300), which shapes its process and outcomes. In hybrid areas such as energy, we argue that there is a more systematic interplay between intergovernmental and legislative processes, with the former remaining central but embedded in the latter.

Role of supranational institutions

NI claims that post-Maastricht the Commission refrains from pursuing further integration as it is sensitive to member states' concerns (e.g. Hodson 2013), underlining the importance of ownership by member states through consensual decision-making at the top level to ensure the authority of the decisions and ensure smooth implementation and compliance (Puetter 2012). Yet, this perspective misses the influence of supranational institutions based on their legislative prerogatives and ability to influence intergovernmental debates. In hybrid governance areas such as energy, European Council conclusions do set the framework within which the legislators must work, but the European Commission plays a substantial role in framing policy debates and following up with legislative proposals (Bocquillon and Dobbels 2014), and implementation including the possibility of infringement proceedings if member states fail to comply. Its formal and informal agenda setting powers – exclusive right of legislative initiative, decision on the timing of proposals – provides the Commission with the ability to steer the process and shape outcomes. The European Parliament has been progressively empowered as a co-legislator in most areas of energy policy, acquiring institutional power in the decision-making process both in agenda setting and in co-decision by putting pressure on the Council but also through ideational influence and discursive interactions - in link with a 'new parliamentarist' view of EU integration (Schmidt 2018).

Compliance mechanisms

In areas dominated by NI, key decisions tend to be first and foremost of a political nature – often in the form of European Council conclusions and intergovernmental agreements, even though legislation is not absent. In comparison, in areas subject to the traditional Community method, implementation and compliance are ensured through legislative and judicial means. In sectors characterised by hybrid governance objectives are often non- (or partially) binding and the obligation falling on member states general in scope. Compliance mechanisms here tend to incorporate a process of reporting by governments, monitoring of progress by the Commission, combined with peer-pressure for those governments who are lagging behind. Given the EU's circumscribed but significant legal competence, there is a 'shadow of hierarchy' (Eberlein 2008). This takes the form of court sanctions or the potential of issuing 'harder', more constraining, legislation to help steer the implementation process and ensure compliance. Intergovernmental and supranational modes of governance are therefore intertwined, and in interaction with each other.

[Insert Table 1 here]

Case and methods

We look at the validity of NI claims and propose an 'embedded intergovernmentalist' approach for the case of the Energy Union governance framework. In this section we briefly present the contextual background to the case and methodology used, before presenting the empirical material and analysis.

Case study: The Governance framework of the Energy Union

In April 2014 the Polish Prime Minister proposed an 'Energy Union', focused on supply security objectives, including a joint gas purchase mechanism to strengthen the hand of EU member states vis à vis external suppliers (Szulecki et al. 2016). The new Commission President Juncker seized on the Energy Union project as a priority in Autumn 2014 and created the post of Energy Union Vice President to drive it forward.

In preparation for the Paris Climate summit of December 2015, the Autumn 2014 European Council conclusions set out the 2030 climate and energy policy framework, including its three main targets: 27% energy efficiency (see Dupont 2020), 27% renewables and a 40% GHG emission reduction. It was agreed that: "…a reliable and transparent governance system without any unnecessary administrative burden will be developed to help ensure that the EU meets its energy policy goals" (European Council 2014, 9). As the proposed 2030 energy efficiency goal was non-binding and the renewable energy target was binding only at EU level, a governance mechanism was promoted - in particular by Germany, along with France and Scandinavian countries - to ensure a collective effort by member state (Vandendriessche et al. 2017, 18).

The Commission's 2015 Energy Union strategy included five broad priority areas.[1] The initial breadth, or vagueness, of the concept made it hard to oppose for member states and industry stakeholders, particularly when there was support from the public for energy integration (interview 3), and it was endorsed by the European Council the following month (European Council 2015). The Commission's strategy emphasised the requirement for "an integrated

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[1] Security, solidarity and trust; a fully integrated energy market; energy efficiency; decarbonisation; and research, innovation and competitiveness.

governance and monitoring process" (Commission 2015, 17). A Regulation on Governance of the Energy Union was formally proposed as part of the November 2016 'Clean Energy package', composed of eight pieces of legislation, the other seven of which were revisions to existing directives and regulations.

The 2015 Paris climate negotiations saw the EU join the High Ambition Coalition, which pushed for limiting emissions to levels compatible with a 1.5°C global temperature increase (going further than the established 2°C target). Adopted in December 2015, the Paris Agreement includes the aspirational 1.5°C target and proposes a bottom-up process through which the parties define their own plans towards achieving the overall objective through Nationally Determined Contributions (NDCs), which should be reviewed and upgraded at regular intervals. The EU's commitment to the Paris Agreement has shaped its own governance mechanism (Oberthür 2019).

The Governance Regulation "aims to integrate, simplify and align an overlapping set of planning, reporting and monitoring requirements ('obligations') under the existing EU energy and climate acquis" (Wilson 2018, 2; also Ringel and Knodt 2018), after the Commission concluded that there was a lack of policy coherence, efficiency and consistency between climate and energy policy fields (Commission 2016). The aim is also to provide a robust process to monitor implementation and ensure that member states are on track to achieve EU headline goals and Paris Agreement commitments.

Methodology

The research takes a qualitative approach, using rich primary data to analyse authority conflicts and compromises regarding the Energy Union governance architecture. We focus in particular

on the EU's 2018 Regulation on Governance of the Energy Union, and interconnected legislation proposed as part of the winter 2016 'Clean Energy Package'. The governance structure is discussed in comparison to pre-existing governance frameworks, in particular those established as part of the European Climate Change Programme in the early 2000s, and the 2009 climate and energy package. The qualitative approach includes the use of documentary evidence, press releases and eighteen elite interviews with representatives of the member states, the European Commission and Parliament, the Council Secretariat, energy regulators and industry representatives, and energy experts working in the media, think tanks and NGOs. They were selected based on their centrality in the EU-based energy policy network and the Clean Energy Package's policy-making process.

Negotiating the Energy Union governance framework

The empirical analysis is divided into three sections, as identified in our discussion of NI as applied to energy, and the theoretical framework: decision-making, the role of supranational institutions, and compliance mechanisms.

Decision-making: Setting the EU's climate ambition

A key debate within the Clean Energy Package centred around the level and legally binding nature of the EU's climate ambition in the context of the Paris Agreement. In October 2014 the European Council, based on a Commission proposal, increased the 2020 targets of 20-20-20 (emissions reduction, renewables, energy efficiency improvements) to 40-27-27 by 2030. While as part of the 2020 Framework both the GHG and renewable targets were binding at the national level, in the 2030 Framework it is the case only for the GHG target.[2] Influenced by

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[2] The EU wide binding GHG targets rests on binding national targets in sectors not covered by the EU Emission Trading Scheme (ETS) as part of the Effort Sharing Regulation, and obligations which are binding on companies in the sectors covered by the ETS.

Energy Commissioner Oettinger, the Commission refrained from pushing for binding national commitments for renewable energy and energy efficiency (Bürgin 2015). It was criticised for failing to take an ambitious stance against reluctant member states, with the UK supported by Spain, Poland and other Central and Eastern European countries rejecting binding renewable targets as an infringement of their authority to decide their own energy mix (Nelsen 2014; interview 7). The level of ambition was generally considered disappointing for renewable energy and energy efficiency (van Renssen 2014). As assumed by NI, the Commission avoided more integrationist measures, while the European Council played a central role in defining the framework which the Commission had to work within when devising its clean energy package.

In 2017, the debate about climate ambition re-emerged, in a context where the EU wanted to demonstrate its ambition as part of the implementation of the 2015 Paris Agreement, while climate issues had also risen in the agenda of several member states. It exposed a power struggle between member states themselves, as well as with supranational institutions. During the negotiations in the Council, Germany and France worked closely together (interview 16), while Luxemburg, Portugal, The Netherlands and Sweden were part of the most ambitious coalition (interviews 8, 13, 17). The negotiation dynamics changed over time. Following elections in 2017, the German government ceased coordinating with ambitious states (interview 8).[3] Instead, France was now demonstrating climate leadership under its newly elected President and high-profile environment Minister Nicolas Hulot, along with Sweden and Luxembourg (interview 6). The increase in EU target ambitions was significantly aided by changes in governments in Spain and Italy as negotiations neared an end. With Spain, this new ambition on climate and energy was espoused by the new socialist energy minister - leading a

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[3] In June 2018, the German Economy and Energy minister effectively vetoed any higher ambition than 32% for renewables, setting an upper limit in negotiations (Simon, 2018b).

newly created Ministry for Ecological Transition (interviews 8; 11; 13; 15). The change in Italy's position, a result of the new Lega-Five Star Movement coalition government and driven mainly by the Five Star Movement's environmental commitments, was surprising, "swinging the balance in favour of higher ambition" (interviews 8, 17). It led to the unravelling of a potential blocking minority at the June energy council, in the late stages of the trilogue with the European Parliament (interview 15). Whilst the Visegrad Group were opposed to ambitious renewable targets (interview 8) and a shift of authority to the EU level in this area (interview 12), Poland's likely opposition was constrained by hosting the UN's 2018 climate change conference (interview 15), and "Bulgaria was neutralised by being the President" during the negotiations (interview 15). On Energy Efficiency there was similarly no blocking minority as the target was strictly non-binding. During the negotiations, authority delegation was therefore contested. Member states were not united in their preferences for the role of supranational institutions as assumed by NI, their positions shaped by changing national and international contexts.

It was within this context that the EP was able to influence the level of ambition. The Parliament was decisive in shifting ambitions upwards (interviews 8, 12, 16, 17, 18), seeking a 35% renewable target by 2030 instead of the original 27% (EP 2018), and a 40% instead of 27% target for energy efficiency. At the end of the negotiations, the Council and EP agreed on a compromise of increasing ambition to 32% for renewables and 32.5% for energy efficiency. On the nature of the targets, the EP was less successful, accepting that the renewable target would remain binding at EU level only and that the energy efficiency target was kept non-binding as preferred by member states. Therefore, the Council, while shifting its position on the levels of ambition, successfully resisted an upward shift of authority towards the EU level.

Another related and contested issue was the trajectory to be followed to reach the renewable energy targets. While the Commission had proposed a first check of national and EU progress towards these EU goals in 2023, member states agreed with the EP's proposal to have an earlier first check on progress, in 2022, but successfully countered that there should only be three (not four) reference points - to avoid administrative burden and inefficiency. Member states also pushed for an exponential rather than linear trajectory – as proposed by the Commission – towards nationally 'planned contributions'. Such an 'improvement focused approach' would require greater efforts close to 2030 to reduce costs by waiting for technology improvements (interview 1). Eventually a compromise agreement was adopted, which saw the Council and EP meet in the middle.[4]

In the context of the Paris Agreement, the EP has also pushed for the EU to commit to net zero emissions by 2050 (EP 2018).[5] Member states were divided; with France, Sweden and Luxembourg pushing for the net zero target but others opposed (Simon 2018a). The Council agreed only that plans should be consistent with the Paris Agreement (CoEU 2018), however the European Council in March 2018 requested the Commission to prepare a long-term Paris-compliant climate strategy to be drafted in 2019 and finalised in 2020 (European Council 2018).[6] This aligns EP and ambitious member state preferences, and the delegated authority permits the Commission to then strongly influence member states' climate ambition by framing it in terms of their Paris Agreement commitments.

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[4] The Council proposal (2022-16%, 2025-40%, 2027-60%) compared to the EP proposal (2022-20%, 2025-45%, 2027-70%) (CoEU 2018). 18, 43 and 65 was eventually agreed (EP and CoEU, 2018a, art. 4.2).
[5] The EP proposed that long-term emission strategies should run to 2100, and crucially that by 2050 they should show zero emissions, with negative emissions after (EP 2018).
[6] The net zero commitment was eventually endorsed by the European Council at its 12 December 2019 summit, although at the price of constructive ambiguity: the conclusions state that 'one member state [Poland], at this stage, cannot commit to implement this objective' (European Council 2019, 1).

The role of supranational institutions: Planning and reporting

In the 2020 governance framework, EU and national targets were defined as part of different pieces of legislation (for more details on the 2020 renewable energy and energy efficiency targets see respectively: Solorio & Jörgens 2020; and Dupont 2020). Member states had to establish separate plans for renewables, energy efficiency or non-ETS sector emissions, presenting the measures to be adopted to reach their sectoral objectives. In the new governance framework planning and reporting obligations are consolidated into integrated 'National Energy and Climate Plans' (NECPs). Member states define their national renewable and energy efficiency contributions towards EU targets as part of NECPs, in a bottom-up fashion on the model of the Paris Climate agreement. This approach partially confirms NI's hypotheses about the dominance of national sovereignty concerns and preference for enhanced intergovernmental cooperation. In contrast, to achieve the EU's GHG emission target, the NECPs only specify the measures through which the national emission targets in non-ETS sectors will be implemented and achieved, whilst national contributions are still determined at EU level by the Effort Sharing Regulation (EP and CoEU, 2018a, Annex I).

However, even for renewables and energy efficiency, aspects of the target setting process suggest that it is not strictly bottom-up. The plans, whose framework is outlined in Annex 1 of the regulation, are based on templates produced by the Commission.[7] The EP successfully pushed for a transparent process for producing national plans (EP 2018), through their publication and public consultations involving national parliaments, local and regional authorities, as well as civil society (EP and CoEU, 2018b, art. 10 & 11). They will be produced in a structured, transparent, iterative process between the Commission and Member States (EP

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[7] While the Commission proposed that these templates *shall* (mandatory) be used, it was eventually watered down to *should* (advisory) (EP and CoEU 2018b).

and CoEU, 2018b, article 1). Whilst member states supported intermittent reports on their national climate and energy plans, the EP wanted regular and more comprehensive reporting (interviews 7 and 8). The negotiated outcome was a close oversight role for the Commission in the creation of national plans, with a role in reviewing biennial progress reports on their implementation from 2021, to facilitate EU level aggregation and assessment (EP and CoEU, 2018b, article 17). Whilst framed as 'Better Regulation', with streamlined and minimised reporting obligations (interview 5), a number of member states perceive that their preferences have been overruled and that: a) the information reporting obligations are the same or have increased (interview 13); and b) that these obligations grant considerable authority to the Commission to monitor member state policy planning and implementation, and to interpret its role (interviews 7, 9, 11, 13, 16):

"[I]t is not a renationalisation of energy policy, totally the contrary. New governance is what the Commission wants. It is high on the agenda now, and it could continue to be so – and be political. Or it could be low on the agenda and technical… There is an option to really put pressure on national politics and national ministries. There is total discretion legally" (interview 14).

The Commission's first review of draft NECPs at the end of 2018 found that whilst one third of member states were judged to have submitted (sufficiently) ambitious contributions to the EU's renewable energy target, there was an overall gap in ambition. As a result, the Commission recommended several member states 'reconsider their level of ambition' ahead of final submissions, "increasing national contributions as appropriate" (Commission 2019, 3). The same Commission review finds a "substantial gap" for energy efficiency, with only a few member states proposing "a sufficient level of contributions for 2030" (Commission 2019, 4), and that "all Member States whose contributions are assessed as not sufficient at this stage are

recommended to review them and consider increasing the level of ambition" (Commission 2019, 5).

In 2023, the Commission will review progress towards the headline 2030 EU targets and achieving its commitments as part of the Paris Agreement (EP and CoEU, 2018a, art. 14). It will assess if there is an 'ambition gap' and/or an 'implementation gap'. This review date is considered "an open door to go higher" (interview 12), and "has the explicit mention that the targets can only be reviewed upwards, so it is a kind of ratcheting-up principle" (interview 15). This refers to the clause in both the amended energy efficiency and recast renewable energy Directives (EP and CoEU 2018c/d, article 3).

Compliance mechanisms: Peer review and the shadow of the Community method

Without binding national targets for renewables and energy efficiency, there is a more limited threat of infringement proceedings from the CJEU. Member states are only obliged: to create national integrated climate and energy plans, and where relevant to respond to Commission recommendations issued on renewables (and possibly other Energy Union objectives) when the EU is collectively adjudged to be failing without any strict obligation to implement them; and to address implementation gaps, choosing the appropriate instruments and measures (EP and CoEU, 2018b, article 31). The Commission can initiate infringement proceedings for incorrect or partial implementation (for instance incomplete national plans), delays, or failure to attempt to address the implementation gap, but not for failure to actually achieve renewable and energy efficiency targets. However, the Governance Regulation provides the Commission with more power to consult with member states on plans (interview 8), and to monitor them.

Peer pressure is often identified as a central tool to ensure ambition and compliance. Greater transparency will allow civil society organisations at the EU and national levels to track

progress and identify 'leaders' and 'laggards' (interview 10). The binding template is considered a: "…tool to shape the political process through obligation of member states to make transparent their contributions and underlying assumptions" (interview 9; also interview 16). The EP strongly advocated increased transparency in the governance mechanism to compensate for relatively soft governance as it "creates a different level of pressure" (interview 10; also 15). In addition, the EP proposed the inclusion of a formula for the calculation of indicative national renewable contributions, which was supported by the most ambitious member states (interviews 7, 11, 16) and included in the final legislation (EP and CoEU, 2018b, Annex II).[8] This formula does not mean a return to binding targets but sets expectations. In the words of an energy official in the Commission: "…the formula is an assessment tool, it is informal, we will use it if there is a gap. We already tell them [MS] what the minimum requirements are" (interview 10). In fact, in its recommendations of June 2019 on the draft NECPs, the Commission has not shied from using the formula to recommend more ambition on renewable energy from 12 states (Euractiv, 2019).

In theory, member states will want to avoid being in the group of countries who are considered as not being ambitious enough and asked to do more (interview 16). This is a key aspect of the regulation: "at the core is soft power. Naming and shaming" (interview 12). Member states themselves will be able to monitor each other's efforts towards the common objectives. As a senior Commission official summarised: "Deadlines, dialogue, benchmarking, tracking, monitoring are the key components [providing] teeth" to ensure compliance and to steer an upwards dynamic in terms of implementation and ambition (interview 2; also 5, 6, 9).

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[8] Germany, Spain and Sweden were amongst the member states pushing for a binding formula initially, though this was abandoned in 2014 (interviews 11 and 16).

A State of the Energy Union report will continue to be produced, now on an annual rather than biannual/ad hoc basis (EP and CoEU, 2018b, art. 35). If the EU is not on target to meet its goals, then the Commission will make non-binding recommendations.[9] Whilst the target for renewables is binding only at the EU level, member states are obliged to set out a 'mandatory baseline share' and national indicative trajectory from 2021 to 2030. This is a bottom-up mechanism of setting targets, but if renewables are below this then the Commission will ask for additional measures from Member States, who *should* then close this gap. Yet, due to national sensitivities, if the national gap is not closed the Commission is clear that it does not intend to use the reporting and monitoring system to design a system that is "binding by the back door" (interview 2). Still, member states are obliged to take 'due account' of these recommendations and also provide and make public reasons for not addressing them 'in a spirit of solidarity between Member States and the Union and between Member States' (EP and CoEU 2018b, article 34).[10] Ultimately, the recommendations are considered 'political': "It is peer pressure. Member states will expose themselves to their peers if they don't do their part" (interview 10; also interview 11).

Beyond reporting, monitoring and peer pressure the 'shadow of hierarchy' is retained. Some parts of related legislation are legally binding, such as sub-targets and objectives enshrined in the Energy Performance in Buildings Directive, the Energy Efficiency Directive or eco-design directives (Dupont 2020). These provisions could be legally enforced to help close the implementation gap. Moreover, if a delivery gap emerges at the EU rather than national level, the regulation explicitly states that it "shall propose measures and exercise its powers at Union level in order to ensure the collective achievement of those objectives and targets" (EP and

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[9] Sweden and Luxembourg were amongst the minority willing to have binding recommendations (interview 8).
[10] This was weakened from the Commission's position of wanting member states to 'take utmost account' of these (Commission 2016).

CoEU 2018a, article 31). National measures should be prioritised but amending related EU legislation (on renewable energy, energy efficiency, or ecodesign for instance) to strengthen the targets, obligations and monitoring process remain on the table, creating an additional pressure for laggards to comply (interviews 11, 15 and 16). This option would require the agreement of the co-legislators and would therefore necessitate a shift in the position of key member states, but is potentially achievable if the Governance Regulation proves to be too weak to meet the Council's stated ambitions in a context where decarbonisation has risen up the national and EU agendas, and the Commission is tasked with proposing alternatives.

Discussion

Institutional power balance: authority contestation and institutional compromise

As part of flagship Energy Union project, the case of the Governance Regulation reveals the ongoing authority contestation between member states and supranational institutions. Early on, member states took a strong stance to preserve their guarded sovereignty in defining their energy mix and policies and avoid any solution 'imposed by Europe' (interview 2). The development of a formal governance framework enshrined into legislation is therefore, from the perspective of the Commission and European Parliament, only a second-best solution. It is a functionally driven move, motivated by the need to meet the EU's climate commitment within the Paris framework, in the absence of binding national targets for renewable energy and energy efficiency, and while respecting member states' sovereignty concerns.

The Governance Regulation heralds a bi-directional authority shifts in climate and energy governance (see Herranz Surralles et al 2020). On the one hand there is a downward shift towards a partial reclaiming of authority compared to the 2020 framework, at least concerning the definition and enforcement of national renewable energy objectives, with a reduced role for

the Court.[11] At the same time, there is also an upward authority shift towards the EU level in terms of planning and compliance monitoring. NECPs are produced and implemented by member states under the Commission's guidance, covering mainly climate and clean energy objectives, but also other aspects related to the internal market. This suggests that the changes do not conform to a strict pattern of re-nationalisation or disintegration.

The Governance Regulation creates a process of 'harder soft governance' (Ringel and Knodt 2018) – partially inspired by the European Semester system[12] – to manage authority conflicts in energy policy, with formal adjudication restricted to certain aspects (see Herranz Surralles et al 2020). Yet, there is also a limited shift in authority to the Commission as an agent empowered to monitor and advise member states on national plans and strategies, including through the use of the indicative renewable energy formula. There is also a potential further shift to the Commission in terms of recommendations and additional measures in case of failure, if the change in the governance process, and greater self-governance, is in danger of failing to achieve binding EU targets. In the case where there is a delivery gap between headline goals set by the member states themselves and their implementation as part of the Governance Regulation, it is likely that substance-based contestation over the level of ambitions and best way to achieve them will become explicit, with conflicts emerging between leaders and laggards. In turn this is likely to reopen discussions and contestation on sovereignty delegation if the largely informal or softer authority conferred to supranational institutions in the Regulation has been insufficient to prevent non-compliance and free riding.

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[11] In contrast, the climate targets defined in the Effort Sharing Regulation remain binding and potentially enforceable through court proceedings, while the headline energy efficiency target is still only indicative.

[12] As one interviewee explained, the Governance Regulation reflects the Council's view that "the whole governance of the Climate should follow the model of the European Semester" (interview 15).

Unlike economic governance within the Semester, there will be no binding country specific recommendations from the Commission. The Commission has the power to use legal sanctions in the form of infringement procedures only for non-submission, delays or improper realisation of national plans and not for any lack of ambition within them or failure to comply with Commission recommendations. However, member states with an initial ambition gap, or later an implementation gap, will be under domestic and peer member state pressure to address this failure, with the Commission then using bottom-up rather than previous top-down pressure. Politicisation is therefore embedded in the governance, to compensate for the softer judicial pressure. As a national representative argued, the process is designed "…to bring politics into energy policy" (interview 14). Political contestation in implementation is expected to compensate for the relative depoliticisation of EU level target setting in decision-making.

Secondly, the shadow of hard governance through the traditional Community method remains. This includes new legislative proposals to address collective EU failure. Arguably, member states are far from united and a blatant failure to keep on track towards EU objectives could lead to changing Council positions and the possibility of a shift of authority to supranational institutions accompanied by 'harder' legislation. A partial move away from supranational governance is made contingent on member states achieving the commitments (emissions, renewables and energy efficiency) they have made in the European Council and as part of the Paris Agreement. Oberthür (2019) concludes that on balance the 2030 governance framework is no less stringent than previously.

The Energy Union governance framework as embedded intergovernmentalism
Whilst most aspects of the clean energy package remain within the scope of the Community method, the process has been dominated by governments from the agenda setting phase to the

negotiations. As part of the European Council, member states set the framework and the headline goals within which the Commission has had to work, notably at the October 2014 summit. Yet, a careful tracing of the negotiations process suggests that supranational institutions have not been merely reactive and have contributed to shape the process and outcome, aided by divisions and shifts among member states themselves.

If the Commission refrained from directly challenging the Heads of State and Governments when drafting legislative proposals, as expected by NI, it also promoted a stronger role for itself in monitoring national plans and progress towards the EU objectives. As for the EP it successfully pushed for more ambitions (if not for more binding objectives), aided by a shift in the power balance in the Council in the last phase of the negotiations. The EP was also instrumental in strengthening the role of the Commission in monitoring progress and compliance. The compromise also reflects a balancing act in the Council, with some governments having concerns about free riding by less ambitious member states while others were worried by the potential discretion of the Commission in assessing national plans and objectives.

Energy policy does not fit neatly into the framework of the new intergovernmentalism. Member states are indeed central, and their collective authority (and relations) key to explain policy outcomes. Yet, in line with critics of new intergovernmentalism, we see cooperation and conflict as shaped by the EU institutional environment. The distribution of authority is far from clearly demarcated and stable, with potential for both informal competence creep and renationalisation. The outcome of the Governance Regulation negotiations is a framework in which the governments remain in the driving seat when defining their national headline objectives and the policy instruments to achieve them but are embedded in a process of

monitoring and peer review in which the Commission has a key political role to play. It has authority to guide member state policy plans and facilitate compliance, with some discretion in how it applies the Regulation's principles. In terms of institutional power balance, new intergovernmentalism places authority on the most sovereignty sensitive issues firmly with the Council and European Council, where member states are represented, and consensus achieved. In contrast, in areas where the Community method dominates, authority is distributed among legislative institutions and the involvement of the European Council limited and intermittent. The Governance Regulation does not map neatly on either the traditional Community method or new intergovernmentalism (see table 1). It is better characterised as a 'hybrid' at the intersection between intergovernmental governance and the Community method, as a form of embedded intergovernmentalism.

Conclusion

Firstly, the Energy Union governance framework illustrates the challenge of addressing enduring sovereignty concerns of member states and providing them with a degree of autonomy regarding their policy choices, while ensuring that headline targets and objectives collectively agreed are met. There has been a high level of contestation, between member states and supranational institutions, but also among member states themselves, regarding the desirable pattern of authority distribution, resulting in a bi-directional authority shift. Upward delegation of authority was to a significant extent successfully resisted by the member states on sovereignty grounds, and there has been a partial renationalisation of (renewable) energy policy. Yet, this intergovernmental shift is only partial and embedded, as there has also been an upward authority shift in order to mitigate concerns regarding the efficacy of an increasingly bottom-up process. The Commission is empowered to monitor, publicise and guide member states' policies. Ultimately, the Energy Union governance framework attempts to reconcile the

objectives of balancing sovereignty with solidarity and flexibility without free riding; the text of the regulation mentions in its preamble (para. 59) the need "to avoid the 'free rider' effect" as a motivation for a close monitoring of member states' national renewable energy trajectory.

Secondly, the regular process of monitoring, reporting and revising is intended to provide flexibility in terms of targets and policy setting in a rapidly changing technological and political environment. Rather than a 10-year plan working towards fixed targets for 2030, as was the case for the EU's 2020 climate and energy framework, the Governance Regulation provides for multiple points for stocktaking and corrective action if members states are collectively under delivering. This iterative process also offers opportunities to react to potential technological and political changes – increasing public pressure, falling technology costs, the results of international climate negotiations – and integral to its design is facilitating a ratcheting up of climate ambition.

Interviews

Interview 1: Member state official, Brussels, 09.04.18

Interview 2: Senior Commission official, Brussels, 10.04.18

Interview 3: Electricity industry representative, Brussels, 10.04.18

Interview 4: Senior gas industry representative, Brussels, 11.04.18

Interview 5: Commission official, Brussels, 13.04.18

Interview 6: Think tank official, Brussels, 13.04.18

Interview 7: Member state official, phone, 17.04.18

Interview 8: Member state official, Brussels, 29.06.18

Interview 9: DG Energy official, Brussels, 02.07.18

Interview 10: Commission official, Brussels 02.07.18

Interview 11: Member state official, Brussels, 02.07.18

Interview 12: Journalist, Brussels, 04.07.18

Interview 13: Member state official, Brussels, 04.07.18

Interview 14: Member state official, Brussels, 05.07.18

Interview 15: MEP's assistant, Brussels, 05.07.18

Interview 16: Member state official, Brussels, 05.07.18

Interview 17: Journalist, Brussels, 06.07.18

Interview 18: MEP, email, 13.07.18

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Table 1: Patterns of authority distribution in three models of governance

Modes of governance	New intergovernmentalism	Embedded intergovernmentalism (hybrid)	Community method
Decision-making & decisions	Consensual deliberation	Combination of legislative and non-legislative processes Political decisions set the framework and headline goals, within which legislation and non-legislative acts are inserted	Legislative decision-making and legislation
Role of supranational institutions	Commission refrains from pursuing further integration	Supranational institutions can influence and shape national positions but ultimately rely on MS decisions	Integrationist role for the Commission, EP and CJEU
Compliance mechanisms	Ownership of the decisions by national governments, through new and intergovernmental decisions	Reporting, monitoring and peer pressure in the shadow of legislation/the Court	Legal enforcement by the Commission and Court
Overall institutional power balance	Dominance of Council and EUCO	Council and EUCO central but inserted in institutional framework	Distributed through the 'institutional triangle'

Source: Based on Dehousse 2011; Bickerton et al. 2015; and authors' elaboration.