

The Energy Union: what is in a name?

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On 19-20 March, the EU Council will react to the Commission's Communication on the Energy Union. Considering the high expectations, the reactions have been diverse so far, with complaints about the lack of attention for some specific interests or unsurprising credit as the document is vague enough to accommodate all wishes. However, a general consensus has emerged about the need for a holistic approach. States and stakeholders seem to recognise that the main challenges Europe faces in energy matters are deeply interconnected and can no longer be treated separately and without a larger role for the EU.

The problems that arise have more to do with the semantics than with the content. Any union is expected to introduce a certain level of centralisation within the governance of a system. In a monetary union, governments give up their power to issue a currency; in a customs union, the power of imposing external tariff barriers; in a banking union, the supervision of their banking system. But what type of sovereignty is given up in an energy union? The EU's traditional way of proceeding in energy matters has been to outsource energy policy as a by-product of the internal market or environmental legislation. So the construction of an energy union worth its name would imply a tremendous change. What elements of centralisation can one identify in the process outlined by the Commission's Communication?

Some elements of centralisation are present. The Communication recognises the need to "upgrade" the European Networks of Transmission System Operators for Electricity and Gas (ENTSO-E and ENTSOG). By exposing the limits to the decision-making powers of the Agency for Cooperation of Energy Regulators (ACER), it also calls for a more binding and independent regulatory function for this body. The flaws in the common regulatory framework set up by the Third Energy Package – which has probably overestimated the integration potential of (partial) ownership unbundling – are recognised as well by stating that a more robust common oversight is needed. However, it remains to be seen to what extent governments will be willing to give up the powers of national regulators, and how the Commission itself will interact with an upgraded ACER-ENTSO system. Additional elements of centralisation are visible in the suggestion that the EU Investment Plan might add to the existing financing facilities. However, the ability of these resources – most of which already exist – to leverage the annual EUR 200 bn estimate for power generation, networks and efficiency still needs to be tested. Also, it remains up to the member states to individually decide where the money will be spent.

When it comes to the decarbonisation of the economy, no further steps towards a centralised approach are suggested. The need to revise the Emission Trading Scheme – whose underperformance has contributed to the need to maintain expensive and fragmented national subsidising schemes for renewables – has actually been known for a long time. The plan is to go ahead with reforming the system, initially through the introduction of a market stability reserve (which was already proposed a year ago), aimed at withdrawing exceeding allowances when the market is oversupplied. But all the signals point in the direction of the approach of mixing a cap-and-trade system with a number of targets agreed by the member states, which will continue with no additional role for the EU. Other parts of the Communication highlight how harmful national capacity mechanisms and uncoordinated support for renewables are for the internal market. But there is no mention of potentially expanding EU competencies beyond a simple cooperation with the governments to ensure that national schemes do not distort the internal market.

Finally, in the area where centralisation was most expected – security of supply – the Communication does not seem to live up to earlier ambitions. The main elements of the original Tusk proposal for an energy union – suggested in the spring of 2014 – comprised a joint gas purchase and a decisive role for the EU in individual countries’ negotiations with external partners. According to the Communication, gas purchase cartels would be voluntary, and formed only as a reaction to emergencies – a formulation that recognises the fragmentation of the EU market in different “gas purchasing regions” and players. This suggests that the Union prefers to deal with external suppliers through liberal means – by deepening the single market and its external resilience to shocks – rather than adopt a mercantilist approach. Such a formulation also accommodates the preferences of several member states who suspected that the original Tusk proposal would turn the Energy Union into an anti-Russian construction.

As for the bilateral agreements between member states and suppliers – which often proved to be in violation of EU rules and are very hard to re-negotiate –, the Commission advocates to have a role in overseeing *ex ante* the deals’ compliance with EU legislation, by announcing the revision of the Decision on Intergovernmental Agreements in 2016. But it does not go so far as to propose a veto right. In the current environment, it seems very difficult for the Council to unanimously agree to cede sovereignty in this realm, as too many countries still benefit from the *status quo* – Hungary and Germany in terms of low prices, Slovakia in terms of transit fees, Austria in terms of keeping the hub. All of this demonstrates that it is very difficult to separate an external energy policy from a wider foreign policy – the common interests of which are far from defined.

All in all, it seems that the Energy Union is not a union in the end, but rather a process. The EU will continue to act through legislation, based on existing primary law and structures. It is very unlikely that member states will spend political capital to reject the approach, as they will continue to have their say in each legislative proposal when it is tabled. However, one should not underestimate the extent to which the EU has already raised its profile in energy matters, regardless of the energy union process. The EU was e.g. able (i) to broker gas deals between Russia and Ukraine, thereby enhancing the EU’s supply security; (ii) to ‘persuade’ France and Spain to adopt more conciliatory terms on interconnections, challenging the national champions’ capture on this chapter; (iii) to drive Russia towards more commercially sound behaviour, reaffirming that projects such as South Stream cannot disregard EU rules.

In the end, a change in the governance of energy in the EU has *de facto* been in the making for a while, suggesting, if not yet a proper “Europeanisation” of this policy area, at least an implicit acceptance by the member states of energy as a shared competence. To achieve further progress in considering institutional constraints that did *not* change, it will be essential to use the political momentum provided by the Energy Union to better organise and supervise the enforcement of present and future community legislation.

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