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Liberalisation to Explore the Changing Mechanisms of
Intergovernmental Governance**

Svein S. Andersen
BI Norwegian Business School

Nick Sitter
BI Norwegian Business School

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Managing Heterogeneity in the EU: Using Gas Market Liberalisation to Explore the Changing Mechanisms of Intergovernmental Governance

Svein S. Andersen and Nick Sitter

Professor Svein S. Andersen (svein.s.andersen@bi.no)

Department of Leadership and Organizational Behaviour, BI Norwegian Business School

Professor Nick Sitter, Professor (nick.sitter@bi.no)

Department of Accounting, Auditing and Law, BI Norwegian Business School

Department of Public Policy, Central European University

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Since the Single European Act the EU has brought many ‘public’ policy sectors characterised by heterogeneity under the umbrella of the Single Market. Consequently, some of the tools employed to shelter these sectors from supranational governance – unanimous decision-making, limited Commission competence, and ‘ring fenced’ national regimes – are no longer fully relevant. The member states and the Commission have therefore developed a series of additional measures to accommodate heterogeneity. The central questions here are: as integration proceeds, what can member states reasonably demand in order to safeguard their interests? And, how can the Commission offer the necessary flexibility? The literature on policy implementation and differentiated integration provides a point of departure for generalisations about changes to mechanisms of intergovernmental governance. The present paper uses developments in the EU gas sector to explore and elaborate how the adoption of new measures changes the mechanisms of intergovernmental governance.

Key Words: Mechanisms of Intergovernmental Governance, Europeanization, Differentiated Integration, Policy Heterogeneity, EU Gas Policy.

Introduction

Over the last two decades, scholars working on Europeanization of member state's public policy have documented broad and continuing variations in policy outcomes across sectors and states (Börzel 1999; Radaelli 2000; Olsen 2002; Bulmer 2005; Hayward and Würzel 2012). Others point to an increase in differentiated integration – the prevalence of formal and informal regimes at the EU-level that permit exemptions, opt-outs, delays and heterogeneous implementation of EU policy (Stubb 1996; Kölliker 2001, 2006; Andersen and Sitter 2006; Holzinger and Schimmelfennig 2012). The overall picture that emerges from this literature is closer to a mosaic than a painting: it is relatively coherent, but closer examination reveals a considerable degree of local variation and pieces that fit together by adjustment rather than by design (Andersen 2006). The central questions in this article are: as integration proceeds, what can member states reasonably demand to safeguard their interests; and how can the Commission offer the necessary flexibility?

The central argument in what follows is that literature cited above allows us to identify new developments in four broad sets of mechanisms of intergovernmental governance. i) Policy sectors may be kept outside EU competence, but as many new areas are brought in under the EU policy-umbrella, opt-outs and derogations have become common. ii) States continue to seek compromises in the Council, but as formal and informal veto-rights have become obsolete, deliberative decision-making has become more prominent. iii) As the Commission's power has expanded, it has demonstrated increased sensitivity to member state policy concerns and willingness to seek pragmatic compromises. iv) Finally, even in areas that are brought in under the Single Market, the member states continue to maintain and strive to preserve parallel authority and strong policy tools.

Developments in the EU energy sector since the early 1990s, and specifically liberalisation of natural gas markets, provides a useful case for exploring and elaborating these new trends in the way states pursue and protect their interest. The heterogeneity of the gas sector stems not only from the differences between the states' natural resources, import dependency and infrastructure, but also from how they organise their gas markets, down to and including asset pricing and accounting rules (Helm 2014). This complexity is compounded by the link between gas markets and other policy issues (environment and industrial policy) and the strong policy instruments that states possess (finance and ownership). The energy sector thus captures a number of features that are common to many policies: national diversity, issue complexity, linkages across policy areas, and strong state capacity and legitimacy for intervention (Andersen and Sitter 2009; Claes 2009, Eberlein 2010).

The article is organised in five sections. The first identifies four mechanisms of intergovernmental governance, drawing on the existing literature. The next four sections explore and elaborate changes in these four mechanisms, using examples from the two-decade long struggle to liberalise European gas markets. The concluding section argues that the EU is set to remain heterogeneous in policy terms. The member states and the Commission have found additional ways of maintaining heterogeneity. Far from being a threat to European integration, the pragmatism this entails seems to be an essential ingredient.

Managing Heterogeneity: Old Wine in New Bottles

The history of European integration is the history of how Europe's states and institutions have sought to manage – rather than reduce – heterogeneity. Both intergovernmental and supranational governance represent models for how to do this. The theoretical debates in the 1960s, 1970s and 1980s very much reflected the practical political challenges of the day (Taylor 1996). Early neo-functional theorists (Haas 1958, 1975; Lindberg 1963; Coombes 1970) looked to the Commission for supranational leadership; the realist school emphasised the importance of member state sovereignty both normatively and positively (Hoffmann 1966, 1982; Pinder 1968; Taylor, 1968, 1982, 1983). In practice, the principal policy choice was between including a sector in the EEC, or not. The exchange between Sandholtz and Zysman (1989) and Moravcsik (1991, 1993) captured the theoretical debate. With the adoption of the Single European Act, debate among practitioners increasingly turned to the mix between intergovernmental and supranational governance rather than a choice between two distinct models.

The second half of the 1990s and the 2000s saw a broad shift in integration theory and analyses of EU governance, perhaps best summed up in Wessels' (1997, 2005) theory of fusion between national and EU level policy. Many recent theorists focus on governance rather than integration theory. This took place at a time of extensive 'deepening and widening'; and a practical search for new ways of accommodating heterogeneity though for example the Open Method of Coordination, more intense bilateral diplomacy, and informal policy coordination in sector-based networks. Sabel and Zeitlin (2008) labelled the resulting system as 'experimentalist governance', consisting of EU-level framework goals and metrics; states' elaboration of plans for meeting these; reporting, monitoring and peer-review of results; and periodical revision of the framework goals. The age-old tension between EU-level authority and states' autonomy is no longer so much a matter of an either/or dilemma, but rather of a pragmatic search for compromises that are compatible with both EU law and national policy concerns.

The recent literature on EU governance features a wide variety of observations and insight about how member states seek to safeguard their interests and how the Commission offers a degree of flexibility. Scholars working on Europeanization (Börzel 1999; Radaelli 2000; Goetz and Hix 2000; Olsen 2002; Bulmer 2005) are primarily interested in how the member states adapt to the EU. However, adaptation need not imply policy convergence, because outcomes depend on how national actors and institutions respond (Knill and Lehmkuhl 2002; Lodge 2002; Knill 2005). Many have documented broad and continuing variations across sectors and states (Featherstone and Radaelli 2003; Hayward and Würzel 2012), including scholars working on differentiated integration (Dyson and Sepos 2010). The latter point out that this is not only a matter of how states react to a given EU policy; states can also demand flexible policy regimes with room for national manoeuvre in the first place (Stubb 1996; Kölliker 2001, 2006). Indeed, the Commission may even offer it, in order to secure legitimacy and local support for implementation (Andersen and Sitter 2006; Holzinger and Schimmelfennig 2012).

Across almost all EU policy areas there are, and have always been, elements of intergovernmental governance. Striking an acceptable balance between supranational authority and state autonomy involves four challenges: i) to delineate EEC/EU authority; ii) to reach compromises between the states; iii) to restrain the influence of the supranational institutions; and iv) to ring-fence member state authority in sectors that are partially covered by EEC/EU rules. The principal tools that states have used – and still use – to maintain control of EEC/EU policy developments include formal arrangements such as the exclusion of a policy area from the EEC, legislation by unanimity in the Council, limits to the power or authority of the Commission and the Court, as well as informal rules such as the Luxembourg Compromise and norms such as the Commission’s self-restraint. The literature discussed above points to a series of new and additional measures for intergovernmental governance; such as i) formal and informal opt-outs and derogations; ii) new forms of deliberation and compromise; iii) the supranational institutions’ receptiveness and sensitivity towards national concerns; and iv) the preservation of parallel state-level policy domains.

Until the Single European Act, the member states used four mechanisms (linked to the four challenges above) to pursue and protect their interests. These were based on a clear distinction between supranational and intergovernmental governance. The SEA brought about a departure from both formal (through voting rules) and informal (through the Luxembourg Compromise) unanimity in the Council. This was reinforced by the Maastricht Treaty, and the ‘public turn’ as the Single Market was gradually extended to cover public services (including utilities). As a result, the mechanisms for intergovernmental rule were gradually extended in ways that blurred the distinctions between supranational and intergovernmental policy-making. This trend can be briefly summarised as follows:

- i) The first mechanism – limiting the scope of EU competences: before the SEA the delineation of EU authority was relatively clear and precise. A large number of policy sectors were simply excluded from EEC competence, or handled in purely intergovernmental forums. From the Maastricht Treaty and onwards, a new solution to the problem of limiting the reach of the EU was found in the form of derogations, opt-outs and opt-ins.
- ii) The second mechanism – consensual decision-making: the main pre-SEA tool for consensual decision-making was unanimity or near-unanimity. With the increased use of majority voting among a bigger number of member states, intense and prolonged deliberation assumed a more prominent role in policy-making. Delegation of authority to forums populated by national actors, such as regulatory agencies, became more common as arenas for deliberation and consensual decision-making.
- iii) The third mechanism – the power, preferences and strategies of the Commission: the EEC model assumed that the states (as principals) exerted some ex-ante and ex-post control over the Commission’s ambitions (as an

agent), and that the latter consistently pushed for further integration. Since the mid-1990s, the Commission has adopted a more pragmatic stance toward understanding, sharing and accommodating member state preferences.

- iv) The fourth mechanism – parallel state authority: in the EEC, the member states retained control over many policy areas because they were responsible for implementation and had several policy tools not available to the Commission. The Single Market project did not change this as radically as many had expected. The extension of EU competence to additional policy sectors often allows states to preserve considerable control over implementation, and to maintain parallel policy domains in the sense that they can regulate, finance and even exert control through ownership as long as this does not violate Single Market rules

In what follows, we substantiate these claims about new or additional mechanisms for intergovernmental governance. The EU gas market liberalisation is used to illustrate the processes by which such mechanisms developed, change, and work in practice.

The First Mechanism: Limiting the Scope of EU Competence

The first mechanism traditionally aimed simply to keep a policy sector outside the reach of EEC/EU competence. Before the SEA and Maastricht, this was the case with many policy areas that states considered strategic and sensitive – notably defence, security, foreign policy, police and judicial cooperation, economic and monetary policy, and ‘flanking areas’ such as social, health and environment policy. The same was the case for the energy sector before 1992. Although energy was always at the heart of European economic integration, and was one of the sectors listed in the Treaty of Rome, it was generally considered a major policy failure for the EU until the late 1990s (CEC 1988; Padgett 1992; Weyman-Jones 1997, Usherwood 1998, van Oostvoorn and Boots 1999; Andersen 2001).

At the time of the Treaty of Rome, shortly after the 1956 Suez crisis, the member states were too concerned about security of supply to allow the newly formed Commission to take initiatives in this area. Although the states eventually accepted the Commission’s guidelines and strategy for energy policy, they by and large ignored its proposals in the 1960s and 1970s. The 1973-74 oil crisis only served to reinforce the states’ focus on security of supply and national policy tools. As McGowan (1990:247) concluded: “The Commission had succeeded in establishing a place in energy policy making, but it was far from being central to member states’ energy policy agendas.” In line with this, the emerging natural gas markets in member states were characterised by monopolies, widespread state ownership, and long-term ‘take-or-pay’ contracts designed to secure supply and protect consumers. The only exception was Thatcher’s reform agenda in the UK. The Commission’s White Paper on Energy (CEC 1988) concluded that the gas market practices represented a counter-culture to the values laid down in the SEA (Andersen 1993).

From the inception of the EEC until the early 1990s, member states’ energy policies were thus strongly embedded in national policy paradigms with a statist orientation. The

successful establishment of the Single European Market prompted expectations that the liberal market regime would be extended to the gas sector. It soon became evident that this process was fraught with difficulties. What followed was characterised by a confrontation between supranational and intergovernmental logic of decision-making. The Commission's 1990 energy market proposal reflected a strategy for deregulation and liberalisation. However, with the exception of the UK, all the member states opposed this (Lyons 1994; Stern 1998). The next two years saw extraordinary strong opposition. As Stern put it: "many of the established actors in European gas industries [...] regarded the introduction of liberalization as the equivalent of the end of civilization" (1998:91). However, discussion on the natural gas directive was kept alive by the Commission. Its legitimacy rested partly on the earlier commitments by the member states to the principles of the Single Market, and partly on the introduction of state-level privatisation and liberalisation processes. Over time, the well-established mechanism of simply excluding gas markets from the reach the Single Market gave way to a search for new ways of combining liberalisation with strong state interest and policy tools in the sector.

The new measures designed to limit the reach of the EU regime includes opt-outs and arrangements that permit a subset of member states to pursue closer integration (or at least a common policy regime). The debates over the gas directive illustrate this mechanisms at work. The main controversy was market opening (Ross 1995:180, Stern 1998; Arentsen 2004): how much of the gas market should be opened for competition, and who should have the right to send gas through transmission lines? The solution was minimum thresholds for liberalisation, which permitted some states to go much further (EP/CEU 1998). The proposal also introduced the concept of regulated third party access to pipelines, with an EU-level regulatory authority. This became the major source of controversy in the years to come, because it threatened what had so far been the exclusive right of the pipeline owners. Another major issue concerned the impact of liberalisation on long-term contracts (take-or pay) that traditionally had been a key instrument to secure investments and long term supplies in the gas sector. Several states, led by France, wanted the possibility to impose special obligations (equal price, supply security, environmental protection etc.) on suppliers (Petroleum Economist 1995). A final issue concerned the need to establish separate markets for production, import, transmission and distribution in the gas market (labelled 'unbundling'), which had hitherto been 'bundled' by monopolies.

Resolving these issues involved intense efforts on the parts of both the states and the Commission – particularly the Energy Commissioner – to preserve a degree of national autonomy in energy policy that would be compatible with an EU-level market-based model (Andersen and Sitter 2009, Helm 2014). The first directive on the liberalization, in 1998, opened up for an alternative to the pre-existing monopolised system. However, the direct and immediate requirements of the directive were limited. Pragmatic flexibility was built into the new directive through a number of new measures: gradual liberalisation and multiple models of compliance. This entailed a step-by-step approach, including minimum targets and member state choice on matters such as regulated or negotiated pipeline access, eligible customers and unbundling of commercial functions (EP/CEU 1998; CEC 2000). In short, national regulatory efforts and new market strategies became increasingly important in providing the content and pace of market liberalisation. The emerging EU-

level policy would have been impossible without the Commission's persistent push, but in the end it allowed ample room for the interests and strategies of member states and their industries. Consequently national solutions varied considerably, and were still acceptable and deemed to fall within the general model.

The Second Mechanism: Consensual Decision-Making

The second intergovernmental mechanism is decision-making by unanimity or consensus by the member states, traditionally in the Council. The informal version of this mechanism came in 1966 in the shape of the Luxembourg Compromise, an agreement between the member states that they would refrain from outvoting a state if issues of vital national importance were at stake. This has gradually been abandoned as far as the Single Market is concerned. Nevertheless, there are many examples (also in the gas sector) of the Council seeking compromises that go well beyond the minimum winning coalition required for a decision by qualified majority voting rules. Indeed, in general, most formal votes indicate one or more member states' desire to have their position recorded for domestic politics motives, rather than real decision-making by vote (Hayes-Renshaw and Wallace 2006; Hayes-Renshaw, van Aken and Wallace 2006). While deliberation has always been a central feature of decision-making among the member states, some scholars (Lewis 2000, Puetter 2003, 2014) point to a pattern of more intense interaction between governments. They demonstrate that debates regularly continue not only until a consensus solution is found, but also that these very processes of deliberation help generate common norms (Puetter 2003:115).

The 1998 directive was the product of prolonged discussions, over several years, and resulted in a compromise acceptable to all fifteen member states and the Commission (and the Parliament). However, it also pointed to another measure designed to ensure consensus in the EU-level follow-up stages. It envisaged that the Commission's regulatory role would be carried out in partnership with national regulatory authorities. Most states established independent regulators for gas, with different degrees of political discretion and/or shared competence with competition authorities; the Commission was expected to co-ordinate national regulators. The establishment of the Agency for the Cooperation of Energy Operators (ACER), which became operational in March 2011, involved a newer form of delegation to the EU (Cohen and Thatcher 2008; Tarrant and Kelemen 2011). This replaced the European Regulators Group for Electricity and Gas. It involves 'double delegation' in the sense that the member states have delegated tasks first to the Commission and the national regulatory agencies, and it is these organisations that are in turn represented in ACER. Its tasks primarily involve monitoring and reporting (e.g. the operation of the internal market, reviewing national rules), drafting (e.g. framework guidelines) and issuing opinions and recommendations (e.g. on network codes, technical rules); but it has decision-making powers over cross-border issues in the event that national regulators fail to agree or they ask for ACER intervention, on exemptions for new interconnectors, and on technical issues related to the third energy package (a series of five directives on electricity and gas regulation adopted in 2009, including EP/CEU 2009a, 2009b, 2009c).

This institutional set-up represents a new context for deliberation and efforts to hammer out policy compromises that all member states can live with. As Wilks (2005) has shown, this happens with national regulators when they meet in European regulatory networks to thrash out common operational guidelines. For example, competition authorities agree on which economic models to use in policy analysis. An additional element in deliberative policy making is thus the delegation of power to networks of national regulatory agencies (Kohler-Koch and Eisinger 1999; Majone 2005). Delegation of authority reflects awareness about possible unforeseen consequences down the line. Institutions dominated by the member states and their regulatory agencies provide a space for flexible and differentiated national responses.

Indeed, the delegation to networks of state-level actors in the gas sector reflected anticipation of conflicts about operational rules. This was a new tool for indirect national control in the gas sector, consistent with EU regulation and competition law. At the policy level, the Commission continues to push for a more integrated homogeneous market; but at the organisational level, the structure, mandate, competences and resources of national regulatory agencies vary considerably. Unsurprisingly, so does implementation (CEC 2010). This strategy of consensual agreement on general frameworks for gas regulation, combined with strategic and technical uncertainty, is very much compatible with the key elements in ‘experimentalist’ policy-making (Eberlein 2010). In this model progress is achieved through recurrent evaluations and policy adjustments that gradually align practical policies in the sector with the general framework and thus reduce heterogeneity over time. However, new challenges have arisen in the form of linkages between gas and other policy areas, notably security of supply and the environment (Helm 2014). Thus, at the same time as the EU manages heterogeneity with respect to gas markets, these unanticipated challenges involve even more heterogeneity.

The Third Mechanism: The Power, Preferences and Strategies of the Commission

In addition to the disciplining effect of the Commission knowing that the Council might reject its proposal, another long-established mechanism whereby states protect their interests in the EEC/EU comes in the form of limiting the power of the Commission and efforts to shape its interests. Examples include appointments to the Commission and early consultations on policy initiatives. The Commission’s radical gas (and electricity) liberalisation proposal of 1990 represented an example of an activist Commission pushing the limits of these restraints. This happened with the support of the UK, and in the context of a broad consensus on the idea of extending the reach of the Single Market. But it but generated a strong backlash from the other member states. Two significant developments followed. First, in 1994 the European Council gave the Commission uncommonly precise guidelines for how to proceed. Second, in 1995-98 the Commission experienced considerable internal debate about how far to accommodate member state and industry interests (Andersen 2001).

In the following decade the Commission pursued a mixed strategy: it accommodated member state concerns, while at the same time pushing a liberalising agenda. It also

engaged in a strategy of building coalitions with state-level actors, notably firms and regulators. Competition Commissioner Leon Brittan (and his successor Karel van Miert) led the argument for a rapid process under then Article 90 (now Article 106 of the Lisbon Treaty), which permitted the Commission to unilaterally issue directives breaking up monopolies, while Energy Commissioner Antonio Cardoso e Cunha (and his successor Christos Papoutsis) arguing for a more cautious approach (Ross 1995:180; van Miert 1994). Opposition centred on security of supply, the fear that small consumers might have to bear the costs of competition, and arguments that liberalisation would require a large degree of regulation (Weyman-Jones 1997:563). The outcome was the above-cited compromise directive of 1998. The follow-up gas directive in 2003 (EP/CEU 2003) required that all states adopt a regulated access tariff, and establish independent regulators. Non-discriminatory third party access should be developed through legal unbundling of transport from trading services. At the time, only the UK was judged to have completed market opening in the gas sector. A third round of proposed directives followed in 2007, leading to the adoption of the third energy liberalisation package in 2009. The latter focussed on ownership unbundling, new regimes for independent systems operators or independent transmission operators, as well as an effort to strengthen national regulators and establish a new EU regulatory agency. However, unbundling was delayed in most states.

The gradual liberalisation of the gas sector illustrates the operation of the mechanisms of state control by limiting the Commission's power and influencing its policy preferences. This may simply be a matter of the Commission pragmatically accommodating the member states' preferences. However, it can also involve real policy reorientation. In case of energy liberalisation in the mid-1990s, the Commissioners responsible for competition and energy for a long time defended diametrically opposed positions. The fact that the Commission experienced internal debate, made it easier for it to change its position. In this case, although the Commission had the power unilaterally to break up national monopolies – which it had exercised successfully on more than one occasion in the telecoms sector – it prioritised a workable compromise over the pursuit of further integration. This is far from the only case where it has departed from the persistent and forceful pro-integration stereotype documented in earlier studies (Nugent 1997, Page 2012: chapter 7).

Even today, a considerable gap remains between the Commission's policy aim of liberalised markets and the realities on the ground. The main challenge remains the ability of incumbent firms (some of which are state owned) to limit access to national gas markets. The Commission's way of dealing with this challenge has evolved: it now takes a more pragmatic approach than in the late 1980s and early 1990s. Integration does not necessarily require increased supranational authority and homogeneity in terms of market structures, but rather better coordination and accommodation of heterogeneity. Indeed, the introduction of a new regulator was an attempt to deal with heterogeneity, rather than do away with it. To be sure, the Commission's report (CEC 2010) concluded with the not-so-veiled threat that if needed "the Commission will not limit its actions to energy regulation and will not hesitate to use its powers under competition law." The actual policy outcome – which can be labelled 'fuzzy liberalization' (Andersen and Sitter 2009) – at first glance seems to violate the assumption of an ever more homogeneous European market implicit

in much of the literature on integration theory. However, the point here is the opposite: integration may well be impossible without a certain degree of fuzziness.

The Fourth Mechanism: Parallel State Authority

The fourth and final mechanism widely used to ensure member state control of public policy is the operation of autonomous policy regimes at the state level. In important public policy areas, such as education, health, welfare, and law enforcement, the member states have successfully maintained their autonomy and control (see for example Wallace, Wallace and Webb 1983; Stone Sweet, Sandholtz and Fligstein 2001, Hayward and Würzel 2012). This is also the case with an important part of the energy sector: the ability to determine the energy mix, control the extraction of natural resources (e.g. shale gas), and ensure security of supply (e.g. building terminal for Liquefied Natural Gas to reduce the dependence on Russian supplies). In other words, whilst the EU regulates the gas market, the states also maintain at their disposal policy tools such as investment, state ownership of industry and the regulation of natural resources. The extension of the Single Market to the gas sector has done little to erode the effectiveness of these policy tools and this boundary between EU-level and national authority.

Even when the EU extended its authority over the gas sector, it made allowances for parallel authority at the state level. An important measure in the 1998 gas directive was the delegation of regulation of third-party access to pipelines to the national level. Companies could apply to national authorities for exemption from the third party access rules in cases of serious economic and financial problems; public service obligations allowed for national protection of vulnerable customers, protection of final customers' rights, social and economic cohesion, environmental protection and security of supply (CEC 2001). The directive contained very few supranational regulations, and preserved considerable freedom for states to regulate national markets in the future (Stern 1998; Arentsen 2004; Haase 2008). In Stern's words (1998: xviii), the member states accepted "both the principle of access to (pipeline) networks, and the assurance that opponents of competition and liberalisation cannot indefinitely procrastinate in the opening up of their gas markets." At the same time the Commission accepted the establishment of new organisations and policy tools at the state level that all but guaranteed heterogeneous implementation.

The mechanism of parallel state authority is perhaps the most varied of the four mechanisms discussed here. It amounts to the operation of national regimes in parallel to the EU regime. In social policy, this is formally acknowledged in the shape of the Open Method of Coordination (Chalmers and Lodge 2003), in foreign and security policy EU initiatives are fully dependent on the capacities of the states (Howorth 2011, Norheim-Martinsen 2012). Even in the core Single Market sectors the states retain very important policy tools. In the gas sector, as in other sectors where the state is a key provider of public goods, increased integration becomes a question of how two parallel policy levels operate in tandem. Article 194 in the Lisbon Treaty provides a clear illustration of this: whilst energy policy is an EU competence, its "measures shall not affect a member state's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply."

A number of other rules have been developed to allow member states to maintain some form of control over their domestic gas markets, perhaps most famously in the shape of the so called ‘Gazprom clause’ that was written into the third energy package in 2009 (EP/CEU 2009a, Article. 11). This clause permits member states to take into account security of supply risks when they vet and certify third-country firms’ acquisitions, ownership and operation of gas transportation networks. In a similar vein, the Commission has supported a series of pipeline initiatives by member state governments and national champions designed to increase diversity of external supply routes, such as Nord Stream and Nabucco. The Commission’s approval of Nord Stream offers a good illustration of its appreciation of member states’ efforts to increase security of supply through government-sponsored bilateral deals – in parallel to the EU’s overall market-based approach. The Commission could also point to diversification of supply routes as an EU-level public good, worthy of support. Although it can hardly exercise policy tools related to ownership and finance, the EU thus supports the member states’ capacity to do so in their quest for energy security (Goldthau and Sitter 2014).

Conclusion: Pragmatism and Power-Sharing in the EU

European integration has always confronted four questions: what should it cover, how do states give their assent, how much power should the Commission have, what competences should be left at the state level even in integrated policy areas? Until the Single European Act, the member states use four broad mechanisms to pursue and protect their interests: issues were kept out of the reach of the EC; they agreed not to outvote each other in the Council; they limited the powers of the Commission; and they sought to preserve their policy tools and authority in key sectors. The central theme in this article has been how these mechanisms of intergovernmentalism developed after the SEA, as the Single European Market was extended to new policy areas.

Our starting point was the literature on Europeanization of member state’s public policy and differentiated integration. A range of studies have documented new measures whereby states try to pursue and protect their interests in areas where the EU has expanded its competence. This literature provides a basis for some generalisations as to how intergovernmental decision-making and authority has evolved over the last two decades. We have organised these tools and measures according to the four broad mechanisms of intergovernmental governance, to explore how the tools and measures associated with each mechanism have change over time. As the reach of the EU widened to include sectors that had previously been insulated from the EU, opt-outs, minimum targets and derogations have become common. As the Council has moved to qualified majority voting and the Luxembourg Compromises faded away, consensus is pursued by deliberation and delegation to bodies populated by national regulators. As the power of the Commission has been extended, it has also demonstrated sensitivity to member state’s concerns, even when they jar with the logic of the Single Market. Moreover, and perhaps unexpectedly, the member states have been able to retain considerable parallel authority even in sectors that have become an integral part of the Single Market.

The liberalisation of the EU gas market has involved many of the kind of challenges that characterise the extension of the Single Market to sectors that were earlier seen as too challenging because of their political salience and the heterogeneity of the member states. For many governments, gas policy has important industrial policy, welfare and public service implications. For some, it is not only a public good, but also has a strong strategic dimension. Moreover, even today, the different national institutional arrangements for gas markets developed before the SEA are clearly visible. Although the sectors into which the EU has expanded since the SEA (e.g. education, health, welfare, and law enforcement) do not all share all of these characteristics, each is sensitive to encroachment from the EU in its own way. Because the gas sector captures many of the sensitivity issues that member states face, it provides a suitable case for exploring how the measures and tools that make up each of the four mechanisms evolve and how they work in practice.

Our analysis of developments in the gas sector is rooted in the differentiated integration literature, and lends support to the model of ‘experimentalist governance’ developed by Zeitlin and Sabel (2008, 2010): the elaboration of EU-level framework goals, followed by states’ plans for meeting these, monitoring of results, and periodical revisions. The directives involved in the liberalisation of the gas sector are typical examples of such recurrent policy cycles. Each successive directive addressed points that were deliberately left vague, or altogether omitted from, the earlier version. However, in addition, a major finding here is that not only did the content of the directives change, but we also witnessed the development of new tools and measure for managing the tensions between the EU framework goals and the concerns of individual member states. To the extent that these developments alter the mechanisms whereby states pursue and protect their interests, they change the nature of intergovernmental governance in the EU.

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