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TranState Working Papers

TACIS AND EU'S
SECURITY OF ENERGY SUPPLY:
THE COMMISSION
AS A STRATEGIC ACTOR
IN EXTERNAL RELATIONS

Sebastian Mayer

No. 46

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TACIS and EU's Security of Energy Supply: The Commission as a Strategic Actor in External Relations

ABSTRACT

This article seeks to explain why EC Members in 1990 delegated competences in the coordination of TACIS – a technical assistance programme with energy related aspects for the former Soviet Union – to the Commission, and to determine whether this institution succeeded in exerting an independent influence on the course of the EU's external energy policy in the following years. Four mechanisms will be used to explain the institutional independence: Path Dependence and Unintended Consequences; Formal and Informal Agenda Setting; and Fuzzy Legal Boundaries.

It can be demonstrated that the Commission has considerably increased its competences in energy politics since the instigation of TACIS. The Commission has exploited institutional rules to take the initiative, redefined the energy sector in relation to foreign and security policy, and thereby has managed to shape EU's external energy policy over time. Ultimately, we can observe the establishment and subsequent interlocking of functions beyond the nation-state together with those still within governmental confines.

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TACIS and EU's Security of Energy Supply: The Commission as a Strategic Actor in External Relations

1. INTRODUCTION

In December 1990 the European Council in Rome adopted special conclusions for the Soviet Union.¹ Initially they provided more than 400 Million ECU for a wide-ranging aid package which was labelled *Technical Assistance Programme for the Commonwealth of Independent States* (TACIS) the following year. The issue area of energy figures prominently in the programme. Not only did the question of nuclear safety play an important role² but also the problem of *security of energy supply* in relation with the Soviet Union (later Russia), a country rich in hydrocarbons. On the other hand, most countries of Western Europe were and still are to a great extent dependent on energy imports and thus have a strategic interest in increasing their energy security by diversifying the sources of supplies.³

During the 1970s and 1980s an increase in “complex interdependence” – multifaceted transnational connections between states and societies – diluted the relevance of military force. As a result, economic problems became more salient, such as “vulnerability”, defined as an “actor’s liability to suffer costs imposed by external events even after policies have been altered.” (Keohane and Nye 1977: 22-37, 13) A state profoundly dependent on energy imports may become vulnerable in its dependency on that commodity as its price or availability changes.⁴ Under such circumstances energy is not a regular trading good but a strategic commodity. In consequence, for net importers of hydrocarbons external energy policy is of high political relevance. In December 2005, due to clashes over pricing, the Russian government cut off gas supplies to the Ukraine which led to a shortage of imports into the European Union (EU). This illustrates the

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¹ European Council Rome, 14th and 15th December 1990, Presidency Conclusions (Part 2), concerning relations with the Soviet Union and the Countries of Central and Eastern Europe.

² This was a controversial topic after the devastation of the nuclear reactor in Chernobyl in 1986.

³ The EU-25 is the biggest energy importer in the world. Almost 100% of its gas imports come from Russia, Norway, and Algeria.

⁴ Against this background, Japan and South Korea, for example, are much more dependent on energy imports than, say, the US, and hence are more vulnerable.

relevance and topicality of the issue. Energy security, the ultimate goal of any external energy policy, can be defined as the availability of a continuous supply of energy at an affordable price (International Energy Agency 2001).

In addition to the Rome Council the issue of energy security had also been addressed at a European Council meeting in June 1990. There, the Dutch Prime Minister suggested expanding the trade in energy products as well as increasing investments in Eastern Europe's energy infrastructure. The expected result was an increase in the security of the energy supply of the European Community (EC) together with economic and political stabilisation in Eastern Europe. The Heads of State and Government eventually entrusted the Commission of the EC with the coordination of TACIS. The latter also played a crucial role in the conception and adoption of the Energy Charter Treaty (henceforth: "Charter Treaty"), the final upshot of the Dutch plan. The Charter Treaty constitutes a multilateral investment and trade regime, establishes legal rights and obligations in the transit of energy products, and regulates competition, access to capital markets and transfer of technology. Its predominant objective is to improve economic efficiency and to protect investments in energy and its transport infrastructure.⁵

This analysis aims to resolve two related questions. First, how can the transfer of competences from the EC members to the Commission be explained, given that granting assistance bilaterally offers a number of advantages for national governments, such as the ability to exert political influence or pursue their economic interests towards recipients a good deal more directly? Second, has the Commission succeeded in exerting an independent influence on the course of the EU's external energy policy in the years following that act of delegation?⁶

My dependent variable is thus the institutional independence of the Commission vis-à-vis its members, which implies for it a certain degree of autonomy. In the present context, however, "autonomy of supranational actors" is not to be understood in the traditional Weberian notion, as the ability to compel others (the governments of influential Member States) to do something downright contrary to their expressed interests (Moravcsik 1993, 1997). Instead, in line with Barnett and Finnemore (2004: 10) I speak of autonomy when supranational actors are able to behave in ways not dictated by states.

While the majority of empirical studies on delegation tackle *either* the initial act of delegation *or* its results, in addressing these questions I will do both: By taking a look at

⁵ The Charter Treaty entered into full legal force in April 1998. It has been signed by 51 states, among all EU and CIS countries. Russia and Belarus have not ratified the treaty.

⁶ The question of Tacis' efficiency and administrative competence – which in the initial years often was (and at times still is) suboptimal – is addressed elsewhere (see Gerner 1998; or Delcour 2002).

the context – “taking a snapshot” of the act of delegation and its genesis in 1989/1990⁷ – as well as paying sufficient attention to the processual dimension – “shooting a movie” on the development of Commission competences over time⁸ – this perspective on the Commission’s role in the EU’s external energy policy promises to be more inclusive than either of these approaches alone. In answering these questions I seek to contribute to the debate on the independent role of the Commission in External Relations,⁹ an agenda which may ultimately lead to a generalisable theory of the EU Commission in that issue area.¹⁰

How can these questions be grasped? I start from the notion that neither intergovernmentalism nor neo-functionalism alone can adequately explain the intricacy of policy making in the EU’s External Relations. While the large majority of the literature on European integration deals with the question of *whether or not* the Commission enjoys powers independent from the Member States, one aspect largely neglected in that debate is the interplay between both. Therefore, the focus of this study lies on the question *under what conditions* the Commission enjoys a degree of autonomy in external energy policy. To this end I propose a “Commission as a Strategic Actor Approach” which views this body as a somewhat independent and deliberately acting subject in External Relations (see e.g. M. Smith 1994 and 1998; Nuttall 1997; Bretherton and Vogler 1999; Winn 2001; or Sjursen 2004). Hence, I argue that institutions can be treated as political actors. Except for neo-functionalist insights, my theoretical point of departure is informed by historical institutionalism, which stresses the persistence and momentum of institutional designs.

Taken together, three sets of mechanisms – Path Dependence and Unintended Consequences; Formal and Informal Agenda Setting; and Fuzzy Legal Boundaries and Task Expansion – serve as independent variables to explain the institutional independence of the Commission. As I also take the preferences of and grand bargains among major governments into account, this approach seeks somewhat to bridge the intergovernmentalist/neo-functionalist divide in integration studies. Notwithstanding a certain danger of theoretical inconsistency, this combination allows me to provide more sufficient answers to the questions I pose.

⁷ Intergovernmentalists criticise functionalism for its focus on the processual dimension, while neglecting context.

⁸ Critics of Neoliberal Intergovernmentalism condemn its attention on “grand bargains”.

⁹ See e.g. Christiansen (1997); Nuttall (1997); Landgraf (1998); M. Smith (1998); Cafruny and Peters (1998); Bruter (1999); Winn (2001); Pilegaard (2003); Cameron and Spence (2004); Stetter (2004); Mayer (2006).

¹⁰ In the early 1990s, Keohane and Hoffmann (1990: 276) and Jørgensen (1993: 211) rightly lamented that there is hardly a theoretically informed research agenda on the EU’s External Relations.

In order to establish sound results on the delegation puzzle, its initial context will be reconstructed. I determine the preferences of the most important actors involved and trace the negotiation procedure leading up to the adoption of the 1990 Rome conclusions. Where do preferences converge, where do they diverge and possibly induce trade-offs and what is the most cogent set of motivations? In a further move it will be argued counterfactually from the perspective of EC members: Were there second-best options to delegating the coordination of TACIS to the Commission and, if so, why were they rejected? Such thinking is crucial in order to clearly identify a null hypothesis as a baseline against which to assess the actual motivations.¹¹

I finally come to the conclusion that the Commission has considerably increased its competences in energy politics since the instigation of TACIS. The Commission has exploited institutional rules to take the initiative, redefined the energy sector in relation to foreign and security policy, and thereby has managed to shape EU's external energy policy over time. Ultimately, we can observe the establishment and subsequent interlocking of functions beyond the nation-state together with those still within governmental confines.

2. THE EC'S EXTERNAL ENERGY POLICY: THE LEGAL BASIS

There had been discussions about a common energy policy for Western Europe before the oil crises of the 1970s, but subsequently national governments based their decisions on strictly national strategic interests. As a result, the energy policy of the EC remained restricted to narrowly defined issues such as coal and nuclear energy on the basis of the Treaty constituting the European Coal and Steel Community and the Treaty establishing the European Atomic Energy Community. As to external energy policy, the Commission has a basis for its activities in Art. 3/1(u) of the EC Treaty, which stipulates that "the activities of the Community shall include (...) measures in the spheres of energy". Also, according to Art. 100, "the Council, acting by a qualified majority on a proposal from the Commission, may decide upon the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products." This serves as a legal basis for Commission activities in the security of energy supply.

Title XV of the EC Treaty (Trans-European Networks) constitutes the legal basis for Commission cooperation with third countries in order to "identify projects of common interest" (Art. 129c).¹² While these paragraphs authorize the Commission to carry out certain activities in the field, they yet remain vague and all are isolated within the EC Treaty; the Union's competence has never been stipulated in full and explicitly in rela-

¹¹ In arguing counterfactually, I follow the plea from Lake *et al.* (2006).

¹² Provisions amending the Treaty establishing the European Economic Community with a View to Establishing the European Community (Maastricht Treaty, 7th February 1992).

tion to energy. As a result, the EU's energy policy has to be understood as an “unplanned, and not plannable, result of many players within and outwith the EU”, rather than a planned, centralised and coherent process (Wälde 2003: 15).

While the latter is exactly what the Commission always tried to achieve, the Member States regularly curbed these attempts and aimed – without success – at establishing a strictly intergovernmental Common Energy Policy (Black 1977). At the Intergovernmental Conference convened in March 1996 to revise the Maastricht Treaty, the Commission suggested a separate chapter on energy which would have conceded it further competences, but subsequent proposals did not provide such an amendment. Similar efforts at the Amsterdam Intergovernmental Conference remained fruitless as well. Particularly the Netherlands, Great Britain, and Germany were strictly against a communitarised Energy Policy (Egenhofer 1997).

3. THE COMMISSION AS A STRATEGIC ACTOR IN EXTERNAL RELATIONS: LENSES AND LOGICS

The External Relations of the EU are characterised by a dualism between two pillars: the coordinated Common Foreign and Security Policy (CFSP) and the integrated EC respectively. Due to the handling of problems related to foreign policy in both pillars the Union can be seen as an actor with a “multi-faceted” profile (Bretherton and Vogler 1999: 31). One line of integration research focuses exclusively on the CFSP, which is largely intergovernmental. The authors of such studies share the view that the issue areas of foreign, security and defence policy – “high politics” – are most crucial to explaining the influence of the EU on non-Member States.

Yet, by only paying attention to the CFSP, the less spectacular – although sometimes more decisive – policy areas of “low politics” are often overlooked, distorting the picture of the EU as a global actor. Michael Smith (1998: 77) argues that “the place to look for ‘foreign policy’ is the development of external economic policies“, an understanding which Bretherton and Vogler (1999) also acknowledge. Peterson and Sjursen (1998: 174) generally point to the importance of new foreign policy issues handled by the Commission, such as international environmental diplomacy or development policy. These authors are convinced that such “low-politics“ issue areas have a strong relevance for the external behaviour of the EU and should be considered appropriately.¹³ External energy policy in particular belongs to these “new foreign policy issues”.

How can this politicisation of low politics be explained? The end of the Cold War and the linkage of diverse policy areas had the effect that many of them gained a new significance due to their increase of “sector logics” (Sjursen 1999: 174). In addition, due to globalisation a clear distinction between domestic and foreign policy is becoming

¹³ A dividing line between high and low politics has most explicitly been drawn by Morgan (1973).

increasingly difficult. The principle of “parallelism” enabled the Commission to combine competences related to the domestic policy area with foreign policy competences (Nugent 2001: 298-299). In this way, changes in international relations the Commission was able to indirectly move into more political arenas (M. Smith 1994: 250). It also circulated position papers or influenced treaty reforms, such as the Single European Act. Thus, as Cini (1996: 84) observes, already since the 1980s the Commission was eager to advance its competences in the EC’s “Foreign Policy”.

Growing formal institutional competences of the Commission over the 1990s are additional factors. They strengthened its influence and contributed to linking the first and second pillars of the EC Treaty (see Stetter 2004; or Gourlay 2004). The Commission was already involved in European Political Cooperation since the Single European Act came into effect in 1987. Since Maastricht it was the function of the Commission – together with the Council – to “ensure the consistency of [the EU’s] external activities as a whole in the context of its external relations, security, economic and development policies.”¹⁴ Due to this increasing “cross pillarisation” of external relations, links between the Commission and Council particularly have to be analysed, which the present paper endeavours to take sufficiently into account. Also, specific external policy areas – such as the Euromed Partnership¹⁵ – suggest that their coherence and the relative independence of the Commission therein are a function of its ability to enter into strategic alliances with some of the larger Member States.

The “Commission as a Strategic Actor Approach” draws on these insights and borrows from the aforementioned literature, which – under certain conditions – depicts the Commission as an independent political actor in External Relations. Notwithstanding its explicit provision for the preferences of and bargains among major Member States, this account is largely sympathetic with neo-functionalist reasoning, which conceives of supranational actors as the driving forces of integration processes. From this angle, supranational actors are perceived to gain a potential for independent influence through their monopoly over the initiation of legislative proposals, the control of considerable financial resources, or their accumulated expertise and information. As to the mechanisms for integration, neo-functionalism elaborated the concept of “cultivated spillover”: a “loyalty transfer” from national to supranational institutions inspired by political activism. Because they expect economic advantages, elites put pressure on national

¹⁴ Consolidated Version of the Treaty on European Union, Art. 3.

¹⁵ The Euromed Partnership (also: “Barcelona Process”) is a wide-ranging initiative for a regional relationship between the EU and Partners of the Southern Mediterranean which includes political, economic and social aspects. The Commission, together with France, Italy and Spain took the initiative and in this way the former developed political competences in the negotiation and implementation of the Euromed framework.

and European institutions for more integration. In this perspective the role of the Commission is that of an “engine”, which functions in the sense of “upgrading (...) common interests” (Ernst Haas, quoted from Tranholm-Mikkelsen 1991: 6). In a similar vein, the Commission and other supranational actors have been labelled “policy entrepreneurs” that seek solutions to existing problems and thus advance a common interest (Haas: 1961). Michael Smith (1998) talks of “strategic action”, a Pan-European interest, which issues from Pillar I and which is articulated and implemented in the international arena accordingly.

Within this context, three concepts are central as explanatory variables for the relative independence of the Commission: Path Dependence and Unintended Consequences; Formal and Informal Agenda Setting; and Fuzzy Legal Boundaries and Task Expansion. While all are interrelated, they each represent a specific mechanism which enables this actor to expand its competences over time.

Path Dependence and Unintended Consequences

The concepts of path dependence and unintended consequences set out from the general premise that history matters, that is, early events have a substantial effect on later ones (see e.g. Stinchcombe 1969; North 1990; or Pierson 2000).¹⁶ At the time of their creation, the design of an institution may well reflect the preferences of the Member States constituting it. Over the years, however, supranational bodies of an institution may develop a momentum that enables them to influence the behaviour of the Members – in some cases beyond their initial competences. Hence, unintended consequences may occur over time, even when economically rational actors are aware of them. Historical institutionalism is particularly suited to explaining such dynamics (Bulmer and Scott 1994; Pierson 1996). Also, path dependence helps answer questions of institutional choice. Why do governments decide to choose a particular institutional setting over another? Here, often short-term arguments convince political decision makers rather than long term criteria. To take an example: Why has the North Atlantic Treaty Organisation (NATO) persisted after the Cold War? The Conference for Security and Cooperation (CSCE) could have been developed – over several years – into an all-embracing European security organisation, more efficient than NATO. Yet, in the view of NATO members the Atlantic Organisation in 1990 still worked fairly well. A substantial upgrading of the CSCE to meet the new demands – including robust peacemaking and peacekeeping operations – would have involved substantive transaction costs. Thus, a particular institutional arrangement which emerged for unique historical reasons may tend to lock-in, in other words: *persist* due to familiarity and institutional stickiness. This opens up chances for supranational actors for independent action.

¹⁶ The concept of path dependence goes back to Alfred Weber and Brian Arthur.

Formal and Informal Agenda Setting

Formal agenda setting powers by supranational actors imply the formal right of them to propose legislation and to set the procedural agenda of a legislature. For the EC Commission such power emerges when it adopts a proposal that may be accepted by the Council through a Qualified Majority but requires unanimity in order to amend it. Sceptics argue that the Commission merely provides necessary technical information, that it acts only as a neutral body and that supranational leaders are not able to “systematically bias outcomes away from the long-term self-interests of the Member States” (Moravcsik 1993: 514). Yet, other scholars have convincingly shown that the Commission *was* able to set the agenda in areas such as climate protection, telecommunications or industrial policy (e.g. Mazey and Richardson 1997; Sandholtz 1998; Sbragia 1998; Matlány 1997a). *Informal* agenda setting – also referred to as political entrepreneurship – relies on “focal points” rather than formal rules in intergovernmental bargaining processes, to provide solutions in situations of uncertainty and when there is a lack of information rather than formal rules (Pollack 1998: 8).¹⁷ Imperfect information among policymakers allows supranational actors an opportunity to exert an independent causal influence even in the absence of formal competences.

Fuzzy Legal Boundaries and Task Expansion

As has been outlined above, EU External Relations consist of a large number of policies which are only marginally integrated, and the Commission is placed at the intersection of such policy networks.¹⁸ Against this background and in the context used here, “fuzzy legal boundaries” refers to imprecise divisions of responsibilities among two or more political actors. Within the EU they occur at three levels: between domestic and external policies; between more or less closely connected policy areas contributing to the performance of the “EU in the World” such as External Economic Relations, Development Policy, or the CFSP; and between the responsibilities of individual actors, particularly the Commission and the Council/Member States (Nugent and Saurugger 2002: 351). Legal boundary problems thus imply that there are several options rather than just one clear, undisputed chain of responsibilities (Nugent 2001: 303). From the point of view of policy efficiency, boundary problems are usually seen as dysfunctional¹⁹ as they are perceived to impede policy coherence.²⁰ However, from the perspective of a Commis-

¹⁷ The concept of informal agenda setting goes back to Kingdon (1984).

¹⁸ This complexity is largely due to the fact that external competences do not only result from explicit Treaty provisions but also from implicit Treaty provisions and from secondary law.

¹⁹ See e.g. Gauthier (2004), M. Smith (2001), Stetter (2004), or Gourlay (2004).

²⁰ An overlap of responsibilities does not imply inefficiency per se, as new problems are not always easily assigned

sion seeking to expand its competences, fuzzy boundaries create political opportunity structures to achieve this goal. Empirical studies show that by exploiting these chances the Commission seeks to extend its own responsibilities where possible by building precedents such as using implied competences in one area as a vehicle for obtaining more scope of action in a new area (M. Smith 1994: 258). This is where “task expansion” comes in. While functional spillover denotes co-operation in a new sector, task expansion refers to increased cooperation in the same field (Schmitter 1969; Groom 1978; see also Niemann 1998: 430). Against this background, the Commission basically appears as a “competence maximizer” (see e.g. Cram 1993; or Majone 1994).

4. DELEGATING TACIS

The Initial Context: Perceptions and Preferences

This paragraph seeks to explain why the EC Members decided for a non-bilateral solution to the problem of political unrest in the Soviet Union and how individual economic interests added to shaping their preferences. The following section explicates why particularly the Commission had been tasked to coordinate a highly valuable technical assistance programme towards the (successors of the) Soviet Union.

There was a general perception among Western governments in 1988/89 that – due to the historic developments in Central and Eastern Europe (CEE) – quick, crucial actions had to be taken in order to avoid political and economic instability (Hainsworth 1990; Haggard and Moravcsik 1993: 252). The main concerns in 1989 were possible risks resulting from a destabilisation of the Soviet Union such as social unrest, mass westward migration, or violent government takeovers (Höhmann 1993: 40-41). Yet, views on how *precisely* to respond to these challenges differed somewhat within the West. At the G24²¹ meeting in July 1990, still not all participants were convinced about granting aid to the Soviet Union.²²

Germany, in particular, advocated giving the EC a more active role in supporting the political and economic reforms. Since 1989 Bonn was a major driving force behind the integration of the countries of CEE into the European Community (Deubner 1999: 89). In part this was due to the fact that trade between Western Germany and the Soviet Union was quite substantial.²³ Also, while at that point German unification was by no

to a particular organisation or body. Hence, competition, redundancies, and duplication of responsibilities and instruments may have the advantage of greater flexibility. See Peters (1995).

²¹ Intergovernmental Group of Twenty-Four on International Monetary Affairs and Development.

²² Group of 24 extend aid to four new central and Eastern European States, Agence Europe, 5th July 1990.

²³ The intensive economic relations between both countries corresponded with a considerable amount of money for the USSR provided by the Federal Republic of Germany. Until late 1991 the financial aid amounted to 72 bn

means an immediate option, it nonetheless was an increasingly realistic possibility. Whereas in general Bonn was discontent with the uneven distribution of expenditure for economic aid to CEE countries (Deubner 1999: 95; see also Stark 1992), a multilateral approach to support the reforms was clearly beneficial as the vast financial burden on Germany could thus be reduced. Hence, not surprisingly, at the July meeting of the G24, German Foreign Minister Hans-Dietrich Genscher fervently pleaded in favour of multilateral aid to the Soviet Union.²⁴

In contrast, the British government proposed to await the reform developments. Prime Minister Margaret Thatcher advocated a Polish-style economic “shock therapy”. She was convinced that unless drastic economic reforms were implemented one should not throw money after the incompetent Soviet government (van Ham 1993: 153-154). At a meeting of EC foreign ministers in January 1990, where an aid strategy in response to the political revolution in CEE countries had been debated, Thatcher vigorously fought an increase in EC expenditure.²⁵ There were also widespread – though just implicitly articulated – concerns over a special relationship between (a potentially united) Germany and the Soviet Union (van Ham 1993: 168; Weber 1994: 9).

Paris, in general, was obstructive when it came to the question of integrating CEE countries into the Community (Deubner 1999: 89), nor was the French government keen to commit large amounts of financial aid to that region. In their view, the threat from the East was weakening while the challenges from the Western Mediterranean, particularly North Africa, were increasingly gaining relevance. Against the background of possible unification, a potential German-Soviet détente, and a political and economic outreach of Germany to the CEE region, France saw a threat to its claim to leadership within the EC. From 1990, in a response to this threat, Paris developed a dense network of bilateral relations with the countries of CEE. Concerning the distribution of aid commitments, France was on the one hand content with Germany carrying the highest burden. On the other hand, this held the risk of Germany reaping the greatest benefits from investment opportunities (Deubner 1999: 94-96). The French view on EC aid to CEE therefore was ambivalent.

There are two important reasons why France and the UK – despite their concerns – eventually agreed on a multilateral aid scheme. First, through multilateralism the development of close German bilateral relations with Eastern European countries could be

DM. In contrast British aid amounted to only about 220 mio DM. see: European Service Center, Assistance to the Independent States (ex-USSR). Facts, figures, background brief Nr. 2/92, 30.1.1992, quoted from Ehrhart (1993: 41).

²⁴ Group of 24 extend aid to four new central and Eastern European States, Agence Europe, 5 July 1990.

²⁵ EC Foreign Ministers Debate Aid for Eastern Europe, Reuters News, 20th January 1990.

restrained. By initiating PHARE²⁶ and the European Bank for Reconstruction and Development (EBRD) France sought to gain influence in the allocation of non-French funds and thus indirectly aimed to enhance its role towards the CEE region by multilateral means (Deubner 1999: 99). Second, a multilateral aid strategy, together with the establishment of the EBRD, largely promoted by Paris and London, promised vast investment opportunities.²⁷ Jacques Attali, former presidential advisor to François Mitterrand, became its first president. He called the Bank "the embryo of a new Europe"²⁸ and speculated that 3000 bn US\$ were necessary to hook up Eastern Europe to the economic development of the West (Pradetto 1992: 4). The specific interest in the Eastern energy market can particularly be explained by the fact that many EC companies perceived the commercialisation, restructuring and internationalisation of state petroleum companies as a great opportunity, whereas until the mid-eighties the Soviet government had allowed no foreign control over its energy economy (Wälde 1994).

During a debate among EC foreign ministers in January 1990 in Dublin on recent developments in CEE countries, Jacques Delors pointed up to "a danger of backtracking, of things going wrong," thereby referring to recent events in Romania,²⁹ "not to talk of the upheavals taking place within the Soviet Union. (...) The Community must (...) give aid and assistance to enable the [democratization] process to go on."³⁰ In April 1990 the European Council authorised the Commission to engage in talks with Moscow and to prepare a report. In May 1990 the Commission organised a top-level conference on future policy options for the EC, with some 400 energy, business and government representatives from the EC, the Soviet Union, Japan and the US, and the idea of a technical assistance strategy for the Soviet Union took shape.³¹ At that conference, Constantine Maniatopolous, Director General for Energy of the EC Commission, stressed the need for a greater role of the Community in energy matters,³² yet without

²⁶ PHARE (french for "beacon") initially stood for "Pologne – Hongrie: Assistance à la restructuration économique" but later became EC's main instrument of financial and technical cooperation with all candidate Central and Eastern European countries. Together with Jacques Delors, President Mitterrand initiated the creation of that programme.

²⁷ The bank had been established in May 1991.

²⁸ The Economist, 16.3.1991, p. 28.

²⁹ President Nicolae Ceausescu and his wife had been executed in December 1989 by the "National Salvation Front".

³⁰ EC Foreign Ministers Debate Aid for Eastern Europe, Reuters News, 20th January 1990.

³¹ See Conference on "Energy for the Next Century", Agence Europe, 4th May 1990.

³² Energy for the Next Century Conference – European Perspective, Agence Europe, 8th May 1990.

immediate success. The Council tasked the Commission to take the issue further and the latter took this opportunity to strengthen its competences.

On the basis of the Commission report, the Rome Council issued special conclusions in December 1990 regarding EC relations with Moscow, pledging to provide 400 m. ECU for a Technical Assistance Programme (TAP) to the Soviet Union in 1991, and requested the Commission to develop suitable instruments and a framework “with due regard for the ideas put forward by the Netherlands, Italy and the United Kingdom”, that is, the creation of an Energy Charter. In that context, the Council deemed it necessary in the long run to increase the security of supplies.³³ Due to its sole right to initiate legislation in this issue, the Commission eventually prepared the draft regulation for the TAP.

As has been mentioned, the Dutch Prime Minister Ruud Lubbers had circulated a memorandum in June 1990 at the Dublin Council and in November 1990 at the CSCE summit. The paper suggested creating a European Energy Charter which was inspired by the general logic to establish closer economic relations with the Eastern European energy suppliers (Wellenstein 1990: 178). The aims of the Charter would be to advance interdependence and thus – against the background of a drastic fall in oil production in the late 1980s – to create a more reliable framework for imports of hydrocarbons into the EC. On the other hand, the modernisation of the Soviet energy industry as well as the implementation of sufficient free market principles the (energy) economy of the Soviet Union would be made more efficient which would, in turn, support political reforms (Doré 1995: 11). Hence, this objective is closely related to the TAP towards the Soviet Union, and between 1991 and 1996 9% of its fund of 2,8 bn ECU were spent on energy-related projects (Lyons 1998: 176-177).³⁴ Besides Lubbers, the UK also demanded closer oil and gas links with the Soviet Union³⁵ and saw technical assistance in that particular context in a somewhat positive light.

Given the economic prospects indicated above, it is plausible to maintain that these privatisable national interests – incentives resulting from the investment opportunities (Haggard and Moravcsik 1993: 257) – largely facilitated the consent of the generally reluctant France and Great Britain for a multilateral technical assistance programme.³⁶

³³ European Council, Rome, 14th and 15th December 1990, Presidency Conclusions (Part 2), p. 3.

³⁴ This figure is even more remarkable as much of Tacis until the 1990s had been dedicated to food aid or related emergency relief.

³⁵ Support seen for EC-Soviet Energy Link, Platt's Oilgram News, Vol. 68, No. 209, 26 October 1990, p.3.

³⁶ In the early 1990s there were recession tendencies in OECD countries, making a huge investment programme all the more desirable. Moreover, the liberalisation of a hitherto closed economy with high trade barriers promised investment in the Soviet Union to be exceptionally lucrative for EC companies.

Why the Commission?

While these political challenges and economic incentives explain the general preference among major EC governments for a multilateral aid strategy, the question remains why particularly the European Commission had been tasked to negotiate with the Moscow government and eventually to coordinate TACIS with a budget amounting to more than five bn Euro. What largely contributed to this decision was apparently its outstanding expertise in the conceptualisation and implementation of development aid. Moreover, geographical proximity of the EC in contrast to organisations such as the World Bank, and the decades of experience in development aid and in coping with macroeconomic structural problems were important rationales, as a former Director General for External Relations at the EC Commission documented (Krenzler 1990: 93; see also van Ham 1993: 168). In contrast, Haggard and Moravcsik (1993: 259) are misguided in contending that the Commission lacked experience in coordinating aid to third countries before the end of the Cold War.

Yet, without an active Commission president in alliance with major EC Member States a different institutional context might have been chosen. Besides tasking the Commission, there were basically five additional institutional frameworks which could have channelled the aid: 1) purely bilateral programmes; 2) ad-hoc coordination through any of the summit networks of the Organisation for Economic Co-operation and Development (G-7, G-10, or G-24), the Paris Club group of creditors, and the EC Commission; 3) already existing multilateral institutions such as the International Monetary Fund or the World Bank; 4) the newly formed EBRD; or 5) the creation of an entirely new institution (Haggard and Moravcsik 1993: 249; Weber 1994: 13).

Paris strongly favoured the fourth option, largely on economic grounds and to dilute German influence in the CEE region. As already stated, the French government actively supported the creation of the EBRD. It initially wanted the bank to subsume all existing multilateral aid programmes aimed at CEE countries and oust the World Bank and the IMF. Such a broad mandate was seen from the EC Commission as a “threat to usurp its newfound leadership role in relations with CEE.” (Weber 1994: 14) In fact, the EC special summit in Paris on November 1989 endorsed the creation of the EBRD but turned down the French proposal for a comprehensive mandate. A struggle subsequently emerged between the Commission and the French government on the Bank’s future profile (Weber 1994: 14-15). Eventually the institute became much more closely tied to the EC than was initially preferred by the French. Also, while Paris initially wanted the EBRD to admit only EC members and the Soviets, it ultimately had to accept the US and Japan in the Board of Governors. What is more, Anglo-American banking standards now dominate its structure and management (Lequesne 1994: 43-79).

In addition to receiving political support from Germany and the Netherlands on that issue, the Commission in June 1990 presented a report on the energy situation in the EC, putting a special focus on the supply side. The paper alerted EC decision makers to an increasing dependence on energy imports. In consequence, a construction of gas pipelines to the producers was recommended.³⁷ Against this background, and given its vast expertise in energy matters, the Commission seemed an ideal partner for France, Great Britain and the Netherlands in advancing their economic interests. On the other hand, the suggestions on creating an Energy Charter, as proposed by Lubbers and supported by the UK and Italy, were a welcome opportunity for Delors to further develop the competences of his institution. In general, he perceived energy as an appropriate issue area with which to move forwards the European integration process (Matlary 1997a: 61-62, 109; see also Sennekamp o.A.: 26).

Until autumn 1995 there was a dispute as to what foundations the Energy Charter should have. Discussions centred around integrating it into the International Energy Agency, the CSCE or the EC. Germany and the UK were rather against EC responsibilities as their motives in that issue were largely economic. Italy and France additionally saw the Energy Charter as a vehicle to boost the European integration process. France also perceived an EC-led Charter as a means to keep non-EC members, especially the US, away from the investment opportunities in CEE countries (Matlary 1997a: 91, 95), as it hoped would happen with the EBRD. Given these diverging views on how to institutionalise the Energy Charter, the Commission was tasked to deliver a report (Matlary 1997a: 76).³⁸

The question of how to grant the technical assistance was a coordination problem: while the general goal – the prevention of economic and political turbulences in Eastern Europe – was shared among all major governments, the difficulty was how to distribute the resulting costs and benefits. Also, it was apparent that national governments were unable to stem the enormous task of identifying and implementing technical assistance programmes worth hundreds of millions of ECU annually. Hence, lack of sufficient national capabilities for largely technical problems was a major rationale leading to a non-bilateral solution.

Hence, the decision of the EC Members in favour of a multilateral solution for the preparation and implementation of TACIS was largely owed to the fact that they lacked the necessary expertise. Given the several multilateral institutional alternatives at hand,

³⁷ Commission of the European Communities 1990, Energy in Europe. Energy for a New Century: The European Perspective, Brussels, p. 26.

³⁸ The negotiations ended with the adoption of a final document signed by all European Countries, the US, Japan, Canada, and Australia.

from which particularly France favoured rather the EBRD than the EC Commission, the active lobbying of the Commission president among Heads of State and Government – against the background of a period in transition and uncertainty – was crucial in securing a positive decision. Though France initially wanted a much more modest role for the Commission, it eventually perceived an active Commission, together with the creation of the EBRD, as an efficient means to curb the German economic and political influence and at the same time to enhance its profile and economic interests in the CEE region.

5. THE COMMISSION, THE ENERGY CHARTER PROCESS, AND TACIS

The Energy Charter Process

The following paragraphs demonstrate how the Commission was able to scrutinise on the competences conceded by the EC Members in the years following the instigation of TACIS. In doing so, it was partly able to act as a pro-active policy entrepreneur, shaping the content of this policy area. The last paragraph of this chapter outlines the latest developments towards a more coherent Energy Policy, which comprises less than the Commission wished for, but ultimately over again increased its competences in energy matters.

While the European Energy Charter of 1991 (henceforth: “Energy Charter”) was merely a political declaration, the Charter Treaty, signed in 1994, comprises binding obligations and places the energy sector of a large part of the Commonwealth of Independent States under the ambit of international law.³⁹ With its signing, the Charter Treaty established the *Energy Charter Conference*, an independent inter-governmental organisation with a Secretariat in Brussels. Yet, there was a strong tendency within the Commission to appropriate the Energy Charter Process.⁴⁰ The Secretariat was initially established within the Commission’s Directorate General for Energy, remaining there until 1995 (Matlárý 1997a: 76). As a full member to the Conference the EC Commission was not only fundamental in conceptualising both Charter documents, but also significantly pushed forward the ratification process. As regards objectives, there are important parallels between the Charter Treaty and TACIS, particularly in terms of protecting investments and enhancing the security of energy supply for Western Europe. The Commission explicitly stipulates that the principles of the Charter Treaty be followed

³⁹ Energy Charter Treaty, signed 17th December, 1994 in The Hague, [http://www.vilp.de/...](http://www.vilp.de/) (download 15.3.2004). The Charter Treaty went into force in 1998 after a sufficient number of signatories had ratified it. The ECT is largely complementary to the GATT rules.

⁴⁰ I owe this insight to Helga Steeg.

when technical assistance programmes within the TACIS framework are prepared.⁴¹ Also, the Secretariat contributes financially to INOGATE, TACIS' core energy programme. What is more, Henning Christophersen, former European Commission Vice-President, became the first President of the Conference. Hence, Michael Smith (1998: 266-267) calls the Charter Treaty "a real foreign policy initiative of the EU".

Notwithstanding its general enthusiasm and support for the Charter Process, INOGATE was at times operated in opposition to the Charter Treaty's transit protocol negotiations. It appears that the Commission supported the Energy Charter when it thought it could control it, while it rather tried to undermine it when it believed it could not.⁴²

On the one hand the strong commitment of the Commission for the Energy Charter Process can be explained by its relevance for the Common European Market, a project that had always been promoted by that body (Armstrong and Bulmer 1998). On the other hand, the Commission intended to expand its competences and to establish itself as an important international negotiator in the field of energy. Moreover, some aims of the Charter Treaty are identical with two central objectives of the Commission: to put pressure on the EC members with a view to adding an energy chapter to the EC Treaty, and the establishment of an EC-led Energy Community. This would allow the Commission to exercise greater influence on the process of transformation in Central and Eastern Europe.

INOGATE and the Role of the Commission

Interstate Oil and Gas Transport to Europe (INOGATE) represents one of TACIS' core programmes. This multi-country scheme aims to promote regional integration of the European pipeline systems, to support investments in the energy sector and to facilitate the transport of oil and gas particularly towards the European markets by either filling existing gaps in the energy infrastructure or by enabling the creation of new means of transportation. After the dissolution of the Soviet Union the management of the formerly unified energy transportation systems raised difficulties and severely increased transaction costs.⁴³ In consequence, already in 1991 and 1992 the Commission launched consultations on these issues with the authorities of the relevant successors of the Soviet Union. In 1992 the Commission prepared the ground for the establishment of "Interstate Oil & Gas Pipeline Management", the forerunner of INOGATE. While the Commission

⁴¹ Commission of the European Communities, Directorate General for Energy (1993): Energy in Europe. Community Assistance in the Energy Sector to the Countries of Central and Eastern Europe and the Former Soviet Union, p. 7.

⁴² I thank Thomas Wälde for this observation.

⁴³ EU/NIS: Another Milestone for Inogate Energy Programme, European Report, No. 2383, 17.2. 1999.

was not the only body recognising the need for supporting reforms in the energy sector, it took up this issue and proactively continued to move it further.

An INOGATE working group, led by the Commission's Directorate General for Energy and Transport, selected the first projects in November 1996. Among others, a feasibility study for a gas and oil pipeline across the Caspian Sea as well as a project for the modernisation of the oil infrastructure in all of the participating countries were contracted.⁴⁴ The Commission also negotiated suitable projects in the context of the Partnership and Cooperation Agreements which came into force around the mid-1990s with many of the successors of the Soviet Union.⁴⁵ Among others, the construction of an Oil Pipeline from Odessa to Brody (Western Ukraine) and its extension via Plock (Poland) to the Baltic Sea were identified as feasible. In May 2003 INOGATE declared this a Euro-Asian Oil Transport Corridor with a pan-European interest.⁴⁶ What is more, the Commission supported the completion of the Southern European Gas Pipeline, leading from Tabriz (Iran) to Otranto (Italy),⁴⁷ which, according to forecasts, may contribute to one third of the EU's predicted energy consumption by 2020 (Götz 2004: 18).

From the Commission's perspective, the Caspian Sea Basin represents one of the vital regions from which hydrocarbons can and should be made available for European consumers. In particular, Azerbaijan as well as Kazakhstan is seen as potential new source of supply.⁴⁸ The Commission estimated required investments for the modernisation and upgrading of gas networks (except for Russia and Central Europe) at four bn Euro.⁴⁹

While the Commission was initial in addressing the problem of how to get the oil production out of the region, the Council acknowledged its pro-activism only in April 1998 by issuing a declaration on the Caspian Region.⁵⁰ During the 1990s, security of energy supply played no prominent, autonomous political role in the national contexts. It is still the case that hardly any EU Member having an all-out, consistent energy pol-

⁴⁴ Europe Daily Bulletin (Agence Europe), Nr. 6860, 25.11.1996.

⁴⁵ The PCA's are ten-year bilateral agreements between the EU and individual partner countries. They are legal frameworks, setting out the political, economic and trade relationship between the EU and its partner countries.

⁴⁶ Industrial Round Table "Odessa-Gdansk: Northern Dimension for Caspian Oil", Gdansk, Poland, 14.7.2003, <http://www.inogate.org/html/news/...> (download 24.3.2004).

⁴⁷ See Hurriyet, 4.7.2005.

⁴⁸ Hans van den Broek, Member of the European Commission, "Concluding remarks at the INOGATE Conference", Rapid, 17.2.1999.

⁴⁹ 2nd Annual Conference and Exhibition "Caspian Energy to Europe", Statement by Mr Faouzi Bensarsa, European Commission, INOGATE Press, <http://www.inogate.org/html/press/...> (download 23.3.2004).

⁵⁰ General Affairs Council, 27.4.1998, Brussels, Press: 109 Nr.7684/98.

icy. Despite the fact that questions concerning the security of energy supplies have always played a role in national governments, they remained largely within the Departments of Trade and Industry rather than in the State Departments and thus were assigned an economic rather than a political connotation.

Overall, particularly in the creation of TACIS' INOGATE programme the Commission performed as an informal Agenda Setter and proved to be exceptionally pro-active. Also, though not chosen as the institutional "home" to the EC Treaty, the Commission maintained close relations with the Energy Secretariat and thus influenced the content of both the European Energy Charter and the Energy Charter Treaty. The body also came up with memoranda or organised conferences on critical issues related to energy of which most Member States took only little notice after their initiatives in 1990.

Towards an Energy Policy for Europe

At the informal European Summit in October 2000, Commission President Prodi persuaded the Heads of State to give the Commission a mandate to maintain a regular dialogue with Russia on energy,⁵¹ which subsequently commenced in January 2001. That dialogue aims at identifying areas of common interest in the energy sector, including relevant means of transportation⁵² and to persuade Russia to ratify the Charter Treaty. By virtue of the Union's common trade policy the Commission's Directorate General for Energy and Transport negotiates on behalf of all Member States in international consultations on energy-related issues. This gives the Commission further leverage in talks with the Russian Federation, which is currently negotiating its entry into the World Trade Organization. Also, in June 2005 the Commission initiated a (yet informal) EU energy dialogue with the delegation of the Organization of the Petroleum Exporting Countries. Proposed by the Greek EU presidency in 2003 and subsequently managed by the Commission, comparable dialogues are taking shape in the context of the sub-committees on Trade, Investment, Energy and Transport within the Partnership and Cooperation Agreements EU-Azerbaijan and EU-Kazakhstan respectively. What is more, in October 2005 an *Energy Community Treaty* was signed between the EU and initially seven countries of Eastern Europe.⁵³ The Treaty incorporates the signatories to the energy-related "acquis communautaire" of the EU. Its objective from the perspective of the Union is to reconstruct the war-battered infrastructure and thereby permit the transit of energy from the Caspian and the Middle East towards Western Europe. With the

⁵¹ Press-conference with German Chancellor Schröder, 13.10.2000, <http://www.bundeskanzler.de/...> (download 27.2.2004).

⁵² See <http://europa.eu.int/comm/energy/...> (download 14.3.2006)

⁵³ These were Croatia, Serbia, Bosnia, Albania, Mecedonia, Romania, Bulgaria.

coming into effect of the Treaty, the Commission obtains greater formal competences (Klaue and van de Loo 2006: 9).

In order to ensure a dependable supply of hydrocarbons, the Commission has frequently mentioned the need for dialogues not only with producers, but also with transit countries, particularly when it comes to gas.⁵⁴ Energy Commissioner Andris Piebalgs stated that the *European Neighbourhood Policy*, which is fully coordinated by the Commission, may be a suitable framework for conducting additional dialogues in the future.⁵⁵ By publishing pertinent reports the Commission placed important issues on the energy agenda and particularly attempted to establish itself as a suitable actor, with enhanced competences, to deal with suppliers: “This debate [with energy producers] can no longer be confined to each individual country, it must take place at European level. (...) [T]he Union needs to muster all its economic and political weight to face its major external energy suppliers.”⁵⁶ Notwithstanding its somewhat technical nature, the character of these consultations in sum has a clear strategic relevance with regard to foreign policy.

In September 2002 the Commission issued two proposals for directives concerning the security of supply for gas and oil. In particular, the Commission proposes obtaining a legal competence to oblige Members in cases of energy shortages to take certain measures, such as curbing their energy consumption.⁵⁷ While this was eventually rejected, Council and European Parliament agreed to incorporate questions of pipeline security into the EC Treaty.⁵⁸ What is more, the Council set up a *Gas Coordination Group*,⁵⁹ a framework within which Member States may define security of supply policies. Meetings of the group can be convened either by them or by the Commission, and

⁵⁴ See Green Paper - Towards a European strategy for the security of energy supply, COM(2000) 769, November 2000.

⁵⁵ Opening remarks of Mr. Piebalgs at European Commission -World Energy Council, Joint Seminar, Brussels, 10 March 2005, [http://europa.eu.int/comm/commission_barroso/...](http://europa.eu.int/comm/commission_barroso/) (download 12.1.2006) Note that in 2007 for the former recipients TACIS will be replaced by the European Neighbourhood Policy, for which the European Neighbourhood and Partnership Instrument (ENPI) is the only financial mechanism.

⁵⁶ Energy. Let us overcome our dependence, European Communities, Brussels, 2002, p. 5-6, 9.

⁵⁷ Proposal for Directives concerning the alignment of measures with regard to security of supply for energy products, 2002/0219/COD; 2002/0220/COD; and 2002/0221/CNS.

⁵⁸ Developing Energy Cooperation with the Neighbouring Countries, Spreading the benefits of the Internal Market to neighbouring countries and partners, Memo, European Commission, Directorate General for Energy and Transport, Brussels, 2003, p. 6.

⁵⁹ Council Directive 2004/67/EC of 26th April 2004 concerning measures to safeguard security of natural gas supply.

they are held under the chairmanship of the latter, which gives it additional scope in external energy matters.

Hence, besides formal competences the Commission exploited imprecise clauses of the EC Treaty, such as Art. 3/t(u) on “measures in the spheres of energy”, or Art. 155 on *Trans-European Networks* which it further expanded and set out in writing in the *European Neighbourhood Policy*. It thus moved from relatively technical activities in economics or trade towards much more political aspects of the same issue area, such as negotiations over strategic transport infrastructures with third countries (the Energy Dialogues), without always having a clear cut legal mandate.

At their summits in October and December 2005 the EU Heads of State and Government mandated the Commission to follow up the energy issue. The UK presidency commissioned a study from the University of Oxford on the potentials for stronger EU energy policy co-operation in order to cope with the climate change and improve the security of supplies.⁶⁰ The study heavily relies on Commission documents and was presented at the informal October summit. There, Prime Minister Tony Blair reminded his colleagues that it is “important that energy policy is something that we work on together as a European Union” and referred to the warnings of the Commission on the increasing European dependence on imports.⁶¹ In the same month, Blair called for the creation of a Common European Energy Policy (CEEP) before the European Parliament. The Commission had apparently been under pressure from the UK over concerns about the availability and price of gas from continental Europe, particularly given the output of British North Sea oil and gas being in sharp decline.⁶²

In March 2006 the Commission published a new Green Paper on Energy which advocates a comprehensive CEEP, including the idea of the publication of a *Strategic EU Energy Review* to Council and Parliament on a regular basis.⁶³ The review would offer a framework for national decisions and would have the function of identifying priorities for the upgrading and construction of a new energy infrastructure.⁶⁴ That proposal was

⁶⁰ Dieter Helm, *European Energy Policy: Securing Supplies and meeting the Challenge of Climate Change*, New College, Oxford, 25 October 2005, <http://www.fco.gov.uk/...> (download 13.3.2006).

⁶¹ Blair calls for stronger EU energy policy co-operation, *EurActiv*, 28th October 2005, <http://www.euractiv.com/...> (download 13.3.2006).

⁶² EC warns of €1,000bn power challenge, *The Guardian*, 9th March, 2006; see also: Fearful EU aims to take energy policy from governments, *Times*, 9th March, 2006. Since 2006 the UK is no longer self-sufficient in gas production and reverted to being a net gas importer.

⁶³ Commission of the European Communities, Brussels, 8.3.2006, COM(2006) 105 final, Green Paper - A European Strategy for Sustainable, Competitive and Secure Energy.

⁶⁴ Green Paper, A European Strategy for Sustainable, Competitive and Secure Energy, COM(2006) 105 final, Brus-

welcomed by the Council in spring 2006 and a first Energy Review is to be published in late 2006. To further back up its pursuit for more competences and present this as a legitimate objective, the Commission requested and coordinated a special Euro-barometer poll, which revealed that 47% of EU citizens prefer European-level decisions on the “new energy challenges”.⁶⁵

As has been indicated above, the initiative received support particularly from the British government. What is more, the Austrian EU Presidency said the Commission had set the “right priorities” with this document⁶⁶ and the Polish Prime Minister, referring to his country’s huge dependence on Russia, also emphasised the strategic importance of energy security: “Today Europe is beginning to view that issue through Polish eyes”.⁶⁷ Peter Mandelson, the EU Trade Commissioner, hinted in that context at Germany’s unilateral energy diplomacy: “Europe’s leaders have sometimes been tempted to compete with each other in vying for a close personal relationship with President Putin, but Europe will only be able to negotiate successfully with Russia on energy, or on other issues, if we determine first, as a group, how we want our relationship with Russia to develop.”⁶⁸

Spurred into action by the gas supply crisis in early 2006, the spring EU Council meeting on 23th-24th March placed the energy issue high on the agenda. While the Austrian presidency and Poland were rather sympathetic towards a CEEP, the Council largely rebuffed Commission President Manuel Barroso’s demands for enhanced energy competences. Yet, this rejection was largely due to the resistance of several Members – notably France and Spain – against a de-regulation of the internal energy market rather than the obstruction of a more coherent and powerful EU in international energy matters.⁶⁹ Only Germany, obviously profiting from a special relationship with Russia, downright rejected this objective.

sels, 8.3.2006, pp. 5, 9, 15.

⁶⁵ European Commission, *Attitudes towards Energy*, January 2006.

⁶⁶ EU considers common energy policy amid national sovereignty concerns, *EurActiv*, Wednesday 8th March 2006; see also: Bartenstein: Europe needs new common energy policy, Press Release of the Austrian EU Presidency, 08.03.2006. <http://www.eu2006.at/...>(download 14.3.2006)

⁶⁷ Energy issues important to Poland and the United States, 25.01.2006, Warszawa, Homepage of the Chancellery of the Polish Prime Minister, <http://www.kprm.gov.pl/engl/...> (download 13.3.2006).

⁶⁸ Fearful EU aims to take energy policy from governments, *The Times*, 9th March, 2006.

⁶⁹ In January 2006, French Government presented a memo which includes raising the profile of the Union towards other countries and regions, including on climate and energy issues. See the French Memorandum on EU energy policy from January 2006: *Résumé des principales propositions*, 19.01.2006.

Despite reservations about a communitarised energy policy, the EU Heads of State eventually endorsed the European Commission's initiative for a new European energy policy. They declared their regret over an "increasing import dependency and limited diversification achieved so far" as well as a "limited coordination between energy players". An *Energy Policy for Europe* was therefore being called for and the Council "invites the European Commission and the High Representative to work closely together on the important issue of external energy relations and to provide input for an EU strategy".⁷⁰ In fact, rather than a new EU pillar, the emerging Energy Policy for Europe is likely to be a mixed bag of directives without altering the EU treaties.⁷¹

Even though most major EU Members were against a communitarised energy policy during the 1990s, none of them pursued a coherent political external energy policy until recently. What is more, several Members – such as the UK and France – clearly saw the advantage of the Commission facilitating a realisation of their privatisable national interests, thus indicating some sort of loyalty transfer. In the light of the surge in oil prices to over 70\$ per barrel, growing energy demands particularly from China, India as well as East Asia, and a resulting politicisation and securitisation of the trade in energy products, a number of EU Members increasingly recognised the advantage of a more coherent EU strategy in coping with these "new energy challenges", with due regard to the Commission.

6. CONCLUSIONS

The intention of this paper was to explain why EC Members delegated competences in the coordination of TACIS to the Commission, and to determine whether it succeeded in exerting an independent influence – understood as the ability to behave in ways not dictated by Member States – on the course of the EU's external energy policy in the following years. While the general choice for a multilateral aid strategy can largely be explained with the national preferences of major EC Members and thus by an intergovernmentalist logic, the particular decision for the Commission was to a great extent determined by its already existent expertise in development aid and in coping with macro-economic structural problems. Thus, this institutional choice was somewhat path dependent. In addition, the pro-activism of the Commission President finally helped convince reluctant states, particularly France, to opt for his institution.

Throughout the 1990s the Commission still acted pro-actively as a policy entrepreneur in the issue area of energy. It did so by organising conferences on energy issues or by releasing green papers on energy with a high relevance to the energy community and with the potential of leading to specific legislative acts. Several of the Commission ac-

⁷⁰ Brussels European Council, 23/24 March 2006, Presidency Conclusions, Part Two (Energy Policy for Europe).

⁷¹ EU's new energy Policy born, EU Observer (Brussels), 24.3.2006.

tivities – such as the informal energy dialogues – do not have a clear cut legal mandate. As a result, significant new energy policy initiatives have been promoted by the Commission. It has exploited institutional rules to take the initiative, and redefined the energy sector in relation to foreign and security policy. As regards formal agenda setting, the Commission applied its sole right of initiative in drafting legislative proposals for the TACIS regulations, which have to be renewed on a regular basis. In seeking to expand its competences the Commission went even beyond the boundaries of the EC treaty, namely in the intergovernmental territory of the Energy Charter process. Hence, alongside path dependence, task expansion and agenda setting, the concept of fuzzy legal boundaries is essential to explain how the Commission scrutinised on the relatively modest competences it originally received. In the case at hand the Commission has also often dealt directly with the governments of EU Members, such as Germany, the Netherlands or Greece, and entered into “alliances” over certain issues with them.

Ultimately, external factors (significantly increased prices of hydrocarbons; transport difficulties with gas from Russia to Western Europe; the UK becoming a net gas importer earlier than initially expected) worked as a “catalyst” and helped convince major governments, that, against this background, a more coherent and strategic EU external energy policy – with a significant role of the Commission – is essential.

Although the Commission hardly acted contrarily to the expressed interests of major governments, it nonetheless behaved in ways not explicitly desired by them. Hence, with regard to the definition used here, it acted widely in an autonomous way. What the Commission (in part successfully) does as a result is to pursue an EU external energy policy as a comparatively coherent process, while in the past, this has not been the case. As a competence maximiser it seeks solutions to existing problems, advances a common interest and thereby has substantially managed to increase its influence on EU’s external energy policy over time.

While EU Members still have key foreign and foreign economic relations resources at their disposal, these apparently do not suffice in addressing the current challenges with regard to the “new foreign policy issues”, which are even likely to intensify in the years ahead. In short, we can observe the establishment and subsequent interlocking of functions beyond the nation-state together with those still within governmental confines, a process which is largely determined by the Commission as a Strategic Actor.

Several explanatory variables of this article are consistent with the current literature on the independence of the Commission, particularly the distribution of information among the Commission and Member States; the intensity of Commission and Member State preferences; or the decision rules for the issue at hand (see e.g. Pollack 1997: 110-111). Yet, for a thorough explanation of the Commission’s independent role, a number of aspects deserve more attention. First, the analysis of intergovernmental bargains alo-

ne is insufficient whereas a focus on both context as well as processual dimensions promise a better understanding of acts of delegation. Second, within a process tracing approach, particularly the examination of fuzzy legal boundaries and task expansion, as well as path dependence and unintended consequences, needs more attention. In contrast, formal and informal agenda setting are comparatively widely established and tested concepts. Third, this article has both revealed that the Council is by no means a uniform actor and that the Commission may well directly enter into coalitions with some or more of the Member States with similar preferences. What needs more attention, therefore, is the interplay between both, which traditional PA accounts are not able to grasp, as they tend to presume uniform actors in each case and incorrectly dichotomise them. Fourth and maybe most important, scholars on IO autonomy need to define more clearly their understanding of this concept and they need to work with less rigid indicators. “Autonomy” as understood by intergovernmentalists – a bias of supranational leaders systematically away from the long-term self interest of Member States – needs replacing by a denotation with a lower threshold, namely the ability of supranational actors to behave in ways not dictated by states. This promises a more nuanced picture of Commission-Member State relationships.

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