

Summary of the report

Europe Unplugged

Progress, potential and limitations of EU external energy policy three years post-Lisbon

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European cooperation in the field of energy lies at the heart of European integration itself, going back to 1951. However, it is only with the Lisbon Treaty that a competence in the field of energy was explicitly conferred on the Union, and, *anno* 2012, the European Union is still very much in the process of formulating and implementing a common external energy policy worthy of the name. This report focuses on three main obstacles to achieving a visible, effective, and coherent EU external energy policy. The report first looks at these three obstacles as they appeared prior to December 2009, and then looks at the impact of the Lisbon Treaty. First we look at the ability of the EU institutions, and their individual Directorates General, to agree on the direction of EU external energy policy. Post-Lisbon we must examine the impact of the setting up of the European External Action Service (EEAS), the increased powers of the European Parliament, and the continued role of the rotating Presidency. Second, in substance there used to be thorough disagreement on whether EU external energy policy should predominantly focus on externalizing the internal market on the basis of legal binding instruments, or should rather focus on energy diplomacy involving deals with third countries to ensure EU supply security. Essentially, the report queries whether the new competence has provided an impetus to reconcile these two approaches. Third and finally, we look at the Member State relationship with the EU common interest in energy policy, which we term ‘the vertical dimension’. Here the report points out that the internal market has long suffered from limited Member State compliance with Union law, stemming from the continued presence of Member State national interests. In the external dimension this translates into a continued tension between individual national policy

priorities and the common good of the Union as a whole. In this report we take a thorough look at the instrument adopted on 4 October 2012 which sets up a vertical ‘information exchange mechanism’ which it is hoped will improve compliance and strengthen coordination between the Member States and the Union.

The report reaches the following conclusions:

In the institutional dimension, the EEAS finds itself excluded from the policy-making process concerning EU external energy relations. Specifically, the examination of the soft legal documents signed as part of the EU external energy policy have shown that the Commission remains firmly in the driving seat, and that the Member States’ role through the rotating Presidency remains. The report observes that, when the EEAS was set up, energy policy initially figured more strongly within the mandate of the High Representative, but that this position soon waned as the inter-institutional dust settled. Subsequently, the Commission’s proposal for a ‘Strategic Group for International Energy Cooperation’ was welcomed, and the report argues that this group should include the EEAS fully in its work. As regards the role of the European Parliament, it has been shown that the Lisbon Treaty will have a significant impact in the near future. A number of legally binding agreements are planned or are under negotiation, and under Articles 194 and 216 TFEU these require the consent of Parliament. Taking a cue from common commercial policy or the external dimension of the areas of freedom, security and justice, Parliament is sure to use its new powers to effect.

The full report is available at www.sieps.se

In substantive terms, the paper welcomes the new-found strategic thinking in EU external energy relations. It is clear that more prioritization has now been infused into EU external energy relations. Thus, while the report finds that cooperation between the EEAS and the Commission may be lacking, in substantive terms EU external energy policy has seen several improvements. While not perfect, the Council conclusions do more than before to set out an explicit strategy in EU external energy relations, including defining the nature of different partners, the EU's objectives in relation to those different partners, and the instruments through which to realize those objectives. This should be welcomed, but now action must be taken to make the relevant Council conclusions concrete. Therefore, the report calls for the EEAS and the Commission to draft a joint communication, which maps the short-, medium- and long-term objectives of EU external energy policy specifically for each region, country and strategic partner and which includes targets and a specific timeframe for the implementation of those targets.

In the final section of this report, the relationship between the EU and the Member States is examined. The newly-adopted instrument is welcomed, but thorough scrutiny reveals a number of deficiencies which may detract from its proper functioning. Several of its obligations were made contingent on Member State agreement on a case-by-case basis. Notably and unfortunately, the Council Decision leaves it to the Member States to make an initial assessment of whether agreements actually 'impact' the internal market and EU supply security, and whether they should be notified to the Commission. Furthermore, the obligations of compliance and means of enforcement were not always made clear. Thus, assistance and advice provided by the Commission in the context of international negotiations will not necessarily provide legal certainty or exclude infringement proceedings against a Member State.

In conclusion, the findings comparing the pre- and post-Lisbon era remain mixed. The report finds most progress

as regards strategic thinking on policy objectives and instruments in EU external energy relations. The vertical EU-Member State relationship was slightly more problematic, but the new legally binding Decision is a highly welcome instrument and is sure to develop into a well-functioning structure in the coming years. Most problematic was the horizontal inter-institutional relationship, where it is clear that institutional schisms have been deepened post-Lisbon, which may cause lost potential and resources for the Union. Thus, the report recommends the following:

- Institutionally, at the level of the High Representative, the total absence of energy security issues from her discourse should be resolved. At service level, it is necessary that the regionally organized desks of the European External Action Service be more closely involved in the work of the thematically organized Directorate-General for Energy within the Commission.
- Substantively, a first concrete policy proposal to overcome the present institutional schism is to draft a Joint Communication containing a clear road map whereby short-, medium- and long-term objectives are formulated more specifically for each region, country and strategic partner, and targets and a specific timeframe for their implementation are included. In this fashion the Commission and the EEAS will be able to implement the strategic choices previously made in the Council, and create a culture of intra-EU cooperation in EU external energy policy.
- Vertically, the new Decision setting up an information exchange mechanism on intergovernmental agreements provides a good basis for EU-Member State coordination. However, given that it is formulated in open-ended and optional terms, the danger remains that lack of loyal, and full, cooperation with the new structure will obstruct its objectives. The Commission could force such cooperation through the infringement procedure, but it is highly desirable that matters should not come to that.