



CHATHAM HOUSE

Chatham House, 10 St James's Square, London SW1Y 4LE  
T: +44 (0)20 7957 5700 E: [contact@chathamhouse.org.uk](mailto:contact@chathamhouse.org.uk)  
F: +44 (0)20 7957 5710 [www.chathamhouse.org.uk](http://www.chathamhouse.org.uk)  
Charity Registration Number: 208223

## Seminar Report

# External European Union Governance in Energy and the Environment

Chatham House: Energy, Environment and Development  
Programme / University of Strathclyde

Glada Lahn  
Stephen Padgett  
Sandra Lavenex

16 September 2009

The views expressed in this document are the sole responsibility of the author(s) and do not necessarily reflect the view of Chatham House, its staff, associates or Council. Chatham House is independent and owes no allegiance to any government or to any political body. It does not take institutional positions on policy issues. This document is issued on the understanding that if any extract is used, the author(s)/ speaker(s) and Chatham House should be credited, preferably with the date of the publication or details of the event. Where this document refers to or reports statements made by speakers at an event every effort has been made to provide a fair representation of their views and opinions, but the ultimate responsibility for accuracy lies with this document's author(s). The published text of speeches and presentations may differ from delivery.

## TABLE OF CONTENTS

<b>Introduction</b>	<b>3</b>
<b>Session I: Defining policy problems</b>	<b>4</b>
1.1 Redefining EU Energy Security in a Changing World	4
1.1.1 The new energy paradigm	4
1.1.2 Developing EU energy policy	5
1.2 Environmental Interdependence: regional and global dimensions	6
<b>Session II: Institutionalising external EU governance</b>	<b>8</b>
2.1 The European Neighbourhood Policy	8
2.1.2 The Union for the Mediterranean & the Eastern Partnership	8
2.1.3 Has the ENP been a success?	9
2.2 Modes of External Governance	9
2.2.1 Institutions and tools that the EU can use to expand governance	9
2.2.2 Discussion	10
<b>Session III: External governance in practice: Energy</b>	<b>11</b>
3.1 The EU's Approach to Energy and Climate Security	11
3.1.1 Global Impacts on Energy and Climate Policy Governance	11
3.1.2 The objectives of EU energy governance	11
3.1.3 EU initiatives and achievements	11
3.1.4 The Euro-Mediterranean Energy Partnership	12
3.2 Assessing the Relevance of the Market Governance Paradigm to EU Energy Security	13
3.2.1 Six Reasons for Scepticism	13
3.3 Institutionalising Energy Cooperation: The view from 'the receiving end'	14
3.3.1 Cooperation problems in energy	15
3.3.2 The Energy Community of SE Europe	15
3.3.3 Euro-Mediterranean Energy Partnership (EMEP)	15
3.3.4 Institutional development and implementation	16
3.4 Main observations	16
<b>Session IV: External governance in practice: environment</b>	<b>18</b>
4.1 Interdependence with the neighbourhood in the water sector	18
4.2 Network governance in the water sector	19
4.3 The shadow of hierarchy on network governance	20
4.4 More horizontal structures in marine waters' protection	20
<b>Seminar Conclusions</b>	<b>22</b>
5.1 Problem definition	22
5.2 Policy problems and institutional design	22
5.3 External governance in practice	23

## INTRODUCTION

This paper summarizes the discussions at a seminar on the EU's efforts to institutionalize energy and environmental governance beyond its borders. The seminar, which took place at Chatham House on 16 September 2009, drew on the results of a major ESRC-funded research project by the University of Strathclyde and ongoing research by Chatham House's Energy, Environment & Resource Governance team.

Energy and the environment both involve the European Union in relations of interdependence with non-member states. Enlargement has increased the EU's circle of neighbours and to some extent, its sphere of influence. Increasing reliance on energy imports means that the EU must find ways of increasing coherence in its relations with a diverse set of producer and transit countries such as Russia, Algeria, Egypt, Ukraine and Turkey. The trans-boundary nature of many environmental problems such as water pollution and Co2 emissions is something EU policy makers also need to address.

In response to these concerns, the EU's strategy is to use external governance to encourage a common regulatory area of shared trade, transit and environmental rules. In both sectors, external governance initiatives are designed to transfer the principles of EU *acquis communautaire*<sup>1</sup> to non-member states. But is the EU coherent enough internally to act effectively externally? What can it offer to neighbouring countries in return for their reforms? Will the initiative present problems in third countries where interests and politico-economic contexts differ radically from the EU's? And how are the EU's neighbours responding to these initiatives?

To explore these questions, the seminar began by outlining the institutional and conceptual problems that the EU faces addressing energy and environmental security. It identified the challenges that interdependence with third countries presents to the EU and its institutional capacity for meeting the challenges.

The second session took a practical look at the European Neighbourhood Policy (ENP); its objectives, limitations and how operates in different regional contexts. This was followed by an analysis of the different institutional designs and governance structures available to the EU as it seeks to export its norms to neighbouring countries.

The third and fourth sessions took the form of two separate workshops, one on energy and one on environment. The energy session focused on the EU's evolving energy security objectives, the challenges in trying to meet these through external governance, and the perspectives of the EU's energy partners. The environment session focused on the legal and security applications of EU's water framework directive and the impacts of the German EU and G8 presidencies on the EU's effectiveness in environmental governance beyond its borders.

---

<sup>1</sup> The total body of EU law accumulated thus far.

## SESSION I: DEFINING POLICY PROBLEMS

### 1.1 Redefining EU Energy Security in a Changing World

This session began by comparing the success of the EU's international leadership in climate change and its lack of success in externalising energy security policy. The disparity was explained by:

- Decision making in the two sectors; qualified majority voting (QMV) under Article 134 in climate change; unanimity under Article 100 in energy
- The strength of intellectual and scientific agreement over the need for international cooperation in climate control and the absence of such in energy security
- The density of international agreements in environment policy and climate change but no clear international framework on energy security (no energy security equivalent of the IPPC)

#### 1.1.1 *The new energy paradigm*

The main argument ran as follows: we face storm of changes both from the new energy systems that will be put in place to reduce emissions and the actual effects of climate change. Therefore, energy security has to be redefined. The traditional definition in terms of accessibility, availability, and affordability is no longer adequate:

First, 'accessibility' has acquired a broader meaning to embrace the geo-political dimension of energy.

Second, a new objective of sustainability focuses on the climate change implications of different energy sources.

Third, 'affordability' is now defined in terms of supply; the price signals required to elicit the requisite investment to ensure future security of supply.

Energy policy must be geared towards securing change – securing the transition to a low-carbon economy.

One participant asked whether this new conception of energy security would spur greater state intervention in markets and alter the terms by which the energy market currently operates. For example, it is unlikely the market (in its current state) will create the necessary critical mass for future energy technology in time to mitigate climate change. It was suggested that we don't yet know how to create the right conditions for competition between renewable energies – there is a danger of too much government intervention (picking winners) and the familiar tension between prescribing outcomes (e.g. emissions reductions) and prescribing means to achieve those outcomes (e.g. favouring certain technologies). In view of the likelihood that losers will emerge in the future competition between new energy infrastructures and a legacy of infrastructure that needs to be looked after, it was argued that we need policy that deals with 'life-cycle effects'.

### 1.1.2 Developing EU energy policy

The next part considered the robustness of the EU's current approaches to on energy – in light of the climate change agenda and the implications of gas dependency on Russia. Recent policy initiatives include:

- The third package of legislative measures in the internal energy market
- The first and second rounds of the Strategic Energy Review
- The introduction of QMV on energy in the Lisbon Treaty. The Lisbon Treaty could open the door to allowing the EC to address ES problems but there are crucial limitations because sovereign rights to choose exporters and internal energy structure etc. are left in tact!

The institutional framework of EU energy policy was charged with failing to keep up with these changes in the policy agenda. The Energy Charter Treaty (ECT) was cited as useful for resolving disputes but it not enough. The WTO had great potential but was not used. There was general agreement that on matters of energy security, *national* policy continues to prevail over EU policy.

In developing its energy policy it was recommended that the EU recognize a number of key points:

- The oil sector shows that the institution that matters is *the market* rather than inter-governmental institutions
- More effort should be made to involve exporters in emergency supply arrangements
- Management of the investment / demand cycle requires better quality data on supply and demand. The exchange of supply and demand data is currently constrained by restrictions placed on production and supply data by state owned oil and gas producers
- The asymmetry of market power between producer and consumer countries in favour of the former
- The value of bilateral energy partnerships – to which the EU is wedded – is reduced by the unwillingness of either side to favour their partners over international markets
- The inseparability of energy from foreign policy – exemplified by the close connection between energy relations with Russia and the question of NATO enlargement

It was argued by some that oil was untypical of the energy sectors as a whole. Oil was a fungible commodity in which there was a well developed international market. Gas markets, by contrast, were constrained by infrastructure requirements, and were predominantly regional. For example, the EU had enough gas during the crisis with Ukraine but was incapable of moving surplus gas to the right places. Moreover market development has been constrained by the predominance of state owned gas producers, and their preference for non-market forms of bilateral contracting.

## 1.2 Environmental Interdependence: regional and global dimensions

This session looked at the concepts of vulnerability and security involved in energy and environmental policy and how much the EU could be considered an 'actor' internationally on these issues.

First, it was pointed out that "securitization" of an issue pushes it up the political agenda. The question is who is secured and from what? Environmental security often stresses conflict as a consequence of environmental change - the latter being recognized by Javier Solana as a 'threat multiplier'. More generally climate security in the EU is defined in terms of staying within the 2 degrees Celsius target, avoiding 'dangerous climate change'. It was noted that the EU is relatively well-placed to prioritize climate change mitigation in relation to many other countries.

Three types of environmental vulnerability were identified:

- Transboundary environmental vulnerabilities e.g. pollution
- Consequences of ecological breakdown e.g. desertification, migratory pressure
- Climate instability and turbulence

The ways in which the EU is able to influence beyond its member states were given as:

- The effects the EU has on the governance systems as a single market that demands certain standards
- The pull of immigration
- Global implications of internal policies – the EU's environmental footprint is still massive
- The very existence of the EU triggers expectations that it will exert itself as an international actor
- The opportunities it offers for assistance and collaboration

In terms of external governance, four elements were said to define the EU's 'actorness' (capacity to act, and be perceived as effective, as a single entity) in a given situation:

- Capacity to engage in external governance
- Competence – although lack of this need not be a barrier to action as progress on climate change agenda proves.
- Coherence – e.g. there may be clear contradictions between external governance objectives and internal trade rules and between energy and environment goals and security policies
- Consistency between the community's and member states policies. Trying to persuade 27 member states to agree is a problem.

It was agreed that achieving coherence and consistency in EU environmental policy is easier than with energy policy because the latter is perceived as central to domestic security issues. In contrast to the lack of common energy legislation, environmental legislation has been a major feature of EU policy in the last 20 years. It was generally agreed that this internal cohesiveness gave the EU more clout internationally. It was pointed out that the abdication of the US from environmental leadership has allowed the EU to take the lead on climate change mitigation.

It was noted that the EU has instruments relative to adaptation to climate change which could make it an effective actor in any technology assistance bargain that arises between developed and developing countries. There was a brief discussion about what the low carbon transition (e.g. going completely nuclear/greatly reducing fossil fuel demand) might mean for the EU's relations with the rest of the world. The future price of carbon could also have a major effect on the way EU countries regulate energy and the EU's relations with external markets and countries (e.g. Russia).

## SESSION II: INSTITUTIONALISING EXTERNAL EU GOVERNANCE

### 2.1 The European Neighbourhood Policy

This session began with a discussion of the European Neighbourhood Policy. The policy was said to be a unique hybrid which had emerged from the experience of enlargement and capitalizes on the enhanced the gravitational pull of the EU. Participating countries include Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel and the Occupied Palestinian Territories, Jordan, Lebanon, Libya, Moldova, Morocco, Syria, Tunisia and Ukraine. Russia does not participate in the ENP.

On the policy's *raison d'être* and aims, it established:

- The EU felt that it would never be safe with a ring of unstable, undemocratic countries on its borders. Motivated by enlightened self interest, the ENP seeks to build a ring of friends by using the same approach that the EU used for enlargement
- The aim is to work towards mutually beneficial relations with neighbouring countries by offering alignment in return for *acquis*. It will prepare countries for accession but there is no offer of this on the table. It says to governments "the more you reform, the more we will respond to your ambitions"
- The ENP fosters regional integration. For example, it brings together ex-soviet states to help them solve cross border issues such as those concerned with the environment and energy
- It is also concerned with using its strong normative power to set a global example

ENP Action Plans were explained: these are tailor-made governance reform and sectoral development plans for each country, covering a wide range of actions over 3-5 years. Sub committees for policy dialogue in the neighbouring countries are established to encourage change and monitor developments, discuss progress and results of the Action Plans. It is never a wholesale batch of measures – governments can pick and choose what is necessary for reform and encouraged to be realistic about what they can achieve. The EC assists the financing of reforms but a major problem with lack of absorption capacity was cited.

It was argued that the EU *acquis* that this policy is trying to export was about "more than rules"; it is a way of thinking, of administration, a way of consulting with stakeholders about what is needed to implement rules.

It was noted that governments ally themselves with the EU for different reasons – they may genuinely want to reform in this way or they may simply want to annoy Washington

#### 2.1.2 The Union for the Mediterranean & the Eastern Partnership

The ENP involves three dimensions or sets of 'partnerships': the Northern Dimension<sup>2</sup>, the Union for the Mediterranean (UfM) which replaced the Euro-Med partnership under the French EU Presidency, and the Eastern Partnership which was devised in response to the UfM. Rather than a heavy hierarchical structure, these partnerships were said to be anchored in a bilateral and multilateral exchange of information and exchange of best practice.

---

<sup>2</sup> The Northern Dimension includes Nordic, and Baltic States and Russia.



However, it was pointed out that the Eastern neighbours didn't like this division because they felt they were a) being sidelined instead of being considered for membership and b) being lumped together with the Southern neighbours. In the South the policy rekindled old hesitations about accepting reform proposals from the EU (as representative of former colonial powers). It was argued that politicization of the UfM (due to the Israel-Palestine conflict) had prevented meetings for the last year although there was an effort to restart these.

### *2.1.3 Has the ENP been a success?*

The ENP was credited with bringing in Algeria, Syria, and Libya which had little involvement with former EU initiatives. However, Russia's assertiveness and the rise of radical Islam in the Southern countries have complicated relations. Questions were also raised as to how the EU should conduct relations with autocratic regimes.

Regarding the ENP's relevance to EU energy security, there was some discussion over the efficacy of encouraging liberalization of markets based on nationalized oil and gas sectors and the irony of the EU's own complex energy regulatory structures. A host of political problems were alluded to, including competing interests over Nordstream South Stream and Nabucco.

Regarding how the Eastern Partnership might help solve the gas conflicts between Russia and Ukraine, problems on both sides were cited: "Naftagaz is a black hole in terms of money and where the gas is coming from and going. Gazprom is also provocative." The ENP was said to be working on these problems by helping Ukraine to become a more reliable trading partner.

Going forward, the big challenge for the ENP is to ensure deeper engagement within the limitations of the EU's power, stated one participant. As there is no offer of membership and individual states don't want to compromise on their own interests e.g. protecting the agricultural sector – so there are only so many carrots to offer. EU states support the ENP *in general* but feel differently about the reality of what they might have to give up in practice.

On the power relation created by the ENP, one opinion was that it inevitably amounted to imperialism until partner countries accept and implement all EU rules and have a vote in Brussels. Another responded that there were "islands of hope" for mutual participation in governance – water governance for instance – whereby the EU and third countries are able to use international institutions to resolve issues and improve practices together.

## **2.2 Modes of External Governance**

### *2.2.1 Institutions and tools that the EU can use to expand governance*

Governance is defined as institutionalized forms of coordinated action that aim at the production of collectively binding agreements. The extension of EU governance to neighbouring countries may take the form of a unilateral policy transfer, such as exercised in the preparation of EU enlargement (hierarchical governance) or it may take more participatory forms in policy networks of interaction that build trust and introduce common practices (network governance).

External EU governance is the expansion of the prescriptive scope of EU roles beyond its borders. The EU is best at expanding governance where it can translate political problems into technocratic ones, and where it can deal with technocrats, bureaucrats and market actors. Consequently, network governance works best when issues are depoliticized as far as possible. Its attraction to partner countries is potential for the transfer of expertise, knowledge and finance. The ENP is a form of external governance. It is driven by a sectoral logic, and relations are much less hierarchical than is often assumed. This part of the seminar asked a number of questions:

Through which instruments and mechanisms does the EU promote its *acquis communautaire* in the ENP?

What is the balance between unilateral, hierarchical policy transfer and more horizontal means of coordination with the neighbours?

How do the modes of external governance differ across policy sectors, and why?

Under what conditions do the various modes of external governance work and how effective are they?

And, finally, how far is external governance in the ENP a form of imperialism?

Energy is not a communitarized policy area so it is more governed by the market. This offers the potential of using network governance to influence third country markets.

The EU's environmental policy contains a mix of more communitarized areas and issues addressed by so-called "new modes" or network governance. Established networks, such as those dealing with the implementation of the EU's Water Framework Directive or maritime policies, can be extended to include neighbouring countries.

Extended network governance tends to work when:

- a) interdependence is more symmetric
- b) EU-third countries' relations are institutionalized in horizontal settings
- c) Third countries have the necessary 'governance capacity'.

The next step is to study the ENP's effectiveness. In Moldova and Ukraine, there is quite an impressive level of alignment with the EU on issues but rules are not translating into political practice.

### 2.2.2 Discussion

Two main components of institutionalizing energy governance were identified by one participant, who questioned their reach: 1) externalization of internal energy regulation: is this possible given that energy fits under every aspect of governance (security, economics, foreign policy etc.) so each DG is deciding how to deal with the energy aspect from its own perspective? And 2) The Energy Community Treaty: If this proved successful, it would create the biggest energy community - could it be expanded to third countries?

Acknowledging the heuristic value of the external governance concept for EU neighbourhood relations, another participant asked how far the concept reaches when one moves beyond Europe and its periphery. Could EU relations with China or transatlantic relations still be observed under the heading of "external governance"? One answer to this was that the EU's power differs across sectors, more than it is determined by geographical regions.

## SESSION III: EXTERNAL GOVERNANCE IN PRACTICE: ENERGY

This session interrogated the EU's response to energy insecurity, its policy objectives and strategies for externalizing governance norms.

### 3.1 The EU's Approach to Energy and Climate Security

#### 3.1.1 *Global Impacts on Energy and Climate Policy Governance*

Discussion began by considering the major global shifts that were impacting the EU's energy security:

- The OECD countries no longer dominate energy markets – 2008 marked a turning point in which energy consumption outside the OECD outstripped that inside. Fast growing demand in China, India and the Middle East means increasing competition for energy supplies
- Increasing role of state owned oil and gas companies which may in future have other priorities than supplying western markets
- Untenable dependency on fossil fuel with its environmental consequences. Renewables still have only a minor share in global energy consumption but their share is growing as fast as governments seek to meet EU climate objectives

#### 3.1.2 *The objectives of EU energy governance*

The main objectives of current energy security policy were summarized as:

- Diversification of energy routes
- Diversification of resources, away from energy that contributes to climate change
- Demand control (energy efficiency)
- Secure energy supply and improved interconnections will be crucial to power future growth

It was argued that there needs to be a shift from financing commodities to financing new infrastructure that will decrease our dependence on these unsustainable commodities. It was pointed out that the political capacity to address these issues remains at the national level and this requires enhanced trans-national cooperation through the European Union. Whilst each Member State is responsible for its own energy security, solidarity between responsible Member States must be strengthened.

#### 3.1.3 *EU initiatives and achievements*

Following strategic energy reviews in 2006 and 2008-09, the EU introduced the following measures;

- The Climate and Energy Package sets the objective of reducing greenhouse gas emissions by 20% by 2020, and the EU is committed to increasing the reductions target to 30% if it gets major international support
- A third liberalization package designed to make internal electricity and gas markets work more effectively
- A commitment to strengthening energy solidarity between Member States

The second energy review identified five main areas for follow-up action:

- Infrastructure; to remodel the Trans-European Networks (TENS) programme as an instrument for internal and external energy; to develop the Southern Gas Corridor via the Nabucco project; and to bring European consumers closer to markets in Saudi Arabia, Iraq and the Gulf via the Mediterranean interconnection plan for electricity and natural gas
- Embedding energy in the EU's wider international relations by developing new energy interdependence provisions in agreements with third countries
- Improve oil and gas stocks and crisis response mechanisms by providing greater transparency on available stocks and clarifying emergency procedures
- New initiatives on energy efficiency and renewable energy technologies; an Energy Efficiency package is underway
- Sustainable Energy Financing; an initiative is in preparation (jointly with the European Investment Bank)
- Development and financing of low carbon technologies

#### *3.1.4 The Euro-Mediterranean Energy Partnership*

Recent volatility in energy prices was blamed for creating uncertainty and slowing down the necessary investments in conventional and new green energy. This underlines interdependence between consumers and producers, and the need for global and regional dialogue. The Euro-Mediterranean Energy Partnership was explained as an example of regional cooperation to address these matters

The EMEP was described as having built on challenges shared by EU member states and the countries of the Southern Mediterranean. As such it has been developed to serve the mutual interests of the EU and its partners in energy security and sustainability

Objectives defined in the priority action plan (2008-13) agreed at the last Energy Ministerial Conference in Cyprus 2007 are:

- To pursue the integration of energy markets in the Euro-Mediterranean region through the harmonization of energy markets and legislation
- To promote sustainable development in the energy sector

- To develop initiatives of common interest in infrastructure (development, investment financing and research & development).

The practical tools for cooperation on strategic energy partnerships in the Mediterranean are:

- The European Neighbourhood Policy: Regional ENP projects include energy market integration, assistance to regulators, gas master planning and training, and a Centre of Excellence for renewables and energy efficiency.
- Euromed ministerial meetings and the Energy Forum
- Association Councils
- European Investment Bank; recent loan financing in the region amounts to more than Euros 2 billion targeted at gas end electricity infrastructure

Three developments in Euro-Mediterranean energy cooperation were highlighted:

- The UfM was established during the French EU Presidency in 2008; the Commission underlines the importance of the UfM Secretariat to be functional in order to deliver its promises. This is not yet the case. Likewise, achievements made in the Euromed can be undermined by the UfM
- The Mediterranean Solar Plan aims to generate 20 GW of renewable energy by 2020
- The Desertec initiative aims to mobilize enough solar energy from desert areas to cover 15% of the EU electricity demand in 2050

### 3.2 Assessing the Relevance of the Market Governance Paradigm to EU Energy Security

It was argued that the EU's current approach to energy security is struggling. A critique of the EU's market-based approach followed:

#### 3.2.1 Six Reasons for Scepticism

The EU's organizing principle for managing interdependence is to promote internal market norms beyond its borders and strengthen "market governance networks". The dual approach was said to be applied across the board but organized in different ways in different regional contexts; highly institutionalized in the Energy Community of South East Europe; less so in the Euro-Mediterranean Energy Partnership. Six doubts were raised over the efficacy of this approach in addressing energy security goals:

- The EU does not yet have an integrated, liberalized energy market. The constraints of Community competence set by the Nice Treaty – notably the limited capacity for physical inter-connection between national markets and highly complex regulatory practices – affect the EU's ability to extend a strong

governance model. These constraints are likely to be more severe in external markets. If the EU market isn't integrated enough, it also militates against the EU responding coherently to external shocks

- Energy security comprises two discrete scenarios; oil and natural gas. In contrast to liquid international markets in oil, gas markets remain under-developed and this restricts the potential for effective market governance reforms in the sector. The interplay between market governance and the political approach will be key here
- Some EU member states are ambivalent to market principles in energy, seeing markets in terms of negotiated reciprocity. Disparate member state interests undermine the EU's capacity to speak with one voice in external governance
- EU environment policy is more advanced than energy policy and some parts of it collide with energy security objectives
- How much capacity does EU market governance have for influencing producer states – experience with Iran and West Africa suggests a rather negative conclusion. Countries signed up to the Extractive Industries Transparency Initiative account for just 5% of EU oil and gas consumption
- The key question is whether this model of market governance is capable of being adapted to the energy sector. A previous contributor to this seminar suggested that external governance works best in depoliticised settings where issues can be treated in technocratic terms. A highly politicised policy sector like energy may thus be resistant to it

The latter point was challenged on the basis that closed or semi-closed external markets are not always capable of attracting the private sector funds that are often needed to secure sustainable local and regional energy security. The examples of the Middle East, North Africa and the Caucasus/Central Asia were given, the latter where the predominance of one global buyer was said to undermine the producer country interests.

### 3.3 Institutionalising Energy Cooperation: The view from 'the receiving end'

This section of the discussion addressed the question of how to institutionalise external EU energy relations, focusing on the perception of states on the receiving end of EU external governance. What sort of institutions for cooperation will they consent to? International relations theory suggests that the institutional design of international institutions is informed by the character of the problem that motivates cooperation. Two generic types of cooperation problem were identified:

- Distribution problems; states have *different* interests in cooperation/benefits are unevenly distributed. Tend to generate decentralised/non-binding institutions
- Enforcement problems; states have *common* interests in cooperation but potential for 'cheating' on agreements. These tend to generate centralised institutions enforcing binding rules

### 3.3.1 *Cooperation problems in energy*

It was argued that consumer and producer countries share common interests in predictable interdependence, but have different interests in security of supply and demand. Moreover they have conflicting preferences over how to structure commercial relations: markets and institutions (market governance); or bilateral supply agreements based on non-market forms of contracting. The tension between these two models of cooperation constitutes a classic distribution problem and can be expected to constrain cooperation.

Where the EU and neighbouring consumer countries share common interests in market integration as a route to security of supply, distribution problems were said to be less severe. It was suggested that cooperation will revolve around the problems of harmonising and enforcing market rules, and this type of enforcement problem can be expected to generate more centralised and hierarchical institutions.

Recent research tested these expectations for EU energy cooperation in two geographical and institutional settings; the Energy Community of South East Europe (composed of energy consumer countries) and Euro-Mediterranean Energy Partnership (a mix of consumer and producer countries). The main findings are given below.

### 3.3.2 *The Energy Community of SE Europe*

- The primary interest in the Energy Community was market integration to improve the investment climate and thereby enhance security of supply
- Interests in market making are strongest in electricity. In gas there are sharper conflicts between markets and non-market forms of contracting
- Recognition that market integration requires regulatory harmonization via binding rules and centralized institutions. But countries also want flexibility to accommodate national circumstances – and to give time for difficult political decisions
- Market leaders, such as Romania, express impatience at the slow pace of market development. Laggards, such as Serbia, emphasize flexibility

### 3.3.3 *Euro-Mediterranean Energy Partnership (EMEP)*

The EMEP consists of a more diverse group of producer, transit and consumer countries, and country interests reflect this diversity. To illustrate this, key interests for Egypt and Morocco in the relationship with the EU were noted:

#### Egypt

- As a future gas exporter it has a strong interest in joint pipeline projects – e.g. the Arab gas pipeline – and onward connections to Europe
- Committed to a Mashreq gas market – officials recognize the value of the European market model as an institutional blueprint.
- Potential for *integration* with the EU market is limited by ‘different market dynamics’.

- Sees EU interest in cooperation consequent on downturn in EU-Russia relations. Needs a more stable long-term relationship to promote investment.
- Wants to see a re-balancing of cooperation from EU focus on security of supply to security of demand.
- Strong preference for bilateral energy partnerships over regional cooperation based on lowest common denominator. Very wary of binding rules and centralized institutions.

#### Morocco

- An energy consumer - sees the potential of markets for offsetting its heavy dependence on Algerian gas.
- Strongly supportive of Commission proposals for a Maghreb gas market – vetoed by Algeria.
- Strong interest in access to EU electricity markets to serve as a lure for private sector investment in renewable electricity.
- Supports strengthening Euro-Med energy institutions to give them muscle to formulate a 'rational regional energy strategy'.

#### *3.3.4 Institutional development and implementation*

As predicted by rational design theory, cooperation institutions reflect the interests and preferences of the participants. The Energy Community consists of centralized institutions – resembling those of the EU – with treaty based commitments to the EU energy, environment and competition *acquis*. Direct effect, however, has not yet been established, and in its absence the enforcement of treaty rules depends largely on peer pressure in the Ministerial Council. Although partner countries have enacted a legal framework for energy markets, there is widespread evidence of implementation failure, pointing to the ineffectiveness of this form of 'enforcement by embarrassment.'

The institutional development of the Euro-Mediterranean Energy Partnership is constrained by the preferences of producer countries for bilateral relations and loosely institutionalized dialogue. Multilateral Institutions are highly decentralized with no secretariat to coordinate or steer the cooperation process. The process is based on non-binding political commitments, and there is virtually no implementation monitoring. Nevertheless, there is evidence of voluntary alignment with EU market rules. Both Egypt and Morocco are in the process of passing electricity market laws, and the Egyptian initiative in particular is based on the EU model.

### **3.4 Main observations**

- Country interests in cooperation vary widely and the design of cooperation institutions requires a similarly variable geometry



- In designing cooperation institutions the EU has to recognize the constraints and build on types of cooperation that serve the interests of the partner countries as well as their own
- Cooperation has a functional as well as a regional logic – as a consumer country, Morocco has some affinities with the Energy Community
- Accession doesn't necessarily trump functional logic – accession countries in the Energy Community don't just fall into line with binding forms of market governance based on the *acquis* - they want a degree of flexibility to pursue their own interests
- Conversely, non-accession Euro-Med countries are open to the EU model of market governance when it serves their interests

## SESSION IV: EXTERNAL GOVERNANCE IN PRACTICE: ENVIRONMENT

This session focused on selected instances of EU external environmental governance addressing questions of interdependence in this field. Its focus was on the scope for participatory forms of network governance<sup>3</sup>, with particular attention paid to transnational water management.

### 4.1 Interdependence with the neighbourhood in the water sector

This discussion began by considering the emergence of new forms of *horizontal, networked* coordination in EU environmental policy, the water sector in particular.

- With eastern enlargement, the EU has become a riparian to the Black Sea, and interdependent with neighbouring countries in the protection of shared rivers such as e.g. the Danube River
- These new patterns of interdependence as well as the EU's self-image as a international 'environmental leader' have prompted early cooperation with the Eastern neighbours
- The adoption of new legislation in the EU - in particular the Water Framework Directive of 2000 and the Marine Strategy Framework Directive of 2008 - has been a further motor in the gradual inclusion of neighbouring states. This new legislation promotes network governance and the principle of "functional areas", according to which water protection policies shall be organized on the basis of geographical and environmental criteria. Member States within a river's drainage basin or marine region are required to develop strategies to achieve "good environmental status" for their waters in cooperation with the other countries sharing that water, including non-member states.
- The adoption of new legislation in the EU, and in particular the Water Framework Directive of 2000 and the Marine Strategy Framework Directive of 2008 has been a further motor in the gradual inclusion of neighbouring states. This new legislation promotes network governance and the principle of "functional areas", according to which water protection policies shall be organised on the basis of geographical and environmental criteria. Accordingly. Member State within a river's drainage basin or marine region are required to develop strategies to achieve "good environmental status" for their waters in cooperation with the other countries in the region, also non-member states.
- EU external governance in this case is often linked with pre-existing regional treaties and organizations. Regional conventions such as the Danube River Convention or the Bucharest Convention for the protection of the Black Sea play a role in EU external water governance, since both the Water Framework Directive and the Marine Strategy Framework Directive require that, in developing their water protection strategies, Member States use appropriate existing regional cooperation structures to co-ordinate among themselves and with third countries in the same region

---

<sup>3</sup> See pp. 13-14 for explanations of different types of governance.

In sum, it was said that the advent of the ENP consolidated existing frameworks of cooperation, but did not provide a major impetus for establishing cooperation in the first place. The Action Plans concluded with the ENP countries are similar in that they emphasize the promotion of good environmental governance including the establishment of adequate administrative structures, coordination between relevant actors, involvement of local authorities as well as of civil society, and access to information.

In addition to exchanging know-how and experience on environmental governance, the Action Plans with Morocco and Tunisia call for the ratification of the amendments to the Barcelona Convention and its protocols. All ENP Action Plans present opportunities for participation in certain activities of the European Environment Agency. The ENP has also introduced new instruments of bilateral administrative interchange with EU Member States, TAIEX<sup>4</sup> and Twinning.<sup>5</sup>

## 4.2 Network governance in the water sector

In line with the above observations, it was said that rather than following new foreign policy initiatives, such as the ENP, EU external environmental governance is very much driven by internal dynamics. The model of network governance applied in the water sector with the ENP countries is an emulation of earlier experiences in Western Europe, especially with the Rhine Commission.

- Network governance is made possible through the mobilization of previously existing intergovernmental organizations in the sector, whereby the EU and the Commission increasingly take the lead in these processes
- In the case of the Danube River, the relevant network is the International Commission for the Protection of the Danube River (ICPDR). Shortly after the Danube Convention came into force, the ICPDR took a lead role, pushed by the EU Member States and candidate countries, to include implementation of EU legislation – namely the Water Framework Directive – as the main goal for Danube-wide river basin management. One year after the adoption of the Directive, all countries cooperating under the Danube River Protection Convention had committed themselves to it and the implementation of the Directive became the highest priority.
- The implementation of the Water Framework Directive must be understood as a joint process of policy coordination geared at promoting mutual learning and flexible arrangements. The first step in this process was completed in 2004 by finalising the ‘Danube River Basin Analysis’, or Roof Report - the first comprehensive study of the basin’s trans-boundary surface and ground waters. The Roof Report helped identify the main water management issues in the Danube Basin District. Since non-EU Member States cannot be bound to implement the Directive, the Roof Report is not legally binding. The next step in the implementation process is the development of a “joint programme of measures” as part of a “Danube River Basin Management Plan” to ensure that all Danube waters meet “good ecological status” by 2015.

---

<sup>4</sup> The Technical Assistance and Information Exchange instrument managed by the Directorate-General Enlargement of the European Commission.

<sup>5</sup> An institution-to-institution partnership between an EU Member State administration and a non-Member counterpart administration sharing the same water basin to help enable the latter to meet EU environmental standards.

Thus, it was conceded that cooperation in water protection with neighbouring countries is a co-owned process of participatory governance. However, these processes cannot be fully detached from the more communitarized parts of the EU environmental *acquis*, and certain structures of internal EU coordination have emerged that circumscribe the degree to which neighbouring countries can really act as equal partners.

#### 4.3 The shadow of hierarchy on network governance

- Whereas the Water Framework Directive itself is a process-oriented piece of legislation that neither prescribes concrete targets nor benchmarks or indicators, it is legally binding. Once the concrete criteria for making the Directive's requirements operational have been developed in the respective implementation networks, at least those which are subsequently also adopted via the comitology procedure will be legally binding. In addition, various more specific EC directives which are relevant for implementing the Water Framework Directive, such as the Nitrates Directive and the Urban Wastewater Treatment Directive, also contain many legally binding requirements. The EU member and candidate states are bound to implement these directives, sometimes with long transition periods given the high costs involved. Other Danube countries follow a more gradual approach, using the EU *acquis* as a template. Clearly, the idea is that although transposition of EC law is no immediate option, non-EU countries may nevertheless learn from the experience and "best practice" of the participating EU members and candidates
- In sum, overlapping memberships allow exerting external influence not only on third countries but also on international conventions, even if the EU itself is not a member, such as the Bucharest Convention. Another source of EU influence is the coordinating structures that have developed within the EU for the implementation of the Water Framework Directive, which so-far exclude the ENP countries.
- The role of regional implementation networks such as the ICPDR is influenced by an EU forum controlled by the EU Member States; the Conference of the Member States' Water Directors. With the development of the Common Implementation Strategy for the Water Framework Directive, this forum has developed a lead function that reduces the scope of discretion in the interpretation and specification of the provisions, and thus third countries' co-ownership.

#### 4.4 More horizontal structures in marine waters' protection

As mentioned, the new Marine Strategy Framework Directive (MSFD) adopts the principles of the Water Framework Directive. However, in our discussions it became clear that its implementation is not likely to replicate some of the latter's hierarchical features. This is partly due to the existence of a larger variety of more assertive regional organizations involved in the MSFD's implementation and their reluctance towards stronger EU influence. These include the Arctic Council – not a convention – the Barcelona Convention, the Black Sea Convention, the Helsinki Convention (HELCOM), the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR). Although some of these regional frameworks involve only EU Member States, such as OSPAR, they are keen to limit the scope of EU influence on their workings. Here are the main observations from the subsequent discussion:

- The EU has taken up a leadership role in the environmental policy of Eastern neighbours and seeks to promote its own *acquis communautaire*

- The emergence of new modes of network governance in EU environmental policy offer opportunities for horizontal, co-owned structures of joint policy making
- The horizontal partnership-qualities of environmental policy networks in one field of cooperation, in our case joint river management, is circumscribed by the relevance of other, more hierarchical parts of the EU environmental *acquis*, as well as by internal coordinating structures excluding the participation of non-member states
- The participatory qualities of water governance networks are dependent on third countries developing the expertise to enable an influential role in these joint processes
- The EU seeks to link its external governance with overarching international agreements in the field to which third countries are member as well as with regional organizations dealing with the implementation of these agreements
- Where these regional organizations are strong, or led by powerful and euro-sceptic states, they will try to limit increasing EU influence over their workings.

## 5 SEMINAR CONCLUSIONS

### 5.1 Problem definition

It was agreed that the two policy sectors of Energy and Environment in the EU display strikingly different characteristics and therefore possibilities for external governance. Environment policy is underpinned by a strong intellectual and scientific consensus about the desirability of ecologically sound policies. Interdependence tends to be rather symmetric and there is a general interest in efficient policies that sustains EU leadership in this area. By contrast, whilst there is an emerging consensus around the objectives of a new energy paradigm – security of supply, sustainability (including progressively lower carbon emissions) and competitiveness – there is no agreement amongst EU members about a policy framework within which to realize them. Arguably, some of these objectives could spawn contradictory strategies. Three particular points of disagreement stand out:

- The role of markets versus intergovernmental cooperation in realising energy objectives
- The role of institutions in regulating energy markets
- The institutional design of intergovernmental cooperation – bilateral or multilateral / binding or flexible

Inconsistency between Member States on these issues constrains the expansion of Community competence, and undermines coherence in external EU energy policy.

### 5.2 Policy problems and institutional design

External governance – defined in terms of expanding the EU *acquis* externally – was generally agreed to work most effectively in policy areas that can be de-politicized and translated into technocratic terms. Whilst environment is very susceptible to technocratic treatment, energy is inherently political. The ‘cooperation problem’ revolves around asymmetrical resource dependencies between countries with energy resources and EU consumer countries. Put simply, countries with energy resources are resistant to the predominant EU model of market governance because they perceive it as operating to their comparative disadvantage.

Different energy sectors have their own specific attributes which raise different kinds of cooperation problem.

- Oil is a relatively fungible commodity in which there is a liquid international market
- Gas is increasing in importance as the cleanest form of hydrocarbons, but markets are constrained by infrastructure requirements and non-market, bilateral supply agreements predominate
- Electricity generation is more mobile and regional transmission systems can be adapted to serve competitive markets

The different attributes of the energy sectors preclude a 'one size fits all' approach to external energy governance.

### 5.3 External governance in practice

The performance of different models of external cooperation had been shown to vary widely between sectors and regional contexts;

- External governance based directly on the EU *acquis* operates very effectively in performing specific functional tasks like marine environment management
- A more diffuse form of external governance has been successful in climate control, where the EU has played a leadership role through the dissemination of its norms to third countries and in multi-lateral international agreements
- The Energy Community of SE Europe shows that external governance via the energy *acquis* can be effective where it builds on the shared interests of consumer countries in market reform
- In electricity, Mediterranean countries have an interest in regional market-making, and it may therefore be possible to extend the Energy Community model to the region
- Gas producers in the wider Europe are resistant to internal market rules and institutions – external governance based on the EU *acquis* has limited potential
- Internal market rules may actually prejudice the EU's external interests by forcing European gas companies to compete with each other for supply agreements with producer countries. An alternative way forward for EU security of supply policy might be demand aggregation - encouraging European gas companies to cooperate in purchasing agreements with third countries

-ENDS-