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policy-maker**

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beyond state-centric  
integration theory

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**The Commission as Policy-Maker:  
The Need to Venture Beyond State-  
Centric Integration Theory**

by

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**Abstract:**

**THE COMMISSION AS POLICY-MAKER: THE NEED TO VENTURE BEYOND STATE-CENTRIC INTEGRATION THEORY**

This article criticizes Andrew Moravcsik's model of two-level states-EU interaction on three counts: it neglects EU actors, assumes the primacy of state actors, and further assumes that interests are formed prior to policy interaction at the EU-level. Empirical evidence of especially the Commission's role in the post-85 period is examined to show the independent actor role of the former. This forms the basis for the subsequent theoretical discussion of the role of non-state actors. The author argues the need for a multi-level model of integration and for a decomposition of the policy-process into the agenda-setting and the negotiation phases. She calls for a processual rather than actor-specific starting point since empirical events have obliterated the assumption of a domestic-international divide and thereby also of the primacy of the state as actor.

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"Institutions do matter..but institutions do not matter too much"

Guy Peters, (1992:121)

**THE COMMISSION AS POLICY-MAKER: THE NEED TO VENTURE BEYOND STATE-CENTRIC INTEGRATION THEORY<sup>1</sup>**

**Introduction: EU Policy Formulation and Impact**

With great upheavals in the political landscape of Europe in the late 80s, 'opportunity knocked' at the door of the EU. Bipolarity was gone, and international competition induced states to leave the EU with the important task of creating a so-called internal market in Europe. These events coincided in time; thus both political and economic changes of great magnitude have taken place since the mid-1980s. In both these processes the EU has come to play a major role.

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<sup>1</sup>An earlier version of this paper was presented at a conference at Utrikespolitiska Institutet (the Swedish Institute of International Affairs) in December 1994. I benefitted from comments from Walter Carlsnæs, Ben Soetendorp, Gunnar Sjøstedt, Ulrika Marth, Lisa van Well, Magnus Ekengren, Esko Antola and Bengt Sundelius. At CICERO Lasse Ringius and Sjur Kasa provided critical comments for which I hereby thank them.

There are essentially two explanations of why the EU has attained an important role of international actor in the post-85 period. The first perspective is state-centered and springs from the philosophical heritage of neo-realism in international relations, which sees states as the major actors and international organisations (IOs) primarily as mediators of state interests and as arenas of cooperation. These arenas are created by the states in order to facilitate cooperation and to reduce 'transaction costs'. Moravcsik, an eminent exponent of this view, argues that "EU institutions appear to be explicable as the result of conscious calculations by member states to strike a balance between greater efficiency and domestic influence" (Moravcsik, 1993:507). He thus views EU institutions as basically passive (Ibid., 508), and regards both the Commission as well as the Court as 'neutral' agents. They provide decision-making systems as well as an agenda that is 'technical'. The Commission is regarded as a facilitator and source of 'neutral' proposals: "As a reliable source of independent proposals, the Commission ensures that technical information necessary for decision is available (Ibid.,511). He however admits that "the ability to select among viable proposals grants the Commission considerable formal agenda-setting power, at least in theory" (Ibid.,512). On this view, in the post-85 period the states needed an arena like the EU and therefore fostered EU-level policy-making.

The second perspective starts at the other end: it sees the building of international organisations (IOs) and regimes as problem-driven, and points to major changes in the external environment as the reason why the EU has attained an important role. Here the primacy of the state as political actor is not assumed; indeed, states' roles may well erode in importance when problems become more international, often global, and thus demand international 'problem-solving capacity'. In this post-modern<sup>2</sup> view, the state is seen as gradually losing its traditional role in response to a changing environment where there is demand for international governance. This perspective is much less specific than the first, and draws on approaches such as multilateralism, the 'new institutionalism', and variants of regime theory.

The thesis that agenda-setting is problem-driven is of course perfectly consistent with the thesis that states form and control the EU as an arena that aids them in 'reducing transaction costs'. The fact that the international and European agenda have provided the impetus for EU activism is commonsensical. What we are interested in is rather whether this impetus has enhanced EU actor roles at the expense of states' roles, sometimes in opposition to states' explicit interests.

How do we theorise about EU actor roles? Under which conditions are EU actors - in this essay

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<sup>2</sup> The expression 'post-modern' here only means that the state system, often termed the major distinguishing feature of modernity, is not the point of departure. Other forms of political organisation and actors may be just as important, something which is however always an empirical question.

the Commission - able to enhance their role? Do they indeed play independent roles, or are they intervening rather than independent variables? The need for careful empirical delineation of the role of EU actors in various issue areas must be the point of departure for such a theoretical discussion. First, we need to know something about the importance of external events, EU responses and the role of the member states. In this context the link between the external 'opportunity' and the EU 'response' is central to the argument that EU actors may enhance their roles. We need to show that the EU - first and foremost the Commission - seized opportunities and translated them into new or extended policy agendas in a given issue area. Then we need to substantiate the claim that it was the external opportunity that accounted for the major change in agenda and role; and third, we need to show that the enhanced role of the IO, here the Commission, cannot be accounted for by the action of states alone. In other words, we will attempt to make plausible the proposition that the enhanced role of the Commission in a given issue area primarily is due to a changed international political context with implications for the issue area in question, and not to the impetus from the states. By doing this we hope to contribute to liberating theory-development about the EU from the common starting-point of assuming that states matter most all the time. We do not dispute the fact that they do in very many ways, but nonetheless the Commission (and by implication, other IOs), may come to play an independent role in specific issue areas and under specific conditions.

The theoretical need to take account of the role of EU actors is further underscored by recent empirical findings about the role that the European Court of Justice (ECJ) plays. Both Rasmussen (Rasmussen, 1986), Joergesl (Joergesl, 1992) and Burley and Mattli (Burley and Mattli, 1993) find that the ECJ has increased its institutional powers systematically over a number of years.

Moravcsik argues that in general, EU actors are intervening variables (Moravcsik, 1993). Sometimes the Commission and/or the ECJ may play an independent role, but this is the exception to the rule, and is therefore not of theoretical interest. Since he aims at arriving at a general, explanatory theory of why states cooperate in the EU, he argues that the fact that EU actors are important from time to time is of little theoretical relevance.

In the evaluation of what is theoretically interesting it is essential to know what the theoretical aspirations are. While we do not share Moravcsik's belief in the possibility of a general theory<sup>3</sup>

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<sup>3</sup> There are two reasons for this: first, the belief in general 'laws' in political life is not shared by this author for philosophy-of-science reasons: politics is not always made 'rationally' according to a calculus of cost and benefit, but is rather evolving through participants' interpretation of a variety of factors. Historical setting and culture as well as learning probably mean more than we like to think when we specify expected actor interests and strategies. Second, in the case of the EU, there is even less reason to expect this IO to be fertile ground for general theories of states-IO interaction since the EU is quite unique in its mix of formal autonomous powers and lack of competence in many issue areas. If one reduces the EU to an

of states-EU interaction, we have the ambition to arrive at general insights into which role EU actors play and under which conditions they play independent roles. Further, since most 'mainstream' theory in international relations (IR) assumes that states are the major actors, it is theoretically interesting if one finds that there are systematic empirical 'exceptions' to this. Finding that the state is the primary actor vis-a-vis the EU is not surprising; what we need to focus attention on is the conditions for EU actor ascendance and importance. So far we have at hand various empirical studies about EU actors, but their role is still little theorised about.

Summing up, much of what one can say about the general states-EU relationship is rather commonsensical: clearly the member states matter most in most policy areas, as the institutions of the Council of Ministers and the European Council testify too. In many areas of policy the majority procedure does not apply, and after the protests occasioned by the ratification process of the Treaty on Political Union (TPU) the Commission has been wary of being charged with interventionism and activism. However, there are periods when EU actors are able to activate themselves: the post-85 period is one such period. A number of factors contribute to this: the internal market mandate, the majority procedure for internal market legislation, the ability of the ECJ to rule on the competition legislation after the Commission applies it, and more fundamentally, the external events that contribute to general state legitimacy for EU-level action.

Moravcsik argues that the states remain in control of the EU despite the occasional independent impact of EU actors like the Commission or the ECJ. Our argument in the following is that EU actors seek to increase their roles in general, and that they are able to do so when the states accord them general legitimacy, as happened with the internal market. External events provide the occasion for an enhanced role for EU actors. There are several variables that are important here, to be discussed later. The general, theoretical point is that international, non-state actors, matter under certain conditions. This is especially pronounced in the EU, with its mix of formal, autonomous powers that vary with issue areas and its dependence on state support for being a high-profile actor on the international scene. Our theoretical aspiration is thus to start to investigate the conditions under which EU actors matter and to find out how they typically act to achieve an enhanced role; how the member states constrain them, while they in turn constrain the member states. While we agree with Moravcsik's point that states use the EU to improve their standing and to achieve otherwise hard-fought outcomes at the domestic level (Moravcsik, 1994),

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intergovernmental organisation one misses this main point. The uniqueness of the EU can thus be argued to be a major reason why it is an unsuited case for general theorising about states-IO interaction even if one believes in such theories in the first place. This does not preclude the possibility of reaching general insights into how the interaction between states and EU actors typically occurs. There are clearly general patterns of political action, and thus a need for systematic empirical and theoretical work.

they are not unconstrained by EU actors. Likewise, EU actors are constrained by states.

The issue area to be used as a case here is energy policy. This is an area where the EU has little formal competence and where member states have played the key role in all aspects of policy-making until the passing of the Single European Act (SEA) in 1986. Although the European Coal and Steel Community (ECSC) and the Euratom treaties both concern energy, they never became the basis for a supranational role for the Commission. In the entire period until the SEA, energy was rather dormant as a policy field in the EU. The competition legislation of course existed, but it was never applied to the energy sector which continued to be dominated by national monopolies and public service thinking. After the SEA and the decision in 1988 to attempt to create an internal market (IEM) also in energy, qualified majority voting (QMV) was used in controversial cases in energy when it had proved impossible to reach a negotiated solution.

The Commission actively utilised the general internal market mandate and tried to create its long-term aim, viz. a common energy policy (CEP) which entailed a major role for itself. A common energy policy deals with the same kinds of issues that the nation-state traditionally dealt with: security of supply, balanced import and production between various energy types, environmental criteria for energy policy, representation vis-a-vis other states and fora in the energy field, etc.

There is no formal competence for such a policy in the acquis, but nonetheless the Commission has managed to construct a comprehensive policy in this area in the span of only some few years. It has argued the need for a formal competence for a CEP in the TPU negotiations and presented a chapter proposal which provided such a competence, but this chapter was vetoed by some member states. However, a new proposal will be presented before the 1996 intergovernmental conference (IGC), and in January 1995 the Commission presented a so-called Green Paper on the subject. Thus, despite the failure to achieve a formal competence for energy policy beyond that of the internal energy market, the Commission has in fact constructed such a policy in the period between about 1990 and 1994.

How has this come about? It is my contention that it is external events that have made this possible along with the general internal market mandate which the Commission used as the basis for defining the internal energy market in a broad manner, comprising elements that together form a common energy policy. The Gulf War prompted a Commission proposal for an oil sharing mechanism, Commission membership in the International Energy Agency (IEA) and a general security of supply policy; the opening up of Central Europe prompted the Commission's policy

initiatives in energy and environmental issues towards the region, and the saliency of environmental policy in general made it possible for the Commission to intensify the work towards integrating environmental criteria into energy policy. It moved beyond the internal market ideas of deregulation towards a common energy policy where political decisions in the environmental field have direct implications for energy questions. The lack of a formal competence for energy policy could thus be circumvented by using the strong formal competence in environmental policy that the TPU provided.<sup>4</sup>

Below we briefly trace the link between external opportunity and Commission policy response in these areas of energy policy - supply security, policy towards Central Europe, and energy-environmental policy. We seek to show that the Commission's initiatives were responses to external events rather than induced by the member states, as is the case with the internal energy market proposals, which are all 'deduced' from the mandate of the internal market and thus legitimated by the general competence for the latter. In the cases that concern a common energy policy, there is however no such competence. Further, there was resistance from the states against the creation of a CEP: the only states that favour this are Italy and Belgium. All the other states are wary of Commission attempts at carving out such a role for itself, something which is reflected in the resistance against formalising such a competence in the TPU.

The work order is as follows: First we look at relevant empirical work on the role of EU actors, especially the Commission and the ECJ, in the post-85 period, in order to exemplify how the Commission worked together with the ECJ in using the legal instruments of the treaties in an increasing number of issue areas. Further, the development of a CEP in the EU is discussed where the Commission is shown to have used external opportunity to create a new policy agenda without the formal competence for so doing. The states are shown to be largely opposed to this development.

The second part of this essay is theoretical. Here we evaluate the empirical findings from the case in terms of the two perspectives on international politics outlined above - the state-centered neo-realist approach and the institutionalist approach. There is no disagreement in the literature on the fact that the Commission plays an activist role or tries to enhance its role. The disagreement exists over what importance to allot to this role, both in substantive terms, i.e. how important is the agenda setting of the Commission for policy outcomes; and in theoretical terms, i.e. how can we study the relative impact of states vs. non-state actors like the EU? Much of the

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<sup>4</sup> The TPU changes the procedure for making decisions in environmental policy from unanimity to qualified majority voting (QMV) as the main rule. It also increases EU competence in the environmental area substantially.



problem here lies the initial assumptions we make about the primacy of the state as actor, as we subsequently shall argue.

### **Part One: Empirical Evidence**<sup>5</sup>

#### **Utilising the Internal Market Mandate: Empirical Evidence on the Commission's Role in the Recent Literature**

What do we know about the empirical role that the Commission plays in various issue-areas in the post 85-period? To date there is little theoretical work that has been done on the Commission's role in the present period, but there are some recent empirical studies that yield the following conclusions about the Commission's role:

The Commission has consistently utilised the internal market mandate in sectors where the competition legislation has been dormant or never applied. It has applied it strategically, starting with the 'easiest' sectors like telecommunications and transport, and in turn moved to notoriously 'difficult' sectors with heavy monopoly practise, like energy. The interventionism by the Commission has been supported by the rulings of the ECJ, but the Commission has first tried to go the 'political way', i.e. via a directive, to achieve its goals. When this has proved impossible it has turned to direct intervention, using its legal competence, something which naturally is much more controversial. Further, the Commission has used its powers of initiative to define internal market policies very broadly, so as to create an agenda with an enhanced role for itself.

Sandholz has completed the major study of European telecommunications in the post-85 period (Sandholz, 1992 and 1993). Showing that the Commission played the leading role in creating an internal telecommunications market, he found that it initiated a tough deregulatory approach against the interests of the states in basing a controversial directive in 1988 on paragraph 90, which does not require Council approval. This directive, creating an open market in terminals and services, was based on paragraph 86, arguing that monopolies in the sector abused their dominant position. It was feared that in using paragraph 100a, the directive would be delayed by approx. two years and watered down considerably in the Council negotiations. Every member state agreed with the policy objective of the directive, but they strongly disagreed about the use of paragraph 90 which would "set a precedent for Community activism" (Ibid. 1993:263). Nonetheless DGIV proceeded, and issued the directive. France filed a case with the ECJ immediately, challenging the Commission's use of paragraph 90. Germany, Italy, and Belgium

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<sup>5</sup>This section draws substantially on the author's book Energy Policy in the European Union (1996) to be published by Macmillan Press. The relevant parts of the section are reproduced here by permission of the publishers.

supported the French case in the Court. But the Court ruled in favour of the Commission's use of paragraph 90. Without a strong support on the part of the member states for creating an internal market in telecommunications, the Commission would hardly have dared to use paragraph 90.

Also in the electricity sector the Commission clearly intensified the application of the competition legislation in the post-85 period. McGowan has studied the Commission's role in the deregulation of the electricity market and concluded that "It was only in the mid-1980s that the Commission demonstrated both the willingness and the competence to challenge the national utilities which had previously been effectively protected from Community purview by member states. The new developments occurred in the context of...the internal energy market. The Commission launched this initiative on the back of the revival of its authority following the SEA...and the Commission's increased readiness to apply competition law. This increased activism of antitrust affected public enterprises and public utilities in particular. In cases concerning the telecommunications and transport industries, the Commission effectively established precedents for action in the energy industry" (McGowan, 1993:44).

There was thus a strategic use of 'spill-over' here: since the Commission has no competence in energy policy, it first used the competition legislation in obvious areas where it applied, like transportation and telecommunications, in order to set a precedent for defining energy policy - especially in terms of gas and electricity - as essentially being about deregulation of regulated markets.

Further, in the telecommunications sector, the Commission created a new policy to which the states responded. Sandholz shows that all policy ideas and proposals consistently emanated from the Commission itself, and that even those states that had a national deregulatory policy in the sector, like the UK, were rather passive in the policy process. There was in most instances no national policy in the issue area before the Commission proposed policy. This has the important methodological implication that we cannot at the outset assume that state interests are formulated prior to the policy-making process itself. In telecommunications, "the Commission played the leading role in promoting collective action. It launched the RACE program (R and D in Advanced Communications Technology in Europe), initiated preparations for a European-wide next-generation infrastructure, pushed for open markets in equipment and services, and led the way in the creation of new institutional arrangements in the joint management of standardization and planning" (Sandholz, 1993:242). He found that the Commission's proposals led to 'the redefinition of national interests'(Ibid., 244).

Sandholz's findings concur with my own. In energy policy, an issue area which, like telecommunications had been characterized by state monopolies, it was the Commission and not the member states that formulated policy. There were no policy ideas on e.g. the internal energy market that came from the states, and in the case of the UK, which had already deregulated its energy sector, there was only reactive, not proactive policy behaviour (Matlary, 1996).

However, granted that the Commission sets the agenda, is there any evidence of opposing interests between the states and the Commission in which the Commission's view prevailed? In the above case of the terminals directive, states opposed the use of paragraph 90, but the Commission won the case in the ECJ. This was a clear case of opposing interests between the states and EU actors, here the ECJ. In a study of energy policy<sup>6</sup> we also found that there were cases of clear opposition between state and Commission views where the Commission's view prevailed - helped by the QMV procedure of the SEA. In a highly controversial directive of open access for gas transmitters the opposition from Germany was attempted accommodated by continuous negotiations over a two year period. In the end the directive was voted on in the Council of Energy Ministers, and adopted against the votes of Germany and the Netherlands. In the case of a conflict over coal subsidies under the Jahrhundertvertrag the Commission's demands for reductions led to the coal companies and the employer's organizations taking the Commission to the ECJ. The outcome of the case is still pending, but this shows that the Commission does use its powers of intervention against the member states.

Further, there is evidence that the Commission builds coalitions with interest groups and regional organisations: Already in 1963 Lindberg found that the DG for Agriculture developed regional and national ties (Lindberg, 1963:71) and that this resulted in a very close-knit network. Wessels finds that "Die Kommission..legt Ihre Zuständigkeiten expansiv aus und treten mit einzelnen nationalen Regierungen und Verwaltungen in Koalitionen, um andere Akteure zu einer Ausweitung der Aufgabenwahrnehmung der EG zu bewegen" (Wessels, 1992:49). Also Schmitter argues that this is a typical political strategy on the part of the Commission (Schmitter, 1992). Peters points out that the Commission is conscious of the need to build coalitions with affected parties (Peters, 1992:89)

An recent study of the Commission's role in coalition-building is Marks's study of structural policy (Marks, 1992). In connection with the TPU negotiations the Council doubled the structural funds and reformed their administration, giving the Commission and the regions themselves a

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<sup>6</sup> Matlary, J.H. Energy Policy in the European Union, (1996), Macmillan: London,, is based on an empirical investigation of the role of states and EU actors in energy policy in the period 1985-1992.

much larger say in their allocation. This signals a possibility on the part of the Commission to 'outflank' the state: Marks finds that "despite the entrenched position of national governments within the EC, the development of structural policy at the Community level has given subnational governments a new arena for pressing their demands (Ibid.,218). This is a strategy of coalition-building that fits both the Commission and the regions. Here the Commission is instrumental in building regional networks of policy-makers that look to the EU as the center. This is yet another example of a political action that does not fit the traditional question that we pose when we want to determine whether the Commission has had an independent impact: did it prevail over state interest? This question makes no sense in this context.

### **The Construction of the Common Energy Policy (CEP): The Gulf War, Central Europe and the Environment as "Windows of Opportunity"**

The exclusive ability on the part of the Commission both in defining policy and in forging linkages between policy-areas - formal and informal - allows it to design policy such that its own institutional role is enhanced. An example of such would be the linking of energy and environmental policy whereby the Commission becomes implicitly mandated to develop policy in areas dealing with e.g. how to encourage environmentally friendly energy types. This is a very different type of policy issue than those that are within the internal energy market (IEM) concept. Likewise, an example of formal integration in energy policy is when the Commission is accorded a role in developing the energy infrastructure of the EU region and also beyond, as part of the general competence on networks defined in the TPU.<sup>7</sup>

By the end of 1994 a 'status report' on EU integration in energy policy would include the following 'competences'<sup>8</sup>: The formal competence of the Commission would include the responsibility to develop infrastructure for the EU region, especially in the less developed nations, but also beyond the EU region into Central Europe and across the Mediterranean; the granting of aid to the general development of the energy sectors in this region; the restructuring of aid to coal production in line with general EU state aid policy and the ECSC rules; the merging of energy and environmental policy as mandated in the Maastricht Treaty; the intervention in national energy sectors to prevent monopoly practise and the continued existence of energy

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<sup>7</sup> The TPU has a chapter on Trans-European Networks (art.129B) where the Commission is charged with "contributing to the establishment and development of trans-European networks in the areas of transport, telecommunications and energy infrastructure".

<sup>8</sup> An EU 'competence' refers to the extent to which the EU takes formal decisions in the policy area, and is stipulated in a treaty or through a ECJ ruling. However, there is a 'grey area' of competences between states and the EU: The Commission tries to extend its competences, while the states try to limit EU competence when it fits their interests.

monopolies, based on the common competition policy; and acting independently as an observer to the IEA and in the United Nations' Conference on Environment and Development (UNCED); to mention the most important items. Informal policy-making roles include the setting up and administering of controls over open access to the transmission for gas and electricity as well as deciding on tariffs for such transportation; the role of implementing, managing, and controlling the adherence to the rules of the European Energy Charter (to be discussed below), and through this combined with other EU policy instruments to become the major actor in the restructuring of Central Europe and the CIS.

Below we look at how the CEP initiatives were responses to external events. The internal market mandate secured the Commission a possibility of defining policy within the internal energy market in a very broad manner, but it could not provide a basis for a CEP. However, external events could be the basis for extending the IEM agenda towards a CEP:

#### The Gulf War:

The then commissioner for energy, Cardoso e Cunha, used this opportunity very explicitly to call for a common EU security-of-supply policy. Part of this would be the construction of an oil sharing mechanism for 90 days akin to the set-up of the IEA<sup>9</sup>. Further, the Commission ought to be a member of the IEA as an international actor, he argued. These proposals were met by resistance on the part of some major member states, but in the Commission got its way with some modifications: First, it managed to get agreement on a 60-day oil sharing mechanism: second, it became an observer to the IEA, and finally it went ahead with the development of a full-fledged security-of-supply policy which has by now become a major feature of the CEP, and which is met with much interest because of the uncertain status of future energy supplies from Russia, on which the EU depends.

The Gulf War reminded European states of their energy import vulnerability for oil which was a major political theme during the two oil crises of 1973 and 1989. Oil import dependence and security of supply in a comprehensive sense had been central to the EU also earlier, each time when external events focussed political attention on them.

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<sup>9</sup> The IEA was created as a response to the first OPEC oil crisis in February 1974. The idea behind it was to have an oil 'buffer' that would offset price hikes due to reduction of oil supply to the world market. When the supply of oil falls by more than 7%, the IEA mechanism is invoked. The member countries have a strategic petroleum reserve of at least 90 days' supply which they draw on in case of emergency. This way an intended price increase will be delayed by this long period, and the intended effect, or 'oil crisis', will not happen.

### Central Europe:

The EU has several formal political ties to the region of Central Europe (Pinder, 1991). For aid to economic development, the European Bank for Reconstruction and Development (EBRD) has been established. The European Investment Bank (EIB) gives loans also to the energy sector, and is interested in favouring projects that are environmentally sound. The "Group of 24", consisting of the EU and other OECD countries, deals with energy and environmental problems in Central Europe in general and the emergency character of the energy supply situation. The Commission coordinates the work of this group. It stresses the need for a medium-term energy strategy on a pan-European scale, proposing that all financial instruments be coordinated; that help be given in diversifying dependence on Russian energy on the part of Central Europe; and that assistance in developing alternative energy import sources be provided. The substance of these proposals indicates that the Commission attempts to develop a full-fledged strategy in the energy-environmental area not only for its members, but specifically also for the Central European region. In terms of financial policy-instruments, both the EIB and the EBRD are in place. There are in addition programmes that entail direct EU funding, PHARE<sup>10</sup>, SAVE<sup>11</sup>, and TACIS<sup>12</sup> to be mentioned.

However, the most comprehensive plan for improving the energy infrastructure and securing energy supply is the so-called Energy Charter which entails the creation of an international legal regime for the production, transport, and sale of energy, perhaps especially CIS-gas.<sup>13</sup> Introduced to the European Council in June 1990, it was debated within the fora of the EU as well as in high-level meetings between the CIS and the EU. As for the architecture of a "strategy" for securing energy supplies, especially gas from the CIS, the charter plan formed the basis for the deliberations between the Commission and the Russians and within the Energy Directorate itself. The oil price volatility caused by the Gulf crisis and the concomitant Soviet demand for hard currency energy payments have served to intensify the work of the EU towards such a "grand strategy". Because the Soviet energy production system was in a state of crisis, and because the energy supply situation and the ability to pay for energy in Central Europe were in an equal state

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<sup>10</sup> Details on PHARE in "Assistance a la reconstruction economique des pays d'Europe centrale et orientale", EC publication, 1990

<sup>11</sup> SAVE is an energy efficiency program and part of the EU's climate policy.

<sup>12</sup> TACIS provides funding for the upgrading and repair of nuclear reactors, especially in the CIS.

<sup>13</sup> Traite de la Charte de L'Energie, Texte a adopter le 17.12.1994, Conference de la charte europeenne de l'energie.

of emergency, only fairly swift action on the part of the Western Europe could hope to prevent a dangerous deterioration of the situation. At stake was not primarily the issue of energy itself, but the very political stability of both the Soviet Union and Central European countries, as was stressed repeatedly by J. Delors.<sup>14</sup>

Delors presented the charter proposal as the best way of achieving East-West integration at the CSCE summit in Paris in November, 1991, stating that "une charte europeenne de l'energie pourrait creer un climat de confiance propice a l'utilisation optimale des ressources....et une reduction des tensions et des equilibres dans la communaute internationale".<sup>15</sup> The place of the Charter process within the realm of the EU was finally underlined in the communication from the Commission to the CSCE conference in Helsinki which started in late March, 1992. Here the role of the two institutions is delineated by the Commission: "The Charter is a follow-up of a CSCE recommendation in the energy field. To avoid duplication, no new initiatives need be taken in Helsinki. However, the CSCE should support the charter,.."<sup>16</sup>

The member states did not oppose the charter process, but played a very small role in it. The process itself was started by DGXVII officials immediately after the European Council had approved of the idea of such a charter, which was proposed by the then Dutch premier Ruud Lubbers. While the concept was being discussed in national capitals, the Commission started negotiations with the Russians within weeks after the European Council meeting. DGXVII thus seized this opportunity very swiftly, and designed the process and the policy proposals even before member state governments had begun to elaborate on it. Further, the Commission ensured that the charter secretariat be part of DGXVII and thus part of the EU's agenda, while other international organisational venues were being discussed by the member states. The legally binding treaty for the charter was signed in Lisbon in December, 1994.

The many elements of the EU policies towards the Central European region gradually become formalised within the EU system. In October 1994 the European Council decided that heads of state and various ministers from these countries should conduct regular consultations with the EU in order to prepare for membership, and that all policies should be coordinated with current EU policy through the 'Europe'-agreements and common ministerials. Here the importance of the energy and environmental policy was specifically mentioned (Euro-East, November, 1994).

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<sup>14</sup> See e.g. his speech at the CSCE-summit in Paris, 19.11.1990, "Intervention par M. J. Delors"

<sup>15</sup> "Intervention de M. Jaques Delors", 19.11.1990, CSCE summit in Paris

<sup>16</sup> Europe, 8.1.1992, Atl. Document no. 1755, "Communication by the European commission on the Helsinki follow-up meeting"

### Environment:

The EU has very strong formal competence in this issue area. The TPU strengthens the competence that was first introduced in the SEA, and recently the Commission has started to work on integrating environmental policy into all other policy areas. A major place is allotted to market instruments, where a CO<sub>2</sub> tax is a controversial proposal. The Commission has many means at its disposal if it thinks that there is enough general member state legitimacy for what it does.

The major justification for the need to arrive at a CO<sub>2</sub>-level tax is 'outside pressure': The EU is a signatory to the UN Framework Convention on Climate Change (FCCC) and is as such obliged to develop a common climate policy and to develop policy for the next international climate conference of the parties to the convention which takes place in Berlin in March, 1995. It was the UNCED conference that led to the initial tax proposal, and the then commissioner of DGXI, Ripa de Meana, threatened not to go to Rio unless he got an acceptance for a CO<sub>2</sub> tax. The UNCED was used very explicitly as the reason why the EU had to have its own climate policy, including a tax. The role of the EU here was thus an active one; not simply a de-regulatory one. The role of the Commission in the CO<sub>2</sub> tax case was one that implied a new and supranational role for the former in being the 'tax collector', although the actual tax implementation was to take place at the state level. The tax has not been adopted due to UK resistance.

### **Empirical Conclusions**

Thus, in energy policy the Commission has seized opportunities presented by the general internal market mandate and by external events. However, it has been constrained as well as supported by state interests in this and other policy areas:

In telecommunications, there was a general state interest in the formulation of a European-wide policy that would meet technological changes and competition from the US and Japan. This demand was met by the Commission. In energy, there was a general state interest in cheaper energy supplies from a deregulated market, but strongly entrenched national, structural interests. The latter clearly limited the scope of Commission action in getting proposals accepted in the Council, and there was less scope for using the competition legislation. It was easier to provide an internal telecommunications market than an internal energy market for these reasons.

The Commission consistently formulated an internal market programme in these areas, despite varying degrees of state opposition, and it reformulated the same proposals in the cases where



a directive was so much 'watered down' that the policy goal could benefit from reformulation. It tried slowly, but patiently, to achieve its internal market goals, invoking the competition legislation whenever there was a chance, also in the energy sector; and by applying pressure through the competition legislation while going slowly in the negotiations on controversial points. It also used this opportunity to try to create a competence for itself in the issue areas. In energy, it bargained with the 'cohesion countries' in the south for support of the IEM against infrastructural and other aid; it attempted to create a CEP, and it created new fora with itself in the leading role, like the secretariat of the European Energy Charter, situated in DGXVII.

In sum, the empirical evidence here presented yields the following conclusions: First, the Commission used the competition policy as an aid in policy areas where it could interpret policy content as falling under the scope of this legislation. It was particularly powerful in its use of this basis for direct intervention, but there are indications that this power of intervention is only used when conditions for EU-level policy in general favour an active Commission. Further, the Commission tried to formulate new policies in such a way that it acquired informal 'competences' - by creating new institutions where it plays a leading role; by building coalitions with regional actors and the 'cohesion' countries, and by carefully justifying new policies on old ones. It also seized opportunities presented by external events with swiftness. The internal market umbrella was particularly useful in this regard.

An obvious and formal power that the Commission commands is the ability to impose the competition legislation. This threat is felt by state actors and business actors alike. The typical way in which the Commission has used this power is by resorting to it only when the negotiated approach has failed. The energy commissioner uses this threat openly: in the long-drawn negotiations over open access to the electricity market in Europe, which have continued since 1991, the energy commissioner threatens to go the 'Court' route: "Papoutsis repeated the warning that, if no agreement is reached soon in the Council, the Commission will have to use its legal powers under article 90 (3) of the Rome treaty to force open the market" (ECE, 21.4.95:3). This formal power can be assumed to make the Commission an independent actor under certain circumstances. We know empirically that the competition legislation has not been applied very much for long periods of time - in the energy area it has in fact not been applied until the post-85 period. Thus, formal power does not always mean actual power.

Keeping this in mind, we turn to a discussion of the importance of agenda-setting in the Commission, which the above examples indicate is very important. For instance, in the Energy Charter case the Commission seized the opportunity to develop the concept of the charter, and

did so on its own. The states were at best responding to Commission initiatives. In the general IEM cases, the Commission used the internal market mandate very extensively and imaginatively, and it also utilised external 'windows of opportunity'. Although the states could 'arrest' Commission proposals, much of the agenda set by the Commission in the energy area in the post-85 period was adopted. This empirical finding warrants a theoretical discussion of the Commission's agenda-setting role.

### **Part Two: Theoretical Discussion**

Above we have seen that EU actors enjoy important formal roles in some issue areas and that the Commission is able to utilise external events and its formal competence provided that general legitimacy for EU-level policy on the part of the states obtains. In such periods, the Commission and the ECJ may 'bypass' the member states and the normal political process of negotiations by intervening directly in cases that can be defined within the remit of the competition legislation. EU actors thus matter much sometimes, other times little; they have much formal competence in some areas, none in others, etc. The Commission has autonomous supranational powers in some areas, e.g. in agricultural policy and in competition policy. In the latter area it can intervene whenever there is a suspicion of 'abuse of dominant position', or any other hindrance to free competition. It can use p.90 of the Treaty of Rome to pass directives without Council approval; it can fine companies suspected of cartelization or price fixing, and can intervene as an antitrust actor (Montagnon, 1990; Jacobs and Stewart-Clark, 1990; Louis, 1990). These powers are clearly supra-national and autonomous, but they are able to be activated only when the member states accord a major role to the EU in general.

We need to assess the importance of the role that the Commission plays, not only to identify which roles it does or can play. What is of primary interest is what the Commission's role is compared to that of the member states. As stated, the predominant theoretical paradigm in this field of study is intergovernmentalism (IG), which allots no independent role to the Commission - 'measured' by the strength of oppositional interests between the states and the Commission. To claim that the Commission has an independent impact therefore implies being able to say something about its importance relative to that of the member states. In turn this requires a decision on which criteria we should accept as constitutive of independent action, and a reasoned opinion on how the role of the Commission can be studied empirically in order to devise a way of determining such impact. The IG perspective, forcefully advocated by Moravcsik, holds that the Commission plays no independent role at all; it simply facilitates interest

mediation between states and serves a technical function (Moravcsik, 1993). The Commission is an arena, but the arena has no influence on policy outcomes. This may however not be so: also an arena may be important. The second perspective which we have called 'institutionalist' for want of better term, is not state-centered in the sense of making assumptions about the primacy of the state as actor vis-a-vis EU actors. However, this perspective is much less specified than the state-centered one, and is thus the least theoretically attractive of the two at this stage. We will however try to develop this perspective in the following and show why it is relevant.

### **The formal and informal powers of the Commission**

The formal powers of the Commission are laid out in the Rome Treaty: It is the guardian of the treaties - it can intervene in cases of non-compliance with e.g. competition legislation, and indeed does this increasingly in the post 85-period. It can use the Court or intervene alone. It has the exclusive right - and obligation - to initiate and formulate policy within the terms of the treaty, and importantly, in order to 'further integration'. Finally, it is the executive branch of the Council and obliged to implement its policies. Here much is left to the member states themselves. The issue of implementation is relatively understudied in the literature on the states-EU relationship, but is a very important in assessing the importance of the Commission.

"The Commission can exercise a good deal of discretion that it can use to expand the scope of integration" notes Lodge. (Lodge, 1989: 40). The exclusive right of policy initiation is therefore in this analysis of substantial interest. This includes the goal setting for the longer term - the key role of the Commission's leader. Both Hallstein and Delors - the two Commission presidents that are generally considered to be the most able leadership figures - have been able to combine political vision with practical types of strategy. This is also possible because of the President's place in the European Council. But lofty goals may be easily disclosed as empty rhetoric unless they are tied to a practical programme of policy. This was the ingenious combination that Delors and Cockfield produced - the internal market slogan coupled with a concrete set of proposals for its realisation. We will return to the role of leadership in the Commission - only here point out that the right to develop policy goals with a general European interest as the only limitation allows for a strong potential leadership role for the president of the Commission.

But policy initiation can occur at many levels below the president, and does. Ludlow reports that "the function of animateur permeates the whole structure and ethos of the institution" (Ludlow, 1991:97). The Commission, notes he, was formed with the Commissariat du plan as the model - the point was to produce policy ideas on a large scale. Once a vision has been agreed

upon, there is the great opportunity of formulating issue-specific policy under this aegis that still conforms to it, but which is highly technical and specific, involving experts in the many working groups and fora.

The point here is that when the Commission provides a general goal to which member states agree, then this goal is the reference point and legitimation for the development of issue-specific policy, which also can be interpreted quite freely. This means that issue-specific policy makers in the various DGs may be very important actors. When there is conflict with interest groups, the Commission invokes the general mandate of this goal as a legitimation for issue-specific policy. This may be a very powerful tool because the policy style in the Commission is not based on interest argumentation but on legal-technical arguments.

Thus, the Commission has important formal functions but depends on the cooperation with both the states and other Community institutions. But it is not a major force in implementing policy or supervising the treaty obligations within the member states, and is in many ways small, often ill-coordinated, and unable to monitor the competition policy in the member states because it lacks the resources. This would also be politically controversial. The role of leadership and member state legitimacy appear to be major factors in explaining when the Commission's policy-initiating role is activated.

### **Arena and actor roles of the Commission**

Provisionally we may distinguish analytically between arena and actor roles. An actor influences the output of policy in an independent way, as a standard understanding of the concept goes (Sjøstedt, 1977; Underdal, 1992). The criteria for defining someone as an actor must as a minimum include that there exists an ability to act at the outset - some degree of autonomy, some independent resources, etc. But also arenas may be politically important. Underdal argues that they may be important for different reasons, and not necessarily in less ways than actors (Underdal, 1992).

The Commission's arena roles include its agenda setting power and the ability to regulate access of participants to a considerable degree. By setting the agenda the Commission may shape the states' own agenda. The states will take into account the EU level activity and likely strategy when they make their own strategies.. The Commission may on this logic shape states agendas and consequently influence interest formation.

States are interested in their reputation, and will want to be constructive participants in international problem-solving. Rittberger et al. found the reputational factor to be very important

in the political calculus of Russia and Germany in their study of East-West regimes (Rittberger et al., 1993). In the EU case, we can expect there to be a high value attached to reputation in the sense that no member state will want to be seen as one that obstructs the policy-making process. This is particularly important in the post-85 period where qualified majority voting (QMV) ensures that states can eventually be outvoted. The general record on fulfilling expectations is important. After the introduction of QMV the laggards are visible - it is much more important than before to be active and cooperative; not try to stop new policies.

Further, by defining new problems and new solutions to them, by making wide-spread use of experts, the Commission may define solutions to new problems and induce learning on the part of the states. Ernst Haas has discussed the notion that 'knowledge is power' in his book by the same title (Haas, 1990). The Commission may thus be an important framework for learning, and in some types of policy it may even be warranted to speak of 'epistemic communities' (P. Haas, 1993). Its policy language is essentially technical-legal, about the 'objective' solutions to problems; that is, issues are always de-politized.

Turning to the actor roles of the Commission, there exists a formal autonomous power to act in certain policy areas. In competition policy the Commission has the formal autonomy to act in a way that has also has a direct applicability and thus effect in member states and on members states. DGIV does intervene very forcefully in cases of hindrances to competition. The ECJ has been found often to support Commission moves against companies and member states. Together these two institutions act autonomously. Like a state, the Commission has formal autonomous acting powers in selected policy areas.

However, the degrees of formal-legal powers - competences - varies with issue areas. Sometimes a weak or almost non-existing power to act in one issue area may successfully be coupled with competition policy by defining the policy issues in competition terms - e.g. energy company structures in member states - often monopolies - were the subject of interventions from DGIV when energy policy became a sub-set of internal market issues. The Commission may thus redefine issue areas in ways that bend them towards the areas where it itself yields powers. We have shown that this happened in the post-85 period. Formal-legal powers in one issue area may thus enable the Commission to extend its action in this area to new issues that are being defined in terms of the remit of competition policy.

However, an actor role is logically different from an arena role. Sometimes the role of arena may be a very powerful one even when this entails no formal power. The institutions playing the arena-role may regulate access to the arena, the setting of the agenda, etc. Sometimes the actor role

entails much political power, be it formal or informal. Thus, while it may be analytically useful to distinguish between arena and actor roles, these roles tell us nothing about the wielding of actual power.

### **Criteria for independent actor role and conditions for its activation**

The Commission always does something - the Commission's output has continuously been growing. The largest part of the work is the routine tasks of implementing policy - the type of 'secondary' legislation that many national ministries is charged with. However, we are interested in the Commission's ability to achieve its own policy goals - these be in opposition to or consistent with those of the member states. The empirical evidence strongly indicates that the Commission is able to act under optimal conditions only when there is a major political task - a vision like 1992 - to which the member states agree. In the literature there is agreement that there essentially are two such periods of Commission activism - the period until the 'accords de Luxembourg in 1966' and the period post-85.

We have seen that the Commission can be independently important both as actor and arena, and that it can play an entrepreneurial role in especially the agenda-setting phase. It can combine its formal powers, as actor in the competition legislation and as exclusive agenda-setter, with informal roles in the arena or negotiations between the states. The Commission thus has important formal policy-making roles which seem to be activated in periods of much general legitimacy for EU-level action, as in the post-85 period. Given this, the theoretical challenge is to devise a systematic way of studying and assessing the Commission's role - and by implication that of other IOs. Which criteria should we employ for calling the Commission an independent actor?

One approach to this question is the literature on leadership that applies to the Commission (Rosenthal, 1975; Sandholz, 1993; Vahl, 1992). A number of leadership functions do not depend on the wielding of formal power. Sandholz (1993) uses the concept of entrepreneurial leadership, following *inter alia* Young who argues that IOs can exercise leadership in especially this manner (Young, 1991). The entrepreneurial leader can promote collective action through such leadership, which in the case of the Commission consists in proposing policy, mobilizing support, shaping the agenda, building consensus, and brokering compromises (Sandholz, 1993:250). In addition, there are, according to Sandholz, four conditions under which such leadership will be effective: that the institution's bureaucracy is expert, that leaders are charismatic, that the initial grant of authority to the institution is large, and that there is a 'policy need' on the part of the states.

These conditions can all very well be argued to have existed in the post-85 period: the internal market filled a 'policy need' on the part of the states, the person of Delors provided personal leadership, the Commission is both an expert civil service and the initial grant of formal-legal powers was very extensive, e.g. the competition legislation.

These are suggested conditions for effective leadership, but note that Sandholz adds that "even the presence of all four in a specific situation, however, does not ensure that IO (international organisation) leadership will be effective (my emphasis)" (Sandholz, 1993:251). We take this to mean that even if leadership is exercised, the claim is not that the IO has an independent impact of policy outcomes. Presumably only effective leadership can have such an impact, and even then, it is not clear from the leadership literature applied to the Commission what the theoretical claim is: does effective leadership mean that the Commission has an independent impact on policy outcomes?

Moravcsik asks "how can you show that the Commission has an independent impact?" (personal correspondence, 1994). Sandholz's implicit criterion for allotting an independent role to the Commission is less rigid than that of Moravcsik, who argues that one either has to pose the historical counter-factual or have a case of opposing interests between the Commission and the states (ibid.). Sandholz uses time as a central indication that the Commission played an independent role: since Commission proposals were consistently ahead of what the states had developed by way of policy, the Commission is deemed to have had an independent impact on policy (Sandholz, 1993:269).

But does an actor role for the Commission always imply that there must be evidence of independent impact on outcomes? It may very well be that the states accept the policy definition and derive their interests from the latter, or there may be common interests between the states and the Commission. This is different from the claim that in order to establish that the Commission has an independent impact we need, for methodological reasons, to have a case of opposing interests between the states and the Commission or be able to establish the historical counterfactual. The problem of establishing the historical counterfactual is formidable (Biersteker, 1993) - would there e.g. have been an internal energy market (IEM) without the Commission's initiative? We think not, but we cannot prove this. When we choose opposing interests between the states and the Commission as the criterion for assessing whether the Commission has an independent impact, we assume that the interests of the two actors is first, formed prior to policy-making, and second, oppositional. Further, we also make an assumption about the nature of interests that is quite confining: we assume that interests are about specific cases and narrowly

national, and that these interests take precedence over an overall general approach to integration in a given state. As Burly and Mattli note in a discussion of the ECJ, there are three types of state preferences vis-a-vis the EU : first, the support of a system of conflict resolution like the ECJ, second, preferences “concerning the pace, scope, and degree of European integration. These preferences transcend any one particular case..third are specific economic or political preferences in particular cases..” (Burley and Mattli, 1995:184). The method of assessing whether states’ interests prevail over EU actors’ interests presupposes that we deal with the third type of interest only. However, it is clear that some states place great emphasis on the second category of interests - here Germany comes to mind - while others, like e.g. the UK - are much less concerned about integration as such. Using an analysis of outcomes of an interest struggle between case-specific national interests as a criterion for assessing actor importance is only valid in the cases where there are clear-cut interests of the third category at work.

In the cases where state interests cannot be established prior to the EU policy-making, it is impossible to establish whether states' interests prevailed. Where we suspect that Commission agenda-setting influences states's definitions of their interests, we need another approach. This approach must be dynamic in order to capture the interaction between states and EU actors in a given policy process which we can trace in stages: policy initiation and agenda setting, the hammering out of positions and interests, and policy outcomes. The so-called two-level metaphor proposed by Putnam can aid us in this:

### **States-EU Interaction: The Need for Two-Level Analysis**

Currently much attention is given to the metaphor of the 'two levels' in international relations theory as well as in the study of the EU-states interaction. Sometimes this is talked about as 'two-level games', but the usage is not precise. Putnam has developed this approach in his famous article from 1988 (Putnam, 1988). His main point is that one should think about the state as being a gate-keeper between the domestic and the international level, and that this position allows it to take into account consequences at both levels when formulating strategies of political action. The state is here the key actor.

This metaphor conveys that states act at two levels simultaneously - the domestic and the international; and that they need to take into account implications of their strategies at both levels when they formulate them. For example, if a state wants to deregulate its domestic energy sector but faces severe domestic opposition to this, it may be easier to accomplish when it can invoke some international regime rule, e.g. in the EU. Further, if able to, a state may shape the



international regime rules itself for then in turn to invoke them, thus by-passing domestic opposition while having formulated optimal rules for itself at the international level. Also, when acting on the international level, the state must reckon with the need for domestic ratification of what it agrees to, and is thus constrained by that.

This line of thinking is at present informing important theoretical and empirical work in EU studies. It has been incorporated into the prevailing intergovernmentalist (IG) theoretical framework in the field of EU research by Moravcsik (Moravcsik, 1993, 1994). However, in doing this only the first level of the 'two levels' is theorized about. Still theories of states-EU interaction lack a conceptualization of EU actors, especially with regard to the Commission.

It does not suffice to theorise about the state only, in terms of its actor capability and strategies, for the application of the 'two-level' framework. This in fact results in a conceptualization of the 'two-levels' in terms of only one level, viz. the state in its domestic setting. As discussed, Moravcsik does not allot any independent power to EU institutions, in fact, "the unique institutional structure of the EU is acceptable to national governments only insofar as it strengthens, rather than weakens, their control over domestic affairs, permitting them to attain goals otherwise unachievable" (Ibid.,507). The EU thus increases state power in two ways, by making interstate bargaining more efficient (common rules, ECJ overseer, penalty for non-implementation, etc.): the EU is essentially a regime that reduces transaction costs. Second, the EU strengthens the role of the state versus societal groups at the domestic level. Moravcsik sees the EU as an arena that unilaterally strengthens state power; it "enhances the autonomy and initiative of national political leaders" (Ibid.,507). But this can be the other way too; the Commission (if it is accepted that it is an independent actor, which IG does not) can impose rules on a recalcitrant government in support of societal groups who invoke it. This we found to be the case when the Commission e.g. imposed its view on coal subsidy on the German government and when it likewise took the French government to task over the monopoly status of its energy companies (Matlary, 1996).

We need to analyse the domestic level in order to establish state interests, but we should simultaneously also analyse the activity of EU actors. This is where we differ with Moravcsik. He assumes the primacy of state actors over EU actors; we do not. Further, one should refrain from assuming that there are a priori state interests, as in neo-realism, and instead carefully trace the domestic policy process to find out what the state represents and to what extent it is constrained by domestic interests. This is also what Moravcsik calls for. However, the same procedure should be followed also for EU actors: which DG sets the agenda, what are the internal conflicts in the

Commission, can the Commission ally itself with the European Parliament (EP) or the ECJ or must it use the 'directive approach'? What role for external events? Is there general legitimacy for a major EU role in the issue area?

In conclusion, while a two-level approach to the states-EU relationship represents a major improvement over traditional intergovernmentalist theory, it also has its limitations: in Moravcsik's version it assumes that states are the major actors; in our view, it must be extended to including also actors at the 'second level', here EU actors. As such, it is a tool for analysing the dynamic and simultaneous interaction between actors at both levels.

However, there is a logical problem with this extension, viz. that of the state's 'gate-keeping' function. Does it e.g. make sense to speak of EU actors like the Commission as a gate-keeper between the states and the EU? By placing non-state actors on a logical parity with the state in the model, its essential premise of the important gate-keeping function cannot be made. Also, the model cannot allow for multiple actors that are not classifiable as either domestic or international-level ones. To these two problems we turn in the last part:

#### **From Two-Level to Multi-Level Policy Analysis: Venturing Beyond State-Centric Theory**

An increasingly common and in our view, valid, criticism of the two-level approach is that it simplifies too much in assuming that it is the 'game' between the states and the IO, here the EU; that is the only important one. Sub-national actors as well interest groups matter: "Some very basic, and perhaps surprising, features of the emerging political landscape are visible now...instead of a neat, two-sided process involving member states and Community institutions, one finds a complex, multilayered decision-making process stretching beneath the state as well as above it, instead of a consistent pattern of policy-making across issue areas, one finds extremely wide and persistent variations" (Marks, 1992: 221). Cameron rightly remarks that the interaction state-EU is much more complex than a two-level game (Cameron, 1992) and Peters argues that there are at least three games played at any time: one between the states and the EU; one between the EU institutions in their internal power struggle, and one between the DGs themselves (Peters:1992:107). A fourth, we would add, is the emergence of a game between the various DGs and interest groups, both sub-national and pan-European.

The existence of various types of actors that belong neither to the domestic nor to the EU-level poses both an empirical as well as a logical problem for the two-level model. The empirical evidence of the importance of these actors is growing - see e.g. the literature on the importance of regions and pan-European interest associations. These actors form direct alliances and linkages

with the Commission. Logically these actors cannot be fitted into the two-level model which not only presupposes the primacy of state actors, but which for this very reason posits a fundamental divide between the domestic and the international levels.

The meta-theoretical criticism of the state-centeredness of neo-realism is by now well-known: neo-realism offers a state-centric world view; one must assume that the state is capable of having an interest and a strategy; the state is treated as an unproblematic assumption and thus may easily be reified, etc. (see especially Ashley, 1984; Wendt, 1992; Kratochwil, 1993). In the words of Ashley, "the state as actor assumption is a metaphysical commitment prior to science and exempted from scientific criticism" (op.cit.,239). One thus has to be able to interpret all actors through the prism of the state. This in turn imposes a certain view of the EU, as more or less 'state-like'. The state is ontologically prior to the international system in neo-realism and in IG. We are so used to thinking in terms of the state in modern political theory that we lack the language for other types of political ordering, as Schmitter notes (Schmitter, 1992).

However, our conventional assumptions about the primacy of the state and the existence of a 'national interest' are highly problematic. They tend to reify the state and thus to impose themselves on the empirical analysis. The 'two-level' approach opens up the so-called 'black box' of the state, as Moravcsik has argued the need for. As we have argued, only when we also open up the 'black box' of EU actors will we be able to make assessments of their independent role and of how they play two-level games with the states. Also EU actors, like states, have their 'domestic struggles' within the EU-system. However, other actors beyond both the nation-state and the EU increase in political importance. Their ascendance to power collapses the divide between domestic and international, and thereby logically also the notion of 'gate-keeping' function. An 'agnostic' approach based on multi-level thinking seems most appropriate for the empirical study of EU actor impact.

The 'two-level' model remains state-centered. It is premised on the assumption that the state retains the so-called 'foreign policy prerogative' and thus that it is able to regulate access to the second level, information about what happens at that level, and the feed-back of information about the negotiations at the second level to the domestic, 'first' level. However, the moment we leave the conceptualisation of two levels and start to talk about multiple levels, we also leave the concept of the state as gate-keeper between the levels. The state then is logically only one among several actors of equal stature.

But what are alternatives once we abandon the assumption of state-centeredness? A useful starting-point may be to focus on political process (George, 1985) and policy problem rather than

on actors. One can trace how an issue has come onto the EU agenda: which actors have been important? What role did external events play? To what extent is the policy problem one that demands international-level solutions? One can assume that the nature or substance of the policy problem itself plays a major role in determining which roles states as opposed to EU actors will have in its resolution. This is, incidentally, a rephrasing of the old functionalist argument that integration is problem-driven. However, this is by no means an automatic process: Actors do not accept some sort of functional classification of problems and on this basis 'assign' them to the EU or to the nation-state for resolution, as ideally the principle of subsidiarity would have it. However, this does not mean that the substance of policy is unimportant for the determination of actor impact on the policy process.

Further, by focusing on process rather than on formal actors we do not have to assume that formal power implies actual power and that actors have interests before the process of policy-making starts. The formal actor role may, as stated, not have much to do with the actual wielding of political power. NGOs may, as an example, be much more powerful in the agenda-setting phase of an international negotiation than states, despite the fact that they may not have any formal actor role. In order to go beyond the focus on actors first, interests second, a viable approach may be to look at the process of negotiations themselves: at the definition of the problem, the setting of the agenda, the inclusion/exclusion of participants, etc. This allows for an analysis of the importance of the stages of policy-making, and this may be a key to determining the importance of various actors. States probably matter more in the negotiation phase than in the agenda-setting phase. This phase is characterised by the overriding importance of problem-definition rather than by actors' interest specification, which belongs to the negotiation phase which occurs later. If the analysis starts with policy problem rather than with actors' interests, we will get a more fruitful analysis of what happens in the agenda-setting phase. The fact that the Commission plays the almost exclusive role here is known to be important, but we lack adequate criteria for the evaluation of the importance of this phase compared to the negotiation phase where an outcome is arrived at. What is interesting to know here is to what extent states' and other actors' interests are influenced by the Commission's agenda-setting. One could fruitfully combine a processual analysis of agenda-setting with an actor-based analysis of the negotiation phase.

Among several interesting theoretical vantage-points for the development of such an analytical framework is the literature on regime formation and regime impact. Young has developed theories of the impact of various types of actors in the various stages of international

negotiations, pointing out that in the agenda-setting phase the role of ideas, knowledge, and so on may play a large role as opposed to the traditional notion of a national interest (Young, 1994). 'Governance systems' may be created without formal state actors, and the power of ideas may be as important as material power. In the pre-negotiation phase where the agenda is set, the power of ideas and knowledge matters, whereas in the later negotiation phase, instrumental and structural interests matter more.

Young discusses the development and impact of international regimes. They are in themselves not formal actors, and as such do not possess formal power instruments like e.g. the Commission. Nonetheless they can be shown to have had an impact, both in terms of compliance as well as in their importance as agenda-setters. We may assume that the formal power on the part of the Commission strengthens its agenda-setting power: Others actor need to play attention to it as they are in the 'game' as it were: they cannot exit but are legally bound by the acquis.

In sum, a decomposing of the policy process into stages seems necessary for an assesment of relative actor importance as well as for when and whence interests are generated. This approach does not contradict two- or multi-level thinking: we still deal with the dynamic interaction between several areas of policy-making.

### **Theoretical Conclusions**

There is such great variance in EU roles between issue areas that there can hardly be a general theory of the states-EU relationship. The gap between the 'political union' and the reality of foreign policy among the member states, which is not even coordinated, illustrates this. It is therefore likely that the substance of the policy area plays a major role in indicating which roles EU actors may play. In areas where there are clear international policy consequences, like environmental policy, the potential for international governance is large. In other areas, where there already exist entrenched geo-political interests, there will at the outset be a clear-cut definition of interests. Energy is an example of this. Because the EU has important legal tools in enforcing legislation, its actor role in 'weak' issue areas may be strengthened by the use of these tools and by linkage politics. But as we have argued, the latter is only possible in periods of general legitimacy for EU-level activity.

If we start with the substance of the policy area and trace the process of policy-making from agenda-setting to outcome, we avoid the problem of state-centeredness and can get an unprejudiced approach to actor roles and actor impact. State actors may turn out to be the predominant ones in most cases, but occasionally we may find that IOs or NGOs are surprisingly

important in defining the agenda, the stakes, and also the outcome. We must of course specify hypotheses about the role of the various actors at the outset, and delineate if possible the domestic 'game' that the state plays as well as the 'intra-Commission games' where there will almost always be conflict between DGs and in turn, between the Commission and other EU actors. We may find that actors' interests are shaped by the agenda and the negotiations, that learning occurs, and that states choose to support solutions that go beyond their 'national interest'.

In sum, a multi-level actor approach to the study of integration seems increasingly appropriate, combined with the processual analysis of the various stages of decision-making. The often implicit assumption of state-centredness precludes both the consideration of the importance of the policy problem and other actors. This critique amounts to the conclusion that it is high time that intergovernmentalism - in its traditional as well as 'improved', two-level form - be abandoned for the sake of conceptually richer developments of integration theory.

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