



# Enlarging the EU's internal energy market: Why would third countries accept EU rule export? ☆

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## ABSTRACT

Why would countries without a membership perspective seek integration into the EU's internal energy market? One major element of the EU's external energy policy is the export of EU energy norms and regulations to neighbourhood countries and beyond. A core legal instrument the EU uses in this context is the Energy Community Treaty (ECT). The ECT goes both geographically and regarding its depth significantly beyond neighbourhood or association policies, addressing potentially also countries in the 'far neighbourhood' and aiming at the creation of a Single Market for energy with these countries. While, however, EU candidate countries are obliged to adopt the "acquis" before accessing the EU and therefore comply to EU rules already before they enter the Club, I argue that countries with no or only a vague membership perspective – i.e. countries where the EU cannot apply the "conditionality" – approach (e.g., ENP countries)—aim at deeper integration with the EU because they are either eager to demonstrate their capability and potential to become part of the Club, they seek greater independence from a regional hegemon or they envisage significant economic gains as common norms, rules and standards are likely to increase economic exchange with the EU.

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## 1. Introduction: 'externalising' the EU's energy market

Since the beginning of the new century the desire to create a common energy policy for Europe has become core to the political agenda of the European Union (EU). The need to secure energy supply in Europe has been articulated by the European Commission already in November 2000 through the Green Paper "Towards a European Strategy for the Security of Energy Supply" (European Commission, 2000). The Commission Energy Green Paper "A European Strategy for Sustainable, Competitive and Secure Energy" (European Commission, 2006a), published in March 2006, accelerated the hype around this topic and provided a new momentum to energy policy. In the context of the overall European Energy Policy Strategy both Member States and the Commission acknowledge a coherent EU external energy policy an indispensable part of the Union's "Energy Package", which was tabled to the Spring European Council in March 2007 (European Commission, 2007a). The importance of an external dimension in the EU's energy policy was re-iterated since then several times.<sup>1</sup>

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<sup>1</sup> For example, Council of the European Union, doc. 14090/08, 14 October 2008; European Commission (2008b, c).

The energy security and solidarity action plan tabled by the Commission in November 2008 made external energy policy one central pillar of the Second Strategic Energy Review (European Commission, 2008a). If finally ratified, the Lisbon Treaty will have an energy chapter for the first time in the Union's history.

For the EU external energy policy has three interrelated objectives: it shall ensure the security of the Union's energy supply, it shall support the international efforts in combating climate change and it shall promote the EU's access to energy worldwide<sup>2</sup>: "Energy must become a central part of all external EU relations; it is crucial to geopolitical security, economic stability, social development and international efforts to combat climate change" (European Commission, 2007a, p. 17). The European Neighbourhood Policy (ENP) and the Eastern Partnership (European Commission 2008d), the Black Sea Synergy (European Commission 2007b), the EU's Strategy for Central Asia<sup>3</sup> as well as the "Union for the Mediterranean" (European Commission, 2008e) provide the main policy framework in which the EU elaborates its external energy policies towards its "near abroad".

<sup>2</sup> See speech by Andris Piebalgs, Commissioner for Energy, 20 November 2006 (SPEECH/06/712).

<sup>3</sup> See Council of the European Union "The EU and Central Asia: Strategy for a New Partnership", Document 10113/07, 31 May 2007; Council Conclusions on Central Asia, 2796th External Relations Council Meeting in Luxembourg, 23 April 2007.

Notably, one of the main pillars of the EU's external energy policy is the objective of energy market integration – rather than only bilateral or multilateral co-operation – with the EU's Eastern and South-Eastern neighbours and the 'neighbours of the neighbours', some of them being neither so-called 'potential candidate countries' nor ENP countries (see [European Commission, 2006b, c](#)), that means countries without any EU membership perspective.

The highest degree of such co-operation is the Energy Community Treaty (ECT) between the European Community and currently the Western Balkan countries.<sup>4</sup> The ECT entered into force in July 2006 aiming at establishing a Single Market for energy between the members of the ECT.<sup>5</sup> The ECT is – besides the above mentioned Western Balkan countries – expected to cover quite a large number of still economically and politically developing countries in the Eastern part of Europe (the Newly Independent States such as the ENP countries Ukraine and Moldova), the Southern Caucasus (ENP countries like Azerbaijan and Georgia) and is envisaged to go beyond the immediate neighbourhood including Central Asian countries as well as countries of the Gulf Region (plus Norway and Turkey).<sup>6</sup> The special features of the ECT, i.e. its potential geographical coverage of non-EU members, the economic status of the countries addressed as well as the quite high degree of its institutionalisation, reveal that the EU has chosen a new quality in its external governance with regard to external energy policies.

The objective to 'externalise' internal energy market principles was first articulated by the Commission in 2003, when Brussels published a Communication on "energy relations of the enlarged European Union with its neighbours and most important geographical partners in this sector" ([European Commission, 2003, p. 4](#)).<sup>7</sup> In that document the Commission highlighted that "the European Union can face the challenges of growing external energy dependence, the need to address infrastructure issues on a regional level, to diversify sources of energy geographically and technologically and to broaden the basis for energy trade in the European continent and its adjoining continents" ([European Commission, 2003, pp. 4–5](#)) only together with neighbouring countries and other partners (in particular Russia).

This article argues that countries with no or only a vague membership perspective agree to deeper (energy) integration with the EU because they are either eager to demonstrate their capability to become part of the Club – even if there is currently no membership perspective – ('identification motive'), they seek

greater independence from political interference of a regional hegemon in its 'near abroad' ('independence motive') or they envisage significant economic gains as common norms, rules and standards are likely to increase economic exchange with the EU ('economic motive'). The degree to which one or all of these motives apply may vary among countries with regard to their individual political, geographical or economic situation.

While the need for an 'externalisation' of EU energy market principles seem to be well founded from an EU perspective (i.e. security of supply), the objective of expanding parts of the Internal Market to relatively poor non-EU member states without a membership perspective through the establishment of a highly institutionalised set-up (i.e. the Energy Community) is indeed rather unique. Other examples with similar degrees of institutionalisation, such as the EU-Turkey Customs Union or the Agreement on the European Economic Area (EEA), differ significantly regarding the type of partner countries: a single-country-case with membership perspective, on the one side, and highly-industrialised small, rich countries, on the other side.

Against this background this article addresses the motives of third countries that have only a vague or no EU membership perspective ('neighbourhood' and 'far neighbourhood' countries) to accept that the EU extends its energy rules and institutions beyond its borders, i.e. they agree with the EU's approach of 'regulatory boundary shifting' (cf. [Lavenex, 2004](#)) or 'norm export' (cf. [Gstöhl, 2007](#)). While most current studies on the EU's external energy policy address the topic from the angle of EU governance or integration theory (e.g., [Lavenex, 2004](#); [Mané-Estrada, 2006](#); [Mayer, 2008](#); [Milcher et al., 2006](#); [Müller, 2006](#)) this article will provide some first explanations on the 'demand side' of integration into the EU's energy market.

In contrast to the enlargement process, where the membership perspective triggered political and economic change as well as compliance with EU law (e.g., [Börzel, 2006](#); [Prange, 2004](#); [Prange and Koutalakis, 2006](#)), the preconditions for successful conditionality are almost absent in the neighbourhood—and more so in the 'far neighbourhood' ([Albi, 2009](#); [Weber et al., 2007](#); [Schimmelfennig and Sedelmeier, 2004](#)). The ENP, which was constructed as an alternative to EU membership ([European Commission, 2004](#); [Landaburu, 2006](#)),<sup>8</sup> does not provide enough incentives for some of the countries covered, especially for those that follow a pronounced pro-EU/Western attitude such as the Ukraine or Moldova ([Emerson et al., 2007](#); [Haran and Sushko, 2005](#); [Hofer, 2007a](#); [Lavenex, 2004](#)). As Emerson et al. point additionally out: the adoption of EU rules is even more unlikely as the domestic costs of adoption "are potentially higher in the neighbourhood countries given the authoritarian political regimes in many of them and the level of economic development in quite a number of them" ([Emerson et al., 2007, p. 6](#)).

In fact, there has already been resistance in some of the supplier countries to the import of EU energy norms. The countries of the Gulf Cooperation Council have accused the EU of having an "overly narrow, regulatory-based approach to energy" ([Youngs, 2007, p. 9](#)). Algeria has rejected the whole set of energy governance norms incorporated into the neighbourhood action plan, and Kazakhstan has resisted "an embrace of EU regulatory and market norms while it has no prospect of a place in the ENP" ([Youngs, 2007, p. 10](#)). In light of these conditions the article studies a 'hard case' for theory building as in the absence of conditionality EU rule adoption is unlikely in third countries (also e.g., [Lavenex, 2008](#)).

<sup>4</sup> The Western Balkans covers the 'candidate countries' Croatia and Macedonia as well as the 'potential candidate countries' Albania, Bosnia and Herzegovina, Serbia, Montenegro plus UNMIK on behalf of Kosovo.

<sup>5</sup> Based on the so-called Athens Regulatory Process that started in 2002 leading to the signature of two Memoranda of Understanding: Memorandum of Understanding on the Regional Electricity Market in South-East Europe and its Integration into the European Union Internal Electricity Market—Athens 15 November 2002; Memorandum of Understanding on the Regional Energy Market in South-East Europe and its Integration into the European Community Internal Energy Market—Athens 8 December 2003.

<sup>6</sup> See the speech of Benita Ferrero-Waldner, Commissioner for External Relations and Neighbourhood Policy, on 20 November 2006 (SPEECH/06/710); also [European Commission 2006c, 2008a](#). For the moment the ECT is focused on gas and electricity, but an 'oil dimension' is very likely to be added soon ([European Commission, 2007b, p. 5](#); Energy Community Ministerial Council, Meeting Conclusions, 11 December 2008). Moreover, the European Commission is currently examining whether a regional 'neighbourhood energy agreement' would be feasible (Speech by Commissioner Benita Ferrero-Waldner at the European Neighbourhood Policy Conference, 3 September 2007, SPEECH/07/500).

<sup>7</sup> The precedent Communication "Completing the internal energy market" (COM (2001) 125 final) of March 2001 only spoke of reciprocal opening of energy markets between the EU and third countries, e.g. within the framework of Association Agreements, but not about the convergence of market regulations ([European Commission, 2001, p. 28](#)).

<sup>8</sup> "The EU has emphasised that it offers a means to reinforce relations between the EU and partner countries, which is distinct from the possibilities available to European countries under Article 49 of the Treaty on European Union" (i.e. EU membership).

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