Renegotiating authority in the Energy Union: A Framework for Analysis

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Abstract

In a context of multiple crises, European Union (EU) energy policy is often identified as one of the few areas still exhibiting strong integration dynamics. However, this policy domain is not exempt from contestation and re-nationalization pressures. This collection seeks to understand better the contradictory integration and fragmentation tendencies by problematizing the notion of *authority*. While authority lies at the heart of European integration theory, less attention has been given to explaining when and why previously conferred authority becomes contested and how authority conflicts are addressed. In framing this collection, we build on sociological approaches to examine systematically the conferral of authority (what counts as authority and how it comes to be recognized) and its contestation (the types of contestation and strategies for managing authority conflicts). We focus this analytical discussion on the Energy Union, being an example of 'hybrid area', which sits uncomfortably at the nexus of different policy areas.

Introduction

In the context of multiple crises that have had centrifugal effects on the European Union (EU), energy policy is often identified as one of the few policy areas that continues to exhibit strong integration dynamics, so much so that it has been labelled as a 'catalyst' for European integration in dangerous times (Delors et al. 2015, 1). The *Energy Union* initiative, one of the top priorities of Jean-Claude Juncker's Commission (European Commission 2015) and, more recently, a centre-piece of the *European Green Deal* advanced by Ursula von der Leyen (European Commission 2019), encapsulates this ambition. At the time of its launch in early 2015, the European Commission Vice-president for the Energy Union referred to it as "undoubtedly the most ambitious European energy project since the European Coal and Steel Community, some 60 years ago" and one that "has the potential to boost Europe integration the way Coal and Steel did in the 1950s" (Šefčovič 2015). Despite this optimism, however, unlike other recent 'Union' concepts adopted within the EU, such as the Banking or Fiscal Union, the Energy Union has not, so far, led to any additional transfers of competence from the member states to the EU level or the development of new institutions. On the contrary, in some dimensions of EU energy policy the efforts have been in the opposite direction, as member states strive to retain or re-claim authority.

Consequently, EU energy policy seems to capture well the so-called 'post-functionalist' dilemma (Hooghe and Marks, 2009). On the one hand, functional efficiency in the provision of public goods, such as financial stability, security or climate change mitigation, requires more governance beyond the state. On the other hand, EU institutions and policies are becoming more politicized and contested domestically. The latest wave of integration theory has explicitly or implicitly attempted to understand better the extent and consequences of this

dilemma, by examining the role of crises (Ioanniou et al. 2015, Schimmelfennig 2017, Tosun et al. 2014), politicization (de Wilde et al. 2016; Costa 2018), or even theorizing (dis)integration (Jones 2017, Vollaard 2015). What brings these approaches together is the conclusion that EU governance is becoming more complex and unpredictable, giving rise to new battle-lines and more hybrid institutional arrangements. So far, it has been unclear whether integration endures against all odds, is receding, or is mutating into new forms.

The special issue introduced here engages with this complexity in a crucial sectoral domain. It does so taking inspiration from global governance theory, which has long tried to understand how societies resolve the tension between the imperative towards cooperation in a globalizing world and the contrary desire to maintain autonomy. Central to those debates is the notion of *authority* beyond the state. Some global governance studies have examined the different ways in which authority is migrating away from states (Kahler and Lake 2004, Rittberger et al. 2008), why authority is conferred, and when it becomes contested (Sending 2015, Zürn 2018). Terms such as 'liquid authority' (Krisch 2017) have recently been coined to capture the growing informal, complex, and unstable relations in global governance.

Our focus is, therefore, on the *renegotiation of authority* in the EU. Anchoring the discussion in global governance theory brings a number of advantages. First, the emphasis on authority allows not only an examination of the formal allocation of competences (often the focus of integration theories) but also of how and why actors gain authority beyond the formal boundaries set by the treaties. Second, it directs our attention to questions about why authority conflicts emerge and how they are managed or mitigated. Finally, it allows us to trace whether contestation leads to actual authority shifts, not only in the vertical direction (upwards or

downwards between the local, national and European levels), but also horizontally (between public and private or majoritarian and non-majoritarian actors).

Energy policy is a critical case with which to investigate the transformation of authority patterns in the EU. As a starting point, given that the historical roots of European integration lie in energy cooperation, this policy has a special symbolic weight. Additionally, due to the fact that energy is an area that sits at the cross-roads of different policy domains and areas of competence, ranging from EU exclusive competence (competition policy), to shared competence (climate policy, single market) and intergovernmental domains (security of supply), and includes both an internal and external dimension, it provides a wide range of examples to analyse the extent and consequences of the post-functional dilemma. As a 'flagship initiative' of the Juncker Commission and a crucial pillar for the success of Von der Leyen's European Green Deal, the Energy Union is also a perfect test case for assessing how the EU executive manages this confluence of integrationist and centrifugal pressures.

In framing this collection, this introductory piece aims to accomplish four main tasks. First, it provides an overview of the potential and challenges facing the Energy Union. Second, it develops a novel analytical framework. Third, it summarises the main findings of the volume. Lastly, the article concludes with some forward-looking reflections on EU energy policy and the broader implications for other areas of EU policy-making.

Energy Union: 'Saviour' or 'Foe' of European integration?

Despite the fact that European integration is rooted in the regional energy cooperation that emerged in the 1950s, for decades, energy was considered as a "less European" policy area

than others (Keay and Buchan 2015, 2). Whilst European energy regulation dates back to the 1970s, it is generally accepted that until recently energy was a "matter of minor importance on the EU agenda" (Boasson and Wettestad 2013, 1). In fact, the EU did not acquire formal competence concerning energy until the 2009 Treaty of Lisbon, previously secured obliquely via competences associated with competition and environmental policy (Tosun and Solorio 2011).

Over the past ten years, the growing functional necessity for increased cooperation has gradually overcome some of the traditional resistance from national governments in ceding their control over energy issues. Crucially, on the one hand, the energy security crises of late 2000s exposed the vulnerability of individual member states and sparked an EU-wide debate on the need for energy diversification (Herranz-Surrallés 2016). On the other hand, the global demand for urgent action on climate change and the EU's ambition to be an international leader further compelled the need for coordinated action regarding energy among its member states (Wurzel et al. 2017). Moreover, competitiveness pressures made the completion of the internal energy market a priority for the EU (Eikeland 2011). Together these factors facilitated a "supranational turn" in energy policy, through the 2020 Climate and Energy Package and the Third Internal Energy Market Package adopted in 2009 (Wettestad et al. 2012, 67). Subsequently, EU institutions have also gradually acquired a central role in securing energy supply, previously a jealously guarded domain of state sovereignty (Maltby 2013). As an example of the growing optimism around EU energy policy, in 2010 Jerzy Buzek and Jacques Delors presented the idea of a European Energy Community, conceived as "the next chapter in the history of European integration" (Buzek and Delors 2010, 1).

However, despite the hope for a rapid consolidation of a comprehensive and coherent EU energy policy, the initiatives above-mentioned also triggered a debate about the degree of power transferred to the EU, emanating from the member states' reluctance to relinquish their central position with respect to core aspects of the policy (such as the energy mix or relations with external suppliers). The pattern of contested authority claims and counter-claims (i.e. reclamation) among and between member states and EU institutions persists. This became evident during the discussions concerning the 2030 Energy and Climate Framework in 2014, when some member states pressed for less ambitious and less binding targets in comparison to those contained in the 2020 framework, exposing the internal fissures within the EU and between its member states with regard to the policy and its governance (Solorio and Bocquillon 2017, 34-35; Szulecki and Westphal 2014). The gradual development of an internal EU energy policy also prompted intense political controversy and legal action among external actors, mainly the Russian Federation, which accused the EU of discriminatory actions and of seeking the extra-territorial application of its rules (Kuzemko 2014; Romanova 2016).

With the above-mentioned in mind, the appearance of the concept of 'Energy Union' at the centre stage of the EU's policy agenda was presented as a 'saviour' for the European integration. In April 2014, following the crisis in Ukraine and the Russian intervention in Crimea, the then-Prime Minister of Poland, Donald Tusk, called for the creation of an Energy Union to combat Europe's energy dependence on Russia and return "the European project to its roots" (Tusk 2014). Much of the emphasis of Tusk's project concerned the security of supply in the gas sector, neglecting the debate about the internal energy market and the climate agenda that had previously characterized the EU's activities in this policy area (Boersma and Goldthau 2017; Szulecki et al. 2016). While Tusk's proposal was not free from criticism, its main merit was to gain media attention and political interest in the notion of the 'Energy Union'.

In this context, the European Commission president, Jean-Claude Juncker, made the Energy Union a top priority on his agenda, widening the range of objectives to include negotiating powers vis-à-vis third countries, as proposed by Tusk, and developing a greater role for renewable energy (Juncker 2014). To coordinate the Commission's efforts, Juncker created the position of vice-president for the Energy Union, a post filled by Maroš Šefčovič. With thirteen new legislative proposals, energy was one of the most dynamic policy areas in the EU during Juncker's administration. In just four years, a new energy governance architecture was re-designed, bundled together by the Regulation on the governance of the Energy Union and Climate Action, adopted in December 2018. Despite the absence of new formal institutions or acts to delegate powers, the development of the Energy Union resulted in the first comprehensive renegotiation of capacities, expectations, and roles in the broad area of energy policy after the formal competence was granted to the EU. It is this renegotiation of authority, undertaken under very difficult conditions, which this collection of papers seeks to disentangle.

Analysing EU governance through the prism of authority

'Authority' is a core concept in Political Science, European Studies and International Relations. In his well-known seminal work to demarcate the domain of Political Science, Eckstein (1973) proposed a characterization of 'politics' as being about *patterns of authority*. Similarly, Schmitter (1970, 836) had previously defined 'regional integration' as the process whereby "national units come to share part or all of their *decisional authority* with an emerging international organization". Several decades later, Lake (2010) proposed an understanding of 'global governance' using the prism of *relational authority*. Even though the notion of *authority* has been debated across disciplines over the course of decades, its meaning remains

elusive. Crucially, as noted by Krisch (2017, 232) conceptualizations of authority have often been comprehended in restrictive and formalistic ways, as a synonym for the 'ability to make legally binding decisions'. In EU studies, whilst the 1990s' 'governance turn' viewed authority as being dispersed among a variety of levels and actors, it largely treats authority as a legal phenomenon, equivalent to formal competence. For example, Hooghe and Marks' influential definition of the EU as a system of multilevel governance characterised it as a "layered system of co-existing levels of *authority* – a complex pattern of transnational, public and private institutional relations with overlapping *competences*" (Hooghe and Marks 2003, 235). Similarly, regulatory governance approaches, which focus on agencies and regulatory networks, have usually highlighted formal acts of delegation (Wonka and Rittberger 2010). Studies about 'new' or 'soft' modes of governance have also concentrated on assessing effectiveness in terms of compliance and the relevance of the so-called 'shadow of hierarchy' (Héritier and Lemkuhl 2008). Less attention has been paid to the ways in which different actors acquire authority (be it formally delegated or informally conferred) or how this authority is contested and renegotiated over time.

Significantly, however, greater clarity concerning the concept of authority has been provided by the latest elaborations grounded in sociological approaches to global governance. By contrast with the approaches outlined above, this stream of thought proposes a more dynamic understanding of authority, more broadly defined as an 'ability to induce deference in others' (Krisch 2017, 241; Sending 2015, 21). This more 'liquid' form of authority, to use Krisch's term (2017), encompasses the multiplicity of actors exercising authority in global governance (e.g. private firms, international bureaucrats, non-governmental organizations, professional networks), derived from a range of authority sources beyond mere legal competence. In this context, expertise, capacity, or moral standing may provide actors with the basis for gaining

authority beyond the formal delegation of competences. We contend that this perspective provides a promising route to assess current authority debates in the EU for a number of reasons. First, it directs our attention to the fact that authority is in constant flux. For example, Zürn (2018, 8) talks about '*reflexive* authority' to denote that when it comes to governance beyond the state, authority is "typically not internalized, but it allows a scrutiny of the effects of the exercise of authority at any time". Similarly, Lake (2010, 589) suggests that the social contract that international authority implies is continuously contested and open to renegotiation, where "authority is not static, but a dynamic, almost living thing". Hence, post-national authority always implies some degree of contestation, which must be constantly regained in competition and cooperation with a multiplicity of actors (Sending 2017). In the context of recent severe crises shaking the foundations of the EU, such as the Eurozone, migration, Brexit, and the rising pressure from Euroscepticism on mainstream parties, the assumption that even formally delegated authority is contested gains traction. This is all the more strongly the case in policy areas that remain closely attached to national sovereignty and where EU integration has proceeded in a piecemeal and non-linear fashion, such as energy policy.

Secondly, global governance theory has also emphasised the study of *overlapping* 'spheres of authority' (Rosenau 2007). Contrary to the early focus on "authority migration" (Gerber and Kollman 2004, 379), which suggests that authority can be relocated from one actor to another, recent approaches argue that authority comes in gradations and with frequent overlaps. On the one hand, overlapping spheres of authority may be seen positively, as necessary and inevitable in solving complex and multi-level problems, as they allow for mutual learning and empowerment of different categories of actors. Regime complexes and hybrid modes of governance are also said to be second-best options for cooperation when power is too dispersed

and preferences are too divergent for building robust international regimes (Colgan et al. 2012). On the other hand, however, overlying spheres of authority may also spur contestation, particularly when crises occur and issues become politicized. EU energy policy is an example of this type of authority intersection, as it has remained a "hybrid of co-existing elements", combining strong integration through law and weak integration through coordination (Thaler 2016, 575). The limits of EU and member state authority in this area are, therefore, not clearly fixed and potentially give rise to disagreement and competition.

Finally, sociological approaches to global governance also invite us to examine *informal* types of authority relations, which are not necessarily based on formal acts of delegation. A particularly relevant source of authority in global governance is expertise and competence, known as 'epistemic authority' (Quack 2016; Sending, 2015). The energy field is populated by a multiplicity of actors who claim relevant expertise in the governance of the sector. For example, independent regulators at national and European levels play a crucial role in implementing the goals of the Internal Energy Market, as do other industry players such as the Transmission System Operators (TSOs). In addition, the transition to renewable forms of energy is also changing the landscape of authority in the field, in that the possibility that households, co-operatives, and municipalities can produce their own energy is giving rise to new political actors and provoking demands for more decentralized forms of governing (Szulecki 2018).

Based on the considerations above, the following section proposes a novel approach to systematically study authority and its (re)negotiation. The section addresses, in turn, how authority might be *conferred*, *contested*, and authority conflicts *managed* (see also Table 1).

A framework for analysis: Authority conferral, contestation, and conflict management

Conferring authority

Before examining authority relations in a particular period or episode, a useful analytical step is to map the *history of authority patterns*. Following Kahler and Lake (2004, 409), in a multi-level polity such as the EU, this could involve an analysis of the extent to which state authority has been displaced *upwards* to supranational institutions, *downwards* to regions and municipalities, and/or *laterally* to private actors such as companies and NGOs, or non-majoritarian institutions such as independent regulatory agencies. This implies going beyond a discussion of the changes in the distribution of legal competence. Given that authority is a relational concept, authority cannot be considered the property of an actor. As Sending (2015, 5) specifies, a "'source' of authority is not just there for an actor to draw on but must itself be constructed, nurtured, and made effective in particular settings". Detecting the presence of authority thus requires examining not only authority claims, but also by whom these claims are acknowledged, either through formal recognition or by deference to the rules set and ideas promoted by a given actor.

A second aspect of the analysis is to understand the *causes or reasons* behind the decisions to delegate or defer to certain actors. Both *functional* needs and *value-based* objectives are relevant here. For example, Zürn (2018, 8) defines global governance as "the exercise of authority across national borders as well as consented norms and rules beyond the state, both of them justified with reference to common goods or transnational problems". Equally, the displacement of authority away from a member state is often seen as a response to a gap between formal authority and actual capacity to solve an issue. For example, as Hall and Bierstecker (2010, 11) argue, when citizens realize that the nation-state can no longer be held

accountable on issues that directly affect their lives, "the exercise of authority by the state is undermined and authority necessarily shifts". Yet another common expectation is that, in particularly sensitive areas, substantive delegation to international institutions could be demanded by crises, which would oblige states to set aside their sovereignty concerns (Ikenberry 2009, cited in Krisch 2017).

Contesting authority

A second dimension of the study is to examine to what extent authority in a given field is contested. Two points of departure exist for this debate. One possibility is that the *degree of contestation* is *low*, either because spheres of authority are clearly delimited, or because even if they are diffuse and overlapping, cooperation and mutual empowerment of different actors operate smoothly and without friction. Where this is the case, this invites reflection on the factors that enable a well-functioning domain despite the assumptions that the exercise of authority beyond the state is likely to generate contestation and competition.

Alternatively, where contestation is *high*, meaning situations where authority conflicts prevent or severely hinder policy making, the next step is to determine the *type of contestation* observed. We define two broad types, which are linked to different dynamics. The first type is *sovereignty-based contestation*, which refers to cases where different actors claim to be the ultimate authority over a particular issue. This type of overlapping authority claim is nicely captured by the notion of 'sovereignty surplus', which denotes common situations in the EU where formal authority is simultaneously claimed by different levels of governance (Walker 2010). The structural cause of this is that the EU can be said to have acquired quasi-sovereign powers, both in a formal and substantive sense: formally, through a gradual process of constitutionalization, setting principles such as the supremacy of EU law and direct effect; and

substantively, through its everyday pre-eminence in a wide array of policy sectors (Walker 2010). This leads to a sovereignty surplus in the sense of "excess and overlapping quality of claims to sovereignty in the EU (i.e. that ultimate authority is claimed both for the supranational centre and for the member states)" (Walker 2010, 8). Such surpluses are more likely in areas where there is a gap between formal and informal authority, namely issues where EU integration dynamics have extended informally beyond the explicit competences set by treaties, via the exercise of neighbouring or implied competences (Herranz-Surrallés 2014, 958). Yet another common type of sovereignty surplus might manifest as a conflict of jurisdictions between the EU, third countries and/or international law.

The second type is *substance-based contestation*, which derives from how authority is wielded and for what purpose. This contestation does not emerge from competition over legal or decision-making authority as such, but from the erosion of agents' authority when they are perceived as failing to act in accordance with the established social contract or expectations of those having delegated or deferred authority. This contestation pattern might be common in public-private relations: for example, decisions by a government to limit or withdraw authority from regulators or private actors who exercise public functions. Another example could be the EU's use of its powers to intervene directly in market or social relations, instead of limiting itself to more regulatory functions, as states have usually expected from the EU (Leuffen et al. 2013, 5). Episodes revealing incompetence, wrongdoing or discrimination could also lead to the erosion or revocation of authority. Political Science studies have also argued that long periods of depoliticisation via the delegation of functions to private and independent regulatory actors will tend to engender re-politicisation at some point (Flinders and Wood 2015) and give rise to accountability issues (Hall and Biersteker 2010). In sum, unlike sovereignty-based contestation, which denotes competing authority claims on the vertical level (mainly between

EU and Member states), substance-based contestation is more likely to imply conflicts of authority on the horizontal dimension, as a result of the ongoing recalibration between public and market actors, or between geopolitical and market-liberal approaches (Goldthau and Sitter 2015; Herranz-Surrallés 2016; Youngs 2011).

Managing authority conflicts

Last but not least, a third dimension of an authority analysis is to examine the strategies employed in mitigating and/or addressing authority contestation and their outcome. We distinguish between legal and political strategies. *Legal strategies* are those aimed at solving authority conflicts by formally (re)allocating actors' authority, and are hence more likely to be used to manage sovereignty-based contestation. The formal recalibration of authority can take place through (a) *formal adjudication*, namely measures that clarify the limits of actors' competences. Within the EU, member states and institutions might bring a case before the Court of Justice of the EU (CJEU) or another form of international arbitration in case of authority conflict with a non-EU country. National Parliaments can also legally prevent the transfer of competence to the EU in the form of subsidiarity checks. Another form of eliminating ambiguity in the allocation of competence is through amending/adopting new legislation or Treaty provisions.

An alternative legal strategy is through (b) *flexibility measures*, having the opposite effect, namely facilitating the dispersion of authority, rather than delimiting it. One such option is through 'micro-differentiation' (de Witte 2017, 25) characterised by high discretion in the implementation of secondary legislation and tailor-made exemptions and derogations (in the energy domain, see Andersen and Sitter 2006; Herranz-Surrallés 2019). Another strategy that facilitates the dispersion of authority is the mixing of governance modes. In that regard,

scholars have observed a growing haziness between hard and soft governance (Graziano and Halpern 2016, 5). Energy policy is precisely an area where scholars disagree on whether recent institutional developments in the Energy Union are a sign of 'softening', with Member States' re-gaining control (Solorio and Bocquillon 2017; Thaler 2016) or on the contrary, an example of 'hardening', where the Commission has formally acquired stronger agenda setting and monitoring powers (Rigner and Knodt 2018; Oberthür 2019).

Political strategies are more likely to be employed in substance-based contestation. The very framing of issues can be a powerful tool in the process of re-negotiating authority. The third strategy to manage contestation is therefore (c) *(de)politicisation*. Since substance-based contestation of authority often relates to the balance between public and private authority, one effective strategy to deal with contestation is to seek a recalibration through politicising or depoliticising an issue (Flinders and Buller 2006). Actors favouring greater authority by independent regulatory or market actors will try to *depoliticise* an issue via framing the issue as a technical domain, in order to 'fence off' certain areas of governance from high politics considerations and/or from the involvement of the public/parliaments. For example, the liberalization of the EU energy markets has been interpreted as a "de-politicisation strategy" (Eberlein 2010: 65). The opposite strategy is to *(re)politicise* issues. This entails seeking an increase in political control over market or regulatory actors, introducing institutionalized screening procedures, or even the requirement for parliamentary approval in issues such as investment decisions.

Finally, another political strategy that might be used when contestation is mostly substance-based is (d) *enhanced coordination.* Rather than recalibrating powers between public and private actors or between national and EU levels, this strategy would seek to maintain flexible

and inclusive arrangements. However, in order to mitigate friction and authority losses, actors may seek to upgrade coordination between the different sites of authority. In EU energy policy, which encompasses a multiplicity of sectors and levels of governance, the existence of coordination structures might be particularly relevant to prevent or mitigate potential authority conflicts.

[Table 1 about here]

Reflecting on the contributions of this special issue

The contributors to this special issue have all grappled with the theme of authority in the context of the Energy Union. Together the papers have covered topics as varied as public opinion attitudes towards EU energy policy (Tosun and Misic 2020), the new regulation on the governance of the Energy Union and Climate Action (Bocquillon and Maltby 2020), the role of private energy transmission operators in the internal market (Eckert and Eberlein 2020), the evolution of EU renewable energy and efficiency policies (Solorio and Jörgens 2020; Dupont 2020), the dilemmas of the EU regulatory power in the gas market (Goldthau and Sitter 2020), the local and external dimensions of the Nord Stream 2 pipeline controversy (Schmidt-Felzmann 2020), and the impact of foreign policy challenges on EU energy policy (Youngs 2020). Despite their different theoretical angles and methodological tools, each paper has successfully highlighted critical patterns relating to the conferral of authority, its contestation and the management of conflict in the Energy Union.

Conferral of authority: Growing EU authority beyond formal competence
The overall picture that emerges from this collection is that European energy policy, despite its tardy and peculiar Europeanisation path, has established itself as a central domain of EU

activity through a double displacement of authority. On the one hand, several contributions point to an *upward authority shift*, from the member states to the EU. The contributions concerning EU renewable energy and energy efficiency policies (Solorio and Jörgens 2020; Dupont 2020) illustrate how the EU has, over time, gained significant authority, ahead of the formal recognition of its competence in the Lisbon Treaty. The centrality of the Commission in EU energy policy making is also what leads Bocquillon and Maltby (2020) to argue that 'new intergovernmentalism' inadequately captures the distribution of authority in this sector, proposing instead the notion of 'embedded intergovernmentalism'. Similarly, the EU has also acquired authority in external energy policy (energy security and climate security) through a mixture of exogenous trends and crises as well as a gradual acceptance of the principle that member states should not be able to decide alone about projects that undermine the security of other member states (Goldthau and Sitter 2020; Youngs 2020). Expertise and the moral high-ground of representing common principles are therefore also relevant sources of EU authority. The consolidation of EU authority is also apparent in the contribution by Tosun and Misic (2020), which indicates that, despite member states' reluctance to transfer energy competences to the EU level, citizens show a very high support for the notion of a common EU energy policy.

On the other hand, two of the contributions highlight the *lateral shift of authority*, from public to private actors, and its interaction with the upward displacement of authority towards the EU. In the internal dimension, Eckert and Eberlein (2020) explore the phenomenon of rising 'private authority' focusing on the operators of the electricity grids, namely the TSOs. The authors find that much of the displacement of authority to these private actors is grounded in their functional expertise and legacy of providing a public good. Again, their involvement in furthering the integration of the European energy market predates by far the formalisation of

their role in the EU third electricity directive in 2009. In the external dimension, Goldthau and Sitter (2020) also argue that the EU has acquired a great deal of authority via the exercise of its market-regulatory competences. The authors argue that the Commission's commanding position came precisely from its ability to position itself as a neutral market arbiter as well as its self-restraint in the exercise of regulatory powers. A core idea that the authors advance is therefore that the degree of EU authority depends on whether power is used 'responsibly', namely within the limits of its market-regulatory function.

Contestation of authority: From bounded contestation to sovereignty surpluses

Given the multi-sectoral character of EU energy policy, contributions in this collection find very different levels of contestation, revealing contrasting trends in the context of the Energy Union. On the one hand, the domain of gas supplies is the case that best exemplifies a *high* level of sovereignty-based contestation, which fits well the sovereignty surplus situation, where a multiplicity of actors (local authorities, member states, the EU and third countries) claim decision-making authority over the same issue (Schmidt-Felzmann 2020). However, Goldthau and Sitter (2020) also make the case that contestation in gas supplies is not so much about whether the EU has authority to use regulatory policy (sovereignty based contestation) but, rather, the purpose for which the EU should wield its power (substance-based contestation). More specifically, member states appear divided on the question of whether the EU ought to use its regulatory power to address a threat that arises from geopolitics – namely a debate between liberal and geopolitically-oriented approaches. Though less acrimonious, sovereignty-based contestation has also figured prominently in the EU's involvement in the promotion of energy renewables and energy efficiency (Bocquillon and Maltby 2020; Dupont 2020; Solorio and Jörgens 2020), where the limits between the EU's competence for promoting energy

sustainability in a well-functioning energy market have often clashed with member states' sovereignty or subsidiarity claims.

On the other hand, some contributions provide examples where sovereignty-based contestation has remained *low* or is decreasing: for example, in the cases of the internal energy market, energy efficiency, and EU external energy policy in general. Concerning the internal energy market, Eckert and Eberlein find that sovereignty-based contestation, for example in network codes and planning, has somewhat decreased alongside the empowerment of private actors, and that substance-based contestation has remained low, despite the suspicion that TSOs might be using their regulatory authority for their own benefit. Dupont (2020) also highlights that the prominent sovereignty-based contestation that marked the early years of EU energy efficiency policy, has gradually subsided since the mid-2000s, and is now more characterised by substance-based contestation, connected to the extent and flexibility of energy efficiency measures. In EU external energy policy, Youngs (2020) also argues that contestation has been lower than was expected when the Energy Union was launched, as many feared then that the EU's more geopolitical focus would intensify tensions. The author advances the idea of 'bounded contestation' to refer to the tempering of differences between institutional actors over external energy strategies.

Management of authority conflicts: Towards delimiting or fudging authority?

The papers in this collection have identified a wide range of strategies available to manage or mitigate authority conflicts. The main choice in dealing with authority conflicts seems to be between strategies that aim for a delimitation of authority and strategies that enable its further diffusion. The most direct way of delimiting spheres of authority, *formal adjudication*, reveals a largely unsuccessful strategy to deal with cases of deep-seated contestation. The debate about

gas supplies is again the clearest example. As discussed by Schmidt-Felzmann (2020), the Commission struggled for a mandate to negotiate a legal framework with Russia for the construction of the Nord Stream 2 pipeline, yet the legal services of the Council argued against it. Russia also sought international arbitration by bringing cases against the EU internal market rules in several dispute settlement bodies. The Commission's proposal to amend the Third Gas Directive to clarify the application of EU law to sub-sea pipelines entering the EU territory also falls within the formal adjudication category in so far as the aim is to better delimitate the respective spheres of competence between the EU and the member states, and between the EU and third countries/international law. However, to date, these legal interventions have been ineffective in solving the underlying authority conflicts.

A more common strategy to delimit/relocate spheres of authority is politicisation and depoliticisation. *Depoliticisation* efforts have been identified as an effective way to overcome contestation in the integration of the energy market, where framing the role of TSOs as being purely technical and confined to operational cooperation has contributed to a form of 'hidden integration', effectively sheltered from public attention (Eckert and Eberlein 2020). Depoliticisation has also been the strategy of choice for the Commission in addressing the particularly sensitive debate about harmonizing RES support schemes (Solorio and Jörgens 2020). On other occasions, the Commission opted for *politicisation* as a method to overcome sovereignty-based contestation and garner support for increasing EU authority. This is the case of energy efficiency, where Dupont (2020) documents the various attempts by the Commission at (re)framing the issue as an 'efficiency-first policy', as part of a long game for solidifying EU competence in this domain. Strategies of (de)politicisation might, therefore, also be a precursor for the use of legal strategies to change the formal distribution of competences between the EU and the member states, or between public and private actors. However, in relation to gas

supplies, Goldthau and Sitter (2020) contend that depoliticisation cannot simply be engineered. The authors argue that the standard power-sharing and depoliticisation strategies do not offer viable solutions given that the politicisation of the gas trade is the root of the problem, confronting the EU with a genuine dilemma.

On the other end, several other contributions noted that the management of contestation has often implied greater *flexibility measures* and forms of *enhanced coordination* that, rather than delimit spheres of authority, have facilitated its dispersion. The contributions most closely related to energy sustainability find that the resolution or management of authority conflicts has been achieved via flexibility in implementation and/or new combinations of soft and hard modes of governance (Bocquillon and Maltby 2020, Dupont 2020, and Solorio and Jörgens 2020). Yet, they also conclude that the resulting distribution of authority remains unstable and could lead to either further integration or re-nationalisation. Finally, in EU external energy relations, enhanced coordination between energy, foreign policy and climate policy communities is deemed to have been a factor contributing to the mitigation of the high levels of contestation characterising this sensitive domain (Youngs 2020).

Conclusion

The new wave of European integration theory, encompassing approaches such as post-functionalism, new intergovernmentalism and new parliamentarism, has revived the discussion about who exercises *power* within the EU and what are the implications for the *legitimacy* of the EU (Schmidt, 2018). A focus on authority, broadly understood as ability to induce deference in others, proffers a useful vantage point to these debates. Crucially, rather than espousing a specific 'grand-theoretical' lens, this introductory paper provides a heuristic discussion of the concept of authority, which the articles in this special issue address from a

variety of theoretical approaches and methods, including new intergovernmentalism, post-functionalism, regulatory governance, Europeanization theory and/or framing literature. The overall objective of this special issue has been to better diagnose the simultaneous integration and re-nationalisation tendencies in EU energy policy, which due to its multi-sectoral nature, is a focused example of wider patterns of contestation in the EU. In this concluding section, we assess some of the broader theoretical and practical implications of such an approach, both for EU energy policy and for debates in European integration.

The contributions in this collection suggest that the area within the Energy Union that generates the most acrimonious authority conflicts is gas trade. In this domain, the EU faces serious policy dilemmas, which touch on the very *finalité* of European integration. Moreover, attempts to manage contestation by delimiting the respective spheres of competence by formal adjudication have generated further tensions internally and externally. In this context, it is paradoxical that the picture that emerges from this special issue is also a deceleration in EU decarbonisation policies. Particularly when it comes to renewable energy policies, previous Europeanization trends are experiencing negative feedback loops, making some member states more protective of their authority. Notably, the strongest advances of EU authority in this domain, for example the inclusion of renewable support schemes in EU anti-state aid rules, are not particularly helpful in achieving decarbonisation goals.

A second paradox that emerges from this volume is that, while some of the developments in the Energy Union expose the reluctance of member states to cede further authority to the EU, and even reclaim some of it, public opinion seems to mobilise in the opposite direction. Not only are European citizens largely supportive of a common EU energy policy, but also their main priority as regards the Energy Union is the development of renewable energy. In that

sense, EU energy policy suffers less from a post-functionalist dilemma, which assumes that the functional need for further integration clashes with a growing resistance from the public, and more from a 'paradox of sovereignty' (McGowan 2009, 21), namely a situation where governments strive to retain their formal authority even though their *de facto* control and capacity to provide public goods is ever more restricted. Echoing Tosun and Misic (2020), there seems to be ample political space for governments to be more ambitious in decarbonisation and for the EU to shift away from a gas-focused external energy policy.

The launch of the European Green Deal framework, which envisages a new binding climate law aimed at achieving carbon neutrality by 2050 (European Commission 2019), seems to capture this sentiment. The implementation of this grand political initiative will soon call for a revival of the debate about the degree of authority that the Commission enjoys and what strategies can best prevent or mitigate the contestation that the ambitious binding 2050 targets are likely to provoke. In this context, future studies could also focus on the impact of other rising sources of authority in EU energy policy not covered in this special issue, such as the recent wave of climate activism that has found particular resonance among the young, as well as the potential for local authorities and prosumer organisations in pushing the boundaries of EU energy policy. In external energy relations, there is also a need to understand better how the EU is equipped for dealing with the international re-allocation of power and authority that energy transitions around the world will bring about.

Beyond EU energy policy, this special issue also contributes to the debate about how to manage authority conflicts in a context where crises and centrifugal tendencies abound. On the one hand, some contributions in this volume demonstrate that formal adjudication is often not a viable strategy to deal with deep-seated authority contestation. On the contrary, it can foster

disunity and re-nationalisation pressures. This is, therefore, a call for caution in a context of unprecedented rise in cases brought to the CJEU in delicate areas such as EU external relations (Erlbacher 2017). Depoliticisation strategies, when practicable, can indeed contribute to overcoming authority conflicts. However, they can also lead to policies with a dubious impact on the general interest, as shown by the discussions on "hidden integration" in the EU energy market or the renewable energy subsidies. On the other hand, the most popular strategies are the ones that foster, rather than limit, the dispersion of authority, such as micro-differentiation and the mixing of governance modes. Yet, these also come with the price tag of fudging political responsibility, as the Energy Union governance regulation exemplifies. Rather than solving this discussion, this special issue represents a move away from a focus on what drives (dis)integration, to debates on what strategies can help manage authority conflicts and their normative and practical consequences.

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References

Andersen, S.S. and Sitter, N. 2006. "Differentiated Integration: What is it and How Much Can the EU Accommodate?" *Journal of European Integration*. 28(4): 313-330.

Boasson, E.L. and J. Wettestad. 2013. *EU Climate Policy: Industry, Policy Interaction and External Environment*. Farnham, UK and Burlington, USA: Ashgate.

Bocquillon, P. and Maltby, T. 2020. "EU Energy Policy Integration as Embedded Intergovernmentalism: the Case of Energy Union Governance Regulation." *Journal of European Integration* 42(1), forthcoming.

Boersma, T. and Goldthau, A. 2017. "Whiter the EU's Market Making Project in Energy: From Liberalization to Securitization?." In *Energy Union Europe's New Liberal Mercantilism?*, ed. By S.S. Andersen, A. Goldthau, N. Sitter. New York: Palgrave MacMillan, pp. 99-113.

Buzek, J. and Delors, J. 2010. *Full text of the Buzek and Delors Declaration on the creation of a European Energy Community (EEC)*, Brussels, May 5.

Colgan, J., Keohane, R. and Van de Graaf, T. 2012. "Punctuated Equilibrium in the Energy Regime Complex." *Review of International Organizations* 7(2): 117-143.

Costa, O. 2018. "The politicization of EU external relations." *Journal of European Public Policy*, early view (DOI: 10.1080/13501763.2018.1478878)

de Wilde, P., Leupold, A. and Schmidtke, H. 2016. "Introduction: the differentiated politicisation of European governance." *West European Politics* 39(1): 3-22.

de Witte, B. 2017. "Variable geometry and differentiation as structural features of the EU legal order." *Between flexibility and disintegration: The trajectory of differentiation in EU law*, ed. by B. De Witte, A. Ott, and E. Vos. Cheltenham: Edward Elgar Publishing, pp. 9-27.

Delors, J., Andoura, S. & Vinois, J. 2015. *From the European Energy Community to the Energy Union.* Paris: NOTRE Europe Jacques Delors Institute.

Dupont, C. 2020. "Defusing Contested Authority: EU Energy Efficiency Policymaking." *Journal of European Integration* 42(1), forthcoming.

Eberlein, B. (2010) "Experimentalist Governance in the Energy Sector." *Experimentalist Governance in the European Union*, ed. by C.F: Sabel and J. Zeitlin. Oxford: Oxford University Press, pp. 61-78.

Eckert, S. and Eberlein, B. 2020 "Private Authority in Tackling Cross-border Issues. The Hidden Path of Integrating European Energy Markets." *Journal of European Integration* 42(1), forthcoming.

Eckstein, H. 1973. "Authority Patterns: A Structural Basis for Political Inquiry." *American Political Science Review* 67(4): 1142-1161.

Eikeland, P. O. 2011. "The third internal energy market package: New power relations among member states, EU institutions and non-state actors?." *Journal of Common Market Studies* 49(2): 243–263.

Erlbacher, F. 2017. "Recent Case Law on External Competences of the European Union: How Member States can Embrace Their Own Treaty, CLEER 2017/2, available at: https://www.asser.nl/media/3485/cleer17-2_web.pdf

European Commission. 2015. *A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy*. COM/2015/080 final, 25.02.2015.

European Commission. 2019. *The European Green Deal*. COM(2019) 640 final, 11.12.2019.

Flinders, M. and Buller, J. 2006. "Depoliticization, Democracy and Arena Shifting." *Autonomy and Regulation. Coping with Agencies in the Modern State,* ed by T. Christensen and P. Laergeid. Cheltenham: Edward Elgar, pp. 53-80.

Flinders, M. and Wood, M. 2015. "When Politics Fails: Hyper-Democracy and Hyper-Depoliticization." *New Political Science*, 37(3): 363-381.

Gerber, E.R. and Kollman, K. 2004. "Introduction – Authority Migration: Defining an Emerging Research Agenda." *Political Science and Politics* 37(3): 397-401.

Goldthau, A. and Sitter, N. 2015. "Soft power with a hard edge: EU policy tools and energy security." *Review of International Political Economy*, 22(5): 941-965.

Goldthau, A. and Sitter, N. 2020. "Power, Authority and Security: The EU's Russian Gas Dilemma." *Journal of European Integration* 42(1), forthcoming.

Graziano, P. R. and Halpern, C. 2016. "EU governance in times of crisis: Inclusiveness and effectiveness beyond the 'hard' and 'soft' law divide." *Comparative European Politics*, 14(1): 1-19.

Hall, R.B. and Biersteker, T.J. 2010. "The emergence of private authority in the international system." *The Emergence of Private Authority in Global Governance*, ed. by R.B. Hall and T.J. Biersteker. Cambridge: Cambridge University Press.

Héritier, A. and Lemkuhl, D. 2008. "Introduction: The Shadow of Hierarchy and New Modes of Governance." *Journal of Public Policy* 28(1): 1–17.

Herranz-Surrallés, A. 2014. "The EU's Multilevel Parliamentary (Battle)Field: Inter-parliamentary Cooperation and Conflict in the Area of Foreign and Security Policy." *West European Politics* 37(5): 957-975.

Herranz-Surrallés, A. 2016. "An Emerging EU Energy Diplomacy? Discursive Shifts, Enduring Practices." *Journal of European Public Policy* 23(9): 1386-1405.

Herranz-Surrallés, A. 2019. "Energy policy and European Union Politics". *Oxford Research Encyclopedia of Politics*, http://dx.doi.org/10.1093/acrefore/9780190228637.013.1079

Hooghe, L. and Marks, G. 2003. "Unraveling the central state, but how? Types of multi-level governance." *American Political Science Review* 97(2): 233–43.

Hooghe, L. and Marks, G. 2009. "A Postfunctionalist Theory of European Integration: From Permissive Consensus to Constraining Dissensus." *British Journal of Political Science* 39(1): 1-23.

Ioannou, D., Leblond, P. and Niemann, A. 2015 "European integration and the crisis: practice and theory." *Journal of European Public Policy* 22(2): 155-176.

Jones, E.R. 2018. "Towards a theory of disintegration." *Journal of European Public Policy* 25(3): 440-451.

Juncker, J. C. 2014. *A new start for Europe. Opening statement in the European Parliament plenary session*, Strasbourg, 15 July.

Kahler, M. and Lake, D. A. 2004. "Governance in a Global Economy: Political Authority in Transition." *Political Science and Politics* 37(3): 409-414.

Keay, M. and Buchan, D. 2015. "Europe's Energy Union – a problem of governance", *Oxford Energy Comment*, Oxford: The Oxford Institute for Energy Studies.

Krisch, N. 2017. *Liquid authority in global governance*, *International Theory* 9(2): 237–260.

Kuzemko, C. 2014 "Ideas, power and change: explaining EU–Russia energy relations." *Journal of European Public Policy* 21(1): 58-75.

Lake, D.A. 2010. "Rightful Rules: Authority, Order, and the Foundations of Global Governance." *International Studies Quarterly* 54(3): 587-613.

Leuffen, D., Rittberger, B. and Schimmelfennig, F. 2013. *Differentiated Integration. Explaining Variation in the European Union*. Basingstoke: Palgrave.

Maltby, T. 2013. "European Union energy policy integration: A case of European Commission policy entrepreneurship and increasing supranationalism." *Energy Policy* 55: 435–444.

McGowan, F. 2009. "International Regimes for Energy: Finding the Right Level for Policy." *Energy for the Future*. Ed. by I. Scrase, and G. Mackerron. New York: Palgrave, Macmillan, pp. 20-34.

Oberthür, S. 2019. "Hard or Soft Governance? The EU's Climate and Energy Policy Framework for 2030.", *Politics and Governance* 7(1):17–27.

Quack, S. 2016. "Expertise and authority in transnational governance." *Authority in Transnational Legal Theory. Theorising Across Disciplines*. Ed. by R. Cotterrell and M. del Mar. Cheltenham: Edward Elgar, pp. 361-386.

Ringel, M. and Knodt. M. 2018. "The governance of the European Energy Union: Efficiency, effectiveness and acceptance of the Winter Package 2016." *Energy Policy* 112: 209-220.

Rittberger, V., Nettesheim, M., Huckel, C. and Göbel, Throsten. 2008. "Introduction: Changing Patterns of Authority." *Authority in the Global Political Economy*, ed. by V. Rittberger and M. Nettesheim. Basingstoke/New York: Palgrave.

Romanova, T. 2016. "Is Russian Energy Policy towards the EU Only about Geopolitics? The Case of the Third Liberalisation Package." *Geopolitics*, 21(4): 857-879.

Rosenau, J.N. 2007. "Governing the ungovernable: The challenge of a global disaggregation of authority." *Regulation & Governance* 1: 88–97.

Schimmelfennig, F. 2017. "Theorising Crisis in European Integration." *The European Union in Crisis*. Ed. by D. Dinan, N. Nugent, and W.E. Paterson. Basingstoke: Palgrave Macmillan, pp. 316-336.

Schmidt-Felzmann, A. 2020. "Nord Stream 2 and Diffuse Authority in the EU: Managing Authority Challenges regarding Russian Pipelines in the Baltic Sea Area." *Journal of European Integration* 42(1), forthcoming.

Schmidt, V. 2018. "Rethinking EU Governance: From 'Old' to 'New' Approaches to Who Steers Integration." *Journal of Common Market Studies* 56(7): 1544-1561

Schmitter, P.C. 1970. "A Revised Theory of Regional Integration." *International Organization* 24(4): 836-868.

Šefčovič, M. 2015. *Driving the EU forward: the Energy Union*, SPEECH-15-4520_EN, 27 February.

Sending, O.J. 2015. *The Politics of Expertise. Competing for Authority in Global Governance*. Ann Arbor: Univeristy of Michigan Press.

Sending, O.J. 2017. "Recognition and liquid authority." *International Theory* 9(2): 311–328.

Solorio, I. and Bocquillon, P. 2017. "EU renewable energy policy: a brief overview of its history and evolution." *A Guide to EU Renewable Energy Policy. Comparing Europeanization and Domestic Policy Change in EU Member States*. Ed. by I. Solorio and H. Jorgens. Cheltenham: Edward Elgar, pp. 23-42.

Solorio, I. and Jorgens, H. 2020. "Contested Energy Transition? Europeanization and Authority Turns in EU Renewable Energy Policy." *Journal of European Integration* 42(1), forthcoming.

Szulecki, K. 2018. "Conceptualizing energy democracy." *Environmental Politics* 27(1): 21-41

Szulecki, K., & Westphal, K. 2014. "The cardinal sins of European energy policy: Non-Governance in an uncertain global landscape." *Global Policy* 5(1): 38–51.

Szulecki, K., Fischer, S., Gullberg, A.T., and Sartor, O. 2016. "Shaping the 'Energy Union': between national positions and governance innovation in EU energy and climate policy." *Climate Policy* 16(5): 548-567.

Thaler, P. 2016. "The European Commission and the European Council: Coordinated Agenda setting in European energy policy." *Journal of European Integration* 38(5): 571-585.

Tosun, J. and I. Solorio. 2011. "Exploring the energy–environment relationship in the EU: perspectives and challenges for theorizing and empirical analysis." *European Integration Online Papers* 15(1), http://eiop.or.at/eiop/pdf/2011-007.pdf.

Tosun, J., Wetzel A. and Zapryanova, G. 2014. "The EU in Crisis: Advancing the Debate." *Journal of European Integration* 36(3): 195-211.

Tosun, J. and Misic, M. 2020. "Conferring Authority in the European Union: Citizens' Policy Priorities for the European Energy Union." *Journal of European Integration* 42(1), forthcoming.

Tusk, D. 2014. "A united Europe can end Russia's energy stranglehold." *Financial Times* 21 April.

Vollaard, H. 2014. "Explaining European Disintegration." *Journal of Common Market Studies* 52(5): 1142-1159.

Walker, N. 2010. "Surface and Depth: The EU's Resilient Sovereignty Question." *Political Theory of the European Union*. Ed. by J. Neyer and A. Wiener. Oxford: Oxford University Press.

Wettestad, J., Eikeland, P. O., and Nilsson, M. 2012. "EU climate and energy policy: A hesitant supranational turn." *Global Environmental Politics* 12(2): 67-86.

Wonka, A. and Rittberger, B. 2010. "Credibility, Complexity and Uncertainty: Explaining the Institutional Independence of 29 EU Agencies." *West European Politics* 33(4): 730-752,

Wurzel, R., Connelly, J. and Liefferink, D. (eds). 2017. *The European Union in International Climate Change Politics. Still Taking A Lead?* London: Routledge.

Youngs, R. 2011. "Foreign Policy and Energy Security: Markets, Pipelines and Politics." *Toward a Common European Union Energy Policy*. Ed. by J.S. Duffield and V.L. Birchfield. New York: Palgrave Macmillan, pp. 41-60.

Youngs, R. 2020. "EU Foreign Policy and Energy Strategy: Bounded Contestation." *Journal of European Integration* 42(1), forthcoming.

Zürn, M. 2018. *A Theory of Global Governance. Authority, Legitimacy, and Contestation*. Oxford: Oxford University Press.

Table 1. Summary of the analytical categories

Conferral	*Displacement*	**Upwards**
		Downwards
		Laterally
	Motivations	Functional needs
		Value-based objectives
Contestation	*Degree*	Low-intensity
		High-intensity
	Type	Sovereignty-based
		Substance-based
Management	*Legal strategies*	Formal adjudication
		Flexibility measures
	Political strategies	(De)politicization
		Enhanced coordination

Source: authors