



*3rd AIEE Energy Symposium*

***CURRENT AND FUTURE CHALLENGES TO ENERGY SECURITY***

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**DIVISION OF POWERS  
BETWEEN THE EU AND ITS  
MEMBER STATES:  
IMPLICATIONS FOR ENERGY  
SECURITY**

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# Introduction

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- ❖ 1) Traditional understanding of energy security
- ❖ 2) European Union's objective to ensure energy security
- ❖ 3) European Union as an international organisation
- ❖ 4) Is Energy Union equipped enough to ensure energy security?

- 1. Energy is essential for economic growth.**
- 2. Natural resources are found all over the world but they are not evenly distributed.**

# Energy Security

# Energy Security I.

- ❖ Diversification of energy sources or energy supplies (suppliers/routes)
- ❖ Examples:
  - ❖ The European **Coal and Steel Community** (designed to integrate the coal and steel industries in western Europe).
  - ❖ EURATOM: the formation and development of Europe's nuclear industry and to ensure **security of supply**.

# Energy Security II.

- ❖ Traditional role of international law in energy diversification
  - ❖ **In fossil fuel based economy:**
    - ❖ Energy production (investment protection in energy producing countries – e.g. ECT, BIT, trade treaties)
    - ❖ Energy transit (freedom of transit – e.g. ECT, WTO)
    - ❖ Energy trade (trade related rules in the WTO Agreements, Energy Charter Treaty)
    - ❖ Energy cooperation (IEA)
    - ❖ **Market oriented approach to depoliticize energy sector (energy policy is often used as a foreign policy tool)**

# Energy Security III.

- ❖ **Energy transition to a low-carbon economy**

# **Combination of internal and external tools:**

- 1) Energy Transition**
- 2) Energy Efficiency**
- 3) Fossil fuels: Diversification of routes, suppliers, freedom of transit, trade and investment**



# EU Energy Security Strategy (2014)

- ❖ In response to disruptions of gas supplies in 2006 and 2009, the European Commission has adopted the EU Energy Security Strategy.
- ❖ It aims at to strengthening the EU's energy security in terms of gas supplies and to reducing the number of Member States that are exclusively dependent on one single supplier
- ❖ **“The key to improved energy security lies first in a more collective approach through a functioning internal market and greater cooperation at regional and European levels, in particular for coordinating network developments and opening up markets, and second, in a more coherent external action.”**
- ❖ **2014 EU Energy Security Strategy is an integral part of the 2030 policy framework on climate and energy**

# Energy Union (2015)

- ❖ **Energy security, solidarity and trust** as one of the Energy Union's dimensions
- ❖ Energy Union seeks to address EU's vulnerability to external energy shocks
- ❖ Key drivers of Energy Security
  - ❖ **Internal:** decreasing Europe's energy import dependence through energy sources diversification (deployment of RES), more efficient energy consumption and solidarity
  - ❖ **External:** diversification of routes, suppliers, investment in energy producing countries

# Energy Union (2015)

- ❖ **“A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy”**
- ❖ **Conclusion: Since the world seeks to tackle climate change, environmental and energy and issues are increasingly interwoven. The measures to be adopted by the EU will likely be covered by both environmental and energy competence.**

# Principle of Conferred Powers

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# European Union – an international organization

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**International organizations can act only within the limits of the powers assigned to them via the Treaties.**

**Principle of conferred powers.**

# European Union: Competence

**Principle of conferred powers: the EU has to find an appropriate legal basis for any of its external action.**

The EU may invoke:

- A. Competence over **Energy (SHARED)**
- B. Competence over **Environment (SHARED)**
- C. Competence over **Common Commercial Policy (EXCLUSIVE)**

# Competence over Trade, Energy and Environment

# Competence over Energy

**Shared competence.**

**Implied external competence.**

**Article 194 includes objective “promote energy efficiency and energy saving and the development of new and renewable forms of energy” and “ensure security of energy supply in the Union”.**

**Caveat (!): Article 194(2) TFEU: Treaty shall not affect Member State’s sovereignty over the choice of its energy sources and the general structure of its energy supply in the electricity sector.**

**Example: Conclusion of the Statute of the IRENA found its legal basis in the competence over energy.**



# Competence over Energy

## ❖ **Article 194 TFEU**

- ❖ 1. In the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim, in a spirit of solidarity between Member States, to:
  - ❖ (a) ensure the functioning of the energy market;
  - ❖ (b) ensure security of energy supply in the Union;
  - ❖ (c) promote energy efficiency and energy saving and the development of new and renewable forms of energy; and
  - ❖ (d) promote the interconnection of energy networks.
- ❖ 2. Without prejudice to the application of other provisions of the Treaties, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish the measures necessary to achieve the objectives in paragraph 1. Such measures shall be adopted after consultation of the Economic and Social Committee and the Committee of the Regions. Such measures shall not affect a Member State's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply, without prejudice to Article 192(2)(c).

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# Competence over Environment

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**Shared competence.**

**Explicit external competence.**

**Article 191 includes objective “the promotion of measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change”.**

**Limitations: 191(4) TFEU: Article 191 TFEU shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.**

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# Common Commercial Policy

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**EU has exclusive competence.**

**CCP covers: trade tariffs and trade agreements relating to trade in goods and services, commercial aspects of intellectual property and foreign direct investments.**

**Conclusion of the Energy Charter Treaty, the Energy Community found its legal basis in the CCP. The CCP can considerably contribute to removal of trade barriers on clean energy technologies or provide investment protection to clean energy related investments.**

# Legal basis

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# Transition to a low-carbon economy and its complexity

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- ❖ **Since the world fights climate change, environmental and energy and issues are interwoven. The measures pursued by the EU will likely be covered by both environmental and energy competence.**
- ❖ **It is difficult to draw the line between energy and environment objective.**
- ❖ **Achieving the main objective of the Paris Agreement, to limit the global average temperature rise to well below 2°C above pre-industrial levels, requires the adaptation of the entire global economy by reorienting investments to support the transition to a low-carbon economy.**

# Energy Star Agreement

- ❖ **International agreement between the EU and the US on energy labelling of office equipment products.**
- ❖ **Council Decision to conclude the Energy Star Agreement adopted in 2001 and originally based solely on environmental competence.**
- ❖ **CJEU found that the Council should have chosen Article 133 EC, in conjunction with Article 300(3) EC and annulled the 2001 Decision.**
- ❖ **Council's Decision concerning the conclusion on behalf of the European Community of the Agreement between the Government of the United States of America and the European Community on the coordination of energy-efficient labelling programs for office equipment was adopted in 2006.**

# **Court of Justice of the European Union**

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# Principle 1

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**The choice of the legal basis for a measure may not depend simply on an institution's conviction as to the objective pursued, on the contrary, it must be based on objective factors, which are amenable to judicial review. (Titanium dioxide, Opinion 2/00)**



# Principle 2

**“Measure that pursues a twofold purpose and one is identifiable as the main or predominant purpose or component, whereas the other is merely incidental, the measure must be founded on a single legal basis, namely that required by the main or predominant purpose.”**

# Principle 3

By way of exception, it is established that the measure simultaneously pursues several objectives which are inseparably linked without one being secondary and indirect in relation to the other.” (Opinion 2/00) Under these circumstances the external action may have dual legal basis (Rotterdam Convention Case).

# Principle 4

**Dual legal bases should be the exception rather than rule. (C-411/06)**

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# Principle 5

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**However, when these two legal competences require different legislative process, and participation of different EU institutions, recourse to a dual legal basis is excluded and it is necessary to determine which of those two provisions is the appropriate legal basis. (Titanium dioxide, Rotterdam case)**

# Examples

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# Energy Community

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**Objective:** enhance the **security of supply** of the single regulatory space by providing a stable investment climate.

In addition:

Article 29 of the Treaty establishing the Energy Community: “The Parties shall, within one year of the date of entry into force of this Treaty, adopt **security of supply statements describing in particular diversity of supply, technological security, and geographic origin of imported fuels.**”

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# Energy Community

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Council's decision on the conclusions of the Treaty establishing the Energy Community (2006) found legal basis in EU competence over the CCP and Environment.

Since 2009, EU has always invoked its **competence over energy** in relation to Energy Community (e.g. DECISION on a proposal to establish the Energy Community list of energy infrastructure projects of energy infrastructure projects).

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# Energy Charter Treaty

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Primary objective of the ECT is to ensure energy security and covers trade – transit – investment – environmental issues.



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# Energy Charter Treaty

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Council's decision on the conclusions of the Energy Charter Treaty (1997) found legal basis in EU competence over the **CCP and Environment**.

The Energy Charter Conference concern areas of mixed competence, the European Communities and the Member States are to cooperate with a view to achieving a common position, in accordance with the jurisprudence of the Court of Justice of the European Communities, ECT was at the end concluded as a **mixed agreement**.

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# Conclusions

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Ensuring energy security requires combination of measures covering trade and energy (different EU competences)

Against the background of the complexity of energy transition, energy and environmental issues are getting increasingly interlinked, also EU external action is getting complex covering energy, trade and environment.

**Limited EU competences, overlaps and blurred lines especially between energy and environment may raise legal questions.**

# Conclusions

**Regulation on the Governance of the Energy Union** reads:

*„A resilient Energy Union with an ambitious climate policy and a fundamental transformation of our energy system can only be achieved through a combination of coordinated action – legislative and non-legislative – at EU and national level. To achieve this, the Energy Union needs strong Governance ensuring that policies and measures at various levels are coherent, complementary and sufficiently ambitious. The main objective of this initiative is to set out the necessary legislative foundation for this process in view of delivering the Energy Union.“*

**However, the Regulation deals with an internal dimension of the Energy Union. Its external dimension**



Thank you for your attention.

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