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**When the cat is away the mice will play. Can a Principal-Agent approach explain EU external relations in the energy sector?**

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*Abstract*

*This paper attempts to test the explanatory power of the Principal-Agent Model (PAM) of Delegation in providing a better explanation for the EU external relations in the energy sector. The model allows investigating the particular form of delegation of power occurring between EU member governments (principals) and supranational organisations (agents). Assuming that principals and agents have different interests and that the former cannot have a complete control on the latter, the PAM allows to analyse relations between these actors and various side effects of delegation known as “agency losses” such as slippage and shirking.*

*The primary assumption of this research is that the Commission is claiming a prominent role over a sector that has always been guarded jealously by national governments. By proposing an innovative application of the model, this research aims to assess whether the Commission is shirking or slipping (or both) while seeking to build an external dimension of its Energy Policy. That being said, by shedding light on these two kinds of agency losses, a topic scarcely examined, this study also aims to fill that gap within the PAM literature.*

**Introduction**

Despite two of the three original treaties, the Treaty establishing the European Coal and Steel Community (1951) and the Treaty establishing the European Atomic Energy Community (1957), concerned energy, scholars have often labelled Energy policy in Europe as rather “insignificant” (Matlary, 1997: 13). Because of the strategic economic importance of energy sectors, energy policy autonomy has been “guarded jealously by national governments” (Padgett, 1992: 54) and the emergence of a European energy policy has not been free of controversies.

In recent decades, however, an increased involvement of the European Commission in the energy sector has been apparent. Not only has the European Commission been pushing internally for the completion of the Internal Energy Market, but it has also been more involved in building the external dimension of the European Energy Policy. As far as the external dimension is concerned, the Commission has made the development of relations with energy supplier and transit countries a priority. Moreover, it has been stressing the importance of speaking with one voice on international energy issues (COM (2007) 1 final). This has been happening, however, in a context where the role of Member States has been dominant. Accordingly, the development of an external dimension of the energy policy may be seen as an arena in which the European Commission is present on the one hand, with the Member States on the other playing to defend their respective interests.

This paper introduces an on-going research on the promise of the PAM of Delegation to account for the building of the external dimension of energy policy. Although classic integration theories and IR theories may have contributed to a certain extent, they seem unable to fully reconcile for the tension between the European Commission and the Member States in building the external dimension of the energy policy. This paper, therefore, aims to test the explanatory power of the PAM as a “middle-range theory” (Pollack, 2007: 3), integrating theory and research. The PAM originally developed to account for the delegation of power in the US Congress and has been recently applied to EU studies.

The basic model is straightforward: a principal delegates power to an agent expecting that the latter will act in order to satisfy the principal’s interests. Examples of a principal-agent relationship are several: think of the relation between the employer and the employee, between a lawyer and his client, a doctor and his patient, a politician and his citizen (Moe, 1984: 756). As the principal cannot constantly observe the agent, the latter may try to pursue his own interests rather than those of the principal. The problems that may derive are known as “agency losses” (Pollack, 1997). Agency losses can be defined as “side effects of delegation” (McCubbins and Page, 1991:5): because there is always some conflict between the interests of the principals and those of the agent, the problem is that “agents behave opportunistically, pursuing their own interests subject only to the constraints imposed by their relationship with the principal” (Ibid.). Given these basic assumptions, the model, therefore, holds a promise for explaining the relation between the principals and the agent.

By looking at the Commission as an agent and the Member States as principals, the aim of this research is to look at the relation between the two while building the external dimension of the energy policy. The paper is structured as follows: a first section will introduce the background of the energy policy and the puzzle evolving at the European level portrayed in the relation between the Member States and the European Commission in the energy sector. A second section will present an overview of the main features of the PAM and the main questions related to the test of its explanatory power in this research. A third section will focus on the research design to assess whether the PAM may be turned into a feasible research. Finally, a conclusion will summarise the main questions that have been raised in the paper in order to inform further research on the topic.

### **The external dimension of the European energy policy: what is it all about?**

Literature on European energy policy is varied. This research looks at a particular dimension of European Energy Policy that is the external one. By external dimension, this research means a level which involves, both directly and indirectly, non EU countries. This research, therefore, takes into account not only European Commission initiatives towards third countries in the energy sector, such as partnerships or international agreements, but it also looks at internal initiatives able to affect relations with non EU countries. More precisely, this research focuses on the internal relations between the Commission and the Member States in building an external dimension of the European Energy Policy.

This relationship has always been controversial as interests at national and European levels have not always been congruent. As mentioned above, energy policy has traditionally been a field of national competence and has always been guarded jealously by Member States because of its economic and political relevance. Despite several attempts pursued by the Commission to call for a common energy policy based on a coherent external dimension,

Member States have preferred to deal with energy supplier countries on a bilateral basis by signing long term agreements.

Until the Treaty of Lisbon (2007), the Commission was not given any formal competence over energy policy. Therefore, the Commission tried to intervene in energy policy by other policies such as competition, environment and foreign policy (Buchan, 2012). The construction of the Internal Energy Market, for example, happened through the instruments of two robust policies such as the Single European Market and Competition Policy. Security of supply, on the other hand, has been connected to EU foreign and security policy.

In particular, Article 308 of the EC Treaty has been expansively used in the field of energy (Haghighi, 2007). The Article provides that “If action by the Commission should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community, and this treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures”. Article 308 has been used as a legal basis to set up “framework programmes, technological action programmes, international cooperation measures and to conclude agreements in the field of energy such as the Energy Charter Treaty” (Ibid., 71). Because the Community already possessed an energy policy in relation to coal and nuclear and other sources of energy such as oil, gas and electricity said to be covered by the general provisions of the EC Treaty, such as the internal market, competition, commercial policy, development cooperation, environmental policy, and the trans-European networks, it was deemed permissible to use this article as a legal basis to adopt measures in the field of energy (Ibid.,72).

As summarised in a Report from the Commission to the Council of 1996, the instruments that the Community had at that time to develop an energy policy were scattered among the treaties. While coal (until 2002) and nuclear energy were covered by specific treaties, “other sources of energy (oil, natural gas, renewable energies and electricity) were covered by the general provisions of the Treaty establishing the European Community (competition, internal market, environment, trans-European network, research)” (SEC (96) 496 final, p. 5)

Such dispersed competency has deeply affected the relation between the Commission and the Member States when they both dealt with third countries. On one side, the Commission pushes for further integration and liberalisation of the energy market while, on the other side, individual Member States do not want to see their national interests questioned by a European approach. Various sources, especially the media, explain the tension between the two actors in terms of the absence of a common energy policy and, henceforth, a coherent external dimension. In the next section the Principal Agent Model of Delegation will be presented in order to test its explanatory power with regard to the external dimension of European Energy Policy.

### **A theoretical framework: the Principal-Agent Model (PAM) of Delegation**

The Principal-Agent Model of delegation was developed in the new economics of organization<sup>1</sup> during the 1970s to account for incomplete information and risk sharing (see Ross, 1973; Moe 1984). The model had initially been applied to the delegation of power in

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<sup>1</sup> The “New economics of organization” refers to a new approach to the study of organizations that has emerged during the 1970s within economics. According to Moe (1984), it is characterized by three elements: a contractual perspective on organizational relationships, a theoretical focus on hierarchical control, and formal analysis via principal-agent models. The approach is particularly important for its implications for the study of public bureaucracy.

the American Congress<sup>2</sup>. Recently, several scholars have started to test the explanatory power of the PAM in EU studies (Kassim H, Menon A: 2003). The model has been applied to explain the particular form of delegation occurring between EU member governments (principals) on the one hand, and a number of supranational organisations (agents), on the other, that member States have created and to whom have been allocated increasing power and discretions (Pollack: 2006: 165). As stated by Moe (1984: 756), the model is an analytical expression of the agency relationship, in which “one part, the principal, considers entering into a contractual agreement with another, the agent, in the expectation that the agent will subsequently choose actions that produce outcomes desired by the principal”.

PAM draws from rational choice theories of domestic and international politics (Pollack: 2007). The model shares with Rational Choice Institutionalism the behavioural assumptions that relevant actors have a set of “preferences” or “tastes” and behave instrumentally and strategically in order to maximise the attainment of these preferences (Hall & Taylor, 1996: 945-6). Preferences are assumed to be “fixed, transitive and exogenously given” (Pollack, 2006). Delegation, therefore, occurs because the agent intends to reduce transition costs involved in the making of public policy in order to produce efficient policies, satisfy constituents and be re-elected (Pollack, 2003)<sup>3</sup>.

This research, however, refers to interests and preferences drawing on Milner (1997). Interests represent fundamental goals, which change little. In particular, the interests of political actors are concerned with maximising the chance of retaining political office. Preferences, by contrast, derive from interests and refer to “the specific policy choice that actors believe will maximise either their income or chances of reelection on a particular issue”(Ibid, 7). Milner also stresses a very important point: “although all political actors may share the same interest, their policy preferences will vary according to their political situation, for example, their party affiliation, constituency characteristic and so on” (Ibid.). Milner’s distinction allows us to reconcile this research with the broader Rational Choice Literature as interests can be seen as given but preferences are seen as likely to vary.

A core assumption of the Principal Agent Model is that “there is almost always some conflict between the interests of those who delegate authority (principals) and the agents to whom they delegate it” (Kiewiet & McCubbins, 1991, 5). The agent has his own interests at heart, and is induced to pursue the principal’s objectives only to the extent that the incentive structure imposed in their contract renders such behaviours advantageous (Moe: 1984).

These side effects of delegation are known as “agency losses” (Kiewiet & McCubbins, 1991, 5). Agency losses come in two forms: slippage and shirking (Pollack, 2003; McCubbins and Page 1987 : 410–11). Pollack (1997: 108), largely relying on Kiewiet and McCubbins (1991), defines “shirking” as the “bureaucratic drift” which occurs when “agents behave opportunistically, pursuing their own interests subject only to the constraints imposed by their relationship with the principal”. By contrast, “slippage” seems to occur when the structure of delegation itself provides perverse incentives for the agent to behave in ways inimical to the preferences of the principals. The distinction between the two, however, is not always sharp (Kerremans, 2006: 175) and further research on this aspect is needed. This paper tries to

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<sup>2</sup> For an account on delegation in the US Congress see Epstein & O'Halloran, 1994; Epstein & O'Halloran, 1999; Huber & Shipan, 2000; Kiewiet & McCubbins, 1991; McCubbins & Page, 1987; McCubbins & Schwartz, 1984; McCubbins & Schwartz, 1984; McCubbins & Schwartz, 1984; McCubbins & Page, 1987; McCubbins, et al., 1987; Moe, 1984).

<sup>3</sup> For a more extensive treatment on the topic see: Pollack M., 2003; Epstein & O'Halloran, 1999; Huber & Shipan, 2000; Moravcsik, 1998.

address this issue by providing a definition of shirking and slippage and a distinction between them.

Following the literature on conceptualisation and operationalization of concepts (Blaikie, 2011; Wonka, 2007; Gerring, 2001; De Vaus 2002, Sartori 1984), a definition has been reached in three steps:

- A range of definitions of the concept has been obtained from the PA literature. The research of definitions has been carried to the point of redundancy. Four works of the main influential actors which do provide for a definition of shirking and slippage have been selected.
- The common attributes have been defined and the controversial ones have been dismissed.
- Distinctive attributes of shirking on the one hand and of slippage on the other have been considered carefully in order to provide for a definition able to clearly distinguish between the two concepts.
- Finally, a definition has been achieved.

At the end of this process, this research defines shirking and slippage as follows:

Shirking:

*An inaction of the agent with regard to the preferences of the principal. Shirking may occur as noncompliance or minimisation of effort by the agent in pursuing the preferences of the principal. With his inaction the agent, rather, pursues his own interest.*

Slippage:

*An action of the agent in a direction that systematically diverges from the preferences of the principals. The structure of delegation provides incentives for such an action.*

These definitions, however, need to be tested empirically. Empirical studies on specific case studies will then reveal whether these definitions can provide an account for agency losses. If this is the case, this research may then contribute to further development of the PA literature.

The core concern of a principal-agent relationship is for the principal to obtain the perfect compliance by its agent (Kassim & Menon, 2003). Principal-agent literature foresees three kinds of control mechanisms that principals have at their disposal: *ex-ante*, *ex-post* and *ad-locum* control mechanisms. The *ex-ante* control mechanisms are administrative procedures that define *ex-ante* the scope of the agency's activity, the legal instruments available to the agency and the procedures it must follow (McCubbins et al.: 1987; Pollack: 1997). The *ex-post* control mechanisms are also known as oversight procedures that allow principals to monitor and influence agency behaviour after delegation through positive and negative sanctions<sup>4</sup>. In applying the model to European studies, Delreux (2008) and Kerremans (2006) illustrate a third category of control instruments called *ad-locum* that Member States can use

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<sup>4</sup> Oversight procedure may be distinguished between "police patrol oversight" and "fire alarm oversight". The first consists in active monitoring of some sample of the agent's behaviour by the principal while, in the second, principals rely on third parties (citizens, organised interests group) to monitor agency's activity and seek redress through appeal to the agent, to the principals or through judicial review. For a more extensive treatment see McCubbins and Schwartz: 1984.

when the Commission negotiates at the international level. Control mechanisms as such are principal participation in international negotiations and in coordination meetings aside international negotiations. *Ex-ante*, *ex-post* and *ad-locum*, however, are not to be seen as including all the existing control mechanisms. Control mechanisms are not given once and for all: member states can develop new control mechanisms to deal with particular situations or policy areas. Codification of new control mechanisms, therefore, may contribute to the development of the theory.

This research conceives the European Commission as a single agent and the Member States as multiple principals. Several Directorates General (DGs) of the European Commission have been defined by Matlary (1997: 107) as “the main actors in energy policy in the Commission”. DGs have different roles and expertise and, of course, some are more relevant than others when it comes to energy policy. However when the Commission relates to other actors such as the Parliament or Member Governments it is expected to assume a common and coherent position. As argued by Matlary, “internal differences between directorates have to be resolved before a proposal can be sent on to the Parliament” (ibid.). As far as Member States are concerned, Pollack (2006: 191), together with Lyne, Nielson and Tierney refers to “multiple principals, namely the member governments and the European Parliament”.

In line with PAM literature in European studies, this research assumes that the European Commission is a rational, competence-maximiser agent which has pursued a broadly integrationist agenda throughout the history of the EU. Thus, it has to be assumed that the Commission’s fundamental goal is further integration (Pollack, 2003; Ross, 1975). As far as Member States’ governments are concerned, we assume that their fundamental goal is re-election. The definition of preferences, on the other hand, is not straightforward as, by definition, they are “specific policy choices” and we expect them to vary overtime. In this research, therefore, preferences will be defined on a case by case basis.

Because principals are multiple, a further level of variety is introduced in the model. As pointed out by McCubbins, Noll and Weingast (1987) with regards to the American political system, multiple principals may not share the same policy preferences. This aspect paves the way for different testable hypotheses as effectively pointed out by Pollack (2003:44).

Firstly, the agent may exploit the fact that multiple principals have conflicting preferences to avoid the application of sanctions and expand its zone of discretion. Secondly, the ability of the agents to exploit conflicting preferences among the principals is greatest when the decision rule for application is most demanding (i.e. unanimity) and less when sanctions are more easy to be adopted. Thirdly, the event of no agreement among the principals (the so-called “default condition”; Scharpf, 1988 in Pollack, 2003) might increase or limit the agents’ autonomy. The first occurs when the “default condition” is the status quo<sup>5</sup> because it makes sanctioning difficult and privileges the existing delegation of authority to the agent. By contrast, when the agent’s mandate expires the would-be reformers among the principals may demand amendment of the agent’s mandate and limit its autonomy. Finally, because of the ex-post oversight control, the preferences of the principals do matter, not only at the time of the act of delegation, but also for their successors and over time.

So far, the main features of the PAM have been drawn. Yet, the challenge is to verify whether or not the model can solve the puzzle related to the external dimension of the European Energy Policy. Therefore, in the next section the theoretical framework is turned into a

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<sup>5</sup> The status quo is defined by Pollack (2004: 44) as the continuation of existing institutions and policies unchanged.

detailed research design in order to investigate the suitability of the model in giving an account of the external dimension of the European Energy Policy.

### **Research design: selecting Variables and Case studies**

This section will introduce the research design of this study. The aim of the section is to investigate whether the PAM can inform a doable and coherent research, able to contribute to a better understanding of the external dimension of the European Energy Policy. As mentioned above, this research stems from the observation that the European Commission has been seeking a major role in building the external dimension of the European Energy Policy. This assumption informs the following Research Question:

***RQ: Why and to what extent is the Commission increasingly seeking to build an external dimension of the European Energy Policy?***

In order to address this Research Question this research will adopt a qualitative case study approach as the most suitable to grasp and reconstruct the puzzle of the relation between Member States and the European Commission in building the external dimension of the Energy Policy.

Firstly, Dependent and Independent Variables are originated from the theoretical model. A theory driven variable selection is a prerequisite for a high quality qualitative research (Berg-Schlosser, De Meur, Rihoux, Ragin, 2009<sup>6</sup>). Secondly, case studies are also selected carefully because of their known relevance to the research question as suggested by Burnham, Gilland, Grant, & Layton-Henry (2004: 157). Finally, methods of data analysis are also selected according to previous work with the PAM literature.

#### **a) The Dependent Variable (agency losses)**

The phenomenon that this research intends to explain is the Commission behaviour in building the external dimension of the European Energy Policy. The starting argument is that the Commission is trying to play a major role in this field in which the role of Member States has been dominant so far. In PAM terms, this research intends to investigate if, why and to what extent the agent Commission “uses its delegated powers to pursue its own preferences at the expense of the preferences of the principals” (Pollack, MA 2003: 26). The Dependent Variable of this research, then, is called, in PAM terms “agency losses” that is the side effects of delegation. As mentioned above, this research distinguishes two kinds of agency losses: shirking and slippage.

Shirking is defined by the following attributes: *inaction, noncompliance, minimisation of effort, pursuing of their own interest.*

On the other hand, the attributes of slippage are: *action systematically divergent from the preferences of the principals and incentives provided by the structure of delegation.*

#### **b) Independent Variables**

This research has selected 3 Independent Variables and one Intervening Variable (Table 1). IV1 and IV2 stem directly from the literature on delegation as the latter first developed to give an account of delegation in the US Congress (McCubbins and Page 1987; Kiewiet and McCubbins 1991). IV3 and 4 are derived from Delreux (2011). The intervening variable

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<sup>6</sup> Although Berg-Schlosser et al. Refers to Qualitative Comparative Analysis I retain their assumption valid for any qualitative research.

“structure of delegation” stems from the application of the model to the European Studies (Pollack 1997). Variables are expected to vary over time and according to changes in the intervening variable. As this research is on-going, these are candidate variables. Empirical research will suggest which of these candidate variables will be the most suitable and worthy to be taken into account. The level of operationalization of the variables will, of course, play an important role in the selection. As argued by Miller (2007), it is indeed important to find sensible observable variables for our concepts.

IV1	Asymmetry of information in favour of the agent
IV2	Asymmetry of information in favour of the principal
IV3	Degree of preference homogeneity among EU principals
IV4	Degree of preference homogeneity between principals and agent
Intervening Variable	Structure of delegation

Table 1: Independent Variables and Intervening Variable

### 1) Asymmetry of information in favour of the agent

Asymmetry of information has been one of the main features of the principal-agent model since its earliest developments (Moe, 1984; Kiewiet and McCubbins, 1991; McCubbins and Page, 1987).

Labelled by Kiewiet and McCubbins (1991: 25) as “hidden information”, asymmetry of information is, together with “hidden action” and “Madison’s dilemma”, one of the three conditions that make the principal-agent relationship a “particularly congenial environment for opportunism” (Ibid.). “The agent possesses or acquires information that is either unavailable to the principal or prohibitively costly to obtain” (Ibid). “The agent has incentives to use this information strategically or to simply keep it hidden – a situation referred to variously as the problem of truthful revelation or incentive incompatibility” (Ibid.)

According to Pollack (1997: 108) the importance of asymmetrically distributed information can scarcely be overstated as, without some means of acquiring the necessary information to evaluate the agent’s performance, the principal seems to be at a permanent disadvantage, and the likelihood of agency losses seems large (Ibid.)

Based on the assumptions provided in the literature, this research sees asymmetry of information in favour of the agent as an independent variable able to affect agency losses, notably shirking and slippage or both. Precisely, using information strategically may lead to slippage, while keeping information hidden may lead to shirking.

Information asymmetry in favour of the agent seems more likely to occur when the latter can rely on his own sources of information. According to a recent survey conducted by Ellinas and Suleiman (2012: 64) on top European bureaucrats, the majority of the senior officials (32.7%) rely “first and foremost” on “information coming from within the Commission”, that

is their own research staff, for the information they need to do their job<sup>7</sup>. Other relevant sources of information include the administration of member states (17.9%), other directorates, Eurostat, and individual corporations (13.8%) and interest groups (13.2%). This research operationalizes asymmetry of information in favour of the agent using the following indicators:

- Can the agent rely on exclusive information coming from his own sources?
- To what extent?

## **2) Asymmetry of information in favour of the principals**

An asymmetry of information exists also in favour of the principals. Principals possess private information that is not available to the agent like the range of agreements negotiated by the agent which principals will be ultimately able to accept (Delreux: 2011), their preferences with regard to a particular proposal. On the one hand, Member States are part of the European Union; on the other hand, however, Member States are still sovereign governments with national preferences, policies, powers and issues. This national dimension is the source of information sometimes exclusive to the State and unknown, or only partly known, to the European Commission. Therefore, this research measures information asymmetry in favour of the principals using the following indicator:

- Can the principals rely on exclusive information coming from their own sources?
- To what extent?

## **3) Degree of preference homogeneity among EU principals**

PA theory suggests that when principals are multiple and have different preferences, the agent can “operate creatively” and “act autonomously” (Pollack, 1997: 129). Notably, the Commission can exploit the fact that Member States have different preferences “to shirk within certain limits, exploiting cleavages among the member states to avoid sanctions, Council overruling of decisions, or alteration of the agent’s mandate” (Ibid). Moreover, having agenda setting power, the Commission may also “push through those proposals closest to its own preferred policy that also can garner a qualified majority in the Council” (Ibid).

When the degree of preference homogeneity among EU principals is high, the probability of agency losses is low as principals can control the agent to a greater extent. By contrast, when the degree of preference homogeneity among EU principals is low, agency losses may occur, as principals are unlikely to be able to control and sanction the agent.

## **4) Degree of preference homogeneity between principals and agent.**

When the preferences of the agent are homogeneous with those of the principals, agency losses are less likely to occur. By contrast, when the preferences of the agent are heterogeneous with those of the principals, agency losses are more likely to occur.

Some scholars (Delreux, 2011; Häge 2011) measure preferences by referring to the pivotal Council member under Qualified Majority Voting<sup>8</sup>. Following Delreux (2011) the pivotal

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7 Ellinas and Suleiman conducted a survey among 385 top officials investigating the main sources of information that they consider necessary to execute their job or to formulate policies. Although this research is not investigating bureaucrats but the Commission as a whole, Ellinas’ and Suleiman’s findings provide an interesting picture of the kinds of information available to the European Commission.

8 Very briefly, A qualified majority (QM) is the number of votes required in the Council for a decision to be adopted when issues are being debated on the basis of Article 16 of the Treaty on European Union and Article

player preference with the collective principals is selected as the benchmark. The preferences of the agent, therefore, are considered homogenous with those of the principals if “they fall within the majority group of the member states’ preferences” (Delreux, 2011: 55). To measure this, the perceived agent’s preferences are compared to those of the principals (Ibid).

### 5) “Structure of delegation”: “institutional decision rules”

“Structure of delegation” is an intervening variable able to affect all the Independent Variables illustrated so far. As highlighted by Pollack (1997: 29)

“[...] the ability of an agent to exploit differing preferences among the member states depends in turn on the institutional decision rules established for applying sanctions, overruling legislation, and changing agent’s mandates. These rules vary over time and across issue-areas, and with them, the autonomy of agents. [...] In addition, [...] the formal agenda-setting powers of the Commission and the Parliament both depend on the specific decision rules established for the legislative process, and the influence of each institution varies from the consultation to the cooperation and the codecision procedures”.

It is therefore paramount to look at institutional decision rules. Institutional decision rules are expected to vary over time. Moreover, institutional decision rules can provide different control mechanisms able to affect agent’s behaviour and, therefore, its ability of shirking and slipping.

This research measures “structure of delegation” with the following indicators:

- Which procedure does the structure of delegation provide for? (consultation, cooperation, codecision, assent procedure)
- Does the structure of delegation provide for control mechanisms? (*ex-ante*, *ex-post*, *ad locum*)

### Case selection

The relation between the DV and the IVs will be tested empirically across some case studies. as mentioned above, case selection in this research project is deliberately not random, as is commonly the case in quantitative sampling processes. By contrast, cases have been selected on the basis of their known relevance to the research question (See Burnham, Gilland, Grant, & Layton-Henry, 2004: 157). For the purpose of this research a case can be defined as “an initiative of the European Commission in the field of energy that has an external dimension”.

In selecting the cases relevant to this research some selection rules have been applied.

1. *Variation in the IVs and in the DV*. The selected cases present some evidence to suggest that the European Commission aims to play a role in building the external dimension of the energy policy. The Commission’s involvement in energy policy may take different forms, such as proposals for regulations, policy initiatives, cooperation framework, consultative committee, bilateral and multilateral agreements, programmes, actions, funds and so on. In PA terms, the Commission’s behaviour might be a case of agency losses in both forms of shirking or slippage (DV). Particularly, cases are selected on variation of the Intervening Variable “structure of delegation”. The three different cases, indeed, have legal basis on three different

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238 of the Treaty on the Functioning of the European Union. Under the ordinary legislative procedure, the Council acts by qualified majority, in codecision with the European Parliament.

Treaties as we expect the structure of delegation to play a role on the IVS and, in turn, on the DV. Moreover, this research expects a variation in the Independent Variables across the cases.

2. *An external dimension is involved.* In the selected cases an external dimension is involved. For the purpose of this research “External dimension” means able to directly or indirectly affect relations with third countries. Therefore, this research looks at two different types of initiatives of the European Commission. On the one hand, those initiatives that directly involved third countries, such as multilateral agreements and on the other hand, internal initiatives likely to affect the relationship between third countries such as regulations for the completion of the internal market.
3. *Shared competence.* In the selected cases both the European Commission and the Member States claim competence over the particular energy policy issue at stake. Therefore, they both feel entitled to satisfy their own preferences. This selection allows us to examine cases in which a rich amount of data in PA terms is available.

This research will analyse the following case studies:

- 1) Proposal of an Energy Chapter in the Treaty on European Union
- 2) Third Energy Package (Unbundling)
- 3) Information exchange mechanisms on intergovernmental agreements between Member States and third countries in the field of energy

### **Overview of the cases**

#### **1) Proposal of an Energy Chapter in the Treaty on European Union (1992) and in the Treaty of Amsterdam (1997)**

During the negotiations for the Treaty on European Union, the Commission tried to have a chapter inserted in the Treaty formalising a Common Energy Policy (CEP) competence. By proposing a chapter on energy policy, the Commission was seeking a more comprehensive mandate and a specific legal basis. The chapter would have pursued measures to improve security of supply; therefore it would have affected external relations with third countries.

The treaty amendment proposal did not meet the Member States’ approval. It was indeed rejected at the Maastricht summit of the European Council in December 1991 by Britain, Germany and the Netherlands – all energy producers who feared that the EU would develop a supranational role if armed with such a competence (Matlary, 1997: 62; Cameron, 2002). Only a few member governments – the “cohesion” countries, Italy and Belgium - strongly favoured a formal CEP competence.

In 1996 the Commission proposed again an energy charter to be inserted into the Treaty, (SEC (1996) 496 final) but no further action was taken or encouraged. Two months prior to the Amsterdam Inter-Governmental Conference, the Commission issued a further document but it had no effect (Cameron: 2002: 54). Member States gave very little support to the energy chapter as this seemed to be a step towards greater management of the energy market and this was not even exactly consistent with the aims of the single market (Cameron: 2002: 54).

Secondary literature and the Commission’s official documents seem to suggest that this case does match the three selection criteria for case studies stated above. In particular, as far as variation in the IVs is concerned:

*IV1: Asymmetry of information in favour of the agent.* Secondary literature and official documents do not suggest that there is any particular asymmetry information in favour of the agent.

*IV2: Asymmetry of information in favour of the principals.* Secondary literature and official documents seem to suggest that energy is a matter in which national governments are more involved than supranational institutions. Therefore, this research expects an asymmetry of information in favour of the principals.

*IV3: Degree of preferences homogeneity among EU principals.* Principals did not share the same preferences. As stated above, the most powerful countries (France, Britain, Germany and the Netherlands) did not have a preference for such a chapter, while only the cohesion countries (Greece, Portugal, Spain, Ireland), Italy and Belgium favoured a formal CEP competence (Matlary: 1997: 62; Cameron: 2002). However, I would consider these preferences as homogeneous against the chapter as only few and not very powerful countries had a preference for the chapter.

*IV4: Degree of preference homogeneity between principals and agent.* Preferences between principals and agent are not homogeneous: the Commission tries to push for more integration in order to satisfy its interests while the Member States do not seem to wish such integration in the energy sector.

*Intervening Variable: Structure of delegation.* If we look at the institutional decision rules established for applying sanctions, overruling legislation, and changing agent's mandates (Pollack, 1997: 29) we can see that Commission is claiming for a broader mandate through modification of the treaties that is the absolutely the most difficult way as it requires unanimity.

## **2) Third Energy Package (unbundling)**

By proposing a Third Energy Package in September 2007, the Commission opened the door to play an important role in the EU gas and electricity markets. As far as this research is concerned, *ownership unbundling (OU)* is the most relevant element of the package as it is very likely to have an effect on the external dimension.

In order to build an infrastructure that would connect the gas and electricity markets of the EU with third countries, in 2007 the Commission incorporated in the proposal for the Third Energy Package the concept of OU: "separating the operation of gas pipelines and electricity networks from the business of providing gas or generating power" (European Parliament). If enforced, OU would force energy companies either to sell their networks outright or to put these networks under entirely independent management. Again, the position of the Member States differed from the Commission's. Moreover, Member States did not all share the same preferences. While some of them, such as the Netherlands, Spain and Italy, backed the Commission's proposal, others, in particular France and Germany, opposed it (Buchan: 2010). According to this last group of countries, ownership unbundling would have weakened the power of national champions in negotiations with major foreign upstream companies, thus reducing national security of supply. In particular, OU would have weakened European States in negotiations with Russia, by complicating the external dimension of energy policy. The proposal also foresaw a so-called "Gazprom clause" providing that if a company wanted to buy shares in a transmission system operator, an agreement between Brussels and the respective country was necessary. The agreement would have ensured that the European companies would be allowed to do the same. Therefore, the rules of unbundling would apply also to the foreign company (European Parliament). Such a clause was, of course, not welcome by Member States such as Germany and Austria that have already secured their gas supply through bilateral agreement (Gutiérrez & Kostadinova).

The Member States eventually managed to avoid ownership unbundling as the only solution. As a result of their action, the Third Energy Package adopted in 2009 grants Member States the opportunity to choose between 3 possible models: Ownership unbundling (OU), Independent System operator (ISO) and Independent Transmission System Operator (ITSO). The Commission admitted that giving countries the choice between ISO and ITSO was only second best (The Economist).

Based on data provided by secondary sources, this research expects variation across the IVs.

*IV1: Asymmetry of information in favour of the agent.* Secondary sources and media do not suggest an asymmetry of information in favour of the agent.

*IV2: Asymmetry of information in favour of the principals.* Asymmetry of information is expected to be in favour of the principals as the gas and electricity market has traditionally been a national competence and several Member States have already secured their gas supply with bilateral agreements.

*IV3: Degree of preferences homogeneity among EU principals.* Preferences among EU principals are heterogeneous. The Netherlands, Spain and Italy, backed the Commission's proposal, others, in particular France and Germany, opposed it (Buchan: 2010).

*IV4: Degree of preference homogeneity between principals and the agent.* Heterogeneous  
*Intervening Variable: Structure of delegation.* The Third Energy Package was discussed under Ordinary legislative procedure (ex-codecision procedure) and a second reading in the Parliament was necessary before approval.

### **3) Information exchange mechanisms on intergovernmental agreements between Member states and third countries in the field of energy**

Arguing that “bilateral energy relations between individual Member States and third supplier or transit countries can result in a fragmentation of the internal market” (COM (2011) 539 final, p. 2), in 2011 the Commission proposed to establish a mechanism for the exchange of information between Member States and the Commission with regard to intergovernmental agreements. The Decision requires obligatory notification of existing intergovernmental agreements to the Commission, which will make these agreements available to all other Member States. It also confirms the possibility for the Commission to participate upon request of a Member State in negotiations as an observer. Finally, it also provides the possibility for the Commission to perform upon request from a Member State ex-ante compatibility checks of negotiated agreements with the EU legislation.

Media refers to the proposal as a way of seeking a greater role for the Commission to assess energy deals' compliance with EU law and the EU's security of supply aims in order to avoid conflicts between Member States over supply agreements (Brand, 2011). The Nord Stream pipeline is an interesting example in this regard as a clear conflict between Poland and Germany was apparent especially in 2006. Poland attacked Germany's support for Nord Stream which was being promoted by Gazprom and E.ON. Also, according to media sources, the original plan suggested that the Commission negotiated energy accords with countries such as Libya, Azerbaijan and Turkmenistan on behalf of the entire EU (Ibid.). Secondary sources do refer to “strong opposition from a large number of Member States” on some obligatory provision foreseen in the proposal (Council of the European Union, Information Note from General Secretariat of the Council to Delegations, 27 January 2012, 5333/12, ENER 11, CODEC 95, p. 3).

Moreover, media reports stress a difference of positions between the European Parliament and the Council of Ministers. On the one hand, MEPs wanted to go even further than the Commission proposals obliging member countries to involve the EU in negotiation with third

parties (especially Gazprom). On the other hand, the Council strongly opposed the proposal “despite the fact that the Council asked for this measure, when it actually saw the measure, it didn’t like it”. (Krišjānis Kariņš, MEP from Latvia, rapporteur on the proposal in *EurActiv*, 12 September 2012). The proposal has been eventually adopted by the Council on 4<sup>th</sup> October 2012. Apparently, as “a majority of countries didn’t like the proposal [...] it was diluted in order to gather a majority of support from member states” (Ibid) .The final decision (994/2012/EU) seems to be actually different from the first proposal.

Based on data provided by secondary sources, this research expects variation across the IVs.

*IV1: Asymmetry of information in favour of the agent.* Secondary sources do not provide evidence for an asymmetry of information in favour of the agent as regards the general situation of the energy market. However, it may be the case that the Commission can access information provided by its own sources.

*IV2: Asymmetry of information in favour of the principals.* Secondary sources suggest an asymmetry of information in favour of the principals. The text of the proposal itself does actually complain about a fragmentation of the market due to the existence of bilateral agreements in energy. It is reasonable to expect that, because of their long tradition of bilateral agreements with third countries, member states can actually access to exclusive information coming from their own source in the domain of energy supply.

*IV4: Degree of preferences homogeneity among EU principals.* Media and secondary sources suggest that the majority of the Member States did not support the Commission’s proposal. Therefore, in this case preferences are homogeneous against the first draft of the proposal.

*IV5: Degree of preference homogeneity between principals and the agent.* Preferences between the principals and the agent are heterogeneous with the former against the Commission’s proposal.

*Intervening Variable: Structure of delegation.* The information exchange mechanism has been draft under Ordinary legislative procedure (ex-codecision) and the act was adopted by the Council after a first reading in the Parliament.

## **Data collection and data analysis**

This research applies two different data collection methods: document analysis and semi-structured elite interviews.

As regards document analysis primary, secondary and tertiary documents are used (Burnham, Gilland, Grant, & Layton-Henry, 2004). This includes: documents produced by EU institutions (Communications from the Commission to the Council, Working papers, Decisions, Regulations, minutes of official meetings (where available), politicians’ speeches, press releases, journalistic reports.

Documents, however, do not provide an accurate indication of actor’s sincere preferences which is one of the most important points of this research. For this reason, it is necessary to supplement official documents through the use of interviews with key officials and experts from EU’s supranational organisations and member governments “which are a rich source of behind-the-scene information about actor preferences and principal agent interactions that are not captured on the official records (Moravcsik, 1998: 80).

Qualitative interviews are useful to understand experiences and reconstruct events (Rubin et al. 1995). They permit the analysis of the context of thought, feeling and action and are thus a good way of exploring relationships between different aspects of a situation (Arksey et al.: 1999). Qualitative interviewing is particularly precious because it allows access to the

perspective of the interviewee (Patton: 1990) and this can add an important value to the research: interviewees, especially those who are not involved in the energy sector anymore, may be happy to share their view about what happened when they were in charge. This would permit us to transcend the sometimes rhetorical approach of EU official documents.

Moreover, interviews can provide further information which could confirm or contradict data collected through official documents: interviewees might forget information or details from the past or recount stories about the past through the lens of their present opinions. Because of this, cross-checking information will be useful.

In selecting interviewees non-probability sampling techniques (Tansey: 2009) have been used. While probability sampling techniques and random selection are more suitable to estimate the relationship between the sample and the population of subjects from which it was drawn, non-probability sampling techniques are more suitable when generalisation from the sample to the population is not the aim of the research.

Since the goal is to obtain a testimony from a limited number of relevant actors, it is important to reduce randomness as much as possible while sampling and ensure that the most important and influential actors are included. Within the non-probability sampling techniques illustrated by Tansey, purposive sampling and snowball/chain referral sampling seem the most suitable for this research. In the first one the researcher, using good judgment and an appropriate strategy, identifies the particular respondents of interest and the sample deemed most appropriate (Kidder et al: 1991). The second technique, which may be used together with the first one, consists in identifying an initial set of relevant respondents, and then requesting that they suggest other potential subjects relevant in the object of study. The same procedure may be applied with the second set of respondents so derived and so on until the sample is large enough for the purpose of the study.

In selecting the respondents two main criteria are applied: the positional and the reputational. The former, allows us to identify a set of positions of key elites that are the focus of the study; this will be possible thanks to the sufficient knowledge of the area of interests and sufficient knowledge of the political structures of relevance acquired in the previous phases of the data collection. In addition, the reputational criteria is used to select respondents according to the extent to which they are deemed influential in the political arena by their own peers. The snowball sampling method is of course the most appropriate here because using a chain-referral process, it is possible to ask the respondents to provide a list of people they feel are influential in the same field. Moreover, this method is successful at identifying influential actors who might otherwise have been ignored as elites can often suggest influential players who initially were not presumed relevant to the study (Farquharson: 2005).

As far as Data Analysis is concerned, this research applies process-tracing. According to George and McKeown (1985: 35)<sup>9</sup> this method “investigate[s] and explain[s] the decision process by which various initial conditions are translated into outcomes”; they argue that “the process-tracing approach attempts to uncover what stimuli the actors attended to; the decision process that makes use of these stimuli to arrive at decisions; the actual behaviour that then occurs; the effect of various institutional arrangements on attention, processing, and behaviour; and the effect of other variables of interest on attention, processing, and behaviour” (ibid).

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<sup>9</sup> Quoted in Falletti (2006)

Process-tracing attempts to identify the intervening causal process – the causal chain and causal mechanism(s) – between an independent variable (or variables) and the outcome of the dependent variable (George et al.: 2005: 206). It is an indispensable tool for theory-testing and theory-development not only because it generates numerous observations within a case, but because these observations must be linked in particular ways to constitute an explanation of the case (George et al.: 2005: 207).

The method, indeed, identifies causal mechanisms that connect causes and effects. Causal mechanisms are “ultimately unobservable physical, social, or psychological process through which agents with causal capacities operates, but only in specific contexts or conditions, to transfer energy, information or matter to other entities” (George & Bennett, 2005: 136). To the extent that these agents do not need to be individual (Falleti, 2006: 2), process tracing might be used to look at how the independent variables selected affect the dependent variable “Commission’s effort in building the external dimension of the energy policy”.

Process-tracing, then, examines diagnostic pieces of evidence – often understood as part of a temporal sequence of events or phenomena – with the goal of achieving and refining causal inference (Collier, 2010:1). The research will therefore focus on Causal-process observations (CPOs), that is, specific pieces of data which provide leverage for adjudicating among alternative hypothesis (Ibid, 1-2).

Process tracing, is also highly complementary with explanatory typologies and typological theories (Bennett & Elman, 2006). These methods allow to look at the particular outcomes associated with different combinations of values of the theory’s variable. Therefore, it might be useful to investigate typologies related to the Commission’s behaviour in building the external dimension of the European Energy Policy.

## **Conclusion**

This paper has introduced on-going research on the potential of the Principal Agent Model of Delegation (PAM) in providing an account for the building of the external dimension of the European Energy Policy.

This research starts from the observation that in the last decades the European Commission has been seeking to build an external dimension of the European Energy Policy. This has been happening, however, in a sector in which Member States have traditionally played a major role. Therefore, a tension between the European Commission on the one hand and the Member States on the other is apparent.

By looking at the relation between an agent and its principals, the Principal-Agent Model seems to hold great promise for explaining the tension between the European Commission and Member States in building the external dimension of the European Energy Policy. The paper has showed that the model can provide a good theoretical framework and suggest Dependent and Independent Variables which are a paramount starting point for the formulation of testable hypotheses.

In turning the Model into a doable research design, the paper has also highlighted some points which may inform further research. Firstly, this paper has provided a definition of the concepts ‘shrinking’ and ‘slippage’, the Dependent Variable, with the aim of overcoming the ambiguity existing in the literature. Yet, those definitions need to be tested empirically. The empirical analysis then, particularly the analysis of data coming from expert interviews, may confirm the validity of the definitions and contribute to the PA literature more broadly.

Secondly, the Model has revealed itself to be suitable in accounting for the preferences of both the European Commission and Member States. Stemming from Rational Choice theory, the Model allows us to look at preferences as Independent Variables playing a role in determining actors' action. Moreover, this research makes a distinction between interests, "fundamental goals, which change little", and preferences "the specific policy choice that actors believe will maximize their utility" (Milner, 1997: 15). Yet, Preferences are notoriously difficult to measure and [...] operationalization choices are restricted by the available data (Häge & Toshkov, 2011: 11). First of all, when it comes to preferences, variation is huge. Not only do the preferences of principals and agents vary over time but different principals may also have different preferences. Therefore, indicators of preferences need to take these variations into account. Secondly, preferences are not stated once and for all, neither are they stated clearly. It might also be the case that preferences are not even completely clear to the actor. These elements need to be taken into account during the data collection and analysis.

Thirdly, this paper has presented some possible case studies of this research. The case studies have been selected on the basis of their relevance to the research question and on the variation on the Intervening Variable "structure of delegation". The cases refer to three different Treaties and we expect this difference to make a role in terms of influence of the IVs. It has to be borne in mind, however, that in cases selection, homogeneity among the cases is fundamental as it ensures that the cases selected are comparable and share enough characteristics (Lijphart, 1975; Sartori, 1994). This research has defined a case as "a European Commission's initiative in the field of energy that has an external dimension". These initiatives, however, may be quite different from each other ranging from Directives to International Agreements. It is therefore important to make sure that a number of comparable characteristics are maintained across the case in order to preserve a degree of homogeneity within the unity of analysis.

Only further research can eventually address the issues raised above and reveal if the PAM can give an account for the external dimension of the energy policy. So far, the main steps of this process and the challenges related have been identified. Carrying out those steps and addressing those challenges may contribute to the development of PA theory and knowledge more broadly.

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