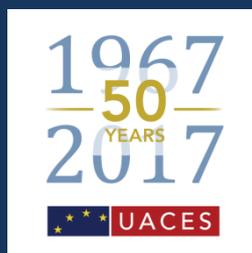


# Looking Backwards to Go Forwards? Europe at a Crossroads

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HISTORICAL INSTITUTIONALISM AND ENERGY POLICY  
AN ANALYTICAL FRAMEWORK TO ASSESSING THE IMPACT OF THE  
EASTERN ENLARGEMENT ON THE EVOLUTION OF THE EU'S  
ENERGY POLICY

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ABSTRACT:

Even though energy was the main focus of two of the initial treaties of what we now call the European Union, as times changed and oil and gas became primary resources, states proved to be reluctant in allowing EU institutions to get involved in areas of national interest and the EU's institutional setup was not updated to deal with this evolution. As such, because it was not one of the main areas of integration, energy policy attracted little scholarly attention among those interested in European Studies. Nevertheless, in the last decade we have witnessed an increased interest in energy policy issues, both from academics and politicians. In 2000s especially, at the same time as the EU decided in favor of expanding its territory towards the east, important steps have been taken with the aim of establishing a common framework in the field of energy, one of the biggest steps being the official recognition as a policy with the introduction of a chapter on energy in the Lisbon Treaty. This paper aims at providing a theoretical framework to assess the impact of the 2004 and 2007 eastern enlargement on the evolution on the EU's energy policy. In this sense, it puts forward a historical institutionalist approach. While exploring the interaction between institutions and preferences, a number of core concepts like unintended consequences, learning, path dependency and critical junctures will be used.

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## INTRODUCTION

Although energy was the main focus of two of the initial treaties of what we now call the European Union, as times changed and oil and gas became primary resources, states proved to be reluctant in allowing EU institutions to get involved in areas of national interest and the EU's institutional setup was not updated to deal with this evolution. Still, in the context of the 2004 and 2007 eastern enlargements important steps have been taken with the aim of achieving a common EU energy policy. Between 1996 and 2009 three energy legislative packages have been adopted and with the introduction of Title XX in the Lisbon Treaty<sup>1</sup> the energy policy received the 'official' recognition by the European Union.

This upheaval in the field of energy policy may be surprising, taking into account scholars' expectations of gridlocks, paralysis or slowdown in the decision-making process in the context of the eastern enlargement (Hosli, 1999: 387; König and Bräuninger, 2004: 432). It even contrasts with more optimistic accounts of the impact of enlargement which assumed that business continued as usual (Pollack 2009a: 241) since, in the field of energy this would mean that some non-binding documents would be issued from time to time.

Taking into account this increase in rules, the paper turns to providing a framework to assessing whether the eastern enlargement had an impact on the evolution of the EU's energy policy and if so how. The focus will be on how the dynamic of negotiations changed, how new member states got involved in the evolution of the policy, but also how the EU institutions took advantage of the opportunities presented by the expansion to promote deeper integration in areas where the EU lacked jurisdiction. The unit of analysis will be the EU level, where policy is negotiated, provisions discussed and adopted. As such, key factors here will be preferences and institutions.

This research understands energy policy in terms of initiatives that have been formulated and adopted at the EU level with the aim of establishing an internal energy market. The goal is to achieve a common framework which does not have the purpose of harmonizing legislation across member states, but to ensure common rules which allow markets to function in an integrated manner (European Commission, 1995a). As such, responsibilities deriving from energy policy and regulations in this area aim at achieving a common policy regime defined by the three interrelated and interdependent dimensions of competitiveness, security of supply and sustainability (European Commission, 2015).

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<sup>1</sup> The Lisbon Treaty was signed in 2007 and entered into force in 2009

While the impact of enlargement on subfields of the policy, like environmental aspects (Burns et al 2012; Bocquillon and Maltby, 2017) or energy security (Belyi, 2010) has been discussed by scholars, these contributions fail to consider the evolution of the policy. Even more, despite the fact that the effects of enlargement have been studied before, we lack, as Mark Pollack (Pollack, 2009a) calls it, a 'historical perspective' on this issue. Most of the research focuses on the immediate effects of enlargement, but the longer term impact has been overlooked.

Based on the above, the paper argues in favour of a historical institutionalist approach. The purpose is not to prove the primacy of either preferences or institutions but to focus on the interaction between them. In doing this it will use a number of core concepts like unintended consequences, learning, critical junctures, path dependency and gradual change.

The paper is structured as follows: the first section provides an overview of previous research on the EU energy policy and impact of enlargement identifying gaps in the literature both in empirical and theoretical terms. The second section will focus on critically analysing the benefits of using a historical institutionalist approach. The third section will present the historical institutionalist analytical framework proposed. Finally, the last section will provide some concluding remarks.

#### WHY THE NEED FOR AN ANALYTICAL FRAMEWORK?

Energy policy did not enjoy as much attention in European studies as other European policy despite the importance of the field in an ever growing industrialized society since it was not one of the main areas of integration. Before the enlargement, the most important account of research on energy policy in the EU is Matlár's volume (1997). Her research focuses on the developments in the area of energy policy, with special attention on the role of member states and the Commission. Using an intergovernmentalist framework, she applies Putnam's 'two-level games' model to explain the slowdown in initiatives promoted by the EC after 1992. Although she acknowledges the importance of energy in implementing the internal market she believes that the EU level actors still lack power and do not have an independent role, therefore energy continues to be the subject of state bargaining (Matlár, 1997: 5). Birchfield and Duffield's edited volume brings together a number of scholars with in-depth expertise on different areas of the policy. The volume outlines developments and achievements in the field, at EU level, and provides some national perspectives on these actions and events (Birchfield and Duffield 2011). From an international political economy perspective, Kuzemko and colleagues offer us an analysis of transitions, uncertainty and change in terms of energy issues with regards to the

relation between the EU and Russia. Relying on questions of energy governance the study focuses mainly on gas trading (Kuzemko et.al, 2012). Recent scholarly articles shifted towards concepts like Europeanization. Dyduch's article on the Europeanization of energy policy discusses the scope and consequences of this process. In her opinion, this process of Europeanization is caused not only by the pressure from Brussels but also by challenges and threats external to the Union (Dyduch, 2015).

Energy policy comprises rules concerning various energy resources and the analytical framework used for research usually depends on the energy source of interest. Scholars interested in rules governing natural gas, coal, oil and other fossil resources as well as research on evolutions in the policy in terms nuclear energy, mainly turned to analytical perspectives derived from international relations and international political economy (Tosun, 2017). Nevertheless, this shows that research on energy policy has been focusing on subfields of the policy and not on the evolution of the policy as a fully flagged policy. The reason for this may be traced to the work of Lovins (1979). He differentiates between 'hard' and 'soft' energy production, where hard refers to large-scale centralized fossil fuel and nuclear facilities, and soft to small entities producing energy from renewables.

The present paper understands by energy policy initiatives that have been formulated and adopted at the EU level with the aim of establishing an internal energy market. According to the European Commission, the goal is to achieve a common framework which does not have the purpose of harmonizing legislation across member states, but to ensure common rules which allow markets to function in an integrated manner (European Commission, 1995a). A common framework where member states work together towards agreed objectives also enables the European Union 'to respond effectively to the destabilising effects of changes' in the energy field (European Commission, 1995b). As such, responsibilities deriving from energy policy and regulations in this area aim at achieving a common policy regime defined by three main aspects: competitiveness, security of supply and sustainability (European Commission, 2015).

The reason for studying the impact of enlargement on the energy policy stems from the fact that in the area of energy the geopolitical context is particularly important. The production and trade of energy are largely influenced by the geopolitical context as 'the resources are mostly located in one region and the markets in another' (European Commission, 1995a).

Most of the studies on the EU's energy policy relate to issues of energy in relation to dependence or interdependence between EU and Russia, focusing only on import/export of gas

and studying just certain events or initiatives (Kaczmarek, 2011; Fernandes, 2011; Khrushcheva, 2011, Simão, 2011; Harsem and Claes, 2013, Kuzemko, 2014, Sakwa, 2011). This outlines the fact that, usually, the three dimensions concerning internal energy market, security of supply and sustainability have been considered separately. Nevertheless, the present paper argues that these dimensions are mutually reinforcing and closely interrelated.

Turning now to the impact of enlargement, the European Union was subject to seven rounds of enlargement until now, so scholars have been particularly interested in this impact. Recent research on this topic (Epstein and Sedelmeier, 2008; Best et al, 2010; Avery et al, 2009) focuses on the way enlargement affects power and interest distribution (Steunenberg, 2002), on how it affects the meaning of core concepts like solidarity (Cremona, 2005), on the economic aspects (Scott, 2004) or the impact of conditionality (Schimmelfennig et al, 2005). Analysing the effects of membership, studies have focused on new members and more frequently by referring to single cases (Falkner, 2000) or by comparing old and new member states (Börzel, 1999). When focusing on the impact at the level of EU institutions, research has been focused on single institution studies and highlighted immediate impact as the timeframe implied would only allow such observations (Best and Settembri, 2010; Brunazzo and Domorenok, 2008). In terms of impact on energy policy, research was concentrated on subfields of the policy, like environmental aspects (Burns et al 2012; Bocquillon and Maltby, 2017) or energy security (Belyi, 2010). However, these contributions fail to consider the evolution of the policy.

In conclusion, the review here identified a series of gaps in the literature. Research dealing with the impact of the EU enlargement is usually based on comparative studies between new and old member states, or, when highlighting the effects on the EU institutions focuses on a single institution. In addition, a lack of research into the EU energy policy as a fully flagged policy is outlined, underlining that most often studies have focused on one aspect of the policy regime, mainly security of supply in gas trading (Kuzemko et.al, 2012; Kaczmarek, 2011; Fernandes, 2011; Khrushcheva, 2011, Simão, 2011; Harsem and Claes, 2013, Kuzemko, 2014, Sakwa, 2011). Research has focused on past events to provide insights into the role played by different institutions, like the EU Commission (Matlár, 1997) the focus being on the increased role of the institution and not the policy itself. Even if some recent research focused on the reasons behind issuing the communication on an energy union, they still deal with only one dimension like energy security or security of supply (Schubert et al, 2016) or analyse future developments and challenges the energy union might face (Buchan and Keay, 2015).

In filling these gaps, this paper aims at providing a framework for analysis of the evolution of policy, in general, and energy policy in particular, in the context of the eastern enlargement, highlighting both the conditions under which developments were possible but also its effects in time. It broadens the definition of the EU's energy policy and brings a historical perspective on the research on impact of the enlargement.

## HISTORICAL INSTITUTIONALISM

Historical institutionalism focuses on impact over time. As the name says, this approach is historical because it understands the political development as a process that unfolds over time and institutionalist because 'these temporal processes are embedded in institutions' (Pierson, 1994: 4). Often referred to as a 'hybrid' variant of new institutionalism (Jupille et al, 2003: 11), this approach builds a bridge between the other two traditions emphasizing the temporal processes (Pierson, 1998: 34). According to Hall and Taylor there are three types of new institutionalism: rational choice institutionalism, sociological institutionalism and historical institutionalism (Hall and Taylor, 1996: 936). The new institutionalism seeks to explain not only that institutions matter, but also how they matter concentrating on the effects they create. What differentiates the 'new institutionalism' from the old is the way in which institutions are defined. Although both the new and the old share the assumption that 'institutions matter', the new institutionalism broadens the meaning to include under the name of institutions 'formal institutions; informal institutions and conventions; the norms and symbols embedded in them; and policy instruments and procedures' (Bulmer, 1998: 370). The new institutionalism provides new lens for researchers to develop their studies. By importing aspects of the economics tradition (rational institutionalism) and from sociology (sociological institutionalism) this new wave seeks to explain how institutions matter focusing also on the effects they create (Aspinwall and Schneider, 2001: 1). Even though all three strands agree that institutions matter, they offer different views over the extent to which they matter.

The logic of consequentiality preferred by rationalists affirms that 'behaviours are driven by preferences and expectations about consequences' (March and Olsen, 1989: 160). Still, a rational model is not well equipped to offer explanations for the broad array of institutional set-ups especially in situations of unintended or unanticipated consequences (Fioretos et al, 2016: 7) and 'bracket preference formation from the analysis' (Koelble, 1995: 232).

Favouring the 'logic of appropriateness', sociological institutionalists consider that people take 'cues from their institutional environment as they construct their preferences and select the

appropriate behaviour for a given institutional environment' (Pollack, 2009b: 126). In terms of integration, from a sociological institutionalist perspective this is strongly connected to cultural and cognitive variation. Values, beliefs and identities deeply impact the actor's views on integration challenges (Aspinwall and Schneider, 2001: 14). Even if rational and sociological institutionalism can provide important insights in the study of institutions, by focusing on snapshots they do not present the full image and their view can be 'distorted in crucial respects' (Pierson, 1994: 4).

Historical institutionalism 'provides a way of explaining both institutional change and continuity' (Bulmer and Burch 2001: 75). In contrast with the rational institutionalism, research in the historical institutionalist camp rejects 'functionalist' explanations of institutional arrangements where 'institutions are assumed to have been deliberately designed by contemporary actors for the efficient performance of specific functions' (Pollack, 2009b: 127). Here scholars argue that institutional choices taken in the past can become 'locked in' shaping and constraining actors creating long term effects. Nevertheless, what makes this approach truly different from the others is the way in which it answers second-order questions. Such second-order questions regard the understanding of preferences and action, the role of ideas and material forces, 'the relationship between interests and institutions, as well as the mechanisms foregrounded in accounting for varied patterns of institutional development' (Fioretos, 2011: 373). Preferences 'signify propensities to behave in determinate circumstances by people who discriminate among alternatives they judge either absolutely or relatively' (Katznelson and Weingast, 2005: 7). Unlike rational institutionalism, where preference and action is ordered by end-point comparisons, the historical institutionalist tradition makes individuals balance the evaluations of costs and benefits of adapting to new circumstances with the costs and benefits of keeping or losing their stakes in the past setups by point-to-point comparisons. Thus, the degree of change plays a major role in shaping preferences. If in the rational tradition the emergence of a better options influences preferences, in historical institutionalism transformation of preferences occurs only 'when the benefits of a prospective alternative outweigh the losses associated with giving up access to past designs' (Fioretos, 2011: 375). As such, research adopting this approach is 'sensitive to the power relations associated with institutional change' and considers beliefs as playing an important role in this process (Hall, 2009: 205).

Although work under the label of historical institutionalism saw institutions persistence in time defining them as 'sticky' (Pollack, 2009b) or using the concept of 'inertia' (Pierson), the new wave of research talks about theories of gradual institutional change. If scholars were initially

focusing on how political and social behaviour is influenced by institutions, more recently focus has shifted to analyses of institutional change. Theories of gradual institutional change argue that change may occur due to endogenous factors. In other words, the attention is not on how institutions transform preferences or social behaviour but how the accumulation of preferences within institutional arrangements leads to change. Change has an endogenous aspect. 'Theories of gradual institutional change have focused more on how social and political interactions transform institutions than on how institutions themselves structure those interactions' (Capoccia, 2016: 1096).

## A FRAMEOWRK TO ASSESS THE IMPACT OF THE EASTERN ENLARGEMENT ON THE EVOLUTION OF THE EU'S ENERGY POLICY

The purpose of this section is to present an analytical framework to assessing the impact of the enlargement on the evolution of the EU's energy policy. Given that the theoretical level is concerned with developing concepts about a social phenomenon and relationships between these, the section aims to critically establish the key concepts used by the empirical research.

As such the section will start with a brief overview on how impact is understood. It continues with explaining how institutions and preferences are conceptualized within the research. Thirdly it proposes a historical institutionalist approach.

Taking stock of existing literature, the present paper proposes a framework to assess the impact of the eastern enlargement on the evolution of the EU's energy policy. In doing so, it draws on the work of Edward Best and his colleagues (Best et al 2005). In their research on the impact of enlargement they distinguish between three levels of change:

- Assimilation – change is minimal;
- Adaptation – 'Perturbations provoke dissatisfaction and/or dysfunctionality which is deal with through marginal alteration in methods, structures and behaviour. Actors accommodate pressure through the adaptation of existing arrangements and their understandings' (Best et al 2005);
- Transformation – fundamental alteration of core features.

In this way, they encourage paying attention to different (and even small) details underlying change, thus making it possible to have a clearer image on the impact of enlargement at the institutional level. This is important since initially, research affirmed that business continued as usual after the eastern enlargement (Pollack 2009a: 241; Peterson and Birdsall, 2010).

Nevertheless, in their volume, Best and his colleagues conclude that detailed analysis, especially if one focuses on a longer timeframe, identifies degrees of impact due to bringing new member states in the EU (Best et al 2010). Therefore, based on the above mentioned understanding of impact it is expected that the enlargement of the EU in 2004 and 2007 has led to adaptation in the area of energy policy.

The paper aims at providing a framework to assessing whether the eastern enlargement had an impact on the evolution of the EU's energy policy and if so how. The focus will be on how the dynamic of negotiations changed, how new member states got involved in the evolution of the policy, but also how the EU institutions took advantage of the opportunities presented by the expansion to promote deeper integration in areas where the EU lacked jurisdiction. The unit of analysis will be the EU level, where policy is negotiated, provisions discussed and adopted. Therefore, the study views institutions and preferences as playing a major role in the evolution of the energy policy, in the context of the eastern enlargement. As such, here the focus is on the interplay between these two factors focusing on the aspect of evolution which implies analysis over time. Drawing on this assumption this paper argues in favour of a historical institutionalist approach.

Based on this interaction, four levels at which impact can be traced are identified: policy content, policy practices, bureaucratic organization and the scope of energy policy.

In terms of policy content, impact is measured by linking the problems identified by the country reports in the pre-accession period with the subject of legislation adopted. For example, in the 1998 country report on Poland, the Commission identifies as problems monopolies, access to networks and energy pricing, import restrictions for oil products and the second legislative package promoted in the following years focused on ensuring third-party access through unbundling and clear criteria for network tariffs.

Impact on bureaucratic organizations is measured by observing changes in terms of establishing new prerogatives for the existing organizations and by establishing new institutions with prerogatives in the area of energy, for example, Directorate General Energy.

Policy practices will look at how new member states got involved in the decision-making process. New member states can now promote their interests by forming coalitions and also the weight of votes of the new member states changes the voting trends and dynamic.

Finally, in terms of the scope of energy policy, impact will be traced by looking at how energy policy was defined, what regulations focused on and which were the areas of influence before and after enlargement.

Before presenting the proposed historical institutionalist approach, it is important to mention that the analysis takes as a starting point the rational actor. The concept of rationality used here is that of bounded rationality. By embracing the idea of bounded rationality, the paper understands preferences as being influenced by the context in which actors live (Selten, 2001). This means that national identities and beliefs cannot be ignored, at least before states join the EU and immediately after, because actors are driven by levels of aspiration 'dynamically adjusted to the situation' (Selten, 2001:14) and they do not act in a social or ideational vacuum. As such, actors take decisions based on their limited knowledge and experience.

Having in mind this conception of rationality, an institutionalist approach seeks to analyse 'how institutions matter' and how they affect preferences and the evolution of the policy. Energy policy is quite a newly recognized policy at the EU level and this opens the opportunity for institutional development.

The next part aims at critically exploring the way in which institutions and preferences will be conceptualized. Based on how the present paper defines these concepts, it is argued that a historical institutionalist approach can better explain the evolution of the energy policy in the context of the eastern enlargement.

### Preferences

Research on the EU has been engaged in the academic dichotomy between constructivists and rationalists. For rationalist scholars, preferences represent the starting point of analysis when explaining behaviour of states in negotiating at international level. Here, preferences are exogenous in the sense that they are considered fixed and given, and theory is not interested in how they are formed. At the EU level states bargain based on their preferences and strategize according to these (Jupille et al, 2003: 12). Stanley Hoffman argues that states cooperate because of egoistic preferences and want to maintain control over the integration process, especially in the case of vital issues that can secure a state's power (economic and geo-strategic). For Hoffman, the increased heterogeneity between member states' preferences prevented the development of a logic of integration (Hoffman, 1995: 71).

Moravcsik's liberal intergovernmentalism adds to these assumptions a liberal theory of national preference formation. According to his model, preferences are formed at the domestic level based on costs and benefits of the economic interdependence. Driven by these domestic preferences state representatives bargain in the EU arena (Moravcsik, 1993). In other words, 'relevant actors are assumed to have fixed preferences...and to act systematically to achieve those preferences within constraints posed by institutions within which they act' (Pollack, 2015:18).

Constructivism, on the other hand, emphasizes the social dimension of international relations (Jupille et al, 2003). Here, scholars argue that 'far from an objective reality, international politics is a world of making', introducing the possibility of agency and stressing the process of interaction (Fierke, 2013: 189). Preferences are endogenous to institutions. Identities and preferences are shaped and reshaped by the social environment (Pollack, 2015: 22). Thus, when facing a given situation, actors 'do not consult a fixed set of preferences and calculate their actions in order to maximize their expected utility, but look to socially constructed roles and institutional rules and ask what sort of behaviour is appropriate' (Pollack, 2015: 22).

The present paper adopts Hall's idea that:

Instead of assuming actors with narrow material interests that arise unambiguously from the world, we might posit actors with multiple goals, reflected in multivariate preference functions, who attach weight to each of those goals in the context of a decision situation. The process whereby those weights are attached can be modelled as a function of salient features of the institutional, ideological or social context in which the actor is situated (Hall, 2016: 37).

Therefore, the paper argues against fixed, given, exogenous preferences, considering that temporal processes can 'generate and reinforce actors' preferences, power relations, and patterns of resource allocation' (Fioretos et al, 2016: 6). Even more, since the focus is on continuity and change, considering a new wave of research highlighting theories of gradual change, the study, will focus not just on how preferences are influenced and transformed by institutions but, also, on how the accumulation of preferences within institutional arrangements leads to change (Capoccia, 2016: 1096).

While there have been studies which delimit preferences, ideas and identities (Juncos, 2007), arguing in favour of introducing each of these as separate concepts in the analysis, in this

present case, embracing the idea of bounded rationality, the paper argues that identities and beliefs are included when talking about preference formation. Let us start from the distinction put forward by Peter Hall (Hall in Katznelson and Weingast, 2005) in dealing with preferences. There are three ways in which preferences can be described and understood. First, these are considered to be 'imputed to actors within the framework of assertive theory' (Katznelson and Weingast, 2005: 2). Secondly, they are caused by the historical process, 'theory attempts to suggest how historical developments cause a particular set of preferences held by a given actor', and thirdly, 'they are induced by strategic circumstances and human interaction' (Katznelson and Weingast, 2005: 3).

Considering the second and the third way of conceptualizing preferences and based on the model of bounded rationality and organizational learning presented by Herbert Simon (Simon, 1991) the paper considers that initially states representatives, both from old and new member states, negotiate based on the limited knowledge they have one over the other and on taking into account, especially in the case of new member states, their national identities. After member states representatives start working together having the same rights within the institutional framework of the EU, a process of learning takes place. So, here, new member states adapt to the ways of negotiating, thus the short term effect would be that institutions shape preferences. Nevertheless, in the long term, learning at individual level has consequences at organizational level leading to organizational learning and to the idea presented above, embraced by theories of gradual change. Without engaging in explaining how member states' preferences change, the paper considers important to present how it understands change and continuity.

### Institutions

Joseph Jupille and James Caporaso (Jupille and Caporaso, 1999) forward the idea that most theoretical pillars, either IR or comparative and EU studies use institutional analysis, but what differentiates them is the way in which they understand institutions, and, even more the influence the attribute to institutions (Aspinwall and Schneider, 2001: 1). From this perspective, thus, it is important to see what to include in a definition of institutions.

While rationalists see institutions as focus on formal rules, procedures and competences 'created by utility-maximizing individuals with clear intentions' (Koelble, 1995: 232), therefore as 'long-lived equilibrium patterns of rational behaviour' (Calvert, 1995: 218) constructivists understands them more broadly. They include in their definitions both informal norms and

conventions, as well as, formal rules and argue that these should be seen as culturally defined (Hall and Taylor, 1996: 946).

In order to be able to study impact, this research takes on Hall's definition of institutions as 'formal rules, compliance procedures, and standard operating procedures that structure the relationship between individuals in various units of polity and economy' (Hall quoted in Peters, 2005: 74). This way it takes into account both formal and informal elements. It is considered that institutions get thicker in a long-term historical perspective. In support of the idea presented above, on how preferences are understood, here, in the short-term institutions are thin 'providing incentives for instrumentally motivated actors to rethink their strategies; they are a constraint on behaviour' (Checkel, 2001a: 20). Thus, institutions here will be conceptualized as including bureaucratic organizations, formal rules and informal practices.

The focus is not on proving the primacy of one concept or the other in the analysis. Rather, it is argued, that the study of the impact of enlargement has much more to gain by concentrating on the relationship between preferences and institutions. Such a model of analysis allows to examine how enlargement produces an impact on institutions and preferences and how the interplay between these affects the evolution of a policy.

Historical institutionalism is concerned with both causality and time. The causal mechanisms identified by the historical institutionalist approach at the EU institutional level in the context of enlargement are the following, *critical juncture*, *path dependency*, *unintended consequences*, *learning*.

Drawing on the argument that history reflects a 'punctuated equilibrium' (Krasner, 1984), researchers believe that history can be divided by moments of great impact. According to Hall and Taylor, critical junctures are 'moments when substantial institutional change takes place thereby creating a 'branching point' from which historical development moves onto a new path' (Hall and Taylor, 1996: 942). They appear as a consequence of an external event or an internal one creating 'windows of opportunity' which actors may exploit 'to introduce innovative institutional changes, producing a clear departure from previous configurations' (Juncos, 2013: 14). Thus, critical junctures are brief episodes during which: '(a) the range of possible outcomes that might take place in the future briefly but dramatically expands; (b) events occur that quickly close off future possibilities and set into motion processes that track specific future outcomes' (Mahoney et al, 2016: 77). Despite various ways of conceptualizing critical junctures (Mahoney et al, 2016; Soifer, 2012), the present paper understands it as a short period of time in which an

event that creates lasting impact happens. Very important here is the duration of the critical juncture as compared to the impact it triggers (Capoccia and Kelemen 2007). The research considers the eastern enlargement was a critical juncture, determining the upheaval in the focus on energy policy.

Path dependence argues that decisions of the past constrain the options of actors at a later time. Therefore, according to it 'actors do not inherit a blank slate [...] instead [they] find that the dead weight of previous institutional choices seriously limits their room for manoeuvre' (Pierson quoted in Reynolds, 2007: 55). In other words, new institutions are not created in a vacuum.

There are various ways to conceptualize path dependence, and in doing so one can take into consideration two types of sequences that can illustrate the concept: self-reinforcing sequences and reactive sequences (Mahoney et al, 2016: 82). Nevertheless, this paper will refer to path dependency by turning to the self-reinforcing sequence. As such it understands that path dependence 'refers to a process in which the structure that prevails after a specific moment in time (often a critical juncture) shapes the subsequent trajectory in ways that make alternative institutional designs substantially less likely to triumph' (Fioretos, 2011: 376).

When taking the side of self-reinforcing sequences one way to understand path dependence is by relating it to positive feedbacks and increasing returns (Pierson, 1994). Here, each step in one direction increases the chances that future developments will follow this direction. Hall defines path dependence in this sense, saying that:

positive feedback effects arising from the entrenched entitlements, coordination effects, or network externalities generated by institutions alter the attractiveness of the options facing political actors profoundly enough to foreclose some paths of political development, while making movement along others more likely (Hall, 2016: 38).

When understanding path dependency like this, crucial are the early steps which, in fact, may 'completely close off certain possibilities that previously existed' (Mahoney et al, 2016: 82). Because of the importance of the earlier steps in increasing returns, scholars have usually linked critical junctures with the study of path dependency considering critical junctures as moments that launch the path dependency process (Capoccia and Kelemen 2007). Nevertheless, it is important to also mention that the 'increasing returns dynamics that follow a critical juncture could be viewed as processes of gradual change' (Mahoney et al, 2016: 83). After the critical juncture, steps slowly unfold over time, each of them contributing to directing a case to a specific outcome. As such, even if the path dependent process starts with a sudden

change it may then turn in to a 'slow-moving process of incremental shifts' (Mahoney et al, 2016: 83).

The evolution of the energy policy in the context of enlargement is considered path dependent, because, even if enlargement created the opportunity for it to develop in the sense of reaching a common single framework, actors make decisions based on their limited knowledge. As such, evolution, despite the fact that now takes the form of more binding rules is guided on what was previously negotiated, promoted and tested. An example are the three legislative packages aiming at establishing an internal energy market similar to that implemented by the Treaty Establishing the European Coal and Steel Community. The treaty created a common market for coal requiring, among others, elimination of all restrictions on trade, discriminatory prices, transportation rates, and state subsidies (Birchfield and Duffield 2011:2).

In order to explain gradual institutional change, the paper turns to the concepts of unintended consequences and learning.

Institutional change can be explained by what Pierson (Pierson 1994) calls 'unintended consequences'. These may appear in the evolution of institutions and even though preferences may change, the long term agreements and *acquis* negotiated by predecessors are left to inherit (Pollack, 2009b: 137). When negotiating the conditions for enlargement a distinctive legal framework not fully deriving from the *acquis communautaire* was created and this gave the EU the power to exercise authority on candidate states in policy areas in which the EU treaties did not grant it jurisdiction. Although these powers were supposed to expire after accession, the EU remained active in most of these fields (Heidbreder, 2014: 747-748). The introduction of the chapter on energy in the negotiation package created some unintended consequences. The EU institutions gained powers in the field of energy where the treaty did not grant them jurisdiction, allowing them to promote legislation that impacted both old and candidate states.

Nevertheless, the lessons learned from some of the unintended consequences tend to be corrected by learning. Learning refers to 'a change in beliefs (or the degree of confidence in one's beliefs) or the development of new beliefs, skills, or procedures as a result of the observation and interpretation of experience' (Levy, 1994: 283). Learning usually occurs when actors face uncertainty or new realities because that is when they are 'cognitively motivated to analyse new information' (Checkel, 2001b: 562). Learning from its own experience and from others' experience had a significant impact on EU energy policy. At the level of the EU institutions, by providing the arena for information gathering and sharing between old and new

member states learning has served to correct some of the unintended consequences. For example, the first energy package was concerned in protecting the markets of old member states ignoring the strain on candidate countries. The second and third legislative packages included clearer objectives for setting the internal market, focusing on a step by step strategy with longer periods of time and dealt with issues specific to the new member states as well, like security of supply. This way, legislation encouraged the energy policy to develop in the sense of a policy regime comprising interests of both old and new members.

The paper argues that is important to focus on the sequence of events in order to prove causality. For this reason, it will turn to the *logic of sequence* specific to historical institutionalism.

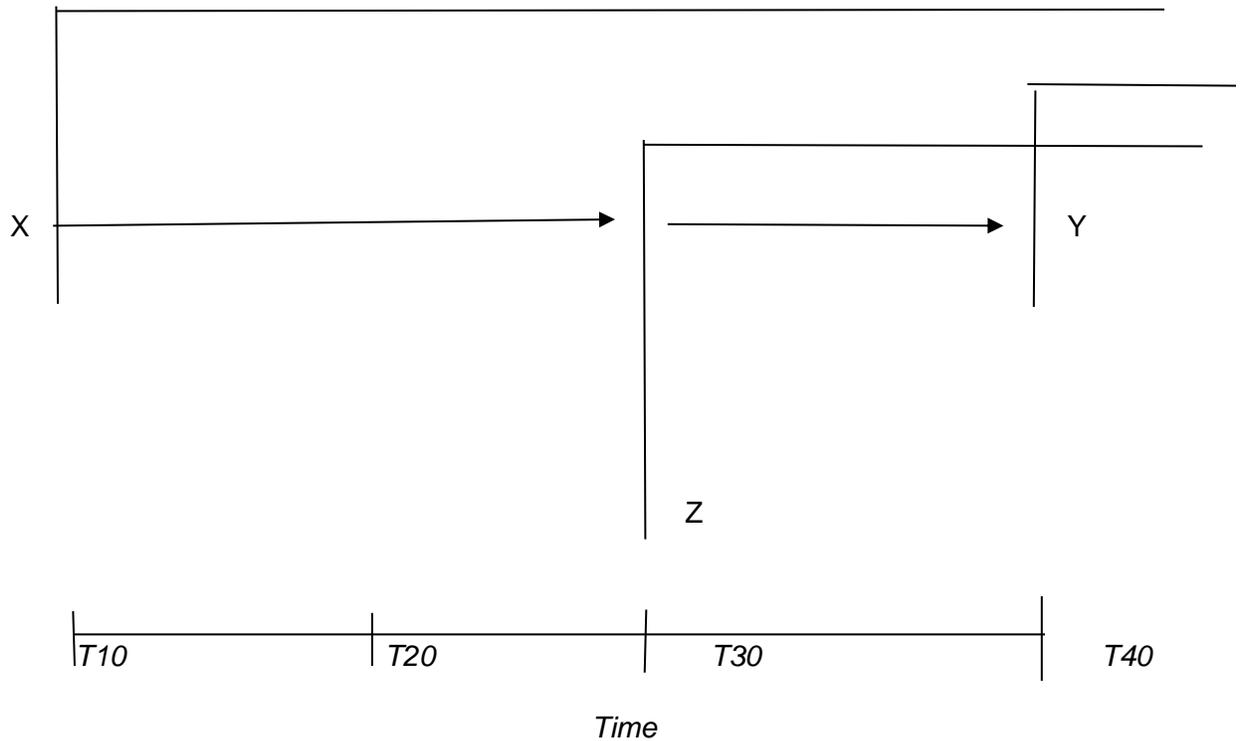
It is argued that enlargement lead to evolutions in the energy policy, but others might say that events on the international arena also affected the field so how can the impact produced by enlargement be pin pointed? The answer is by paying attention to the order in which events took place.

Let us take the example of the eastern enlargement, the Ukraine gas crisis and the publication of the communication on Energy Union, in 2015. It could be argued that enlargement had nothing to do with the evolution of the energy policy towards the idea of an Energy Union and that the Russian gas cuts of the 2009 Ukraine crisis lead to issuing a communication which talks about finding other ways to secure energy and investments in this area in order to decrease dependence on Russian gas (European Commission, 2015). Nevertheless, by using a logic of sequence we can see that enlargement brought a number of states dependent on Russian gas on the route Russia – Ukraine. Twelve<sup>2</sup> of the EU member states were affected by this crisis out of which seven joined in the two waves of 2004 and 2007. The most affected were the seven new member states with percentages of dependence on Russian gas between 30% and 100%. Using James Mahoney's (Mahoney et al, 2016: 74) graphical illustration on situating causes in time, Figure 1 shows the two causal conditions X (enlargement) and Z (Ukraine crisis) that could be jointly sufficient for outcome Y (Communication on Energy Union).

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<sup>2</sup> Hungary, Romania, Poland, Bulgaria, Greece, Czech Republic, Slovakia, Austria, France, Italy, Slovenia and Germany.

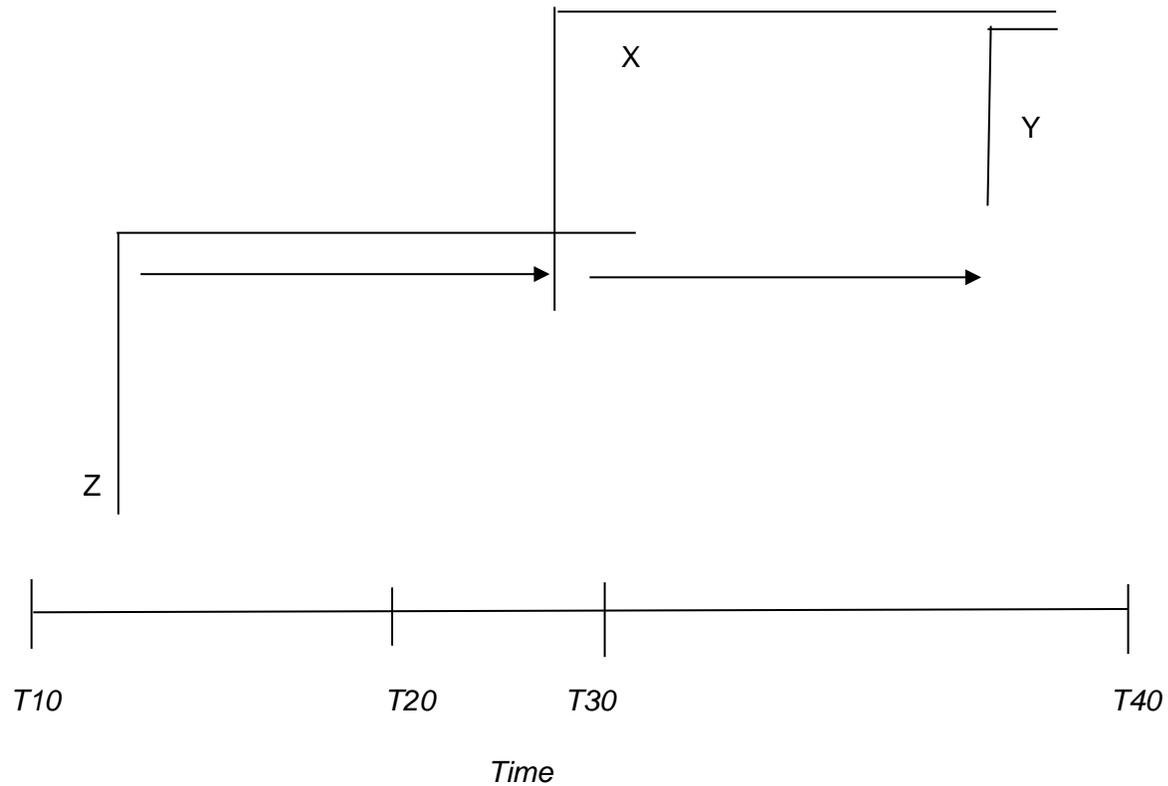
Fig. 1 XZ generates Y



Source: Mahoney et al, 2016: 76

If we reverse the two causal conditions a similar graphical illustration shows us that the outcome may not be reached. Thus in Figure 2 the Ukraine crisis takes place before enlargement. This way, Germany would be mostly affected and taking into account the history of bilateral agreements between Germany and Russia, the situation would not have lead the EU to committing to find a common solution. Thus, in this case, the occurrence of Z before X ensures that Y will not occur.

Fig. 2 ZX does not generate Y



Source: Mahoney et al, 2016: 76

In conclusion, the critical juncture, illustrated by the enlargement, created a window of opportunity. Although it did mean a departure from the way in which energy was conceptualized and regulated, this departure still followed, through path dependency the guiding lines of the past. Thus, the departure refers to the idea that instead of total supremacy granted to states and energy being regulated through provisions of other policies, now energy policy became a fully flagged policy. Nevertheless, provisions are guided by and supplement ideas promoted in the past, such as the common market established by the ECSC.

## CONCLUSION

The aim of this paper was to provide an analytical framework to assess the impact of the eastern enlargement on the evolution of the EU's energy policy. Starting from a broader

definition of the EU energy policy and arguing in favour of treating the three dimensions of the policy regime as mutually reinforcing and closely interrelated, the paper put forwards a historical institutionalist approach. Having identified an upheaval in adopting rules in the field of energy at the same time as the enlargement was negotiated or taking place, it is considered to be worth analysing whether the eastern enlargement had an impact on the policy and if so how.

Impact is considered as change, but this needs not to be equated always with major change. The three ways in which impact is defined represent different levels of change, starting from no change in the case of assimilation; marginal alteration or adaptation; and total change, which is termed here as transformation. This allows identifying different and even small details which make it possible to have a cleared image of the impact.

Having identified institutions and preferences as key concepts, the present paper is not interested in proving the primacy of one concept or the other in the analysis. Rather, it argues, that the study of the impact of enlargement has much more to gain by focusing on the relationship between preferences and institutions. Such a model of analysis allows to examine how enlargement produces an impact on institutions and preferences and how the interplay between these affects the evolution of a policy.

The historical institutionalist approach with its focus on continuity and change and attention to sequence of events helps understand how the dynamic of negotiations changed, how new member states got involved in the evolution of the policy, but also how the EU institutions took advantage of the opportunities presented by the expansion to promote deeper integration in areas where the EU lacked jurisdiction, all at the EU level, where policy is negotiated, provisions discussed and adopted. In this sense, the following causal mechanisms are identified: *critical juncture*, *path dependency*, *unintended consequences* and *learning*. These, together with the logic of sequence help understand evolution over time at the level of the four identified dimensions of policy content, policy practice, bureaucratic organizations and scope of policy.

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