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THE MAKING OF THE EU INTERNAL ENERGY MARKET

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WHAT IS THE INTERNAL ENERGY MARKET?

Current debates about EU energy policy do not arise from issues around the *Energy Union* initiative. The Juncker Commission announced the Energy Union with the aim to reinforce the integration of energy policy in the EU by developing a coherent framework for all fields of EU energy and climate policy. Although the framework remains vague at the moment, it has become clear that the integration of the *Internal Energy Market (IEM)* for electricity and gas is one of the most important parts of the Energy Union initiative. Therefore, an understanding of the IEM is necessary to follow current debates on EU energy policy.

To approach the question of what the IEM actually is, we start with a glance at EU institutions' objectives associated with the IEM. According to the European Parliament, the objective "is to ensure a functioning market with fair market access and a high level of consumer protection as well as adequate levels of interconnection and generation capacity" (European Parliament 2015: 1). Furthermore, the IEM should help to decarbonise the economy, maintain energy security by reducing import dependency, bring down costs for consumers, and increase competitiveness, thus stimulating growth and employment for the whole EU. Thereby the legal basis for market integration is the Treaty on the Functioning of the European Union (TFEU) Art. 194, which clearly contextualises the IEM as an instrument for deepening the Single Market. However, the integration of renewable energy sources (RES) into the IEM is also of great importance in meeting the EU's emission reduction targets and committing to the vision of a low-carbon economy.

1952

European Coal and Steel Community for free movement of coal and steel

1957

European Atomic Energy Community (EURATOM) aimed at a common nuclear energy market and the enhancement of the nuclear energy capacity in Europe

during 1960s

Proposals for a free market for energy

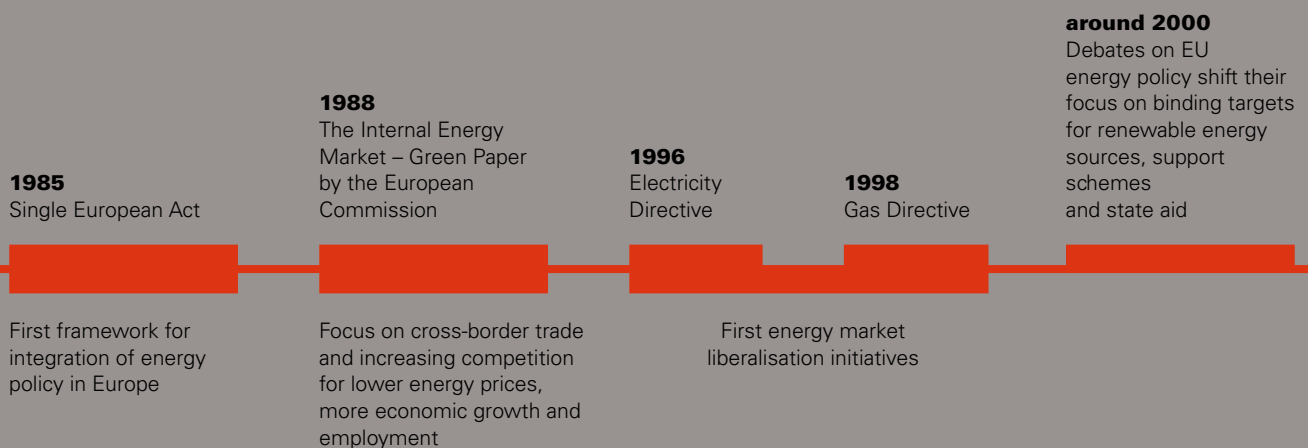
1973/1974

Oil crisis leads to measures for increased energy security

Fuel preferences in European economies changed from coal to oil and gas.
No significant steps towards energy policy integration in Europe.

Before the achievement of these policy aims is the great task of integrating a multitude of different national electricity and gas markets into a single market and simultaneously facilitating an energy transition towards RES while maintaining energy security. For integration, the IEM demands at least the common implementation of new technical rules, appropriate cross-border infrastructure and harmonisation of national support schemes for different energy technologies, as well as harmonised tax and pricing policies. Consequently, this process of market creation is not free of conflict. The diverse interests and strategies of different actors are linked to the IEM. So, the policy-making conflicts surrounding the IEM and the energy transition involve not just the big players in the fossil-nuclear industry and the emerging renewable energy industry, but also the strong energy-intensive industry in Europe, trade unions, consumer and environmental NGOs, and social movements, all of which, regardless of their power resources to impose them, have interests in energy policy (for a detailed actor analysis, cf. Fiedler 2015: 30–50).

The European Commission initially announced in a communication on November 2012 that it wants the integration of the IEM to be completed by the end of 2014 (European Commission 2012). Although this deadline failed, the process of market creation and liberalisation of national markets has sped up rapidly since the first IEM proposal in the 1990s. In the following, a short historical section will provide an overview of the most important steps towards the IEM taken so far. In the second part, special focus will be placed on the framework of the *Third Energy Package* as the most important milestone towards the IEM. In the third, current debates and conflicts regarding the establishment of the IEM will be outlined.



TOWARDS THE INTERNAL ENERGY MARKET: A SHORT HISTORY

As energy itself is central to every kind of economic activity, European integration has always been about energy issues. In this sense, the historical development of European integration has had its influence on the development of national energy markets and the IEM project. The first attempts at a European energy policy can be traced back to the European Coal and Steel Community (1952), an institution with the objective of organising the free movement of coal and steel. EURATOM, or the European Atomic Energy Community (1957), aimed at creating a common market for nuclear energy and has been committed to developing nuclear energy capacity in Europe since its foundation.¹

However, in the ensuing decades, the fuel preference of European economies changed from coal to oil and gas. Despite early proposals for a free market for energy in the 1960s and measures for the increase in energy security in reaction to

the oil crisis in 1973/74, significant steps towards integration of energy policy have not been taken. This changed with the adoption of the Single European Act in 1985. The dynamic of integration towards the Single Market has been used to establish a terrain for struggles over energy policy on the European scale. In 1988, the Commission issued a Green Paper called *The Internal Energy Market*, which became the first general orientation towards an integrated energy market. The philosophy behind it can be characterised as “free and fair competition” (Eikeland 2004); cross-border trade, and an increase in competition should result in lower prices for industry and consumers and consequently, in an increase in economic growth and employment (European Commission 1988: 4–6). The initiative clearly aimed for the “inclusion of energy in the single market concept” (Ibid: 3).

However, different national energy mixes, transport routes, and historical development of market structures resulted in different interests mediated through the nation states, who wanted to maintain control of their (often) state-owned electricity and gas-supply industries. Whereas privatisation and liberalisation were on the rise in other industry sectors, the energy

¹ Today, all EU member states are members of EURATOM, and supply the institutions with financial means for research and development.

2001

Directive 2001/77/EC on the promotion of electricity produced from renewable energy sources in the internal electricity market

Binding EU-wide target of 22.1% share of Renewable Energy Sources by 2010

2003

Second Energy Package

After the 9/11 terror attacks and the second Iraq war the energy policy strategies in Europe concentrate on energy security again, aiming at more competition and trade within the EU

2004

Eastern European enlargement

New actors bring new views on energy policy questions and different energy market structures.

2004–2006

Geopolitical conflicts and rising prices for oil and gas

In parallel: rising public awareness for climate change

EC tries to embed the Internal Energy Market project in the strategic framework of a common EU energy policy

Focus on issues of energy security
Emission reduction targets are being discussed for the first time

sector resisted for a long time. The first liberalisation initiatives decreed at the European level started with the *Electricity Directive* (1996) and *Gas Directive* (1998), which instructed member states to partly open their markets to free competition. RES played no role in the first IEM initiatives, which merely focussed on liberalisation and competitiveness, and not on environmental protection (Hirschl 2008: 316–317). However, subsequent debates on European energy policy increasingly focussed on support schemes, state aid, and binding targets for renewable energy and its inclusion in the IEM concept (Eikeland 2012: 23–25). The most important output was Directive 2001/77/EC on the promotion of electricity produced from renewable energy sources in the internal electricity market, which, for the first time, set a binding EU-wide target of 22.1 percent share of RES by 2010, which should be translated into national targets.

Following attempts at European energy policy and the IEM placed greater focus on energy security in reaction to rising oil and gas prices and geopolitical conflicts after the 9/11 terror attacks and the second Iraq war. At a time of productivity stagnation, low industrial growth and high unemployment in the beginning of the new century, the Lisbon European

Council (March 2000), initiated a new strategy towards competitiveness and economic growth, setting out the strategic goal “to become the most competitive and dynamic knowledge-based economy in the world”. The new strategy also included the removal of barriers to competition and trade for the internal market, including the IEM. With this background, the EU agreed on a *Second Energy Package* in June 2003. It amended the first electricity and gas liberalisation directives, demanding legal unbundling of Transmission System Operators (TSOs) and energy suppliers. Moreover, new regulations on the harmonisation of cross-border infrastructure and cross-border market regulations were proposed.²

In 2004, the Eastern European enlargement not only changed majority ratios in the EP and Council, but brought in new actors from ten countries with different views on energy policy and different energy market structures. Moreover, the context for energy policy in the following years was characterised by rising

2 Another step towards a more market-based approach to climate and energy policy was the first framework for the EU Emission Trading Scheme (ETS) with Directive 2003/87/EC, which was introduced as a means to meet that commitment in the Kyoto Protocol.

2007
An Energy Policy for Europe

Aims to enhance competitiveness, promote sustainability and provide energy security

2009
Third Energy Package
2020 Climate and Energy Package

Proposal by the EC to achieve the strategic goals through liberalisation, including the regulation of ownership unbundling and a governance framework for an enhanced cross-border infrastructure and harmonised technical rules

2014
2030 Climate and Energy Framework

prices for oil and gas and geopolitical conflicts which heightened the focus on issues of energy security. In January 2006, the dispute between Ukraine and Russia over gas contracts also led to supply problems in the EU, as the main pipeline infrastructure passed over Ukrainian territory. However, increasing public awareness for climate change also determined the context for struggles over the IEM. The latter started a debate about emission reduction targets in the EU. As a consequence, the Commission started a High-level Group on Competitiveness, Energy and Environment, including the commissioners of the Directorate General (DG) for transport and energy (TREN), DG Environment, DG Competition and DG Enterprise and Industry, as a way to facilitate a new approach to European energy policy over the next two years. The group was complemented with members of the European Parliament, high-level members of national governments, trade unions, environmental NGOs and business organisations, mainly from energy-intensive industry. In the discussion process, the Commission tried to embed the IEM political project in the broader strategic framework of a common European energy policy (European Commission 2006).

After an immense consultation process (Eikeland 2012: 55–68), the Commission announced its strategy *An Energy Policy For Europe*, with the objective of “combating climate change, limiting the EU’s external vulnerability to imported hydrocarbons, and promoting growth and jobs, thereby providing secure and affordable energy to consumers”, thus “transforming Europe into a highly energy efficient low CO₂ economy, catalysing a new industrial revolution” (European Commission 2007a: 5). The IEM played a key role in this strategy as set out in the Commission’s Action Plan. It should enhance competitiveness by cutting costs and attempting to “stimulate energy efficiency and investment”; promote sustainability by making economic instruments effective and fostering the connection of renewables; and provide security of supply due to inter-connection capacities and new infrastructure investments (Ibid: 6). To achieve these goals, a *Third Energy Package* for liberalisation was proposed, which should regulate ownership unbundling and establish a new governance framework in order to enhance cross-border infrastructure for the IEM and harmonise technical rules. Moreover, the strategy proposed targets through the year 2020 for emission reductions, and increased RES in the energy-mix and energy efficiency (Ibid: 13-18). These targets should be implemented with a new *climate and energy package*, including a new renewable energy directive and a *Strategic Energy Technology Plan*, which should identify the key technologies for the ‘new industrial revolution’.

PAVING THE WAY FOR MARKET INTEGRATION: THE THIRD ENERGY PACKAGE

One of the most contested issues of liberalisation under the Third Energy Package has been ownership unbundling, as it directly interferes with existing structures of capital organisation. Ownership unbundling thereby refers to the separation of Transmission System Operators (TSOs) from producers or suppliers of electricity or gas. The aim of the Third Package has been to increase competition in all parts of the value-chain, except the network-based steps of transmission and distribution.

In its initial energy strategy, the Commission required full ownership unbundling, but with a fall back option of an Independent System Operator (ISO) model, where the company retains ownership of networks “but is not responsible for operation, maintenance and development” (2007a: 7). The initiative provoked differing reactions: While large parts of the fossil-nuclear energy industry resisted further liberalisation to maintain the profitable business of system operation in an integrated company, the energy-intensive industry pushed for full ownership unbundling in order to create more competition and lower prices. Moreover, the renewable energy industry, environmental NGOs and green parties supported full ownership unbundling as a prerequisite to get RES fair access to the grid and to challenge the dominant market position of the fossil-nuclear energy producers. In the Commission, this approach has been supported by DG Competition, which together with DG TREN, tabled a first proposal largely based on the demands and objectives set out in the above mentioned strategy paper (European Commission 2007b). A majority in the EP also demanded ownership unbundling in a resolution (European Parliament 2007). In the European Council, however, differing interests have become evident. While ministers of the UK, the Netherlands,

and Scandinavian countries supported ownership unbundling, a number of member states feared that unbundling their national energy champions would weaken their bargaining position with foreign oil and gas companies and thus threaten energy security (Eikeland 2011: 252). Following the positions of big energy corporations like EDF, GDF, RWE and E.ON (MarketWatch 2007), the governments of Germany and France, as well as the new Eastern European member states, stood against mandatory ownership unbundling and the ISO model (Euractiv 2007). This stance was also supported by left parties. Arguing for a democratisation of the energy sector, the GUE/NGL group for instance, strongly neglected the liberalisation approach, defining energy as a “common asset” (Wurtz 2007). Trade unions, like the European Public Service Union (EPSU) and the ETUC also opposed liberalisation in an effort to defend energy as a public service (2007).

The Third Energy Package finally contained three regulations and two directives: Directive 2009/72/EC – common rules for the internal electricity market – The New Electricity Directive; Directive 2009/73/EC – common rules for the internal natural gas market – The New Gas Directive; Regulation (EC) No 713/2009 establishing ACER - The ACER Regulation; Regulation (EC) No 714/2009 New Electricity Regulation; Regulation (EC) No 715/2009 New Gas Regulation.

To sustain the market position of the big integrated energy corporations, the governments of Germany and France proposed a third option for unbundling: the independent transmission operator model (ITO), which would allow for ownership of transmission networks and supply in one integrated company, with rules established to prevent misuse of this concentration of power (European Council 2008). The amended policy framework adopted with the Third package in July 2009 provided three options for member states as proposed by Germany and France: Full ownership unbundling as the preferred option, the ISO-model, and the ITO-model (European Parliament and the Council 2009a, 2009b).

The Agency for the Cooperation of Energy Regulators (ACER) officially began operating in March 2011. It is the successor to EREG, which has been the official advisory board for the Commission on IEM issues and was dissolved in July 2011. Its purpose is to foster and implement binding cooperation among NRAs in the building up of a Trans-European energy infrastructure system and the setting out of principles for new Network Codes. Acer is also set up to monitor the IEM and regional energy market developments. According to the Regulation on wholesale energy market integrity and transparency (Regulation No. 1227/2011), Acer also monitors the energy wholesale market and informs NRAs in case of suspected market abuses. Moreover, ACER plays a role in energy network development, as it has an advisory role in the outline of the 'Projects of Common Interest'. It further monitors and evaluates the implementation of PCIs and participates in the outline of the TYNDP (Herbert Smith Freehills 2013: 8–9).

Furthermore, a new governance structure has been created with two *European Network Transmission System Operators (ENTSOs)* as a new organisation for electricity and gas TSOs (European Parliament and the Council 2009c, 2009d), which should cooperate with the new ACER agency and the Commission (see information box). This governance structure has been set up with the aim of facilitating the process of IEM integration by outlining a *Ten Year Network Development Plan (TYNDP)* for trans-European energy infrastructure and the development of new common Network Codes, the rules for the operation of the IEM. The latter are also important for the integration of RES into the grid (Brüning 2014). In the struggle over the Third Package, this new regulatory framework remained largely uncontroversial, aside from the critique by National Regulatory Agencies (NRAs) and the sectorial organisation Eurelectric, which demanded a stronger ACER agency (Eikeland 2012: 83). NRAs themselves gained more power and independence from other government bodies with the Third Package (Herbert Smith Freehills 2013: 7–8).

RECENT DEVELOPMENTS AND CONFLICTS REGARDING THE CREATION OF THE INTERNAL ENERGY MARKET

Despite the policy framework of the Third Energy Package, which entered into force in March 2011, the IEM remains a political project in the making. The progress of implementation of the Third Energy Package has been overlooked by the Commission. In October 2011, six months past the deadline for the Third Package, 18 member states had still not fully transposed the legislation. As a consequence, the Commission started legal actions against member states, threatening them with the European Court of Justice (ECJ) and heavy fines (Euractiv 2011). As progress remained slow, the Commission demanded the full implementation of the existing legislation in its communication *Making the internal Energy Market work*. Announcing infringement procedures against all member states failing to transpose the law (European Commission 2012: 9). To make the IEM work, the modernisation of grid infrastructure and an increased investment in cross-border infrastructure

was demanded (Ibid: 14-16). Furthermore, the Commission condemns price regulation in all but nine member states as barriers against competition and the entrance of new competitors into the market. Therefore, the Commission announced it would enforce competition and state aid rules (Ibid: 9-10), aiming at the harmonisation of support schemes for RES, but also subsidies for fossil fuels (Ibid: 14). Vulnerable consumers suffering due to energy poverty should get “assistance with energy efficiency” as the preferred option to price regulation (Ibid: 11).

CONFLICTS ABOUT SUPPORT SCHEMES AND STATE AID

The slow progress towards the IEM is accompanied by the ongoing conflict over support schemes and state aid. The new guideline on *State aid for environmental protection and energy* outlined by DG Competition has been of special importance in this respect. Guidelines on state aid formulate exemptions to the general prohibition of state aid under competition law of the Single Market (according to Art. 107 TFEU). Although guidelines are not binding, they frame the Commission decisions on state aid. The new guidelines show a strong shift towards market integration and the harmonisation of support schemes.

According to the new guideline, subsidies for mature renewable technology should fade out after 2017. After this, only subsidies for small scale RES should be allowed, (up to 6MW for wind energy and Up to 1MW of other RES). Feed-in tariffs³ are defined in the guidelines as not market compatible because they led to “market distortions” in the past. As a consequence, they should be progressively replaced by a “competitive bidding process” and so called “feed-in premiums”, which expose renewable energy sources to market signals (European Commission 2014). Exemptions for small producers are possible, and rules do not affect existing

support schemes approved by the Commission (so as not to harm investors). Free market ideology and competition, however, has limits when it threatens the competitiveness of European industry. Accordingly, guidelines provide exemptions for the energy-intensive industry “exposed to strong international competition”. The introduction of capacity mechanisms⁴ are also allowed for energy security purposes (European Commission 2014b). As a consequence of the new guidelines, the UK capacity mechanism, which largely benefits old coal power plants, has already been approved by the Commission (2014c).

Nevertheless, a harmonisation of support schemes will be difficult to achieve for the Commission, at least in the near future. The lack of coherence regarding development of the national support schemes makes any harmonisation not merely difficult (Brunnengräber & Haas 2013: 224), but also contradictory to primary EU law in the Lisbon treaty, which gives member states the right to “determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply” (Art. 194(2) TFEU). In this sense, “national autonomy” in the energy mix is materialised in the Lisbon treaty and extended by ECJ case law (Strunz et al. 2014: 249). Decisions over state aid in energy issues increasingly lead to cases at the ECJ. For instance, the Commission accepted state aid for the controversial Hinkley Point nuclear power project in the UK in a majority decision. In response, the Austrian Commissioner, who voted against the project, took the matter to court with the support of some member-state governments (Euractiv 2014). In another example, DG Competition started infringement procedures against the German feed-in tariff support scheme in December 2013. Although procedures are officially taken against exemptions for energy-intensive industry from surcharges outlined in the German Renewable

3 Feed-in tariffs are a policy mechanism created to promote investment in and the production of RES, by offering long-term contracts and a guaranteed fixed price to producers of renewable energy, to create investor certainty.

4 Capacity mechanism describe a system in which power generation capacities, generally baseload power of coal and nuclear power plants, are rewarded through financial compensation.

Energy Act, it can be assumed that the Commission uses the infringement procedure as a lever for the harmonisation of support schemes (Tews 2014: 13–14). The German government however, reacted with their own ECJ case against the Commission, claiming that the German support scheme does not fall under EU state aid regulation (Sarmadi 2015).

CONFLICTS OVER INFRASTRUCTURE

Another key challenge to overcome is building the necessary trans-European and cross-border infrastructure. In October 2011 the Commission presented its new proposal on transport, energy and telecommunication (2011a). Part of the package is the *Connecting Europe Facility*, which identifies 12 priority electricity and gas corridors for the energy sector and aims at providing 9.1 billion EUR for co-financing projects between 2014 and 2020 (European Commission 2011b). Additionally, *Projects of common interest* (PCIs) should enhance market integration. Up to this point, infrastructure projects have been planned and regulated at the national and local level, whereas PCIs get a special, prioritised licensing treatment, marking another shift towards stronger regulation on the European scale. Included in PCIs are new natural gas pipelines, cross-border networks for Carbon Capture Storage (CCS), and Priority electricity grid projects (European Commission 2011c).

In the forthcoming discussions, it became clear that the volume of public funding had to be reduced because of austerity in the EU (Euractiv 2013). For energy infrastructure projects, the budget was cut from 9.1 to 5.85 billion EUR. Nevertheless, the infrastructure package was adopted in November 2013 by the Parliament, and by the European Council shortly after. With the adopted regulation, PCIs are selected on the basis of the Ten-Year Network Development Plans (TYNDPs); set up by ENTSO-E for electricity and ENTSO-G for gas and the ACER agency (European Parliament and the Council 2013). The TYNDPs outline the investment needs for transmission infrastructure to complete the IEM. The plan is updated from now on every year. According to the regulation, the process should include a

consultation process with all stakeholders (Ibid: Art.11). The first list revealed by the European Commission in October 2013 identified 140 electricity transmission projects and 100 projects for natural gas and liquefied natural gas (LNG), and only a few on decentralised Smart Grids (European Commission 2013). The selection clearly reveals the EU's preference for the development of natural gas and large scale electricity production.

Nonetheless, the conflicts over new energy infrastructure projects remain a continuing struggle. According to the Commission, investments of 200 billion EUR in infrastructure projects are needed to meet the Energy 2020 targets with the IEM (European Commission 2011d). Public co-financing with 5.85 billion can only be a small incentive in this respect. Large-scale trans-European infrastructure projects are particularly prone to resistance from the local population. Even when public finance for a project is secured, this does not mean that these projects will be built.

ENERGY AND CLIMATE 2030

The struggle over the Energy and Climate 2030 framework has been of great importance for the future of the energy transition in Europe. However, the EU does not move far beyond its 2020 targets, which will most likely slow down the energy transition towards RES. It has been agreed on as a target for the IEM integration. An electricity interconnection target of 10 percent by 2020 and 15 percent by 2030 is set out (European Council 2014). The importance of the IEM political project becomes clear in the decision by the European Council to offer the possibility of EU financing for countries which until now have been less integrated in order to meet the targets. The targets should be achieved with the implementation of PCIs and projects included in the 2014 *European Energy Security Strategy* (Ibid: 6-8).

SUMMARY

The purpose of this short explanation paper has been to provide the reader a brief overview of what the IEM is, how it has been developing so far and what barriers and conflicts can be associated with it.

To summarise, it can be stated that the making of the IEM is led by three motives: competitiveness, energy security and sustainability. The IEM is connected to different EU energy policy fields such as competition policy, infrastructure policy and climate policy. Thereby, the objective is that electricity and gas are moving freely in a single European energy market across EU borders, enhanced by trans-European Networks. This should then decrease energy costs for consumers, raise the competitiveness of the European industrial base and, at the same time, lead the EU on the path toward a low-carbon economy by integrating RES into the IEM.

There has been some success in this direction (for instance, with the liberalisation initiative under the Third Energy Package, the centralisation of infrastructure planning and the beginning of harmonisation of support schemes). Nevertheless, many barriers exist and are difficult to overcome. Different national energy market structures persist and geopolitical conflicts reduce the debate on energy policy to issues of energy security. Moreover, there is still resistance against liberalisation of energy markets, especially regarding pricing policy and state aid. Moreover, large-scale investments in new cross-border energy infrastructure are not yet taking place.

In the policy process, various social forces try to enable the IEM and the struggle over energy transition in the EU in order to universalise their specific interests and strategies. As a consequence, the IEM integration progresses slowly and remains a contested terrain for struggles over energy policy.

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