

Andrzej Ancygier

**Misfit of Interests instead of the “Goodness of Fit”?  
Implementation of European Directives 2001/77/EC  
and 2009/28/EC in Poland**

**Verlag Dr. Kovac**

**Hamburg**

**2013**

**1**



# Contents

<i>Acknowledgements</i> .....	9
<b>1. Introduction</b> .....	<b>11</b>
<b>1.1. Putting the research in a context</b> .....	<b>15</b>
1.1.1. Europeanization .....	15
1.1.2. EU renewable energy policy .....	18
1.1.3. Polish renewable energy policy .....	20
<b>1.2. The case studies</b> .....	<b>21</b>
<b>1.3. Climate change policy vs. renewable energy policy</b> .....	<b>24</b>
<b>1.4. Summary</b> .....	<b>25</b>
<b>2. Theoretical background</b> .....	<b>27</b>
<b>2.1. Europeanization</b> .....	<b>27</b>
2.1.1. What is Europeanization all about? .....	27
2.1.2. Reactions to Europeanization .....	32
2.1.3. Europeanization in the new member states .....	34
<b>2.2. Factors influencing the implementation of EU directives</b> .....	<b>36</b>
2.2.1. The balance of costs and benefits .....	37
2.2.2. The role of the Commission: between the punishment and the management .....	39
2.2.3. The scope of discretion .....	41
2.2.4. The number of veto points .....	42
2.2.5. The “goodness of fit” approach .....	43
2.2.6. The misfit of interests .....	45
2.2.7. Summary .....	47
<b>2.3. The role of interests in the process of implementation of the European directives</b> .....	<b>48</b>
2.3.1. Interests vs. preferences .....	48
2.3.2. The matrix of interests at the EU level .....	51
2.3.2.1. National interests in the European policy-making process .....	51
2.3.2.2. The interests of the European supranational institutions .....	52
2.3.2.3. The interests of subnational actors .....	54
2.3.3. The matrix of interests at the domestic level - Liberal Intergovernmentalism .....	56
2.3.4. Summary .....	58
<b>2.4. Defining the dependent variable: the effectiveness of implementation</b> .....	<b>59</b>
<b>3. Methodology</b> .....	<b>61</b>
<b>3.1. Qualitative approach</b> .....	<b>61</b>
<b>3.2. Case studies</b> .....	<b>62</b>
<b>3.3. Process-tracing</b> .....	<b>65</b>
<b>3.4. The model</b> .....	<b>67</b>
3.4.1. Defining European and national renewable energy policies .....	68
3.4.2. The making of a directive .....	71
3.4.3. Implementation .....	72
3.4.4. Other factors that might interfere with the process of implementation .....	74
<b>3.5. Methodology tools</b> .....	<b>74</b>
<b>3.6. Summary</b> .....	<b>76</b>
<b>4. Interests behind European renewable energy policy</b> .....	<b>79</b>

<b>4.1.</b>	<b>Policy formulation .....</b>	<b>79</b>
4.1.1.	EU competences in the area of energy .....	80
4.1.2.	The making of a directive .....	81
4.1.2.1.	Problem definition and agenda setting .....	83
4.1.2.2.	Policy formulation.....	84
4.1.2.3.	Negotiations .....	86
<b>4.2.</b>	<b>The main contextual factors shaping European renewable energy policy .....</b>	<b>88</b>
4.2.1.	Energy dependence.....	88
4.2.2.	Global warming .....	91
4.2.3.	Ecological modernization .....	96
<b>4.3.</b>	<b>The interests of the main stakeholders .....</b>	<b>100</b>
4.3.1.	European supranational institutions.....	101
4.3.1.1.	European Commission .....	102
4.3.1.2.	European Parliament .....	106
4.3.1.3.	European Court of Justice.....	110
4.3.1.4.	Summary.....	111
4.3.2.	Member states .....	111
4.3.2.1.	The leaders .....	114
4.3.2.2.	The followers .....	121
4.3.2.3.	The dissenters.....	125
4.3.2.4.	Summary.....	128
4.3.3.	The role of lobbying groups .....	130
4.3.3.1.	ENGOS .....	132
4.3.3.2.	The renewable energy industry .....	138
4.3.3.3.	The traditional energy industry .....	143
4.3.3.4.	Expert groups.....	148
4.3.3.5.	Summary.....	150
4.3.4.	Public opinion and media.....	151
4.3.5.	The interests behind European renewable energy policy - Summary.....	153
<b>4.4.</b>	<b>The development of European renewable energy policy.....</b>	<b>154</b>
4.4.1.	Phase 1 – the 1970s and the 1980s: “Alternative” sources of energy as a way out of energy dependence.....	155
4.4.2.	Phase 2 – the 1990s: Ambitious targets, meager means .....	156
4.4.3.	Phase 3 – the 2000s: Introduction of binding measures.....	161
4.4.4.	The future of European renewable energy policy.....	164
<b>4.5.</b>	<b>Summary .....</b>	<b>166</b>
<b>5.</b>	<b><i>Interests behind Polish energy policy .....</i></b>	<b>169</b>
<b>5.1.</b>	<b>The implementation of the European directives .....</b>	<b>169</b>
<b>5.2.</b>	<b>The main contextual factors influencing Polish energy policy.....</b>	<b>171</b>
5.2.1.	Structure of the energy industry .....	172
5.2.2.	Energy dependence.....	177
5.2.3.	Economic situation .....	180
5.2.4.	The Nuclear Energy Program.....	183
5.2.5.	Summary .....	190
<b>5.3.</b>	<b>Preferences of the main actors .....</b>	<b>191</b>
5.3.1.	The government .....	192
5.3.1.1.	Ministry of Economy.....	193
5.3.1.2.	Ministry of Environment.....	197
5.3.1.3.	Ministry of the Treasury .....	201
5.3.1.4.	Ministry of Agriculture.....	203
5.3.1.5.	Energy Regulatory Office .....	205
5.3.1.6.	Summary.....	206

5.3.2.	The parliament .....	207
5.3.2.1.	Civic Platform (PO) .....	207
5.3.2.2.	Polish People’s Party (PSL) .....	209
5.3.2.3.	The Law and Justice Party (PiS) .....	210
5.3.2.4.	Democratic Left Alliance (SLD) .....	213
5.3.2.5.	Palikot Movement (RP) .....	214
5.3.2.6.	Greens2004 (Zieloni2004) .....	215
5.3.2.7.	Summary .....	216
5.3.3.	Non-governmental actors .....	217
5.3.3.1.	Coal industry, large energy companies, .....	217
5.3.3.2.	Renewable energy industry .....	222
5.3.3.3.	Environmental non-governmental organizations (ENGOS) .....	228
5.3.3.4.	Think tanks .....	231
5.3.4.	Population, local communities and media .....	234
5.3.5.	Summary .....	237
<b>5.4.</b>	<b>Polish energy and climate policies – an overview .....</b>	<b>238</b>
5.4.1.	The 1990s– ambitious goals, ineffective tools .....	238
5.4.2.	1997-2005 – the impact of Europe.....	240
5.4.3.	2005-2012– From laggard to stumbling block of the European energy and climate policy .....	246
<b>5.5.</b>	<b>Summary .....</b>	<b>257</b>
<b>6.</b>	<b>Directive 2001/77/EC.....</b>	<b>261</b>
<b>6.1.</b>	<b>The making of the directive .....</b>	<b>261</b>
6.1.1.	Definition of renewable energy .....	263
6.1.2.	Targets by 2010 .....	266
6.1.3.	Support schemes .....	268
6.1.4.	Access to the electricity network and removal of bureaucratic barriers.....	272
6.1.5.	Summary .....	274
<b>6.2.</b>	<b>The scope of the discrepancy of interests in the case of Directive 2001/77/EC .....</b>	<b>275</b>
<b>6.3.</b>	<b>Implementation of Directive 2001/77/EC in Poland .....</b>	<b>277</b>
6.3.1.	Definition of renewable energy .....	278
6.3.2.	Support scheme .....	280
6.3.3.	Additional Funding .....	291
6.3.4.	Access to the grid .....	295
6.3.5.	Administrative issues .....	303
6.3.5.1.	Report about the impact of the investment on the environment .....	304
6.3.5.2.	Localization Permits.....	305
6.3.5.3.	Construction permit.....	306
6.3.5.4.	License to produce electricity .....	307
6.3.5.5.	Obligations resulting from the certificates of origin: Art 9e of the Energy Law .....	308
6.3.5.6.	Taxes .....	308
<b>6.4.</b>	<b>Summary .....</b>	<b>310</b>
<b>7.</b>	<b>Directive 2009/28/EC.....</b>	<b>313</b>
<b>7.1.</b>	<b>The making of the directive .....</b>	<b>313</b>
7.1.1.	The targets .....	317
7.1.2.	Optimization of the support mechanisms .....	322
7.1.3.	Administrative measures .....	326
7.1.4.	Access to the grid and its development .....	328
7.1.5.	Summary .....	330
<b>7.2.</b>	<b>The scope of the discrepancy of interests in the case of Directive 2009/28/EC .....</b>	<b>332</b>
7.2.1.	The target .....	333
7.2.2.	Tradable Certificates of Origin .....	334

7.2.3.	The scope of the discrepancy of interests in the case of Directive 2009/28/EC .....	335
<b>7.3.</b>	<b>Implementation of Directive 2009/28/EC in Poland .....</b>	<b>337</b>
7.3.1.	Reporting .....	338
7.3.1.1.	The Forecast Document .....	338
7.3.1.2.	National Renewable Energy Action Plan .....	339
7.3.1.3.	Report on Progress in the Promotion and Use of Energy from Renewable Sources .....	342
7.3.2.	Support scheme .....	343
7.3.3.	Administrative Procedures .....	354
7.3.3.1.	Report about the impact of the investment on the environment .....	355
7.3.3.2.	Localization permits .....	355
7.3.3.3.	License to produce electricity .....	358
7.3.3.4.	Registering a company .....	358
7.3.3.5.	Renewable energy in public buildings .....	359
7.3.4.	Information campaigns concerning renewable sources of energy .....	360
7.3.5.	Electricity Grid .....	360
7.3.5.1.	Connecting to the grid .....	361
7.3.5.2.	Grid development .....	363
<b>7.4.</b>	<b>Summary .....</b>	<b>369</b>
<b>8.</b>	<b>Conclusions .....</b>	<b>371</b>
<b>8.1.</b>	<b>Discrepancy of interests and the implementation of the European renewable energy directives .....</b>	<b>373</b>
<b>8.2.</b>	<b>Theory vs. reality .....</b>	<b>378</b>
<b>8.3.</b>	<b>The Europeanization of Polish renewable energy policy .....</b>	<b>383</b>
<b>8.4.</b>	<b>“Polonization” of European energy and climate policy? .....</b>	<b>385</b>
<b>Sources</b>	<b>.....</b>	<b>389</b>

## 8. Conclusions

The discrepancy between the interests of the actors shaping European energy policy and the interests of those participating in the process of its implementation in the member countries has influenced the effectiveness of policy implementation in important ways. To what degree this statement can be extended to other policy areas is a matter for further research, but it can be assumed that in a situation in which certain measures are introduced under pressure from Brussels and against the will of some domestic actors, side-payments to those actors, who can influence the decision-making process, will have to be made. These side-payments can either be anchored in the mechanism introduced to achieve the goals mentioned in a directive, which will make the achievement of these goals much more expensive, or the European directives will be transposed in a way that leaves large room to maneuver for domestic actors to hinder the introduction of measures that are against their interests.

What the analysis of the implementation of Directives 2001/77/EC and 2009/28/EC made clear is the importance of the institutional framework within which a policy is created. The balance of interests in a given area does only play a role if the bearers of these interests can influence the policy-making process. In this situation the existence of the channels of influence plays a decisive role. As shown in this dissertation, the strengthening of the actors representing the renewable energy sector for a long time did not find expression in a more favorable renewable energy policy. In fact, the rising strength of the sector, which made electricity from renewable energy an important competitor to the conventional energy sector, could have been one of the reasons for the proposals included in the first draft of the Renewable Energy Law from December 2011 that would significantly worsen the position of the investors in renewable sources of energy. The changes proposed in the first draft of the law, if adopted, would mean the end of the nascent wind energy sector. Although operators of the electricity grid were still obliged to purchase electricity from renewable sources of energy, they would be free to decide what price they offer. In addition, the reduction of the proceeds from green certificates resulting from the introduction of the conversion factor at the level of 0.75 would make investment in the wind energy sector economically unviable. At the same time, the introduction of the conversion factor at 0.70 would still make biomass co-firing highly profitable, especially in a situation in which its main competitor, the wind

energy sector, would be significantly weakened. Indeed, the only beneficiary of the changes proposed in the first draft of the Renewable Energy Law from December 2011 was the small photovoltaic sector, which posed no foreseeable threat to the dominant position of the four energy groups.

It was only with the creation of the Renewable Energy Department in early 2012 that the situation changed dramatically. The decision to create this department was not necessarily a result of the good will of the government but was enforced by the wave of dissatisfaction concerning the draft of the Renewable Energy Law from December 2011 and the existence of a special department for nuclear energy. In the end, however, the Renewable Energy Department became a channel through which the interests of the renewable energy sector could influence the policy-making process. The existence of the department not only influenced the content of the second draft of the Renewable Energy Law, but also the debate that led to its adoption. The policy-making process has become much more open and took place with the active participation of the renewable energy sector. The outcome was to some degree surprising, especially to those, who gave up the hope that the government would ever decide to introduce a support mechanism based on the feed-in tariffs. Although the tariffs were only proposed for small units, the introduction of the relatively high conversion units for large photovoltaics and an increase of the conversion factor for electricity from onshore wind power plant from 0.75 to 0.90 does show a significant improvement in comparison to the earlier draft of the Renewable Energy Law.

Still it must be noted, that the Renewable Energy Department is functioning within the Ministry of Economy and is only one of many institutions that are trying to influence the policy-making process in the area of energy. When suggesting more favorable conditions for the development of renewable sources of energy, it has to assert itself against some much more powerful actors. The role of the Ministry of the Treasury, which owns the majority shares in ENERGA, ENEA and PGE energy groups and minority shares in TAURON, has increased significantly since the start of the nuclear program. Also the Ministry of Economy, due to its close links to the coal industry, is not necessarily in favor of developing a policy that would lead to a significant increase in the role of renewable energy in electricity sector. This situation found reflection in the draft of the Renewable Energy Law from July 2012. Although the side-payments for the conventional energy companies for biomass co-firing have been significantly reduced, they were to some degree replaced by the very

generous conversion factors for large hydro power plants. Importantly, however, in the form suggested they would only be received if the power plants are modernized or built. Although an increase in the conversion factor with the increase of the size of the plants is rather unusual and can only be explained as a compensation for the reduction of the conversion factor for biomass co-firing, it can nonetheless be judged as a step in the right direction.

The radical change in renewable energy policy after the creation of the Renewable Energy Department shows that although interests are important in shaping a policy, the institutional framework is decisive in determining whether different interest will reach the decision-making level in the first place. In the following section the way the discrepancy of interests between Brussels and Warsaw in relation to renewable energy policy has influenced the process of implementation of the European directives will be presented. These discrepancies also have certain repercussions for the dominant theoretical approaches concerning the implementation of the European directives in the member countries. Some of these repercussions will be presented in the second section of this chapter. Afterwards a more general overview of the “impact of Europe” on Polish renewable energy policy will be taken to assess how deep Europeanization was in the case of Polish energy policy and how this is linked to the definition of Europeanization found in chapter two. Finally, how Poland has managed to influence European renewable energy and climate policies will be analyzed.

## **8.1. Discrepancy of interests and the implementation of the European renewable energy directives**

As mentioned in chapters four and five, the interests of the actors participating in the policy-making process are influenced by a number of contextual factors, such as the threat of global warming, the notion of ecological modernization or the structure of the energy market. These factors not only influenced the interests of the actors active in the energy sector, but most of all determined the options available for these actors to realize their interests. The threat of global warming reduced the number of possibilities to limit energy dependence, whereas the need to reduce CO<sub>2</sub> emissions is used by energy companies as one of the major arguments to start a nuclear energy program. Certain contextual factors, although common for the European and Polish levels, lead to different conclusions concerning the development of energy policy. Whereas the government

stresses the need to further use coal to reduce energy dependence, the European Commission promotes the development of renewable sources of energy to achieve the same goal. This shows that the impact of these contextual factors should be perceived through the prism of the interests of those actors who are playing the role of agenda setters at a given level. Agenda setters do not only interpret the factors which impact their decisions, but are also themselves shaping these factors to fulfill their interests. For the European supranational institutions, especially the European Commission, the development of renewable sources of energy is not only a way to combat global warming and reduce energy dependence, but also to increase their competences necessary to manage the “New European Project” of sustainable development. Therefore it was the European Commission that presented renewable sources of energy as an answer to the threat of global warming long before this become a viable option for the IPCC. In its position papers, the Commission also repeatedly stressed the positive role of renewable energy in reducing European energy dependence and in increasing economic growth. In this way it created a link between the main challenges facing the European Union and the development of renewable sources of energy when that link was not yet treated as an obvious one.

In the case of Poland, the impact of the agenda setter, the Ministry of Economy, on the factors shaping energy policy was even bigger. The consolidation of the energy sector and the development of the nuclear program, factors that play a major role in the development of energy policy in Poland, were initiated by the government. Both processes further increased the impact of the conventional energy companies on energy policy. Of course, as described in chapter five, large producers of electricity had a significant influence on the policy-making process before the consolidation of the energy industry. Already in 2004 Grzegorz Wiśniewski pointed out that the ineffective implementation of Directive 2001/77/EC is not only caused by the weak preparedness of the public structures for the difficult task of transposition of the European law, but also by a conscious policy of defending the interests of the existing structures in the energy sector.<sup>996</sup> Also Urszula Kurczewska, author of a book dealing with the impact of different groups of interest on the European energy policy, underlined the importance of the link between the government and conventional industry.

---

<sup>996</sup> Grzegorz Wiśniewski, “Transpozycja i implementacja prawa Unii Europejskiej w praktyce” [Transposition and implementation of the European Law in practice], *Czysta Energia*, 11:37 (2004).

According to Kurczewska, for the government the interests of the large energy companies were closely linked with national interests.<sup>997</sup> But before 2007 the main channel of influence was the Department of Electricity within the Ministry of Economy. After the consolidation of the energy sector around four energy groups and the beginning of the nuclear program, the Ministry of Treasury in cooperation with PGE started to play an important role in shaping energy policy. That has led to a situation in which, as described by the former deputy Minister of Economy Jerzy Markowski, Polish energy policy became the sum of the policies of the individual energy companies.<sup>998</sup>

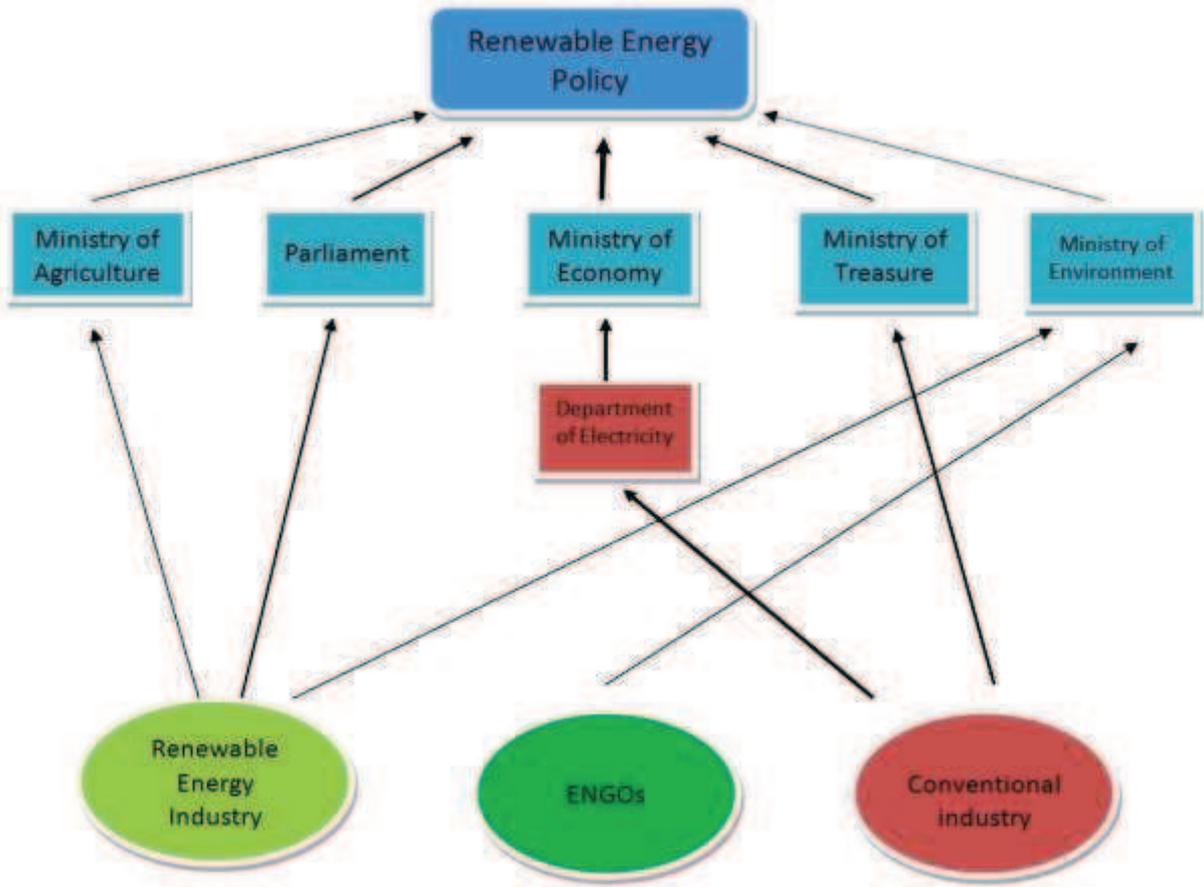
The dominant position of the conventional energy industry in the policy-making process led to a situation in which the change on the position of the prime ministers or a particular minister did not lead to a significant change in policy. After some positive steps towards the development of renewables were taken by the Ministry of Environment during the Buzek government from 1997 and 2001, all three ruling governments have since then followed a policy with the main goal of not hurting the interests of the conventional energy industry. One of the ways to keep the dominant position of the big energy companies was the development of nuclear sources of energy. It was already the left-wing government that mentioned the need to develop nuclear energy in the Polish Energy Policy until 2025 adopted in 2005. This idea was upheld by the Law and Justice Party-led government and implemented by the liberal government, which took over the government in 2007. Similarly, all these governments failed to timely and effectively implement European directives that would strengthen the role of alternative and distributed sources of energy. One could get the impression that the interests of the conventional energy sector captured the policy-making process. The only way representatives of the renewable energy sector could access the policy-making process was through the Ministry of Agriculture and the Ministry of Environment. Also the Environmental Committee of the Parliament in the post-Solidarity-led government played an important role in formulating the resolution calling the government to adopt Strategy for the Development of Renewable Energies. But the role of all three institutions in

---

<sup>997</sup> Interview, Urszula Kurczewska.

<sup>998</sup> Jerzy Dudala, "J. Markowski: rząd musi przejąć inicjatywę w kreowaniu polityki energetycznej państwa" [The government has to take over the initiative in shaping country's energy policy], [wnp.pl](http://www.wnp.pl), 18 Jan. 2012, <[http://www.wnp.pl/wiadomosci/j-markowski-rzad-musi-przejac-inicjatywe-w-kreowaniu-polityki-energetycznej-panstwa.160369\\_1\\_0\\_0\\_0\\_0.html](http://www.wnp.pl/wiadomosci/j-markowski-rzad-musi-przejac-inicjatywe-w-kreowaniu-polityki-energetycznej-panstwa.160369_1_0_0_0_0.html)>, (accessed on 20 Sep. 2012).

shaping renewable energy policy was reduced significantly in the following years. In the government led by the Civic Platform, the Ministry of Environment lost all its competences in the area of renewable energy, which was one of the main reasons for the resignation of Maciej Nowicki. With the transfer of Marcin Korolec and a number of his co-workers to the Ministry of Environment also the climate policy was fully subordinated to the interests of the Ministry of Economy.

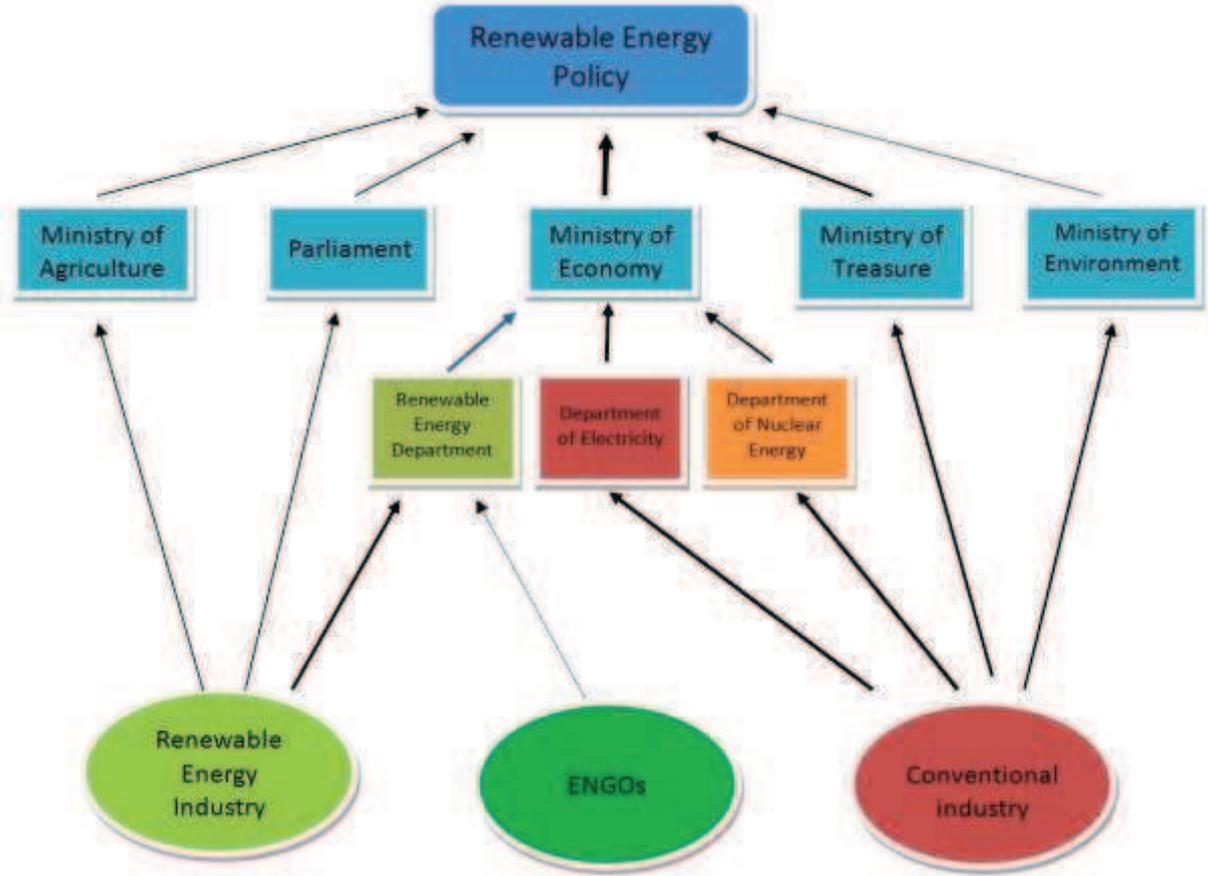


**Figure 13.** Institutional framework influencing the implementation of Directive 2001/77/EC.

The major and to some degree surprising change took place with the creation of the Renewable Energy Department in the Ministry of Economy. It has established a new channel of influence not only for the actors representing the renewable energy sector but also for ENGOs, who became increasingly focused on energy policy. But with the strengthening position of the Ministry of the Treasury closely cooperating with the energy companies, the Ministry of Economy lost its monopoly on shaping energy policy. In the area of climate change, the conventional energy sector can also count on the support of the

Ministry of Environment, which has been “captured” by the former employees of the Ministry of Economy.

These institutional reorganizations explain the confusing developments in the areas of energy and climate policy. The favorable changes found in the second draft of the Renewable Energy Law reflect the significance of the creation of the Renewable Energy Department, which took the initiative in implementing Directive 2009/28/EC. The much harder position of the Polish government towards European climate and energy policy reflects the impact of the interests of the conventional energy sector, which can influence the decision-making process through the Ministries of Treasury, Environment and Economy.



**Figure 14.** Institutional framework influencing the implementation of Directive 2009/28/EC.

The changes in the constellation of the channels of influence have had an influence on the process of implementation of the European directives. The ineffective and patchwork implementation of Directive 2001/77/EC resulted from two factors: the lack of access points that would allow representatives of the renewable energy sector to influence the decision-making process and the lack of an actor within the government that would be clearly responsible for an

effective or at least correct transposition of the directives. Renewable energy policy was the outcome of a mix of measures introduced by different departments and sometimes even different ministries. It seems that the main goal of these measures was not to develop a strong renewable energy sector but merely to formally fulfill the obligations resulting from the European directives. As a result the measures introduced in the process of implementation were designed in a way that should not have had any negative effect on the interests of the large energy companies.

The situation changed dramatically with the establishment of the Renewable Energy Department. Not only was the renewable energy sector given a clear addressee for their comments and critique, but for the first time there was also an actor that could be blamed for the inefficiencies and ineffectiveness of the support scheme for renewable energy and could be made responsible if Poland missed its renewable energy goals. Not surprisingly the first step of the Director of the Department was to present draft of a law reducing and abolishing after 2020 the unreasonably expensive and unsustainable support for biomass co-firing.

## **8.2. Theory vs. reality**

In chapter two a number of theoretical approaches and factors that may influence the implementation of European directives by member states were presented. Whereas interests proved to be of great importance in shaping renewable energy policy, clearly some other factors also played a role. But it can be argued that in many cases the factors that are behind ineffective transposition or implementation of European directives in member states result from the discrepancy between the interests of the actors participating in the policy-making processes at the European and national levels.

A case in point is the goodness-of-fit approach, which underlines the impact of the discrepancy between the *status quo* in a given country and the law that should be implemented on the effectiveness of implementation. To some degree the predictions based on this approach turned out to be correct. The large misfit between the status quo in the largely coal-based electricity sector and the European policy promoting renewable sources of energy could be blamed for an ineffective implementation of the European directives. But the government also decided to support the development of a nuclear energy program, which accord-

ing to Poland's Energy Policy until 2030 would over the following two decades limit the role of coal in the electricity sector to a much larger degree than even an effective implementation of the renewable energy policy would do. This change of the *status quo* was initiated with strong support from the major energy companies, despite its inconsistency with the existing structure of the electricity sector. Also, the initial implementation of the policies that were to introduce this change was contrary to the predictions provided by the goodness-of-fit approach, surprisingly quick and effective. Such change can much better be explained by consistency between this change of the *status quo* and the *interest* of the actors shaping the energy policy.

A radical change of the status quo can take place even if there is a large misfit between the status quo and the new policy. What matters is whether or not the change is in the interest of the actors able to influence the policy-making process. Since the existing *status quo* in many cases *results* from the interests of the actors active in a given area, the predictions based on the goodness-of-fit are in most cases correct. But in some cases the interests behind a *status quo* change much faster than the *status quo* itself. It can happen either because the actors shaping a policy were replaced by other actors, or because the interests of the established actors changed. In the case of Polish energy policy, both factors played a role. On the one hand, after the consolidation of the conventional energy sector the large energy companies were looking for different options to uphold their dominant position on the energy market. Since, due to external factors, mostly the European climate policy, it was clear that the role of coal would have to be reduced, the construction of a nuclear power plant, perceived by the decision-makers as a "CO<sub>2</sub>-emissions-free" source of electricity, became a viable option. On the other hand, the introduction of the support mechanism for renewable sources of energy allowed a number of new actors to enter the energy market. That led to a significant discrepancy between the *status quo* and the interests of the actors shaping Polish energy policy. In this situation the goodness-of-fit approach could not provide any reliable predictions concerning the implementation of the policies aimed at changing the *status quo*.

Also the predictions based on the "balance of costs and benefits" approach did not fully explain the process of implementation of the European renewable energy directives. For a number of reasons the costs of lacking or ineffective implementation are much higher for the candidate country than for the member of the European Union. Therefore the implementation of directive 2001/77/EC

should have been more effective than the implementation of directive 2009/28/EC. Indeed, even the beginning of the punitive action on behalf of the European Commission did not facilitate the process of adoption of the Renewable Energy Law, which aims at transposing the directive into Polish law. But it can of course be argued that the costs of an effective implementation for those actors who were participating in the policy-making process were simply much higher than the costs of potential sanctions for non-implementation, which would be paid from the state's, not a company's budget. This would provide the "balance of costs and benefits" approach with some explanatory powers.

Another factor that can influence the process of implementation of the European directives is the use by the Commission of "soft" forms of governance, such as partnership models, voluntary agreements, social dialog, recommendations, advice concerning best practices, and guidelines. The impact of these measures on Polish renewable energy and climate policy is rather mixed. On the one hand the cooperation between the European Commission and domestic actors representing the renewable energy industry significantly strengthens the position of the non-governmental actors in shaping national policy. That was especially the case regarding EC BREC, which played an important role in shaping Polish renewable energy policy at the time, when there was no industry that it could represent. Also the participation of PIGEO in the REPAP2020 project financed by the Intelligent Energy-Europe Program made it possible for the European Commission to get first-hand information about the progress (or lack thereof) in the implementation of the European directives. But despite Poland's membership in the European Union, the government not only failed to develop an effective climate policy, but also significantly strengthened its opposition against further measures, or even suggestion that could lead to adoption of some measures leading to CO<sub>2</sub> emission reduction in the future.

Whereas the use of "soft" measures can impact the *quality* of the implementation, the scope of discretion given to member states when implementing a directive has been defined by scholars as having an important impact on the *speed* of transposition. But as mentioned in chapter two, there is a difference of opinion as to whether large discretion accelerates or delays the process of implementation. Based on the conclusions of this dissertation it can be assumed that large discrepancy of interests has a negative impact on the effectiveness of implementation of the European directives. The freedom to decide how the goals mentioned in the directive can be implemented led to disagreements which

significantly extended the duration of the transposition process. In many cases, proposals of legal acts prepared by some actors were rejected by others and the whole procedure had to be started from scratch. Interestingly, it did not only happen after the change of government, but also after personnel changes in the ministries dealing with renewable energy. Therefore it can be expected that the more concrete the provisions of a law that should be implemented are, and the smaller the room of maneuver for different actors to insert their own interests, the faster and more effective the transposition of that law should be. But, as shown in the analysis of adoption of the renewable energy directives, it is very difficult to make all member states agree on a directive that significantly limits their freedom to choose how to implement the directive and achieve its goals.

The opposition of member states to a directive, which would in detail describe how policy goals are to be achieved, could have been because such a directive could be blocked during the implementation process by “veto players”. There is a general agreement that the larger the number of *veto players* or *veto points*, the longer it takes to change a policy or introduce a new one. Although this assumption sounds rational, it was not confirmed either during the analysis of the decision-making process that led to the adoption of the renewable energy directives or in the examination of the process of implementation of these directives. Although there were numerous actors participating in the process that led to the adoption of each of the directives, it took the EU institution and member states “only” two years to reach a compromise concerning Directive 2001/77/EC and less than a year to adopt the much more extensive Directive 2009/28/EC. The process of implementation took over four years in the case of Directive 2001/77/EC and two years after the deadline the process of implementation of Directive 2009/28/EC was still underway, despite a much more limited number of *formal* veto players at the national level.

There could be two reasons for this discrepancy between this explanation and reality. First, the ideological distance between different actors participating in the policy-making process at the European level is much smaller than between the actors trying to influence the process of transposition of the European directives. Whereas all actors interviewed for this dissertation at the European level, including representatives of the conventional industry, agree with the statement that global warming needs to be dealt with and alternative sources of energy have to be developed; in Poland there exists considerable discrepancy in the opinion of actors concerning this issue. Whereas many important actors,

including leading politicians, consider the threat of climate change to be a “myth” and the development of renewable sources of energy a way to exploit poorer EU member countries by richer ones, representatives of the renewable energy industry and ENGOs stress the need for radical action against climate change. The existence of this discrepancy at the national level can explain why in some cases a document prepared by one actor was rejected and the policy-making process had to begin from scratch. A case in point is the draft of the Renewable Energy Law prepared by EC BREC in 2003 which was rejected by the Ministry of Environment. Although soon after the work over Renewable Energy Law resumed within the same ministry, it was only in late 2011 that the first official draft of such a law was presented.

The second reason that could explain a relatively smooth adoption of the renewable energy directives at the European level and the cumbersome implementation of these laws in Poland, despite a much smaller number of veto players, is issue of leadership. Whereas in the case of the Energy and Climate Package the Commission, with strong German and French support, managed the whole policy-making process at the European level, at the national level until early 2012 there was no clear “leader” that would promote certain solutions and push the decision-making process forward despite the opposition of some veto players. It was only with the creation of the Renewable Energy Department that renewable energy policy became a clear responsibility of a single institution. Based on that it can be assumed that although the number of veto players does play a role in framing the policy-making process, it is the existence of an actor with clear competences in a given area and willingness to push certain policy forward that can reduce the impact of the veto players.

The scope of the discrepancy between the interests of those who shape a policy at the European level and the interests of those who participate in the process of its implementation at the national level significantly influences the way this policy will be implemented. But a simple comparison of the “balance of interests” is not enough to provide viable predictions concerning the effectiveness of implementation. In addition to that it is necessary to find out if the actors representing different interests can actually influence the decision-making process. Of great importance is also whether the decision-making process is led by an actor who takes full responsibility for the content of the law or whether the implementation is influenced by different actors but none of them is pushing the process forward. What is clear, however, is the rather minor impact of

“socialization” and “soft powers” in those policy areas, in which the interests of the strong domestic actors dominate the policies of the government. In the following section the impact of the European Union on Polish energy policy will be looked at in more detail.

### **8.3. The Europeanization of Polish renewable energy policy**

In chapter two the notion of Europeanization was briefly described. According to the definition presented, only the “added value of Europe”, namely the implementation of policies and regulations that otherwise would not have been adopted by member states, can be treated as resulting from Europeanization. Also the different impact of the EU on the member and candidate countries was underlined. Whereas the former may participate in the policy-making process at the European level and therefore be able to reduce the misfit between new policies and the policies already adopted in a given country, the candidate countries do not have a choice and if they do not want to risk their prospects of becoming members of the European Union, they have to adopt the laws “as they are”. Although that can lead to a full and correct *transposition* of the European laws in the candidate countries, the practical *implementation* of the new regulations may look much different. As a result the new rules may turn out to be merely “empty shells” which are largely ignored by the actors active in a given policy area.

The analysis of the implementation of the European renewable energy directives only partly confirmed these predictions. Although Poland was required to legally transpose Directive 2001/77/EC before it became a member of the European Union on 1 May 2004, it failed to do so until October 2005, when the support mechanism for electricity from renewable sources of electricity started to function properly. Although the amendment of the Energy Law from April 2004 did transpose a number of requirements resulting from the directive, one of the major elements of the law – giving facilities generating electricity from renewable sources priority access to the grid – was not even mentioned until the adoption of the second draft of the Renewable Energy Law in July 2012. This contradicts the assumption that candidate countries will fully and correctly transpose European laws to avoid the threat of missing the chance of joining the EU. But the postponed implementation of Directive 2001/77/EC, despite the

high potential costs of non-implementation, can also be explained by the low probability that the Commission would postpone Poland's membership in the EU due to the incomplete implementation of the European directives. Once the negotiations ended in 2002 and EU enlargement became real and imminent. That Poland's entry would be blocked due to its failure to fully implement some requirements of Directive 2001/77/EC was rather improbable.

Also the prediction concerning the adoption of European regulations as "empty shells" turned out to be only partly correct. This is to some degree due to the character of the electricity sector, in which the existing regulations have to be respected and it is not possible for the actors active in this area to act according to unwritten rules and simply ignore their legal obligations. But the obligations resulting from the renewable energy directive were implemented in a way which made some of the provisions ineffective. An example of such a practice is the introduction of the requirement to connect renewable energy power plants to the electricity grid and the obligation imposed on the operators of wind energy facilities to predict the exact amount of electricity produced 24 hours in advance. The difficulty of making such a prediction in the case of wind energy and the high costs incurred if the prediction was incorrect, significantly reduced the benefits from the access to the grid.

The change of the status from candidate country to member of the European Union, and the ability to influence the content of the renewable energy directive, did not have a large impact on the process of its implementation. In this case the ability to reduce the misfit between the status quo and the content of the directive was limited because the law was negotiated as part of the Energy and Climate Package and the priority of the government lay with reducing the perceived threat resulting from the auctioning of the CO<sub>2</sub> emissions allowances. But taking into consideration a rather lenient approach of the European Commission towards the lacking or incomplete implementation of Directive 2001/77/EC, the Ministry of Economy did in the end agree on a directive it did not really like, but also was not in a hurry to implement. Indeed the expectations of the government turned out to be largely correct. It took the European Commission 14 months after the deadline for adoption of Directive 2009/28/EC to start infringement procedures against Poland.

But the incomplete and inefficient implementation of European directives does not mean that Polish energy policy has not been Europeanized. If the Europeanization is defined as a process that leads to a change in a member

country, which would not have taken place without the EU institutions taking action in a given policy area, then Polish energy policy was Europeanized to a much larger degree than the policies of a number of other EU countries, such as Germany or Spain, that introduced effective support mechanisms for the development of renewable energies long before the EU obliged them to do so. As pointed out by a number of interviewees, without the pressure from the European Union, Poland would not have developed renewable energy or climate policies in the first place.<sup>999</sup> This view is confirmed by Bokwa, who concludes that “Poland’s climate policy is not rooted in a domestic *environmental* policy so much as in outside political stimuli.”<sup>1000</sup> Bokwa argues that “becoming a member of the EU was the only factor strong enough to counterbalance with the coal-mining and energy-production sectors to force significant changes in GHG emissions”.<sup>1001</sup>

As a member of the European Union, Poland is not only influenced by, but is also influencing the decisions made at the European level. In the last section of this chapter Poland’s impact on European renewable energy and climate policies will be shortly analyzed.

#### **8.4. “Polonization” of European energy and climate policy?**

As pointed out by Jankowska, over the last decade the role of Poland in the European Union had changed from that of a “taker” of EU energy and climate policy into that of a “shaper”.<sup>1002</sup> Over the last few years, Poland’s role has changed further from that of a shaper into that of a hurdle blocking European renewable energy and climate policy advancements. In the 12 months after June 2011, Poland vetoed three times the proposals of the Commission concerning the reduction of the CO<sub>2</sub> emissions and the role of low-carbon sources of energy until 2050. That these proposals had the support of the other 26 member countries did not hinder Poland in defending the short-term, particular interests of the domestic conventional energy sector at the European level.

---

<sup>999</sup> Interview, PIGEO.

<sup>1000</sup> Anita Bokwa, p. 126. Cursive added.

<sup>1001</sup> Ibid., p. 133.

<sup>1002</sup> Karolina Jankowska, p. 175.

Indeed, the importance of the European level for domestic energy policy has also been recognized by the energy companies in the new EU member countries. In July 2010 an association called Central Europe Energy Partners was founded in Brussels. Although it purports to represent the energy sector of Central Europe, as of October 2012, 11 of its 16 members came from Poland, among them all major energy companies and four companies dealing exclusively with coal mining or trade.<sup>1003</sup> According to a report published by this organization in cooperation with Ernst & Young, the high costs resulting from the implementation of the European energy and climate policies - estimated at € 300 billion - may slow down economic development in the new member countries which have already significantly decreased their CO<sub>2</sub> emissions since 1990. If necessary, reductions of the CO<sub>2</sub> emissions could be achieved by the promotion of “clean coal” technologies and nuclear energy. But as pointed out in the report, the reductions of the CO<sub>2</sub> emissions in Europe would only have a “symbolic” character taking into consideration the emissions in other countries, especially China.<sup>1004</sup> The report fails to point out that the modernization of the energy sector is long overdue and the costs would have to be borne this way or another. Also the costs of the “clean coal” technology were not taken into consideration because the CCS technology is not commercially available – as opposed to the renewable sources of energy, the potential of which was largely ignored in the report.

But what the report does show is that the conventional energy companies are increasingly realizing the importance of the European level in shaping domestic energy policies. In this regard, Polish energy companies can fully count on the support of the government to defend their interests. This can significantly hinder the development of the European renewable energy and climate policies over the coming years. In this regard, the conclusions about the impact of the discrepancy of interests on the process of implementation of the European directive in the areas of renewable energy and climate have important practical consequences.

To move Poland’s energy and climate policies in a direction that would limit its opposition against the measures proposed at the European level, it is necessary to change the balance of interests at the national level. This can be

---

<sup>1003</sup> Website of the Central Europe Energy Partners, <<http://www.ceep.be/www/Our-members/11/pages.html>>, (accessed on 20 Sep. 2012).

<sup>1004</sup> “Central Europe Energy Partners Report 2012 – introductory presentation”, 23 Apr. 2012, <<http://www.ivd.cz/download/EaY.pdf>>, (accessed on 20 Sep. 2012).

done by either weakening the role of the four major energy groups on the policy-making process or by strengthening the position of the renewable energy associations. The former could be achieved by cutting the formal and informal links between the government and the energy companies. That would be a long process but a full privatization of these companies, especially PGE, would be the major step in this direction. Also the process of liberalization of the energy market, which would force the energy groups to fully separate from the companies managing the electricity grid would create a level playing ground for renewable sources of energy.

Another side of the equation is the increase in the influence of the actors representing the renewable energy industry. The influence of the renewable energy associations was already visible in the process of implementation of Directive 2009/28/EC. But the development of the renewable energy industry needs to reach a certain tipping point before the government will realize the benefits of supporting renewable such as the job creation and the possibility to increase Poland's energy independence. Under such conditions, the government could introduce policies beneficial for the renewable energy industry. This would be done not because of pressure from Brussels, but because it is good for the economy, and this in turn enhances the chances for the ruling party to win in the next elections.

The inaction of the Commission in taking consequences for the incomplete or incorrect implementation of the renewable energy directives is one of the major factors that made the implementation of the European renewable energy directives ineffective, expensive, and due to the very generous support for biomass co-firing, unsustainable in the long-term. The lack of a concrete reaction despite the problematic implementation of Directive 2001/77/EC significantly lowered the perceived costs of implementation failure at the precise time when the costs could have been very high, namely before Poland joined the European Union. This led the government to the conviction that a late and incomplete implementation of the European laws would still fully satisfy the European Commission. This way of thinking could be clearly seen in the earlier plans of the government to implement Directive 2009/28/EC in the form of ordinances of the Ministry of Economy. Indeed, the conviction of the government that the European Commission would be very hesitant to take legal action against Poland was confirmed by the lack of reaction from Brussels in the case of the second renewable energy directive. It took Brussels 14 months after the

deadline for implementing Directive 2009/28/EC to initiate legal action against Poland. The hesitancy of the Commission to take legal action against a country for failing to effectively implement European laws may have been motivated by the fear that in the future the same countries may oppose the proposals of the Commission aiming at strengthening the already adopted policies. But this argument does not count in the case of Poland, which is already blocking all Commission's proposals in the areas of climate and energy. A tough EU policy on Poland could even increase the chances that more ambitious renewable energy and climate policies will be supported by the government in the future. An effective implementation of European renewable energy policy would increase the position and impact of the actors whose interests are in line with the interests of the European Commission. As soon as the benefits resulting from the development of domestic renewable energy industry become clear to society and some politicians, the opposition against more ambitious renewable energy and climate policies can be expected to weaken.