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# EU GAS SECURITY ARCHITECTURE

The Role of the  
Commission's  
Entrepreneurship

**Elina Brutschin**



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## Introduction

**Abstract** This chapter introduces the motivations behind studying the activities of the European Commission within the European natural gas market. The European Union (EU) currently faces a number of challenges, one of them being the creation of the European Energy Union during times of low energy prices and highly uncertain political environment. By studying and systematically comparing the Commission's efforts to coordinate natural gas policies in the past, important insights into possible future developments can be gained.

**Keywords** Energy Union · European Commission · Policy entrepreneur

In February 2016 the new European Commission under the leadership of Jean-Claude Juncker adopted an energy security package (European Commission 2016g) as part of the general strategy to create Energy Union. Two of the key elements of the new energy package are the revision of the gas security regulation as well as a revision of the decision 994/2012/EU that has established an information exchange mechanism with regard to intergovernmental agreements in energy. Additionally, the Commission intends to make substantial progress with the development of the Liquefied Natural Gas (LNG) and gas storage. The envisioned reforms and the Energy Union idea represent some of the major changes in the European energy policy (Szulecki et al. 2016: 1752). Will the Commission be able to successfully

coordinate European energy policies given that member states' preferences, with currently (still) 28 member states, remain highly heterogeneous?

The contribution at hand might provide some insights into this question by tracing the Commission's initiatives and activities over the period from 1980 to 2016 in the liberalisation of the EU gas market and the development of the trans-European infrastructure. The idea that the European Commission is a policy entrepreneur of European policymaking (Bauer 2002) and of European energy policies (Herweg 2015; Maltby 2013) is not new. Still, systematic analyses of Commission's activities over a long period of time are rare (for exceptions see Boersma (2015), Goldthau and Sitter (2014), Proedrou (2012)). Additionally, we know from the previous literature that there was considerable variation in the success rate of the Commission's efforts to create a coordinated gas policy. For example, the early 1990s were characterised by rather incremental regulatory activity (Matlary 1997), while more recent studies find faster and more substantial reforms (Boersma 2015; Glachant et al. 2013; Proedrou 2012; Tosun et al. 2015). One cannot, however, simply conclude that the substantial reforms in the gas sector are the dealings of the European Commission. It is essential to control for other possible explanatory factors (Schmidt 2000). Previous studies suggest that energy security concerns might be the driving factor for a deeper integration in the energy sector (Maltby 2013; Schubert et al. 2016). For this reason, different energy security environments are systematically compared in order to trace the difference in the Commission's strategies. Based on historical developments (Chap. 2) and the conceptualisation of energy security demands as a reaction to internal and external vulnerabilities (Chap. 3), two periods form the backbone of the analysis. While in the period from 1980 to 2000 the demand for increased gas security was low (given low gas disruption threats and low oil prices), the period after 2000 is marked by high oil prices and Eastern enlargement, through which the European gas market became more susceptible to possible gas disruptions. If we do not account for these two different environments, we might arrive at wrong conclusions and assign too much importance to the Commission's activities. Additionally, the seminal study by Pollack (1997) and the subsequent literature on the Commission's formal and informal powers are used to structure the discussion of the Commission's strategies.

An exploratory analysis of legislative activities in the liberalisation (Chap. 4) as well as in the infrastructure sector (Chap. 5) leads to interesting results. In both sectors one of the key contributors to successful

policymaking was the usage of network governance. Intriguingly, when the Commission faces strong opposition, it tends to rely on its informal powers, rather than use its formal powers vested in competition law. This is in line with the theoretical work that suggests that the Commission seeks consensus in order to prevent “punishment” from the member states in the future, for example through a change in the Commission’s mandate or delegation of competencies away from the Commission (Pollack 1997). A strategy that works quite well to overcome a complete deadlock is to leave legislative ambiguity (a similar observation is made by Jegen and Mérand (2014)), while when there is a strong coalition of supporters, strict definitions and deadlines should be included if possible. The Commission also displayed its policy entrepreneurship skill by putting controversial matters on the agenda during the “windows of opportunity”, like the change in the government of the main opposing member state or crisis situations.

## Historical Background and Overview

**Abstract** This chapter starts by tracing the idea of the unification of the European energy markets from the times of the European Coal and Steel Community in 1950s and then explains why European countries subsequently became heavily dependent on oil supplies from the Middle East. It is then argued that oil disruptions of the 1970s, new gas discoveries and the “steel for gas” deals with the Soviet Union were decisive for the evolution of the current gas infrastructure. The parts of the chapter that trace the developments of the EU gas markets after the Soviet breakup and Eastern enlargement show that the 2006 and 2009 gas interruptions to Ukraine have partially motivated new EU gas legislation, which Russia perceived as threatening to her economic interests.

**Keywords** Soviet pipelines · Energy dependence · Gas security · Gas disruptions

The pursuit of a common European energy policy and distributional disputes among member states are as old as the EU. Indeed, the European project started with the liberalisation of the coal and steel markets after France, West Germany, Belgium, the Netherlands, Luxembourg and Italy signed the Treaty of Paris in 1951 to establish the European Coal and Steel Community (ECSC). Liberalisation of coal markets required the creation of a single competitive market for coal, with

no tariffs, import quotas or discriminatory practices that would protect domestic industry. At the time, the central distributional conflict over the exact instruments of liberalisation was between France and Germany: the prior being the major coal consumer and the latter being the major coal producer (Callender 1953). The High Authority of the ECSC, the predecessor of the European Commission, helped to coordinate the disagreements between states. Even though supranational bodies were perceived as weak, the High Authority enforced its supranational power on a number of occasions against all expectations. After 4 months of negotiations, West Germany was obliged to drop its discriminatory freight rate system in steel transportation (New York Times 1953). Then, frontier charges on coal, iron ore, steel and scrap metal were removed despite the opposition of the German shippers (New York Times 1955). Additionally, the High Authority implemented the restructuring of the Ruhr coal selling agency GEORG and the French coal-buying agency ATIC (High Authority 1956a). This assertive display of supranational power, supported by economic benefits associated with the liberalisation of the coal markets (New York Times 1956), instilled “more serious talk about extending the Community’s scope to include other forms of energy than coal, such as electricity, gas, oil, or even atomic power” (Diebold 1955). The High Authority realised at an early stage that “to be effective, a policy for coal would need to be dovetailed into a broader policy for energy in general” (European Community Information Service 1967: 12).

## 2.1 THE AGE OF OIL

Since the creation of the ECSC, European integration of other forms of energy has been tedious. The changing domestic and global market structures led to a growing reliance on oil, of which the ECSC had precious little. This presented itself as a major economic problem. As Jean Monnet, the architect of the ECSC, pointed out, “Europe [was] the only great industrial region which [was] unable to produce the energy indispensable to its economic development” (High Authority 1956c: 3). Although the urgency to coordinate energy policies increased, political disagreements stalled any substantial progress. During this period, the rejection of the French Assembly to ratify the European Defence Community (EDC) treaty in August 1954 presented a major blow to European integration (High Authority 1955: 1ff). Additionally, the Community experienced a major economic crisis between 1957 and 1959. Rising coal stocks and falling coal

prices led to coal mines closures across Europe and a considerable social upheaval of mine workers (The Economic Weekly 1959). Germany and Belgium deliberately imposed a coal import licensing system (Lubell 1961), a measure that was contrary to the provisions of the ECSC treaty. More importantly, the High Authority was forced to allow member states to provide state aid for the coal industry (European Community Information Service 1967: 13) – a measure clearly incompatible with the idea of liberal markets. The High Authority attempted to use the coal crisis as a justification to further develop common energy policy and create additional competencies at the supranational level (European Community Information Service 1959: 5), but the member states were only willing to cooperate by incrementally approaching different sources of energy. The member states thus approached the integration of nuclear markets first.

As there were no substantial vested interests in the relatively young sector, it was possible to integrate nuclear markets through Euratom in 1957. It was also possible because France, as the major political power within the ECSC with a nuclear weapons programme, did not oppose it. However, this momentum in the European energy integration did not spill over to other sources of energy. Then Vice President of the High Authority, Albert Coppé, remarked that the nuclear sector was an obvious choice for further integration because it was “not yet barricaded by nationalism” (High Authority 1956b: 6). The Suez Crisis (1956), which raised concerns over the security of oil supplies, offered an opportunity to frame Euratom as a solution to Europe’s energy problems (Doty 1956), especially in the electricity generation sector. The high cost and technical complexity of nuclear power made combining resources necessary (New York Times 1957). After signing Euratom, the Council of Ministers asked the High Authority to work on a range of proposals “in regard to energy policy, suggestions as to how such a policy might be put into practice, and a list of measures it considered desirable” (High Authority 1964a: 72). In response to this, three memoranda were issued (March 1960, January 1961, October 1961), none of which being concrete enough for the Council of Ministers. Therefore, the High Authority was asked to draft proposals “for an energy policy designed to culminate in the establishment of a Common Market for Energy” (High Authority 1964a: 73). While the High Authority gladly took on the task, the Council of Ministers did not accept any of the proposals issued by the High Authority (Haghighi 2007: 49). In the meantime the European energy market was undergoing substantial structural changes.

Two of these changes occurred in the 1960s. First, domestic coal production became less competitive because of low oil prices. A period of extremely low oil prices was enabled by many new oil discoveries in the US and Soviet Union in the 1940s and 1950s, the discovery of the world's largest oil field in Saudi Arabia in 1948 (Ghawar field) and discoveries in Libya in 1956 and 1959 (Lujala et al. 2007). Second, the member states became more dependent on energy imports from the Persian Gulf region and the Soviet Union. Oil turned out to be more competitive than coal also because of decreasing costs of shipping and the Soviet Union's entrance into the oil market (Haghighi 2007). Table 2.1 depicts the share of primary energy source consumption in the union in 1950, compared to 1960 and 1970. Strikingly, coal dropped from 70 % to only 22 % by 1970s, while oil rose from 12 % in 1950 to 59 % by 1970. An ongoing post-war economic boom, which led to substantial increases in domestic energy consumption, was associated with an increase in oil imports by 244 % in the period from 1959 to 1968 (European Community 1970: 31). An additional contributor to growing oil consumption was the growth of the European transportation sector. From 1955 to 1965, the number of private cars in the Community increased fourfold (High Authority 1964b: 42).

One might wonder why European decision-makers were not overly concerned about the growing dependence on oil supplies from the Middle East and the Soviet Union given the Suez Crisis. In 1956, the Suez Canal, as one of the major oil transit routes, was closed due to ongoing tensions between Egypt and Israel, the UK and France. Lack of concern could be partially explained by the contractual structure of the oil market at the time, as well as by a relatively stable political situation in the major supplier countries. Already in the 1940s, the majority of Western oil

**Table 2.1** Total domestic consumption of primary energy 1950–1970. Data based on (Commission of the European Communities 1972a: 2)

<i>Product</i>	<i>Total Domestic Consumption of Primary Energy within the Community (in Percentage)</i>		
	<i>1950</i>	<i>1960</i>	<i>1970</i>
<b>Coal</b>	70	52	22
<b>Lignite</b>	8	7	4
<b>Oil</b>	12	30	59
<b>Natural Gas</b>	0	3	9
<b>Primary Electricity</b>	10	8	6



companies secured “great oil deals” with oil-producing governments (Yergin 1991: 482). And while the post-war period was generally associated with the “Arab Struggle for Independence” (Cleveland and Bunton 2012), there were no major conflicts in the oil-producing countries until the Six-Day War of 1967. The creation of the Organization for Petroleum Exporting Countries (OPEC) in 1960 was a crucial reaction to the oil surplus and extremely low oil prices, which were partially caused by the Soviet Union’s entrance to the oil world market. Yergin (1991: 501) observes that in the late 1950s, “Russian oil could be picked up in Black Sea ports at about half the posted price of Middle Eastern oil”. To balance exporters’ bargaining power after the creation of OPEC, the then Head of the Directorate-General of Economic Affairs and Energy (ECSC) suggested that import agreements should be coordinated at the European level, but this proposal never materialised (Nora 1961: 34). The member states instead agreed to invest in oil stocks: the Council Directive from 1968 obliged member states to maintain “at least 65 days’ average daily internal consumption in the preceding calendar year” (The Council of the European Communities 1968). This measure was, however, not sufficient in emergency situations like the one instigated by the oil embargo of 1973.

The security of oil supply became a more important issue in the late 1960s and 1970s, but there was no major breakthrough in European energy policy integration. When the Netherlands was affected by the oil embargo in October 1973, the nine member states of the European Economic Community (EEC) did nothing to display unity in practical terms, apart from issuing a joint communiqué during the Copenhagen Summit the following month (Assembly of Western European Union 1973). On the contrary, national – not European – interests took over, when the French and the British declared their neutrality on the Middle Eastern conflict, both eager to negotiate better oil deals for themselves (Laqueur 1974). Nonetheless, in 1974, the Commission and the EC Energy Committee prepared policy guidelines related to coal, oil, electricity and nuclear sectors, with the major goal to “go nuclear” by 1985 (European Community Information Service 1974). Even though most of these never became binding, the 1970s mark an increased level of regulatory activity for the Commission. For example, the Council Directive on minimum oil stocks from 1968 was updated in 1973 (Directive 73/238/EEC) and pre-existing efforts to invest in new sources of energy were extended. Additional binding legislation and initiatives concentrated on information gathering and improvements in energy efficiency (European

Community Information Service 1979). From the Commission's perspective, the main reason that the Community failed to implement a common energy policy was "the diversity of situations in Community countries and the prerogatives guarded by Community member states" (Commission of the European Communities 1979c: 3). Amidst a number of the initiatives to coordinate energy policies in early 1970s, the Commission noted that "the lack of a common energy policy cannot be blamed on the Community's executive bodies" (Commission of the European Communities 1972a: 6).

The oil disruption of 1973 did not lead to more coordinated energy policies because member states could cope with oil supply (in)security by substituting oil in electricity generation with other fuels. In the wake of the oil embargo, the Community experienced about a 1.5 % decrease in economic growth and a 3 % increase in the general price level (Commission of the European Communities 1974: 2). However, a sharp increase in oil prices meant that gas used to generate heat and electricity became increasingly more competitive. As Helmut Schmidt correctly predicted, "oil for heat-producing purposes [would] become substitutable as soon as the price of oil equals or exceeds that of alternative sources of energy" (Schmidt 1974: 445). Concerns over oil supply security in the 1970s coincided with growing environmental concerns. Denmark, together with the UK and Ireland, became part of the European Community in the first round of enlargement in 1973. A pioneering nation in wind energy (Mendonça et al. 2009) and an active promoter of renewable energy, Denmark could now influence European decision-making. The UK, as a natural gas producer, certainly contributed to the shift in interests, especially given that natural gas has often been framed as an environmentally friendly fuel (Helm 2015). Nuclear energy, natural gas and renewable energy presented viable solutions that would enhance security of energy supply and would decrease carbon dioxide emissions. While the attempts to expand nuclear and renewable energy proved difficult in periods of low coal and oil prices, natural gas, which was pegged to the prices of oil, was gaining popularity, especially in the electricity generation and heating sectors (Commission of the European Communities 1972b).

## 2.2 THE AGE OF GAS

The dependence on Russian natural gas imports did not become a major concern until the late 1990s. Historically, natural gas markets were developed in regions where coal was not available, such as Romania, Austria,

northern Italy, southwestern France and the eastern regions of interwar Poland (Högselius et al. 2013). In 1959, the Slochteren gas field was discovered in the Netherlands (Högselius 2012), at the same time as new gas field discoveries in Germany, France and Italy. According to the EEC, European reserves amounted to 1,500 billion cubic metres (bcm) at the end of 1963 (European Economic Community 1965). In 1966, the first pipelines carried Dutch gas to Germany and Belgium, while France received its first Dutch gas in 1967 (Högselius et al. 2013). Additional European reserves in the British, Danish, Dutch and Norwegian sectors of the North Sea were discovered in late 1960s (Högselius et al. 2013). Algeria, a former French colony that gained independence in 1962, was rapidly becoming an important oil and gas producer (Yergin 1991: 508). While most of the liquefied natural gas (LNG) projects from Algeria to Europe did not happen due to ongoing political instability, a contract was signed in 1977 to construct a sub-sea pipeline carrying Algerian gas to Sicily (Högselius et al. 2013). Given the growing number of suppliers and LNG technology, one could have hoped that the gas market would become competitive in the following decades. For a number of technical and political reasons, this did not happen, leaving only a few natural gas suppliers for the community's gas market. Most importantly, the EEC had to rely on gas supplies from the Soviet Union.

It was in 1962 when the Soviets first offered to build a gas pipeline to West Germany, France, Italy and Austria (The Montreal Gazette 1967). Since then, the Soviets and later the Russian Federation developed a number of long-term gas contracts with the Western countries. Although NATO put an embargo on big inch pipeline sales to the Soviet Union (The Montreal Gazette 1967), the Soviet offer was met with a significant amount of interest not only because the deal meant access to natural gas, but also because it enabled the Europeans to promote their steel industry. This provided the starting point for the so-called “triangular natural gas deal” (Stent 2003: 212) between the Western countries and the Soviets: Russians would provide natural gas while the Europeans would take care of the pipelines and provide credit for projects at low interest rates. Austrian OMV's major lobbying effort in 1966 to bring itself and the national steel company VOEST into the Soviet gas project shows just how lucrative the deals were for the ailing European steel industry (Högselius et al. 2013). It was then in 1968 that the first major gas pipeline “Northern Lights” from the Soviet Union (through Belarus) found its way into the European energy market, and the first

Soviet gas started flowing to Austria (Högselius et al. 2013). Additional trade deals were supported by a wave of détente. As Willy Brandt came to power in West Germany in 1969, so did the idea of using “Osthandel” (Eastern Trade) as the key to “Ostpolitik” (Eastern Politics) (Lippert 2010). West Germany would become one of the most important trading partners with the Soviets by agreeing to natural gas contracts in 1970, 1972 and 1974, among other trade deals (Gregory 1981).

After the oil markets stabilised, a period of oil glut followed into the late 1980s. Oil prices reached relatively low levels again. This development removed energy concerns from the top of the political agenda as member states saw no need to coordinate efforts at the supranational level (Commission of the European Communities 1995a). The idea of creating an internal market covering all member countries and functioning along the same line thus had to be put to rest. Even though West Germany was importing 25 % of natural gas from the Soviet Union by 1980 (Geddes 1980), it signed, along with nine European countries, another mega gas deal in 1981 for the next 25 years. The “Brotherhood” pipeline was born, which Americans perceived as a possible security threat (Director of Central Intelligence 1983), and the foundation for Ukraine to become an important transit country was laid. Following the “triangular natural gas deal”, the German steel producing companies Mannesmann A.G. and Thyssen A.G. agreed to deliver 950,000 tons of steel pipes (Geddes 1980), which boosted the steel industry to welcoming cries from the German Social Democrats (Gregory 1981). German and French companies also supplied compressor stations for the pipeline (Tagliabue 1981). To calm domestic critics worried about the growing dependence on the Soviet Union, West Germany forced two domestic measures to avoid political dependence: a cap on the Russian gas share and the development of gas reserves (New York Times 1981). In 1981, West German reserve capacity in underground tanks amounted to 3 bcm, but additional extensions were planned (Gregory 1981: 7). While West Germany tried to balance the dependence on Russian natural gas through the measures mentioned above, many observers were relieved when Norwegian gas became available in 1986 (Tagliabue 1986). The Norwegian share increased over the following years, but significant European dependence on Russian gas prevailed. The Kremlin allegedly viewed the 1981 deal as “a Cold War victory against the United States” (Högselius 2012: 197).

Lack of alternatives made “Europe’s Big Gamble on Soviet Gas” (Karr and Robinson 1981) possible. Attempts to develop links with two other possible natural gas producers – Algeria and Iran – failed (New York Times 1981). While the 1975 deal with Iran was off the table after the revolution, Algeria was not considered as a particularly reliable supplier after it cut off gas supplies to France in 1980 to lift prices (Blumstein 1982). Additionally, Algeria was pressing for a new OPEC-style organisation of gas-exporting countries (Lewis 1982), signalling its desire to exert political control over gas markets. The EEC could still invest more in nuclear expansion, but this proved to be rather difficult because of the limited number of possible uranium suppliers. The US was the sole supplier of enriched uranium for the European market during this period, and the EEC wanted to pursue diversification. As there were few uranium suppliers on the global market, Europe cut another deal with the Soviet Union, which offered uranium 5 % below the market price (New York Times 1973). The Soviets had been supplying uranium to France since 1971 with “no political strings” attached (Giniger 1971) and were in negotiations with Sweden, Finland and West Germany. By 1979, 55 % of the enriched uranium in West Germany came from the USSR (Stent 2003: 214). Instead of further increasing their reliance on Middle Eastern oil or on US or Soviet uranium, the European countries decided to develop their gas markets and increase gas imports from the Soviet Union.

While the Americans hoped to prevent strategic trade links to the Soviet Union (Director of Central Intelligence 1983), the economic reforms introduced by Mikhail Gorbachev in 1980s and the eventual breakup of the Soviet Union led to the opposite development. The EEC was advocating for “a comprehensive cooperation and trade agreement between the Community and the Soviet Union” (European Parliament 1988: 10). A more extensive proposal to cover energy cooperation was then proposed by the Commission in 1990, arguing for exchange of information and mutual co-operation to modernise the Soviet energy system (Commission of the European Communities 1990a). The sudden Soviet breakup intensified the EEC’s efforts to include Russia into the European energy space (for more details see Sect. 2.3). In 1993, Russia, Germany, Poland and Belarus signed contracts to construct a new gas pipeline that would supply Siberian gas to Western countries. Surprisingly, Poland agreed to this deal with Russia in an attempt to circumvent Lithuania as a gas transit country (Moscow News 1993). Additionally, the pipeline meant jobs and some additional debt settlements for Poland (Guardian 1993). Through

the “Yamal Europe Pipeline”, Poland was to receive 14 bcm of natural gas by 2006 and had to cover only 15 % of construction expenses of the pipeline part that went through Polish territory (Moscow News 1996). Germany, following the well-established procedure, provided the loans (Financial Post 1995).

In the early 1990s, the Commission showed an interest in reviving common energy policy efforts through the instruments of liberalisation. This new wave was related to the adoption of the Single European Act in December 1985 (Padgett 1992: 56–57), the major goal of which being the completion of the internal energy market by December 1992. It however met much more resistance than initially expected (for a detailed overview of the European energy policy during this period, see Matlary (1997)). Nonetheless, the negotiations taking place during this period were influential to the development of European gas policies. In 1993, the Commission realised that talking only to member states was not enough, therefore the Commission contacted a broad range of stakeholders (energy producers and consumers) and presented a White Paper on energy by 1995. In this document, the Commission emphasises that “gas will compete with oil as a leading component of the fuel mix” and that “European consumers will become increasingly dependent on ‘grid’ supplied energy” (Commission of the European Communities 1995b: 12). A new approach to developing gas infrastructure was therefore necessary. Already, in 1993, the Commission proposed a series of guidelines on trans-European energy networks (COM(93) 685). Concerns that some major energy suppliers were not politically stable justified a new round of talks for energy coordination. The high unemployment rate presented another major concern in the early 1990s, and the Commission saw an opportunity to create new jobs by supporting new energy sectors and developing endogenous resources (Commission of the European Communities 1994: 2). In its seminal Green Paper on Energy Policy, the European Commission defined the community objectives as “the satisfaction of all users’ needs at the least cost while meeting the requirements of security of supply and environmental protection” (Commission of the European Communities 1995a: 5). The result of this wave of efforts was the so-called first energy package, which is discussed in regards to the gas market in Chap. 4. Tripling oil prices in late 1990s motivated a new round of discussion and culminated in a new Green paper on energy in 2000, which ultimately led to the second energy package. Finally, a renewed concern over increased energy prices and poor implementation

of the previous legislation motivated the 2006 Green Paper, which resulted in the third energy package and many substantial reforms (more details on Commission's activities are in [Chap. 4](#)).

In 2000, Gazprom proposed an extension of the Yamal pipeline to Poland, but Poland vehemently refused ([Moscow Times 2000](#)). This suggested that, for Poland, the costs of energy dependence on Russia were higher than any benefits associated with an additional pipeline. Russia therefore started looking for new options to increase gas exports to the well-paying Western markets. Unable to move forward through Poland, Gazprom found a new gas route by striking a deal with Germany in 2005 and linking Russian Vyborg to German Greifswald through the Baltic Sea and therefore circumventing a number of Eastern European countries. This so-called Northern European Gas Pipeline project has been heavily contested in the European energy discourse. It was one of the first "stress tests" of European solidarity in the newly established Eurasian space, with Russia under Putin's control and many of the countries from the former Soviet sphere of influence now members of the EU and NATO. When Germans and Russians signed the agreement to start working on the Northern European Gas Pipeline in 2005, some Polish politicians stamped the project as a "geopolitical disaster" ([Bouzarovski et al. 2015](#)). Poland's minister of National Defence at the time, Radoslaw Sikorski, even went so far to designate the project as "Molotov-Ribbentrop pipeline" ([Högselius 2012](#)). One of the most controversial aspects of the deal was the appointment of the former German chancellor Gerhard Schröder as the chairman of the Northern European Gas Pipeline company, which was later renamed to Nord Stream ([Kramer 2005](#)). As previously discussed, Germany, and specifically the Social Democratic Party, supported gas deals with Russia because these deals were normally coupled with an economic boost for the steel industry. At the same time, the European Commission backed the project and considered it to be an important element to enhance European energy security ([IHS Global Insight 2008](#)). For Russia, this project presented an opportunity to start raising energy prices in the post-communist space, particularly in Ukraine. Previously, this was not possible because all Russian gas deliveries to Europe were going through Ukraine. Andrew E. Kramer from the New York Times speculated that "when finished, the pipeline would help Russia raise prices [in the Eastern European countries] with less risk that those nations will raise fees for crossing their territory" ([Kramer 2005](#)). Additionally, around the time of the Nord Stream agreement, the Yamal pipeline through Belarus and Poland was finished. These

developments might have made raising prices for the Eastern European countries less risky because Russia developed alternative gas routes to Ukraine. The result was the infamous Ukraine gas crisis of 2006.

### 2.3 RELATIONSHIP WITH RUSSIA

Two pertinent questions one must ask are these: how has dependence on Russia shaped European gas security? And are any concerns that high dependence on Russian gas might endanger the European security of supply substantiated? The breakup of the Soviet Union was a major challenge for all former communist countries and explains the problematic energy relationships between Russia, the former Soviet republics and even Warsaw Pact members. The transformation from planned to market-based economy was strenuous: Russia was pushed by the International Monetary Fund and World Bank to raise oil and gas prices to competitive market levels in order to receive credits and loans (Bohlen 1992). While gas contracts with Western partners were long-term and thus could be easily continued, contracts and prices with the former Soviet republics and Warsaw Pact members had to be renegotiated. The former Soviet republics had difficulties paying higher prices and urged Russia to postpone gas-related reforms. It was thus not surprising that Ukraine experienced a gas cut-off when its debt amounted to US\$1 billion in 1994 (Agence France 1994) or that in 1995, gas supply was cut off to Lithuania because it was unable to pay the debt of US\$44 million to Gazprom (Baltic News Service 1995). In the late 1990s, Gazprom was under mounting pressure: allegedly three quarters of Gazprom's gas were going to nonpaying customers (Cullison and Bahree 1999: 10). The Russian gas market was among the most pressing problems, as cash accounted for only 20 % of its income and the rest was paid in "chicken feed, sprocket wrenches, meat sausages and other manufactured goods" (Cullison and Bahree 1999: 10). Similarly, Ukraine, whose industry was heavily dependent on Russian energy supplies, had difficulties adjusting to higher gas prices. However, threats to cut off gas to Ukraine were not credible as it was too politically costly to implement given that all Russian gas exports to Europe were going through Ukraine. Gazprom therefore invested an estimated US\$24 billion into building Yamal Europe (Cullison and Bahree 1999: 11), which would circumvent Ukraine and bring gas to Europe from Belarus and Poland (see also the discussion in Sect. 2.2).



The European Community strived to develop a comprehensive energy cooperation framework in the post-communist space after the break-down of the Soviet Union, but its efforts were only partially successful. During the so-called Dublin summit in 1990, the Dutch Prime Minister Ruud Lubbers proposed a European Energy Community that would unite Western and Eastern Europe (Agence Europe 1990). The Energy Charter Treaty of December 1994 grew out of this idea (New York Times 1994), which was signed by 45 countries and Russia. However, Russia never ratified the Charter and in 2009 stopped the provisional application of the treaty (Belyi 2012). Two of the main goals were to introduce market concepts and to encourage investment in Eastern Europe (Council of European Communities 1993). Through these measures, the level of competition was to increase in the energy market. To Russia, increased market competition was a problematic element. For example, Russia did not want Central Asian countries (with substantial fossil fuel reserves) to have access to its pipeline infrastructure (Energy Economist 2006). Allegedly, Russia also felt that it was put under too much political pressure to ratify the treaty (Belyi 2012: 2). The EU thus approached a specific agreement on energy with Russia through the Partnership and Cooperation Agreement (European External Action Service 2016).

In recent memory, Russia's utilisation of gas as a political instrument is Putin's invention (Balzer 2005). But gas as a bargaining chip has been used since Mikhail Gorbachev's time. For example, to "convince" the Lithuanian parliament to reverse its independence laws, Russia threatened energy supply interruptions (Fein 1990). Especially in the early years of post-communist transformation, Boris Yeltsin used energy dependencies of the newly established countries as a "carrot and stick" instrument. In this context, Yeltsin's 1993 Black Sea Fleet deal is particularly striking: Ukraine was offered either to pay US\$600 million gas debt or to rent out the Black Sea Fleet to Russia. The head of the Foreign Affairs Committee in the Ukrainian Parliament at the time commented: "we agreed [to rent out the fleet] in order to be paid rather than start shooting guns" (Bohlen 1993a). The gas delivery to Estonia was interrupted in June 1993 as a reaction to the new Estonian residency law, which was considered unfair towards ethnical Russians. Officially, the reason was the Estonian energy debt to Russia, but Yeltsin signalled in an interview that "Russia will not remain in a position of indifferent onlooker [when Russian citizens are treated in a certain way]" (Bohlen 1993b). Azerbaijan, Armenia and Georgia were experiencing some of the most frequent gas cut-offs during

their political transformations (Högselius 2012: 205). Gas cut-offs are thus not something that is characteristic of Putin's "era"; it has been part of Russian foreign policy towards Eastern European countries since the breakup of the Soviet Union.

While the Energy Charter Treaty was not working out as envisioned, the EU established the so-called Energy Community in 2005, which was extended to the newly established states in South East Europe in order to improve energy cooperation in the post-communist space. This way, a more direct export of the European energy *acquis* was pursued. Building on the so-called Athens Memoranda from 2002 to 2003, the major goal for community members was to adopt relevant EU energy and environment legislation, and in return, get access to the European energy market (Europe Information 2004). The first round of members that joined in 2006 included Albania, Bosnia and Herzegovina, Kosovo, FYR of Macedonia and Serbia (Energy Community, 2016). In 2007, Montenegro joined, followed by Moldova in 2010 (Energy Community, 2016). The preparations for Ukraine's anticipated membership started already in 2007 when Germany invited Ukraine to consider cooperating with them in the energy sector (Ukrinform 2007). In March 2009, Ukraine signed a declaration with Brussels stating that the Ukrainian Gas Transmission System should be modernized (European Union 2016a). The combination of the Ukraine agreements and the effects of the so-called "third energy package" (for more detail see Chap. 4) led Russia to fear that it would lose control over its gas monopoly in Europe (Kommersant Daily 2009) and that Gazprom would be forced to sell gas at the Ukrainian border with no way of controlling the further transmission and distribution (Business World Agency 2009). Ukraine has initiated a number of important gas market reforms since its accession to the Energy Community in 2011 in order to restructure its major gas operator Naftogaz, which should lead to a considerable improvement of the transparency and efficiency of the European gas transit (Kopac and Buschle 2014).

## 2.4 IMPLICATIONS OF GAS INTERRUPTIONS OF 2006 AND 2009

The gas flow interruption to Ukraine in 2006 presented a major political shock for the European gas markets because Western countries also felt the consequences of the gas cut-offs this time. France, Italy and Austria

reported falls in supplies between 25 and 40 % (BBC 2006). While some argued that the interruption was a result of economic disagreements (Stern 2006), others suspected that there were political motivations to punish the new pro-Western Ukrainian government, as Gazprom raised the price for Ukraine from US\$50 per thousand cubic metres to US\$230 basically overnight (BBC 2006). As the energy commissioner at the time Andris Piebalgs concluded, this unrealistic request made it clear that Ukraine would not be able to pay (BBC 2006). Most importantly, in December 2005, Ukraine signed a memorandum of understanding with the EU, in which it committed itself to eventually join the Energy Community and to liberalise its energy market in accordance with the second energy package (European Union 2005). The liberalisation of energy markets has created a number of problems between Russia and the EU (Lavrov 2013) and might have been the reason behind Russia's growing concerns over the future of its gas market in Ukraine.

Russia's possible attempt to stop the spread of gas market liberalisation backfired because it unified the European member states in their attempts to further integrate their gas markets through regional liberalisation. It also partially motivated new gas legislation, for which the groundwork was laid out during the informal European Council at Hampton Court in October 2005 (Council of the European Union 2006). As a reaction to the disruptions in Ukraine, the Commission proposed the following adjustments: the gas market was to be liberalized at a faster pace, a European Energy Supply Observatory and emergency gas stocks were to be created (European Commission 2006a). While the liberalization of the markets was welcomed in principle, the emergency stocks idea was met with criticism. For example, the Gas Infrastructure Europe (GIE) argued that gas stocks were "extremely expensive and unnecessary if a well-connected and integrated market with diverse supply sources can be brought about" (GASMTD 2006). In a more in-depth Communication to the European Council in October 2006, the Commission extensively discussed how the relationship with Russia was to be handled in the future (European Commission 2006b). In this document, the Commission suggested that the future pipelines with Russia should be accessible to third parties. This is the first trace of the so-called "Gazprom" or "third-party" clause (Brutschin 2013), which eventually became binding through the Directive 2009/73/EC after the second Ukraine crisis. For obvious reasons (also extensively discussed by Lavrov (2013)), Gazprom did not particularly welcome this competition-increasing element of the European energy policy (Laitner 2007).

Overall, the Ukraine crisis of 2006 initiated more serious debates about the European energy security policy (more detailed discussion in [Chap. 4](#)). In May 2007, a network of energy security correspondents (NESCO) was set up. The major goal of NESCO has been to create an early warning system for possible energy disruptions through a coordination between the European Commission, the Council Secretariat and the member states (Europolitics Energy 2008) and to “help the EU to speak with one voice on the most sensitive energy issues” (European Commission 2007a). Early on, NESCO operated under the Directorate-General for the External Relations (DG RELEX), and since 2010, the NESCO became part of the European External Action Service. Additionally, the Gas Coordination Group, which was proposed in 2004 through the Council Directive 2004/67/EC and whose “existence had almost been forgotten” (Agence Europe 2006), met for the first time on January 6, 2006 to discuss the implications of the gas disruptions to Ukraine. The Gas Coordination Group’s major task has been “to facilitate coordination of security of supply measures at Community level” (European Commission 2006c) and its scope of activities has been constantly expanded (see [Chap. 5](#)).

Some observers suggest that as a reaction to developments in the European gas markets, Gazprom developed a “divide and conquer strategy” directed towards old and new members of the EU with the support of Russian government. For example, in 2007 Sarkozy (the French President at the time) apparently was asked to call Putin to discuss gas matters (Graham 2007). Putin wanted to inform Sarkozy that Gazprom was willing to let Total (French energy company) get 25 % of the shares in the Shtokman gas field in the Barents Sea (Graham 2007) – a project which Gazprom considered of the highest strategic importance for its LNG development (Gazprom 2013). Meanwhile, Gazprom moved ahead with the Nord Stream (agreement signed in December 2005) through a range of high-level meetings with German representatives. Gazprom also offered Italy lucrative bilateral deals. In June 2007, Gazprom and the Italian energy company ENI signed a memorandum of understanding for South Stream, which was based on a strategic cooperation agreement sealed in November 2006 (Gazprom 2007). This “divide and conquer strategy” targeted one of the weakest links within the European gas security architecture – the lack of coordination in negotiating bilateral energy deals.

In the post-2006 crisis, relations between Ukraine and Russia remained tense: another price dispute was building up and culminated in the crisis of 2009. While the oil price collapse in the wake of the financial crisis indicated that gas prices would also drop to an estimated US\$280 per thousand cubic metres (Pugliaresi et al. 2009), Gazprom was asking Ukraine to pay US\$450 per thousand cubic metres on the eve of the crisis (BBC 2009), while Ukraine was willing to pay US\$235 (Izundu 2009). During negotiations, Ukraine unsuccessfully tried to use the Black Sea Fleet Contract, which was to expire in 2017, as a bargaining chip (Itar Tass 2008). The failed negotiations resulted in major gas disruptions to Europe in the middle of a cold winter (broader discussion is presented in Chap. 4). While the cut-off can be interpreted as a display of Russian economic might, the 2009 gas disruption to Europe was costly for Gazprom in many ways. The interruption of gas supplies for 20 days cost Gazprom, according to some estimates, US\$1.1 billion in direct revenues (Izundu 2009). In a way, the two Ukrainian crises increased gas security concerns and motivated more cooperation between Ukraine and the EU. In March 2009, Ukraine and the EU signed an agreement to modernise Ukrainian transmission networks. This move upset Gazprom so much that it issued a warning to Ukrainian authorities “that any modification of its gas pipelines without Moscow’s approval would affect natural gas deliveries to Europe” (Agence Europe 2009a). Additionally, a spokesman from the Russian Foreign ministry added that “Russia considers the EU’s decision to help Ukraine to modernize its gas pipelines [ . . . ] an ‘unfriendly act’” (Agence Europe 2009a). This did not stop the European Commission from giving Ukraine a loan of US\$1.7 billion in July 2009 to store gas in return for faster liberalisation of the Ukrainian gas market (Oil and Gas Journal 2009). However, the major Ukrainian law that would ensure compliance with the Third Energy Package was passed only in April of 2015 (Popovych 2015).

The EU, yet again, went back to updating its gas legislation after the second Ukrainian crisis. Andris Piebalgs, the Energy Commissioner at the time, underlined that “the crisis has demonstrated the deep lack of transparency in gas flows and strategic stocks” (Agence Europe 2009b). This time, the legislation not only targeted liberalisation (the so-called Third Energy Package), but also transmission networks and other gas security measures. The EU passed a new directive on gas market liberalisation (2009/73/EC), a new regulation on gas

transmission networks (715/2009, updated through the decision 2010/685/EU), an updated regulation on gas security (994/2010) and more specifications on the composition and tasks of the Gas Coordination Group (decision 2011/C 236/09). The new gas security regulation was a direct response to the Ukraine crisis. In its background documents on the regulation 994/2010, the Commission explains (European Commission 2010):

The Russian-Ukrainian gas crisis in January 2009 demonstrated that the provisions of the [previous] directive and their uneven implementation by the EU countries was not sufficient to prepare for, and to respond to a supply disruption, and there was *a clear risk that measures developed unilaterally* by the EU countries could jeopardize the functioning of the internal market.

Overall, the EU was pursuing a more coherent gas market policy (for more details see [Chaps. 4](#) and [5](#)). While Russia was officially supporting the European efforts to improve gas security, such as signing an early warning pact with the EU (EU Business 2009), others suspected that Russia was trying to sabotage (Demsey 2013) the gas pipeline Nabucco, the European “flagship” project, because Nabucco would circumvent Russia. For example, the European delegation was rather perplexed when Uzbekistan, Kazakhstan and Turkmenistan refused to sign (and to explain why) a declaration between the EU and Central Asian countries on the development of Southern Corridor during a summit in May 2009 (Agence Europe 2009c).

Now that more fears about natural gas disruptions existed, the debates about finding other suppliers of natural gas for Europe or fuel substitution intensified. In the following the major efforts to diversify energy supplies are discussed. Under the Swedish presidency, the member states agreed to invest €3.98 billion in 2009 and 2010 for energy projects, including infrastructure projects and developing other sources of energy (Agence Europe 2009d). In the attempts to increase the energy security of the so-called energy islands (such as Baltic States), a Memorandum of Understanding on Baltic Energy Interconnection Plan was signed in June 2009 (European Union 2009). Norway has been the beacon of hope for Europe’s natural gas – a European country with considerable natural gas reserves, which is the second major supplier of EU gas. The discoveries in the early 1990s, especially the Troll field, holding

approximately 40 % of Norwegian gas (Cook 2014), were so promising that Norway was considered the European “Great Gas Power” (Norwegian Oil and Gas Association 2016). While Norway is generally perceived as a reliable gas supplier, its customers do experience supply disruptions once in a while. The nature of supply disruptions that plague Norwegian gas is slightly different to those of Russia. Since 1977, when oil and gas unions were established, Norwegian gas supply is occasionally disrupted by workers’ strikes (Högselius 2012: 201). For example, a major strike in 2012 cost Norwegian companies close to NOK 30 million a day (Norwegian Oil and Gas Association 2012). These disruptions are especially problematic for the UK as it heavily relies on Norwegian gas. Ironically, during the fall-outs of Norwegian supplies in 2010 – for technical reasons – Russia stepped in to ensure a constant supply of gas to the UK (Macalister 2010). The strikes are, of course, not the major issue preventing Norway from being a credible alternative to Russian gas; it is rather the cost of additional explorations. Norwegian reserves in the North Sea are technologically challenging and costly. Naturally, less costly fields were developed first, leaving the less accessible fields for future development. The development of Norway as an alternative supplier would thus largely depend on future oil and gas prices and technological advances that might make Norwegian reserves economically attractive.

Apart from Russia and Norway, Europe’s other major gas supplier has been Algeria. Spain and Italy are extremely interested in developing gas links with Algeria given their geographical proximity. Apparently Spain even proposed strategies to substitute Russian gas with Algerian gas (Agence Europe 2014). However, in order to distribute Algerian gas throughout the continent, a better infrastructure is required – Spain and Portugal are still considered to be energy islands, that is, the links to the other European countries are not sufficiently developed. It was only after the on-going tensions in Ukraine (the conflict of 2014) that the EU leaders decided to give priority to the so-called MidCat pipeline that would interlink Spanish and French gas markets through the Eastern Pyrenees (Natural Gas Europe 2015). In March 2015, France, Portugal, Spain and the European Commission signed a Memorandum of Understanding for the South-West Regional group on developing energy infrastructure (European Commission 2015a). Creating a link between Spain and France might indeed be an important step to improve European gas security: Spain has the highest

capacity for LNG regasification, and according to some estimates, could replace up to 10 % of Russian gas (Agence Europe 2014). At the same time, Algerian gas comes from another politically unstable region. For example, in the wake of the political uprising in Libya in 2011, the interruptions on the Greenstream pipeline (Algerian gas that goes through Libya) affected supplies to Italy for 8 months (Lochner and Dieckhöner 2012). As previously mentioned, Algeria has not historically been a consistently reliable gas partner. More recent analyses also conclude that substituting dependence on Russian gas with dependence on Algerian gas might not be wise given the vulnerabilities of the Algerian political system (Mokhefi 2014) and the threat that the disruptions in Algerian gas supplies would pose for Italy and other European countries (Lochner and Dieckhöner 2012).

A brief historical excursion presented above suggests that the current gas infrastructure is a result of path-dependencies and, at times, certain miscalculations, but certainly not of coordinated energy policies on the European part. In the 2010s, another Russian pipeline project is testing the European energy unity. On September 15, 2015, Gazprom, BASF, E.ON, ENGIE, OMV and Shell signed a shareholders' agreement to start the implementation of the Nord Stream 2 project amid sanctions against Russia, which would have the annual capacity of 55 bcm (Nord Stream 2 2016). Thus, Nord Stream 2 could double the current capacity of Nord Stream and substantially decrease the amount of gas that needs to be transported through Ukraine. In a recent report on the State of the Energy Union, the Commission stated that it considers the project to be commercial, but that the commercial parties have to fully respect EU law, specifically the Third Energy Package (European Commission 2015b). The Commission also added that, according to its estimations, the pipeline would be excessive given the European demand for natural gas (European Commission 2015b). The Commission is not the only actor to raise concerns about the necessity and implications of Nord Stream 2. Seven EU members, all from the Central and Eastern European countries, addressed a letter to the European Commission urging to stop the Nord Stream 2 project (EurActiv 2015). If Nord Stream 2 does not comply with the Third Energy Package it could indeed become problematic. The Third Energy Package was a major obstacle for another Russian pipeline project – the Russian Black Sea pipeline South Stream (EurActiv 2013a), which was put on hold in December 2014 (European Commission 2014b). Currently, the EU stands at another major turning



point with plans to create the European Energy Union under the leadership of Jean-Claude Juncker (Brutschin 2016). The success of this endeavour will largely depend on whether a reconciliation between new and old member states' energy security interests will materialise (Austvik 2016).

## The European Commission as a Policy Actor

**Abstract** In Chapter 3, the reader is introduced to the Commission's formal powers such as agenda setting as well as informal powers such as making use of policy networks, based on the insights from previous studies. One of the key explanatory factors that is mentioned across different studies of European policymaking in the energy sector is the concern over energy security that is assumed to motivate further integration. Different gas security environments are then proposed to be used in the subsequent analysis of gas policies: 1980–2000 with high levels of gas security and 2000–2010s with low levels of gas security. Tracing the Commission's entrepreneurship across different environments allows for more systematic insights into successful strategies.

**Keywords** European Commission · EU policymaking · EU theories · Formal and informal policy instruments

The scope of the Commission's powers and influence is often debated in academia between the proponents of intergovernmentalism and supranationalists, with many studies focusing on determining the conditions that lead to either the member states or the EU institutions dominating the decision-making process (Hix 1999). Intergovernmentalists assume that

member states are the most important actors in the European decision-making process, while the proponents of supranational institutionalism argue that supranational institutions have at least equal or even a higher level of influence than its member states (for a similar explanation see Schmidt (2000)). Recently, this debate resurfaced under the so-called new intergovernmentalism with Christopher Bickerton and his colleagues arguing that the Commission's "importance in determining the character and direction of the integration process has been in question ever since Maastricht" (Bickerton et al. 2015) due to the lack of "[transfer of] more powers to traditional supranational bodies" (Bickerton et al. 2015: 704). According to the scholars, one of the most pronounced signs of this development was the creation of new regulatory and executive agencies, which means that there was delegation of power away from the Commission (Bickerton et al. 2015: 705). Other scholars, however, claim the exact opposite. They suggest that the Commission has experienced a growth in executive power through these new executive bodies (Egeberg et al. 2015; Ruffing 2015). Although agencies are connected to national governments through the composition of management boards (Buess 2015; Egeberg and Trondal 2011) and to the Parliament through budgetary oversight (Dehousse 2008), the Commission is the major point of contact and oversight. Additionally, Ruffing (2015) has shown that there is a growing information gap between national ministries and agencies when negotiating European issues, suggesting that the new European regulatory agencies are less dependent on national governments than it is generally assumed. At the same time, scholars who are sceptical about the claims advanced by the "new intergovernmentalism" point out that looking at the development of formal powers in the EU context is insufficient because the Commission has at its disposal a range of "informal power resources" (Nugent and Rhinard 2016: 2). Some of the most notable examples in this context are studies that look into the evolution of the European Common Foreign and Security Policy (CFSP), which show that the Commission can substantially affect the final output of negotiations (Blauberger and Weiss 2013) even though the sector remains under the national sovereignty. The following sections (3.1 and 3.2) provide an overview of general and energy-related literature that concentrates on the channels through which the Commission influences EU decision-making.

### 3.1 GENERAL LITERATURE REVIEW ON THE POWERS OF THE COMMISSION

Literature that analyses the role of the Commission in the decision-making process can be divided into studies that look into the formal and informal powers as well as the constraints of the Commission. A summary of the debate is presented in Fig. 3.1 and is addressed in the following paragraphs. The Commission's key formal power is its monopoly on legislative initiative (Bailer 2014: 40; Garrett & Tsebelis 1996), which is now anchored in the Article 17 (2) of the Treaty on European Union (TEU). Already after the Single European Act (1986) and the Treaty on European Union (1992) under the so-called consultation and the cooperation procedure, the Commission and the Parliament obtained considerable powers through the right to initiate legislation. As shown by Garrett and Tsebelis (1996), this can systematically alter the rationale behind coalition building in the Council, and, in turn, the final legislative output. More specifically, the Commission's proposal is difficult to alter because it required the Council's unanimity. This can thus allow the Commission to "pick among different winning coalitions [within the Council] the one proposal that is closest to its own preferences" (Schmidt 2000: 40).

At the same time, scholars note that the Commission's additional formal form of influence can stem from its position as the guardian of

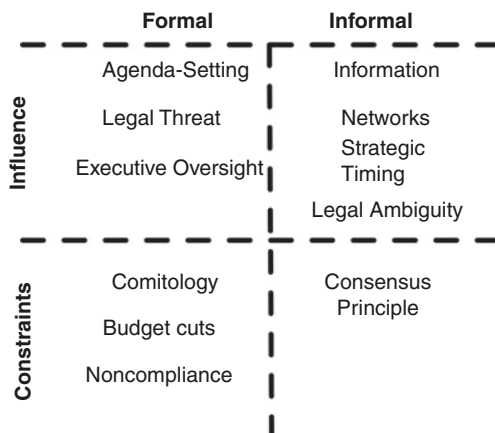


Fig. 3.1 Overview of the Commission's formal and informal powers and constraints

the Treaties (Article 258 TFEU) and its responsibility to enforce competition rules (European Parliament 2016). This includes the possibility to initiate infringement procedures in the case of non-compliance or threats to directly apply competition law (Schmidt 1998). The Commission can, for example, successfully link judicial and legislative policies, which indirectly affect the strategic calculations of the member states (Blauberger and Weiss 2013: 43). This argument resonates with Schmidt's (2000) work, which coined the so-called "divide and conquer" and "the lesser evil" strategies. The "divide and conquer" strategy describes a situation in which at least two member states have implemented certain domestic reforms that are close to the Commission's ideal point and where the Commission can break the opposition by creating a coalition with these member states. The "lesser evil" strategy implies that the Commission, with the support of the European Court of Justice (ECJ), can threaten to "unilaterally bring the worst-case scenario [for the member states]" (Schmidt 2000: 43), meaning that the Commission can use its treaty powers in the competition sector to impose a policy that is different from the member states' ideal point.

In a seminal study on whether and how supranational institutions matter, Mark A. Pollack has analysed the formal as well as informal powers of the Commission (Pollack 1997). Apart from the agenda-setting and legal threat powers listed in Fig. 3.1, Pollack highlights the executive powers with which the Commission is equipped. These are however constrained by committee oversight through the so-called comitology system (consultation, management and regulatory procedure). The Treaty of Lisbon has slightly changed the oversight procedures by replacing the previous mechanisms with the "advisory" and "examination" procedure (Article 291(3) TFEU), which have been in force since March 2011 (European Parliament 2016). Highlighting the possible constraints to the Commission's formal powers is one of the major contributions of Pollack's (1997) article. In a similar vein, Bailer (2014: 42) argues that "it would be detrimental for the Commission to suggest something too extreme on a permanent basis" and that for this reason the Commission is not overexploiting its formal powers and tries to balance out member states' interests. Pollack (1997) also points out that the Commission could be sanctioned through budget cuts and unilateral non-compliance if it oversteps its authority, or in the worst case the member states might decide to revise the Commission's mandate (Pollack 1997: 119).

Scholars studying the European Commission point out that apart from the formal powers, the Commission has a wide range of instruments that

fall under informal forms of influence (Nugent and Rhinard 2015: 247) or the so-called soft-power (Pollack and Slominski 2011). In particular, the Commission's "policy expertise and institutional persistence" (Pollack 1997: 103), which is enhanced by information collection activities such as interpretational notes, reports and surveys (Pollack and Slominski 2011: 105), can affect the output of the EU decision-making. Apart from the direct collection of information, the Commission can also make use of policy networks (Pollack 1997: 128) by indirectly embedding domestic stakeholders (energy consumers and producers) in the decision-making process (Eikeland 2011) and benefiting from their technical expertise (Eberlein 2008). The policy networks approach generally looks into new types of governance, where non-governmental actors can influence informal bargaining during the policy formulation phase (Peterson 1995). The Commission can actively make use of policy networks to influence policymaking by "inviting stakeholders to expert and consultation committees" (Eikeland 2011: 247). Additionally, the Commission can make use of other bargaining tools like strategically postponing deliberations to the periods after national elections ("strategic timing") or by leaving ambiguity in legislation in order to reach faster agreement during negotiations (Brutschin 2013). The ability of the Commission to define policy implies that the Commission gets the opportunity to present its understanding of such abstract concepts like energy security or liberalisation to the member states. Moreover, it may present a menu of instruments to the member states from which they can select and leave certain legal implications and definitions ambiguous. Ambiguity has been shown to be a useful tool when "member state preferences are heterogeneous and the EU's legal basis is weak" (Jegen and Mérand 2014: 182). Similar to the constraints that apply to the formal powers, the Commission is constrained by the norm of consensual decision-making (Padgett 1992; Pollack 1997). This implies that the Commission cannot abuse these tools to induce legislative outputs that are completely incompatible with member states preferences.

Another prominent strand of research on the influence of the European Commission depicts the Commission as a policy entrepreneur because of its right to initiate policy (before it is even part of the formal agenda) and "its capacity as a think-tank for the Union as a whole" (Laffan 1997: 650). Policy entrepreneurship is generally understood as "the act of selling policies to decision-makers" (Copeland and James 2014: 4). This perspective is largely based on the work of Kingdon (1986) on agenda setting and

policy formulation. More importantly, policy entrepreneurs are assumed to actively seek policy change (Mintrom and Norman 2009: 650). Generally, a policy entrepreneur displays social acuity, defines problems, leads by example (Mintrom and Norman 2009: 650) and can effectively make use of “windows of opportunity”, that is constellations that make policy change more probable. Empirical evidence suggests that successful policy entrepreneurs are able to make use of their networks and acquire relevant information about the preferences of other actors across different levels of decision-making (Mintrom and Norman 2009: 652). More importantly, previous studies found that the conditions that lead to a success of a policy entrepreneur are highly contextual (Mintrom and Norman 2009), that is, they can vary across sectors. The Commission can therefore be successful in using certain tools in one sector, while these tools might not work in the other. Given that the energy sector is peculiar in respect to actors’ constellations and the role of private interests, the following chapter depicts the academic debate surrounding the role of the Commission in the energy sector.

### 3.2 COMMISSION—A POLICY ENTREPRENEUR IN THE ENERGY SECTOR

Almost all scholars of the European energy market have pointed out the crucial role of the Commission in the energy sector, even during times when the Commission was not considered as powerful as today (McGowan 1989; Padgett 1992). In particular, Matlary (1997: 13), who analysed the early attempts to liberalise the energy sector through the prisms of intergovernmentalism, concludes:

The ability of the Commission both to define policy and to forge links between formal and informal policy areas allows it to design policies in such a way that its own institutional role is enhanced.

Overall, as shown in [Chap. 2](#), the European Commission (and its predecessors) has taken on a visionary role in its efforts to develop a common approach to energy markets. Jacques Delors, the former president of the European Commission and still one of the leading voices on European affairs, comments in his recent call to create an Energy Union at the European level that the weakness of the European approach to energy security is that “the immediacy of politics and financial profit outweigh all other factors” (Andoura et al. 2015: 5). While Padgett (1992: 55)

once argued that “energy policy must be ranked as one of the Community’s major failures” (also quoted by Herweg (2015)), it cannot be blamed on the Commission’s lack of efforts. For example, in the early 1970s, even before the natural gas became one of the major energy fuels, the Commission realised how important it was to collect reliable information on the Community’s gas reserves, imports, exports and long-term bilateral agreements with parties outside of the community (Commission of the European Communities 1972b: 20). The Commission also correctly predicted that the different gas-calorific power of Dutch gas compared with other markets (USSR and Africa) would lead to a highly fragmented gas infrastructure, which would make the development of a European gas infrastructure extremely difficult (Commission of the European Communities 1972a). The Commission thus urged the member states at the time to have a more long-term strategy for European gas infrastructure and to find technical solutions to these problems as early as possible. In hindsight, these examples suggest that the Commission had been an active supporter of a coordinated approach to the EU energy challenges. Maltby (2013: 436) who has systematically traced the Commission’s involvement in energy policy since the 1950s, similarly concludes that there has been “a degree of path dependency and continuity of the Commission[’s] energy proposals”.

After Matlary’s (1997) seminal work that explained the lack of progress in the energy sector by looking at the interests of powerful states (inter-governmentalism and two level games), most scholars have strived to explain the reforms in the EU energy sector. Energy legislation (1996–1998, 2003, 2009) was viewed as unexpected because the provisions within the final legislative acts seemed to have been different from the member states’ initial positions (Eikeland 2011; Eising 2002). Reflecting the general scholarship on the European Commission discussed in Sect. 3.1, scholars who have looked at the role of the Commission in the energy sector provide a range of explanations based on the Commission’s formal (Schmidt 1998) as well as informal (Eikeland 2011; Maltby 2013) powers. While Schmidt’s work on the liberalisation of electricity markets explains liberalisation from a perspective of rational choice institutionalism (see Sect. 3.1) and, therefore, assumes that preferences of policy actors are relatively stable, many studies of the EU energy security explicitly or implicitly assume that the Commission’s as well as the member states’ preferences change depending on the environment in which the actors interact (Aalto and Korkmaz Temel 2014; Eising 2002; Herweg 2015; Maltby 2013).



In this context, Eising (2002) has presented a new theoretical framework by arguing that intergovernmental approaches that assume complete information and rationality of actors fail to explain why member states change their positions during negotiations. He thus suggests to assume bounded rationality and the possibility of policy learning. More specifically, his major argument is that “new information gives rise to learning processes and to a change in basic policy preferences” (Eising 2002: 88). Similarly, Mayer (2008: 252) concludes that Liberal Intergovernmentalism is inconsistent with “the Commission’s ambitious energy role” after looking into the evolution of European external energy policy. Moreover, Mayer (2008) finds that Historical Institutionalism can better explain how the Commission has expanded its role in the energy sector through active collection of information and a range of initiatives. Meanwhile, Aalto & Korkmaz Temel (2014) suggest to view the European energy policy through the prisms of the so-called English School and find that informal institutions (“the principles”) of energy diplomacy, sovereignty and great power management are particularly helpful in explaining the ebbs and flows in the EU gas market integration. Related to the English School is the application of the Regional Security Complex Theory by Kirchner and Berk (2010), which studies the European energy discourse within and between regions and emphasises the EU’s relationship with Russia. Kirchner & Berk (2010) suggest that energy security concerns might lead the European energy policies to integrate more. Motivated by the supranationalist perspective Eikeland (2011) uses the concept of policy networks to analyse the role of non-state agents during the negotiations for the third energy package (2007–2009). His analysis indicates that the Commission could effectively mobilise major energy consumer stakeholder groups, which was essential in getting the member states to agree to certain controversial elements of the third energy package. A way to link Commission’s formal and informal powers is provided by Eberlein (2008), who views them through the principal-agent perspective, in which the Commission is considered to be the principal that delegates certain responsibilities to agents of sectoral governance such as private stakeholders and domestic regulatory agencies. It is then shown that this type of governance, which makes use of local expertise, can “provide opportunities for information sharing, mutual learning processes and performance enhancing benchmarking processes” (Eberlein 2008: 89). This, together with the competency in the competition law, can lead to more policy efficacy.

Another theoretical perspective that is widely used to analyse EU policymaking (Zahariadis 2008) is the Multiple Streams Framework (MSF) based on Kingdon's work (Kingdon 1986). For example, Maltby (2013) and Herweg (2015) used MSF to explain the liberalisation of the EU gas market. MSF assumes that in order for a policy change to happen, a number of conditions has to be satisfied (as explained by Herweg (2015) and Maltby (2013)): the policy entrepreneur has to couple the "political stream" (Commission's activism) with the policy stream (viable technical solutions). Additionally, successful coupling of the two streams is expected during the so-called windows of opportunity. While Maltby (2013) argues that Eastern European enlargement as well as the two Ukrainian crises presented such windows of opportunity during negotiations over the third energy package, Herweg (2015) argues that José Manuel Barroso's term (2004–2014) as the president of the European Commission was the "window of opportunity" that made policy change more probable given Barroso's strong leadership and the commitment to liberal markets.

It is the importance of energy security concerns where the different perspectives on the EU energy policy seem to agree. Specifically, it is often argued that energy security concerns such as the oil crisis of 1973, gas interruptions and other similar situations motivate deeper integration of the European energy policies (Aalto and Korkmaz Temel 2014; Kirchner and Berk 2010; Maltby 2013; Schubert et al. 2016). However, a systematic study of how energy security concerns might affect member states' preferences regarding energy integration is presented only by Pointvogl (2009). Pointvogl (2009: 5710) shows that "liberalisation and integration of European energy markets have the potential to be downgraded to instruments to pursue national supply security". In his analysis, he uses member states' energy dependencies, energy intensity and production to consumption ratios as proxies for energy security concerns, while the implementation of the EU energy *acquis* is assumed to be the approximation of member states' preferences towards further integration. At the same time, Pointvogl (2009) finds that Denmark, the Netherlands and the UK, who have the lowest levels of energy dependence and energy intensity in the EU (lowest energy security concerns), are among the top performing countries in their willingness to implement liberalisation (electricity and gas directives). This suggests that energy producing member states pushed for liberalisation of the European energy markets and not the member states with the lowest

levels of energy security. The implication of the aforementioned considerations is that energy security concerns might have different effects on the two major instruments of the EU energy policy: liberalisation and creation of a common energy infrastructure (as discussed in [Chap. 1](#)). EU energy producing countries might be interested in the creation of a liberalised European market, where they can benefit from their economies of scale and preferential access to the European market. In turn, the energy consuming countries with higher energy security concerns might prefer the opposite if they have lucrative deals with other energy suppliers (as for example was the case for France and Germany). This view is also consistent with previous findings that Eastern European member states are sceptical about liberalisation policies, but support efforts to develop energy infrastructure and to “speak with one voice” in external energy policies (Geden and Fischer [2008](#)).

Studies that try to highlight the role of the European Commission in the EU energy policy (Brutschin [2013](#); Eikeland [2011](#); Maltby [2013](#)) have in common a key methodological shortcoming. As pointed out by Schmidt ([2000: 40](#)), “it is difficult to disprove that member state governments were not simply hiding their true preferences” (Schmidt [2000: 40](#)) when one assigns certain policy changes to the entrepreneurship of the Commission. It is therefore essential to check for plausibility of other factors that might have motivated member states to agree to certain energy policies, which were driven by the Commission’s entrepreneurship. Taking into account the findings and discussions of previous research, the following section elaborates the research design that informs the analysis in [Chaps. 4 and 5](#).

### 3.3 ANALYTICAL TOOLBOX

One of the major goals of the contribution at hand is to provide an account of how the Commission could successfully coordinate member states in order to agree on a common approach to gas policy, or in other words, to establish a gas security architecture. In a certain way, this comes close to what Eberlein ([2008](#)) has described as policy efficacy, which represents “the successful production and enactment of rules and standards necessary to achieve the given policy goal; it does not include performance in the sense of policy outcomes” (Eberlein [2008: 74](#)). Consequently, before assessing the Commission’s efficacy, it is important to define the overarching policy goals and to pick a research

design that accounts for an alternative explanation and therefore addresses the critique raised by Schmidt (2000). Mintrom & Norman (2009: 651) make a similar point by arguing that “when a range of contextual factors indicated that legislative change was likely to happen, the actions of policy entrepreneurs did not seem to have major impacts” (Mintrom and Norman 2009: 651). In the following subsection, the goals of the Commission in the energy sector and the different energy security environments along internal and external dimensions are discussed.

### 3.3.1 *The Commission’s Goal*

In 1957, the Council instructed the High Authority to elaborate on a set of proposals for the development of the European energy policy (European Community Information Service 1967: 12). It took 7 years to reach the first consensus. The negotiation process was certainly overshadowed by the coal crisis (1957–1959) and the closure of coalmines (see also Chap. 2). The economic downturn in the coal industry severely damaged the credibility of the European elite, which promoted European integration as an instrument to increase economic welfare. The Council rejected the first proposal presented by the Special Committee on Energy Policy. The President of the High Authority at the time had to travel to member states’ capitals to broker a compromise. An important element of the deal was the agreement to institute state aid for the coal industry and through this to decrease the re-distributional conflict that was unfolding. The efforts of the Special Committee on Energy Policy led to the protocol that was signed in April 1964, which presented the first clear definition of energy policy at the Community level. This protocol can also be interpreted as the Commission’s overall goals:

Cheapness of supply, security of supply, progressive development of substitute products, stability of supply as regards both costs and quantities available, freedom of choice for the consumer, fair competition in the common market between the various sources of energy, general economic policy (Secretariat of the Commission of the European Communities 1968: 6).

We can trace the interests of different groups in this first clear formulation of the European energy policy. Given the background of the coal crisis,

the interest to maintain “fair competition” aimed to protect certain segments of domestic industry. However, the major pillar is the overall competitiveness, which is hardly surprising given the background of European integration.

### 3.3.2 *Different Energy Security Environments*

Given that many scholars and analysts concur that energy security is the driving force behind member states’ motivations for further integration (see Sect. 3.2), different energy security environments can be used as benchmarks to assess the outreach of the Commission’s entrepreneurship. In the most recent study in the energy security literature, Ang et al. (2015) found over 100 studies between 2001 and 2014 on conceptualisation and operationalisation of the concept and concluded that there is no consensus on the definition of energy security. Difficulties in defining energy security are closely linked to the problems that social scientists have encountered when defining security (Cherp and Jewell 2014). First of all, security might appear as a contextual and highly subjective matter (Wolfers 1952). Throughout the same period of history, one country might perceive the world as highly unstable, while another sees it as rather peaceful. For example, Eastern European countries, the so-called new member states of the EU, perceive Russia as an unreliable gas supplier, while the so-called old member states, mostly Germany, France, Italy and Austria, perceive Russia as an extremely reliable gas supplier. Eastern European countries experienced a number of gas interruptions in the early 1990s, while Western European countries have almost never experienced gas interruptions from Russia (see also Chap. 2). Past experiences shape states’ perceptions of threat, and subsequently shape their concerns over energy security. Similarly, only after the Iranian revolution in 1979 did US President Carter conclude that energy interruptions presented “clear and present danger to [US] national security” (Nye 1982: 122).

If we borrow the international relations definition of security as “the ability of a nation to deter an attack, or to defeat it” (Wolfers 1952: 484), we can think of conditions under which countries might enjoy energy security. If there exists no possibility that the supplier would interrupt the flow of resources and if the price of the imported good is lower than domestically produced resources, a country might prefer to rely on foreign resources. This was observed in the European context during the 1960s when countries were substituting coal with cheaper oil: the Western

European countries valued the economic competitiveness more than the possible political threat to the security of supply (Lubell 1961: 417). In other words, the European leaders at the time were interested in energy security at the lowest possible price and were not too concerned with political security (or did not find that the threat that oil producers would interrupt supplies for political reasons was credible enough (Lubell 1961: 401)). Additionally, many countries can balance out dependence on foreign suppliers through other means. If a country has a vast energy storage capacity, the dependence on imports might be less of a security concern (Nye 1982).

However, the key issue is related to the degree of energy security, which links the conceptual debate to costs. As Wolfers (1952: 494) poignantly summarises, theoretically “the sky is the limit” in terms of how much security a country would like to obtain. Practically, however, obtaining security is costly and relates to trade-offs in other sectors of state activities. It thus might be more plausible to assume that security is costly and that countries will strive to minimise their efforts to reach what is considered the adequate level of protection (Wolfers 1952: 488). But what is an adequate level of protection? The previous assumption implies that the degree of energy security that a country might select would be largely motivated by the costs accompanying it. In this context, Lubell (1961) elaborates that energy autarky, which might be associated with the highest degree of energy security, might be expensive in a “multilateral trading system in an untroubled world” (Lubell 1961: 418). Indeed, under such conditions it does not make sense (from a purely economic perspective) to strive for autarky. Likewise, in a stable, interdependent world it might be too costly to pursue diversification, which is another possible strategy that is associated with a higher degree of energy security (Yergin 2006). Consequently, a country’s calculation of possible costs associated with energy security depends on the environment in which the countries operate.

Analyses of energy security can become more systematic if we clarify: who is the main actor that defines energy security and what is considered to be the major threat (Baldwin 1997; Cherp and Jewell 2014). The identification of an actor who defines energy security would largely depend on the unit of analysis and the assumptions that scholars make about the aggregation of interests. In other words, is it a collective or unitary actor? If it is a collective actor, we need to specify who defines the perception of threats. For example, the demands of the electorate shape

the cost calculations of politicians in power in a democratic system. Consequently, the political system and the decision-making rules determine how interests are aggregated. After clearly locating the actor who defines energy security, one can proceed to a more systematic analysis of threats and the degree of energy security that a state might want to obtain. As indicated above, if we assume that political actors are rational, that is, they want to maximise their utility and minimise their costs, the discussion about what actors might perceive as a major threat has to be linked to possible costs associated with different strategies. Proedrou (2012), for example, points out that other scholars often emphasise the difference in perceived threats between energy consumers and energy producers (Proedrou 2012: 3). Producers are assumed to be interested in the security of demand and consumers in the security of supply. However, there is one dimension that can be borrowed from political science that unites the interests of supplier and consumer countries – that of political survival (De Mesquita and Smith 2010). In more operational terms, political survival means re-election or remaining in power. Once one makes this assumption, we can move forward and think about what affects political survival in the context of energy security. While other dimensions might be also plausible, I propose to structure the debate on energy security threats along two dimensions: an internal dimension, which looks at energy vulnerability of a country and an external dimension, which looks at the political and economic stability of the major producers. The logic behind the internal dimension (which unites the interests of producers as well as consumers) is that political leaders – regardless of polity type – will have to satisfy the political requests of a powerful group, which is decisive for the survival of the regime. If the economic and the military wellbeing of a country is highly dependent on energy, the issues of energy security will have high priority because the associated costs of energy disruption are the highest. At the same time, political and economic stability of the energy producing countries also affects the choices of energy importing countries. If the major producers are relatively stable (in terms of political and economic environment), there will be fewer incentives to invest in expensive security enhancing measures. Apart from conceptual parsimony, the rationale for selecting these dimensions is also practical. Both country's energy vulnerability and the political and economic stability are easily operationalisable for a given country and thus do not necessitate an inquiry into actors' perceptions, which are often difficult to measure systematically.

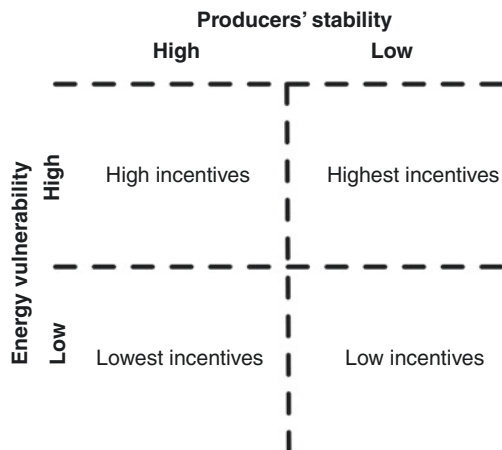


Fig. 3.2 Incentives to invest in energy security

Based on these considerations we can deduce (see Fig. 3.2) under which conditions we would expect countries to strive for the maximum degree of energy security and under which conditions threats associated with energy security would be less eminent. If we simply distinguish between low and high levels on both dimensions, we can conclude that a country would have the highest incentives to invest in energy security when energy is essential for its economic survival (for example as a major exporter of raw materials, or as a major producer of goods from an energy intensive industry) and when the economic and political stability of energy producers<sup>1</sup> is low (frequent changes of governments, high energy output volatility). At the same time when energy has low economic significance and the producers are relatively stable the incentives to invest in energy security will be the lowest.

Figure 3.2 offers a simple framework on how to think about the possible degrees of energy security that countries might want to achieve. The major implication is, however, that in order to systematically compare energy security efforts across different countries or within one region over time, we might need to make sure that the internal as well as external incentives are comparable. Another way of thinking about this framework is to view the two dimensions as major control variables that can help build stronger arguments about other possible explanatory factors.



### 3.3.3 *Research Strategy*

Different EU enlargement rounds, along with global changes in the markets and security concerns, can be summarised in four different energy security periods depicted in [Table 3.1](#) (based on elaborations presented in [Chap. 2](#)). We should take these different settings into account and look at them separately when analysing the Commission's activities, as they are associated with different demands to invest in energy security. In this sense, we would control for paramount internal and external shifts that affect energy policies which have nothing to do with the Commission's efforts to coordinate these policies. With the notable exception of the Suez Crisis in 1956, the period between 1950 and 1970 is characterised by concerns over the acceptable price range. A poignant challenge has been to balance out producers' and consumers' interests across different energy fuels. The internal and external transformation associated with the conflicts in the producing countries made oil supply cuts a credible threat in the 1970s, which became a period with the highest incentives for ensuring energy security in the oil sector. Finally, a 20-year period of relative stability in the oil market followed. It was also a period when natural gas took over the energy markets given the expectation that the gas market will become more competitive as there were many emerging gas producers on the market (newly independent Central Asian countries, see [Chap. 2](#)).

I propose to consider the period where European natural gas consumption was increasing through two phases: 1980–2000 and 2000–2010s. While price concerns dominated the first period, the latter period saw a shift in actors' constellations and the global environment. Through the so-called big bang enlargement (Naurin and Lindahl [2008](#)) in 2004, the EU found itself with a

**Table 3.1** European energy security environments

	<i>1950–1970</i>	<i>1970–1980</i>	<i>1980–2000</i>	<i>2000–2010s</i>
<b>ACTORS</b>	West Germany, France, Italy, Belgium, Netherlands (gas producer), Luxemburg	New: Denmark (gas producer), Ireland, UK (gas producer)	New: Greece, Spain, Portugal, Austria, Finland, Sweden	New: Eastern enlargement
<b>THREATS</b>	Price volatility	Oil disruptions	Price volatility	Gas disruptions

number of member states that were both highly dependent on natural gas and had a historically troubled relationship with the main natural gas supplier in Europe. Although gas can be substituted more easily than oil (Haghighi 2007: 14), the incentives to coordinate energy policies at the European level have substantially increased in the post-2004 period due to the implications of these internal and external changes. Based on the expectations elaborated in Fig. 3.2, one would therefore expect that from the 1980 to 2000, the demand for establishing European gas security architecture was low, while from 2000 to 2010s the pressure for successful coordination was much higher.

By selecting cases based on one of the major independent variables presented in the literature (energy security concerns), more systematic insights about the role of the Commission's entrepreneurship can be gained. Additionally, the analysis is structured around the Commission's tools discussed in this chapter (Sects. 3.1 and 3.2) in order to trace which strategies are used under which conditions and ultimately to assess which strategies are associated with policy efficacy, that is, enhancing the EU gas security architecture. Similar to other studies that use process tracing techniques (Eikeland 2011; Maltby 2013), the study at hand collects information based on the official EU documents and background reports, media reports (specifically Agence Europe, EurActive, Europe Energy and New York Times) and secondary literature.

## NOTE

1. Political instability of major energy producers is also bad for energy producers because it is associated with volatile oil prices, and therefore, with volatile revenues.

## Targeting Liberalisation

**Abstract** Chapter 4 traces the European Commission's activities and initiatives during the EU's efforts to liberalise its natural gas market. The observations made in this chapter suggest that when faced with opposition from a number of powerful states and during times of low incentives for new energy policies, the Commission utilises its informal powers such as usage of networked governance in order to advance policymaking. During times when member states have high incentives for new energy policies, the Commission employs its full legislative power. After the third energy package, the Commission could extend its executive reach with the help of the Agency for the Cooperation of Energy Regulators (ACER) by delegating policymaking to sectoral groups.

**Keywords** Gas directives · Policy networks · Unbundling · Third party access · ACER

The cornerstone for the creation of the internal energy market was laid in the 1960s with the decision of the European Court of Justice (ECJ) to define energy as a common good (Costa/ENEL decision 1964)<sup>1</sup> and the memorandum in 1968<sup>2</sup> (Secretariat of the Commission of the European Communities 1968). Additionally, the previously mentioned Single European Act (1986), which set the ambitious goal of achieving the Single European market by 1992, made the liberalisation of energy markets an issue of the highest importance. Liberalisation has many different conceptualisations

(on different concepts see Arentsen and Künneke (1996)). Nonetheless, liberalisation is generally associated with “sector re-structuring, introduction of competition in wholesale generation and retail supply, incentive regulation of transmission and distribution networks, establishing an independent regulator, and privatisation” (Jamasp and Pollitt 2008: 2). The European Commission understands liberalisation, in a very broad way, as breaking up of national monopolies in energy production, transmission and distribution (Commission of the European Communities 1988). More specifically, the Commission’s view is that “the network industries... constitute natural monopolies only for the sector of their activity corresponding to infrastructure management, [a]ll their other activities must be open to competition” (Percebois 1999: 10).

The first EU legislative outputs, that can be linked to energy liberalisation measures, addressed less controversial topics such as harmonisation of reporting on prices (Directive 90/377/EEC) and the regulation of transit through grids (Directive 91/296/EEC). These two directives paved the way for the successive legislation because information about energy price levels across the member states as well as on energy infrastructure enabled more systematic analysis of the possible benefits of market liberalisation. The first directive concerning common rules for the internal market (98/30/EC) in the gas market was passed after more than 6 years of negotiations. Even though it did not include some of the controversial measures such as the unbundling of the ownership of transmission and distribution networks (it merely required the separation of the accounts), it presented a major breakthrough in the efforts of the European Commission (Herweg 2015) given that member states showed little support for the reform (more details in Sect. 4.1). The second Directive 2003/55/EC (repealing 98/30/EC), which was negotiated just within 2 years, surprised the observers of the negotiation process because it contained elements, which were opposed by Germany and France (Eising 2002). For example, the Directive 2003/55/EC required a legal separation of transmission and distribution networks. Eising (2002: 109) ascribes this success to certain informal norms initiated by the European Commission such as an increase in the frequency of the energy group meetings with the Council of the EU. The last directive, as of 2015, that targets liberalisation of the gas market is the third gas directive (2009/73/EC). Eikeland (2011) considers the third gas directive as the culmination of the Commission’s power and policy entrepreneurship because it led to a substantial speed-up of the liberalisation efforts and the creation of the Agency for Cooperation of Energy Regulators (ACER).

In order to provide a systematic overview of the major gas liberalisation directives, [Table 4.1](#) traces and compares the initial Commission's proposals to the final legislative outputs across five issues. These five issues represent some of the key elements of liberalisation efforts: (1) Third Party Access (TPA) to transmission and distribution networks, (2) Form of Unbundling in transmission and distribution, (3) Form of Dispute Resolution, (4) Regulations for external participants and (5) Deadlines for transposition. This overview then allows for a more systematic assessment of the Commission's achievements. First of all, the Commission was only partially successful in establishing a gas market architecture that is solely guided by market mechanisms. At the same time the provisions in the third gas directive come rather close to the initial targets in the first proposal of the Commission from 1992 or even include the so-called third countries clause that was not discussed in the wake of negotiations for the first or second gas directives. Ownership unbundling has remained rather weak through all three directives. Based on the gas directive (2009/73/EC), the member states are still allowed to select between ownership unbundling and an independent system operator, which can prevent an effective break-up of energy monopolies. Most notably, ACER has been established through the third energy package. ACER, as it is shown in [Sect. 4.2.3](#), has played a major role in the harmonisation of the European gas markets.

To sum up, while the first directive represents a major break-through in the European gas market policy, the instruments that are included in the directive present the lowest possible denominator of the member states' interests. The first directive was however negotiated during the times of relatively low concerns for energy security and it is thus surprising that any agreement was achieved at all. The second gas directive offered incremental adjustments as compared with the first, but included new, more ambitious deadlines on the full liberalisation of the gas market. The third gas directive came during the period with 27 member states and when substantial concerns over the security of gas supply were present after the gas interruptions to Ukraine. Based on the elaborations from [Chap. 3](#), the following chapters divide the analysis into two distinct periods: a period of low energy security concerns (1980 to 2000) when the first gas directive was negotiated, and a period of high energy security concerns (2000 to 2010s) when the second and the third gas directives were passed. The Commission's strategies are then traced based on its formal as well as informal channels of influence as discussed in [Chap. 3](#).

**Table 4.1** Evolution of the European gas market liberalisation (own elaboration based on Brutschin (2015))

	<i>First Gas Directive (98/30/EC)</i> <sup>3</sup>	<i>Second Gas Directive (2003/55/EC)</i> <sup>4</sup>	<i>Third Gas Directive (2009/72/EC)</i>
Third Party Access	COM Proposal <b>Final Act</b>	Commercial principles (Article 3) Negotiated (Article 15) or Regulated access (Article 16)	Regulated by a national authority (Article 14) Member states shall ensure the regulation (Article 18)
Unbundling	COM Proposal	Complete (ownership unbundling) (Article 21)	Ownership unbundling (Article 7) or independent system operator (Article 9)
Dispute Resolution	COM Proposal <b>Final Act</b>	Separated accounts (Article 13)	Ownership unbundling (Article 9, 14, 26) or Independent system operator (Article 13, 17)
		Specification about the separation in its legal form and a clause that ownership unbundling is not an obligation (Article 9)	National Regulatory Authority and European level coordination through an Agency (Article 24a-24f).
		General dispute resolution mechanisms (Article 25)	National Regulatory Authorities and European level coordination (Article 35–40).
		Competent authority (Article 21)	Competent bodies with the function of regulatory authorities (Article 25)

Table 4.1 (continued)

	<i>First Gas Directive (98/30/EC)</i> <sup>3</sup>	<i>Second Gas Directive (2003/55/EC)</i> <sup>4</sup>	<i>Third Gas Directive</i> <sup>5</sup> (2009/72/EC)
Third Countries	COM Proposal		Operators shall not be controlled by a person or persons from third countries (Article 7a)
	<b>Final Act</b>		Certification in relation to third countries (Article 11)
Deadlines	COM	100 % by January 1, 2005 (Article 18)	18 months (Article 2)
	Proposal		
	<b>Final Act</b>	20 % by 2000	By March 2011
		28 % by 2003	Article 11 by March 2013
		33 % by 2018	

## 4.1 1980 TO 2000

The Commission presented the first proposal for a gas directive in 1992. The first proposal was based on the consultations with two Consultative Committees (one professional and one member state committee) to consult on the matters of the natural gas market: the committees met monthly throughout 1990 and their proposal served as a basis for the subsequent Commission's proposals (Agence Europe 1992). During the early efforts of liberalisation (before the first gas directive came into force) there were three groups of member states: (1) countries such as France, Italy, Greece, Ireland, where the deregulation process had not started, (2) countries such as Spain, Netherlands, Germany, Austria, where the deregulation process has partially started and (3) the UK, where the gas market was liberalized (Percebois 1999: 11). Member states were rather quick in voicing their general dissatisfaction with the major liberalisation instruments as laid in the initial proposal. The coalition of proponents of liberalisation composed of the UK, Denmark, Ireland and Portugal stood against the sceptical states such as France, Belgium and Luxembourg (Agence Europe 1996). France requested to be allowed "to impose strong public service obligations on gas undertakings, notably in relation to secure supplies, environmental protection and equalization of prices" (Agence Europe 1996), which would essentially allow making the directive void when necessary. Additionally, France opposed liberalisation on the grounds of long-term contracts and long-term investments that were, in France's opinion, a major guarantee of stability in the provision of public service goods. The French government was under extreme domestic pressure given that French Unions staged protests and signalled a complete opposition towards the Commission's plans. Additionally, reservations were voiced about the TPA (Agence Europe 1992). Meanwhile Germany was torn by an internal struggle between the opponents and the proponents of liberalisation. While the coalition between Christian Democrats and FDP that was governing Germany at the time was generally in favour of liberalisation, the major German gas company Ruhrgas signalled its total opposition to liberalisation. In an interview, Wilfried Czernie, the general manager of Ruhrgas at the time, stated that unbundling would significantly endanger the competitiveness of the European companies (Knott 1996: 23).

There were, however, also some supporters of liberalisation efforts. As already mentioned, among the member states the UK was one of



the major active supporters. The UK government even organised a large energy conference, to which major energy stakeholders and energy ministers of other member states were invited (Agence Europe 1992), in order to discuss the benefits of liberalising the natural gas markets. Energy intensive industry, as the major energy consumer, was also particularly interested in liberalisation efforts because this group expected lower energy prices after liberalisation. For example, the German Chemical Industry Association and the fertiliser industry, which is one of the main consumers of natural gas, signalled its full support for a complete TPA along with the car industry and the International Federation of Industrial Energy Consumers. Overall, the Commission was facing a major opposition from many important member states and some support from the UK and energy consumer industry.

#### *The Commission's Formal Powers*

Even though the Commission was aware of the strong opposition from the member states (especially from France), it kept all controversial elements such as TPA and unbundling in the initial proposal (Agence Europe 1992). The atmosphere of credible threat – or, as Schmidt (2000) puts it, of “lesser evil” – was created through a set of infringement procedures regarding exclusive rights to import and export gas and electricity (Agence Europe 1992). The efforts to deter further prolongation of the negotiation process were also supported by the Competition Commissioner at the time, Karel van Miert, who warned six member states (Denmark, France, Ireland, Italy, the Netherlands and Spain) over possible complaints to the ECJ if they could not find a compromise during the Energy Council meeting in 1993 (Brutschin 2013). However, even the personal urge and engagement of Abel Matutes, the Energy Policy Commissioner at the time, did not lead to a political compromise. The gas liberalisation directive was put to rest for a few years, and the electricity directive was negotiated first.

#### *Policy Networks*

The initial proposal of the Commission was based on the exchanges with consultative committees that included member states as well as representatives of the major energy companies. The Commission additionally instigated “lengthy consultations” with national administrators as well as “the circles concerned” (Agence Europe 1992). This was however insufficient to make the Commission’s first proposal successful.

*Legislative Ambiguity*

Some progress in negotiations was achieved in 1993. Claude Desama, a Belgian member of the European Parliament, through his famous so-called “Desama report” proposed to introduce the term “flexible liberalisation” in the legislative proposal (Europe Energy 1993a). Flexible liberalisation would allow for different speeds of liberalisation, where member states would have the freedom to decide the degree and the type of liberalisation they wanted to pursue. Likewise, the strict form of the TPA was turned into the option of “regulated” and “negotiated” TPA. Finally, the strict deadlines were relaxed into a transition period, which again would mean more flexibility. In this context France was considered to be the major winner of the negotiation process. The final deadline was set to 2000 and the requirement to liberalise only 20 % of the gas market was exactly the demand that France put on the table and obviously could enforce (Petroleum Economist 1998). At the same time, including legislative ambiguity was essential for the development of the “divide and conquer” strategy (see Chap. 3). Some member states transposed the stricter version of liberalisation and later demanded new legislation that would make liberalisation less flexible.

## 4.2 2000 TO 2010s

The period from 2000 until 2016 is associated with higher energy security concerns in the EU as compared with the period discussed in Sect. 4.1. In Chaps. 2 and 3, I argued that this is because there was a substantial increase in global oil and gas prices, economic and political instabilities in the major gas producing countries and most importantly because of the Eastern European enlargement, which increased import dependence on Russia. It can therefore be expected that the Commission had an easier environment for enforcing stricter liberalisation measures because there was generally more demand for a coherent EU energy policy. During the period from 2000 to 2016, two additional gas liberalisation directives were passed: the Directive 2003/55/EC and the Directive 2009/73/EC. These directives are discussed separately in Sects. 4.2.1 and 4.2.2.

### 4.2.1 *Second Gas Directive*

While in the early 1990s the UK was almost the sole supporter of the liberalisation process, certain market transformations increased the number of member states that were willing to support stricter liberalisation measures.

Because France was the only state that showed no particular effort to liberalise its gas market, the level of discontent within other member states was growing. During the Stockholm EU Summit in March 2001, Spain, Italy and the Netherlands complained about French reluctance to transpose the liberalisation directive and accused France of hindering market operations for other participants (Utility Europe 2001a). Additionally, the European Parliament has taken on a more pro-active role in the liberalisation process by arguing that liberalisation is essential in order to protect consumers' interests (Europe Energy 2000). The shifts in some of the member states' positions thus suggest that the Commission's job in this period should have been easier when compared to the negotiations during the first gas directive.

At the same time, a new coalition of liberalisation opponents was formed. The merger between German Veba AG and Viag (to form E.ON) created a new German energy giant (Europe Energy 1999). This possibly motivated the German government to side with the French position in order to protect large energy utilities. Both states vehemently opposed the draft from 2001. The coalition of the two most influential EU members was further supported by a powerful coalition of energy companies: Shell, Ruhrgas, Distrigaz and Gazprom, all voiced their opposition by arguing that liberalisation would threaten new investments. More specifically, the energy providers were arguing that speedy unbundling of transmission and distribution would destabilise the markets and "reduce investors' confidence" (Utility Europe 2001b). The overall directive was, in the end, partially weakened on German insistence (for the full overview see Table 4.1). Germany, as one of the biggest gas markets in Europe, was strongly opposing the establishment of an independent energy regulator. Germany preferred to let the Federal Cartel Office (Pariente-David and Swanson 2003) deal with market competition issues. This resulted in a very weak formulation of Article 25 of Directive 2003/55/EC, which requested merely "one or more competent bodies with the function of regulatory authorities...wholly independent of the interests of the gas industry". In sum, while the Commission could enhance its coalition of liberalisation supporters, it had to face a new powerful opposition during the negotiations for the second gas directive.

#### *The Commission's Formal Powers*

The Commission had the opportunity to initiate further investigations into market practices based on the poor implementation of the first directive. It became quickly clear that additional legislative clarifications

were necessary in order to achieve progress in liberalisation efforts. The flexibility approach that was pursued during the first gas directive in order to reach consensus had to be transposed into more specific measures. As discussed in [Chap. 3](#), one of the powerful formal tools that the Commission can utilise is its power to instigate infringement procedures. In June 2000 the Commission sent “reasoned opinion” to the German government for not complying with the first gas directive (Agence Europe [2001a](#)) and waited until December to open infringement procedures against France, Germany and Luxembourg. The proposal for the second gas directive was presented to the member states in March 2001. In May 2001 Loyola de Palacio, the energy (and transport) Commissioner at the time, announced that France would be taken to the ECJ for not transposing the gas directive (Agence Europe [2001b](#)). The Commission’s threat was carried out in November 2002 and the ECJ decided that France did not transpose the Directive 98/30/EC within the prescribed period (C-259/01).

### *Policy Networks*

In terms of changes in informal structures, there were two major events that have shaped the future development of the European gas market: the establishment of the Madrid Forum in 1999 and the establishment of the Council of European Energy Regulators (CEER) in 2000. The bundling of networks meant that the Commission had a much clearer overview over the evolution of the stakeholders’ preferences and more importantly it suddenly received better access to more technical information. Frequent consultations with regulators as well as other stakeholders meant that the technical information gap between member states and the Commission was decreasing. More importantly, the national regulators could now exchange information and socialise at the European level, which, as it was shown by Ruffing ([2015](#)) led to their higher independence from national governments and their interests. It is thus not surprising that in 2002 CEER lobbied the Commission to impose stricter liberalisation measures and “express[ed] concern that the market rules ... to allow a single market ... are not in place” (Power Economics [2002](#)).

### *Strategic Patience*

France was a prominent opponent of liberalisation during the negotiation process for the first directive as well as for the initial stage of the second directive. However, in 2002 in the wake of French elections, a major shift occurred. A new party, “Union pour un mouvement populaire”, with a more pro-liberalisation stance as compared with the socialist party, won the

majority of seats in the National Assembly. Coincidentally, the new French industry minister, Nicole Fontaine, happened to be the former president of the European Parliament (Fuller 2002). This particular event allowed the Commission to seize the opportunity and reach the final deal on the second gas directive, where this time France, not the Commission, made some major concessions.

#### 4.2.2 *Third Gas Directive*

The quality of implementation continued to be a contentious issue after the adoption of the second directive. First of all, the legal uncertainty about how to implement the provisions in the directive was decreased because the Commission elaborated on a set of implementation guidelines with the help of the stakeholders from the Madrid Forum. Better oversight however meant that more problems came to surface. Germany and many other states such as Spain, Sweden, Belgium and Greece were having difficulty transposing the second directive (Harrison 2005). The companies who had to implement the provisions now became the major part of the problem. George Verberg, President of Gasunie, emphasised at a conference of gas producers that natural gas market was naturally oligopolistic and that the best approach to liberalisation would be without any direct governmental regulation (Europe Energy 2004). As a way to balance the trend of breaking up natural champions, the companies reacted through a wave of mergers to create European champions. In 2005, France and Italy sealed a deal where EDF increased its control of Edison and in return Enel was allowed to acquire about 3% of the French electricity market (Sylvers 2005). The mergers were going against the competition efforts, but at the same time, intra-European mergers were establishing a European gas market with European rather than national interests.

With the high oil prices of 2006 and the first gas crisis came another window of opportunity for the Commission and the pro-liberalisation coalition. The gas market situation gave impetus to the Commission to target unbundling – one of the most contested issues of the liberalisation process. Upon the invitation from the Spring Energy Council in 2007, the Commission prepared a new proposal by September. The first draft contained strict measures on effective separation of supply and production activities from network operations. Many member states displayed their discomfort about the ambitious draft. Upon French initiative, a group of

nine member states sent a letter to the Commission urging that unbundling “should remain optional and not compulsory” (Oil and Gas Journal 2007). Similarly, a group of German municipality utilities advised the Commission to observe the market implications of liberalisation before committing to new efforts (Global Power Report 2007). At the same time another group of states including Belgium, Denmark, Finland, Ireland, the Netherlands, Portugal, Spain, Sweden and the UK were calling for compulsory unbundling measures (Oil and Gas Journal 2007). A decisive push to bring gas matters at the top of the European agenda was the gas dispute between Ukraine and Russia in January 2006. The matters of internal market could now be credibly linked to the matters of energy security. The Commission, the UK and Austria (Gill 2006), used the momentum to initiate a discussion on the third gas directive and to update the mandate of the Gas Coordination group (Decision 2006/791/EC).

Given the substantial efforts that the UK put into the second gas directive, the UK’s dissatisfaction with the poor implementation by the other member states was growing. British media blamed French and Germans for high energy bills (Jameson 2005). The media attention quickly spread to the House of Commons, where more firm action at the European level was requested (Jameson 2005). Gordon Brown, the British Prime Minister at the time, promised to the British public and politicians to address this issue during the next meeting of the European finance ministers in Vienna “to call for action that went further than merely the setting of new timetables for greater liberalisation” (Duncan 2006).

Interestingly, one of the major supporting measures for the European Commission during negotiations for the third gas directive was a report published by ERGEG in July 2007. The report, which was prepared under the leadership of John Mogg, the former head of the British regulator Ofgem, revealed a number of substantial breaches in the implementation of the second gas directive (ERGEG 2007). Similarly, to the developments during the second gas directive, the European Parliament displayed its full support for the pro-liberalisation coalition at the backdrop of the protection of consumer rights. The spokesman for the Green Party, Claude Turmes, accused German and French companies of sabotaging the liberalisation process and impeding the rights of energy consumers (Gow and Milner 2007).

The renewed disagreements between the proponents and opponents of liberalisation resulted in a compromise (see Table 4.1). France and

Germany could push through their so-called third way unbundling (Europe Energy 2008a). The third way unbundling introduced the option of imposing an independent system operator (ISO) as a type of unbundling instead of sole ownership unbundling. While the European Parliament was not willing to accept this flexible approach to unbundling, in the end it gave in (Europe Energy 2008b). In exchange for the Parliament's concession on unbundling, the Council agreed to give more administrative power to ACER (Iago 2009a). The analysis in Sect. 4.2.3 shows that the activities of ACER have been decisive for enhancing the Commission's executive power and the coordination of the European gas policies.

#### *The Commission's Formal Powers*

In the period between the second and the third gas directive the Commission (and national regulators) could rely on substantial support from the ECJ in punishing improper implementation of the second liberalisation package. Table 4.2 offers an in-depth overview of some major cases. Out of the eight cases reported in the table, five included decisions that supported liberalisation measures and further strengthened the Commission's or the national regulators' positions. One of the most notable cases was the Commission v Germany in 2004 (C 64/03). During the case, Deutsche Energiehandels GmbH (DEB), a German company that provides energy to the industrial sector, argued that because Germany did not transpose the directive on time "it [DEB] had no access to the gas network which resulted in its losing important contracts" (Kaczorowska 2013: 225). This indicates that energy providers that were interested in gaining access to the previously protected energy infrastructure supported the liberalisation efforts. Furthermore, national regulators brought cases to ECJ in Belgium, Italy and Germany. While it has been argued that in the period from 1980 to 2000 the use of the Commission's hard power was kept to the necessary minimum, the period after 2000 and the implementation phase of the second gas directive is characterised by a higher level of legislative activity.

#### *Policy Networks*

The European gas and electricity markets are historically embedded in the European network governance and its "administrative innovations" (Levi-Faur 2011: 811). One of the key moments in the history of networked governance in the EU energy context was the creation of the CEER in 2000. More importantly, based on the second energy package, the European Regulators' Group for Electricity and Gas (ERGEG) was

**Table 4.2** Overview ECJ judgments in the gas market sector 2002–2013 (based on own elaborations)

<i>Year</i>	<i>Case</i>	<i>Judgment</i>
<b>April 2004</b> <i>Supporting liberalisation</i>	Commission of the European Communities v Federal Republic of Germany C 64/03	Directive 98/30/EC – Failure to fulfil its obligations
<b>April 2005</b> <i>Indifferent</i>	AEM SpA (C-128/03) and AEM Torino SpA (C-129/03) v Autorità per l'energia elettrica e per il gas and Others (Italy). Cases C 128/03 and C 129/03.	Increased charge for access to and use of the national electricity transmission system – State aid – Directive 96/92/EC. The increased charges cannot be considered as state aid.
<b>July 2008</b> <i>Supporting liberalisation</i>	Group of Dutch companies v European Commission v Kingdom of Belgium. Case C 206/06.	National legislation permitting the levy of a surcharge on the price for electricity transmission in favour of a statutorily-designated company which is required to pay stranded costs. Amount paid to Netherlands Elektriciteit Administratiekantoor BV (a high voltage net operator) is considered as state aid.
<b>May 2008</b> <i>Indifferent</i>	Citiworks AG v Bundesnetzagentur Case C 439/06.	Citiworks not offering third party access. According to the German transposition such exemptions are allowed.
<b>December 2009</b> <i>Supporting liberalisation</i>	European Commission v Kingdom of Belgium. Case 475/08.	Decision exempting major new gas infrastructures from the application of certain provisions of Directive 2003/55/EC. Failure of a member state to fulfil obligations.
<b>December 2010</b> <i>Supporting liberalisation</i>	Fluxys SA v Commission de régulation de l'électricité et du gaz (CREG) (Belgium). Case 241/09.	Partial withdrawal by the applicant in the main proceedings – Changed legal framework – Court's reply no longer necessary for the decision in the main proceedings.



Table 4.2 (continued)

<i>Year</i>	<i>Case</i>	<i>Judgment</i>
<b>December 2011</b> <i>Supporting liberalisation</i>	Enel Produzione SpA v Autorità per l'energia elettrica e il gas (Italy). Case C 242/10.	Obligation to submit tenders on the national electricity exchange market in accordance with the limits and criteria laid down by the electricity transmission and distribution system operator.
<b>March 2013</b> <i>Indifferent</i>	RWE Vertrieb AG v Verbraucherzentrale Nordrhein-Westfalen eV (Germany). Case C 92/11	Unilateral alteration by the supplier of the price of the service. Obligation of use of plain and intelligible language and transparency. (National court to scrutinise the breach in more detail).

created in 2003 through the Decision 2003/796/EC as a more formal network compared to the voluntary CEER. Similarly to the Madrid Forum (1999), this meant that an important group of energy stakeholders could regularly meet and exchange information and practices. One of the possible implications of this bundling of interests is that the Commission delegates certain policymaking responsibilities to agents of sectoral governance, which, as shown by Eberlein (2008), in combination with the Commission's formal powers, can be beneficial to the efficacy of policy-making, and in turn help to achieve the Commission's goals in the energy sector. In a similar vein, in a more recent study Maggetti (2014) shows that soft market rules developed by ERGEG positively affect the overall harmonisation of the European energy market.

In order to further enhance the benefits of networked governance, the European Commission proposed in 2008 to create the Agency for the Cooperation of Energy Regulators (ACER), which would be the continuation of ERGEG with more formal competencies and powers. The energy regulators were at first sceptical because they doubted that the agency would be equipped with enough powers to fulfil its mandate (EurActiv 2008). During the deliberations on ACER's formal powers and its role in the European regulatory landscape, the European Parliament played a central role in securing more formal powers for ACER, but also in ensuring more oversight and involvement over ACER's activities. For example, the Parliament proposed that the agency

should be involved in the development of network codes through the so-called framework guidelines *ex-ante* rather than *ex-post* as initially intended. Ostensibly against the Council's will, ACER has to report to the Parliament (Iago 2011a). This is specifically reflected in the setup of the administrative board. Out of the nine members, two representatives have to be from the European Parliament and two from the European Commission, while the rest are appointed by the Council of the European Union (ACER 2016a). A more radical proposal by the Parliament to let ACER develop binding network codes was rejected by the Commission based on the Meroni doctrine, which prevents the Commission from delegating discretionary powers to another body (European Commission 2008). The Parliament's wish to have a vote on the director was watered down by the Council (Iago 2009a). MEP Giles Chichester, Rapporteur on ACER, justified the Parliament's efforts to create a stronger agency as a way to circumvent certain deficiencies of the third energy package. In an interview with *Europolitics* he elaborated that "as [the European Parliament] did not get what [it] wanted on ownership unbundling, it was important to counter-balance power for the national regulators and the agency" (Iago 2009a). Overall, Walter Boltz, the vice-chairman of ACER's board of regulators at the time, remarks that "The procedures may not be as fast or simple as we wished, but they should be effective" (Iago 2009b). Given that ACER presents an essential new element in the post third energy package landscape, its importance and activities are discussed in more detail in [Sect. 4.2.3](#).

### 4.2.3 *ACER and Its Activities*

ACER can be categorised as an "agencified network" (Levi-Faur 2011: 825). At the institutional level, ACER is working closely with the European Network of Transmission System Operators for Gas/Electricity (ENTSO-G/E) established likewise within the third energy package through Regulation No. 715/2009. At the same time, ACER continues working closely with the CEER: while the activities of ACER lie within areas specified in European legislation, CEER "does everything else in energy regulation" (CEER 2016). ACER sees its mission in "aligning national market and network operation rules for gas as well as making cross-border investment in energy infrastructure easier" (ACER 2016b). The major tasks are currently divided into 5 areas of activity: framework guidelines and network codes, regional initiatives, European Gas Target

Model (GTM), infrastructure development and market monitoring. Network codes are seen as instruments to achieve GTM, a vision that the European gas market consists of “entry-exit zones with liquid virtual trading points” (ACER 2016c). Network codes, which represent a set of common rules in the energy sector (ENTSOE 2016), are at the heart of the European gas market liberalisation efforts. According to the ACER activity reports, in 2013 alone, the agency has presented 11 codes (on electricity and gas) to the Commission out of which 3 were adopted. The process of negotiating network codes is depicted in Fig. 4.1.

In the first step the Commission defines priority areas within which ACER develops framework guidelines over a period of 6 months. The technical details are then formulated by ENTSOG within 1 year. Finally, network codes are inspected by ACER and forwarded to the European Commission, which can then initiate legislation through comitology. The current process of negotiating network codes has two implications. The first implication – as Fig. 4.1 clearly demonstrates – is that ACER and the Commission were given agenda-setting as well as veto powers. Based on extensive research on EU processes, we know that both institutional mechanisms imply more institutional power (Pollack 2003; Tsebelis 1994). The second implication is that the higher bargaining power of the supranational institutions and a stringent time schedule (the overall negotiation is limited to a maximum of 21 months) might lead to more frequent as well as more significant change of the European gas market on the way towards full integration (for a similar argument see Jevnaker (2015)). Once network codes become a binding legislation, ACER has the oversight role and can ask national authorities to conduct investigations should it suspect breaches.

Apart from ACER’s role in the network code legislation, the agency has received substantial formal powers on cross-border issues, which are specified in the Regulation (EU) No. 347/2013 (TEN-E). The European energy market is currently divided into 12 regional groups with



Fig. 4.1 Network code policy cycle (own elaboration based on ACER (2016d))

infrastructure projects of common interest that are updated every 2 years (European Commission 2014a). The Connecting Europe Facility, established through the regulation (EU) No.1316/2013, financially supports the projects. If there is no agreement on cross-border cost allocation between national regulators of the countries engaged in a project of common interest within 6 months, ACER has the authority to make the final decision within 3 months (Article 12, Par.6 of (EU) No. 347/2013). As of 2016, the only time when ACER has invoked this authority so far was in April 2015 in the case of the Poland–Lithuania gas interconnector (ACER 2015a). This enabled a political agreement by October 2015 among Poland, Lithuania, Latvia and Estonia to start the construction of the interconnector, which should be completed by December 2019. This project connecting previously isolated Baltic states to continental Europe is to a high degree (more than 50 %) financed by the Connecting Europe Facility and presents a major achievement on the way towards a pan-European gas infrastructure (European Commission 2015a).

Finally, along side the Regulation (EU) No.1227/2011 (REMIT) on wholesale energy market integrity and transparency came ACER's increased responsibility with regards to market oversight. The requirement to collect data on market abuse and manipulation presented ACER with an immense technical challenge. This consequently led to a growth in budget and staff, but ACER maintains that the “level of resources [is still] clearly inadequate in relation to its mandate” (ACER 2015b). Nonetheless, the pilot phase of data collection, which started in October 2015, has had already huge implications, with ACER examining 45 cases of alleged market abuse (MacDonald 2015). The current director of ACER, Albert Pototschnig, was disappointed that the Commission issued “just a warning letter” instead of a stricter enforcement (MacDonald 2015) after the cases of abuse were reported to the Commission. Even though the Commission has not swiftly reacted to the observed non-compliance, this presents an invaluable source of information and it is to be expected that a new package of energy legislation and a new wave of infringements will follow shortly (European Court of Auditors 2015).

Since its inauguration in March 2011, ACER has experienced growth in terms of competences, functions and importance. The newest wave of additional instruments to improve ACER's capacities to enforce compliance with existing European regulations should be negotiated by 2016. The boost in ACER's power might not stop just there: at the annual ACER conference in July 2015 Miguel Angel Arias Cañete, the current

Commissioner for Climate Action and Energy, has noted that reinforcement of the role of ACER will be one of the key elements on the way towards an Energy Union for Consumers. Table 4.3 shows how ACER's competencies and influence have grown since its inception. Within 4 years, the agency's budget has doubled and its access to information expanded. This was possible not only through REMIT but also through PRISMA. PRISMA, which was launched in 2014 by transmission system operators<sup>6</sup> in order to create a joint capacity platform, is a response to the Network Code on Capacity Allocation Mechanisms. It is currently a pilot project for a European auctioning mechanism (PRISMA 2016) and represents a major achievement on the way towards the envisioned GTM, where gas is freely traded. Just by examining ACER's activities, it appears that through ACER, the EU could achieve some major breakthroughs towards gas market harmonisation within a rather short period of time.

The third energy package was considered a major breakthrough on the way towards liberalisation and integration of the European gas market (Brutschin 2013; Eikeland 2011), but market participants were complaining about the lack of legal clarity. Jean-Marie Devos, Eurogas Secretary general, denoted the third energy package as "a very complicated package, sometimes unclear, with passages that appear contradictory" (Iago 2009c). The legal uncertainty however might present a window of

**Table 4.3** ACER activities 2011–2014 (own elaboration based on ACER's yearly reports)

<i>Year</i>	<i>Budget</i>	<i>Staff</i>	<i>Achievements</i>
2014	€9 955 256	53	Decision on Poland–Lithuania Interconnector. Proposed 11 network codes, 3 were adopted. Market observatory under REMIT.
2013	€11 736 669	54	Gas network codes on Capacity Allocation Mechanisms and on Balancing and Commission's Guidelines on Congestion Management Procedures entered into force during 2013. Support of PRISMA (launched by major transmission system operators) to collect information on cross-border gas interconnections. REMIT related information technology system (significant support from the DG Energy).
2012	€7 245 889	47	Implementation of REMIT and TEN-E regulations.
2011	€4 400 898	34	Setting up of the agency. Published 5 framework guidelines on network codes.

opportunity for the Commission to establish a truly Europeanised regulatory order through ACER and “networked governance”.

### 4.3 SUMMARY OF SUCCESSFUL STRATEGIES

The dynamics in the negotiations over the first gas directive imply the three following conclusions regarding successful strategies: (1) legal threats proved contra-productive and not credible, (2) the coalition of energy consumers was not sufficiently exploited and (3) the Commission’s hard stand on the initial proposal made the negotiation process unnecessarily long. Indeed, the final proposal that made the compromise possible included flexible options, which could have been proposed straight at the beginning of the negotiation process in order to set the liberalisation process in motion. The Commission’s strategy at the time possibly underestimated the strength of the opposition coalition. Nonetheless, this differentiated liberalisation proved to be of paramount importance for the future development of gas market liberalisation. Once the liberalisation process was set in motion, the coalition of pro-liberalisation actors and the demands for more substantial liberalisation measures at the European level grew.

Compared to the first period and the negotiations over the first gas directive, the Commission had an easier job negotiating the second and the third gas liberalisation directives. The second period (2000 to 2010s) was marked by high oil prices, Eastern European enlargement and most importantly the gas disruptions, which led to an increased demand from the member states to coordinate energy policies at the supranational level. The Commission nonetheless tried to make the best of these opportunities by sticking to its long-term strategies and by presenting strict and controversial measures in its initial legislative proposals. Apart from certain external and internal changes that made political compromise easier, the key strategy was the use of networked governance. The Commission successfully dovetailed the bundling of different interest groups (ENTSO-G, ACER) with application of legislative tools it had at its disposal. Closer interactions with interest groups and energy regulators meant that the Commission had much more access to information and therefore could justify stricter regulation and new energy packages. The importance of ACER cannot be overestimated in this context. Through ACER, the Commission could finally bundle liberalisation and infrastructure efforts and extend its executive reach. At the same time, it could be

traced that the EP's support for stricter regulations and stronger powers for ACER was essential for the final form of the third energy package.

## NOTES

1. The definition of energy as common good made energy sector susceptible to the policies of liberalisation.
2. In this memorandum the Commission addresses the main problems of the Community energy policy and suggests that "this dangerous trend can only be changed by a Community energy policy which fully integrates the energy sector into the common market" (Secretariat of the Commission of the European Communities 1968: 5).
3. The initial proposal is presented in European Commission (1992).
4. The initial proposal is presented in European Commission (2001).
5. The initial proposal is presented in European Commission (2007b).
6. From the following countries: Austria, Belgium, Denmark, Germany, France, Italy and the Netherlands.

## Targeting Infrastructure

**Abstract** Chapter 5 traces the evolution of policies related to trans-European gas infrastructure from 1980 to 2016. This major building block of the European gas security architecture has received little attention from academia so far. This is partially because some major legislation on European infrastructure was passed only recently. The number of occasions when the Commission could use its formal powers was therefore limited. Instead, the Commission had to rely more on networked governance and personal leadership of its Commissioners. In particular, given that the Commission still lacks a clear competence in external energy policy, the development of new gas links proved to be difficult.

**Keywords** Trans-European networks · Pipeline diplomacy · Gas Coordination Group · LNG

Liberalisation of the European gas market has attracted more media and academic attention than the development of a pan-European energy infrastructure. However, infrastructure is equally, or even more, important than liberalisation. Without proper EU-wide energy infrastructure, there cannot be a truly liquid EU market. Overall, European energy infrastructure development has been based on the following three pillars: harmonisation of network rules, development of strategically important infrastructure that creates energy links between the member states and coordination of external



energy policies. In the wake of the Single European Act and as a supporting measure to the general liberalisation of the European energy market, the Council gave the mandate to the Commission to “propose appropriate measures” for the “development and interconnection of trans-European networks, notably in the area of air traffic control, the linking of the main Community conurbations by broadband telecommunications networks, the most efficient surface communications links and energy distribution” (Commission of the European Communities 1990b: 4). The mandate was later enforced in the Maastricht Treaty, which tasked the EU with the development of trans-European network in the energy sector.

This chapter (as in Chap. 4) considers the European approach to the development of gas infrastructure by looking at two different periods: the period from 1980 to 2000 and the period from 2000 to 2016. As in the liberalisation of the European gas market, it is expected that there will be less activities in the first period because there was generally less political demand to invest in energy security given the relatively low levels of oil and gas prices. Additionally, as was shown in Chap. 4, the EU had many difficulties with establishing a truly liberalised energy market, which lessened the demand for a pan-European infrastructure. While some early directives dealt with gas infrastructure, the Commission decided to first concentrate on the liberalisation of the European gas market and subsequently on infrastructure projects. At the same time, as the national markets were becoming more liquid, the member states gained more interest in building a trans-European gas infrastructure. It was, however, only in 2013 that an energy infrastructure package was passed (Regulation 347/2013 and 1391/2013 on guidelines for trans-European energy infrastructure and Regulation 1316/2013 on establishing the Connecting Europe Facility), which presents a fundamental reform of the trans-European transport network (European Parliament 2015). In the gas market context, the regulation on gas security 994/2010 is similarly impressive and is also discussed in more detail in the subsequent chapters.

## 5.1 BACKGROUND ON THE OVERALL PERIOD UNDER CONSIDERATION

The development of common standards in European infrastructure presented itself as a particularly daunting task. For example, the first proposal for a regulation on “Introducing a declaration of European interest to

facilitate the establishment of Trans-European networks in the electricity and natural gas domain” was withdrawn in 1992 (European Commission 1999) because the Council had taken no decision. First substantial legislation was presented only after the second energy package. Council Directive 2004/67/EC of 26 April 2004 concerning measures to safeguard security of natural gas supply was targeting (among other measures) protection of household customers, storage capacities and requesting a greater oversight over infrastructure and supply flows to be shifted towards the Commission. An additional regulation No. 1775/2005 on conditions for access to the natural gas transmission networks was passed a year later. The Ukraine crisis of 2006 has shown that the early warning mechanisms developed in the Directive 2004/67/EC proved to be too weak mainly due to lack of access to the relevant information on supply, demand and storage capacities (Commission 2009: 6). The directive was thus repealed by a new regulation on security of natural gas supply (Regulation 994/2010). After the establishment of ACER (see the discussion in Chap. 4), many legislative acts that relate to the EU infrastructure were passed through the comitology procedure (Regulations No. 984/2013, No. 312/2014, No. 2015/703).

The development of strategic infrastructure has been equally incremental. The Commission strives to promote new infrastructure projects through financial incentives. It is, however, unclear, which projects should be promoted and how the exact set up of the financial incentives should look. For example, based on Decision No. 1464/2006/EC, the Commission listed 550 priority projects with only €22 million of funding per year (Iago 2011). The Commission’s background documents indicate that including so many projects with so little financing proved to be counterproductive (European Commission 2011). Before proposing a new list of projects, the Commission therefore conducted broader consultations and more extensive research and analysis through the Gas Coordination Group and the Madrid and the Florence Forum (European Commission 2011: 5). The Regulation on trans-European Energy infrastructure (347/2013) that repealed the Decision No. 1464/2006/EC now includes a much clearer and faster procedure on selecting projects of common interest with 12 priority corridors and a clear decision-making structure. While ACER plays central advisory role (Buckens 2012), the European Commission – against member states’ initial preferences (Kugyela 2012) – makes the final decision. The number of projects established through the Regulation (No. 1391/2013) has been first reduced to 248, and then in 2015 to 197 (European Commission 2016a), making

sure that all projects of common interest contribute to market integration and security of supply, and in the case of the gas market, also to market competition (E-Control 2016). More importantly, funding experienced a substantial increase: the Connecting Europe Facility allocated €647 million alone in 2014 to the projects of common interest (European Commission 2016b).

Even though the Commission can use market mechanisms (specifically liberalisation instruments) to influence external energy policies (Goldthau and Sitter 2015), it essentially lacks clear competencies to coordinate the EU's external energy policies. The Commission has tried to address the lack of coordination in bilateral deals by passing Decision 994/2012/EU on establishing an information exchange mechanism with regard to intergovernmental agreements (IGAs) in the field of energy. This decision allowed the Commission to conduct compliance checks with existing EU law only after a member state and a third party have concluded an agreement. The Commission recently tabled a revised proposal on IGAs that requires the Commission's involvement before the agreement is signed. The Commission's accompanying report emphasises that "experience shows that assessment by member states is not sufficient and satisfactory to ensure compliance of IGAs with EU law and creates legal uncertainty" (European Commission 2016c: 3). Since 2012, member states submitted 124 IGAs to the Commission, 17 of which were in breach of the third energy package. While the Commission sent out letters of notification, the member states had not revised their agreements (European Parliament 2016). It is, however, doubtful that a political agreement on the new proposal will be reached: the majority of business stakeholders as well as six member states (Cyprus, Czech Republic, France, Germany and Hungary) are strongly opposing the Commission's involvement (European Parliament 2016).

## 5.2 1980 TO 2000

Creating an environment where private actors are encouraged to invest in new infrastructure is one of the major goals of the Commission in the context of infrastructure development. As previously mentioned, during the period from 1980 to 2000, there was little progress in terms of legislative output and infrastructure development. Nonetheless, a few

important strategies and directions were developed that would lay the groundwork for the post 2000 policies.

#### *The Commission's Formal Powers*

In the early 1990s, the Commission was busy preparing for negotiations on the first gas directive. It is thus not surprising that we find a lack of substantial legislative activities related to infrastructure during this period. Nonetheless, in 1991, the gas transit directive (91/296/EEC) was passed. The directive required that “member states [should] take measures necessary to facilitate transit of natural gas between high pressure transmission grids” (Article 1). Which measures should be taken, was, however, not further specified. This makes the directive rather broad and leaves lots of leeway for the member states’ interpretation. Nonetheless, some scholars still consider the introduction of the gas transit directive as “remarkable” (Kopp 2015: 73), given that there was fierce opposition towards supranational coordination of the gas markets (see Chap. 4).

#### *Policy Networks*

As in the strategies on liberalisation, the Commission strived to involve major stakeholders when preparing proposals for the energy infrastructure sector. For example, in order to develop the first set of infrastructure priority projects, the so-called Christophersen group was founded. The group consisted of Henning Christophersen, who was the Commissioner for Economic and Monetary Affairs at the time, and representatives from the member states governments (Europe Energy 1994a). This ad-hoc group was working intensely between January and November 1994, meeting 11 times in total and contacting a wide range of representatives from public and private organisations. Leading industrial figures got also involved when discussing possible guidelines for the selection of priority projects (The Group of Personal Representatives of the Heads of State or Government 1995). In November 1994, a list of priority projects was presented (Europe Energy 1994b). The list contained supporting measures to introduce natural gas in Greece, Portugal and Spain. Further priority projects included LNG development in France, Italy and Ireland and gas storage development in Belgium, Denmark, Portugal and Spain. Projects to interlink different gas markets subsumed an interconnector between Spain and Portugal (Cordoba to Leiria and Braga to Tuy/Oviedo), a natural gas pipeline to bring Algerian gas to the EU, and Russia-Belarus-Poland (Yamal) pipeline (The Group of Personal Representatives of the Heads of State or Government 1995: 231–238).

The major disagreements among member states were obviously over financing of these envisioned mega projects. The Commission's approach to create a more stable investment environment was to guarantee insurances in the context of the European Investment Fund, to create interest rate subsidies for EU loans and to think of potential tax incentives (Europe Energy 1993b). For example, the above mentioned gas link from Algeria to Spain and Portugal received ca. €224 mln in European funds and Portugal received additional €121 mln to expand natural gas connections within its domestic market (Europe Energy 1996).

### *Pipeline Diplomacy*

Developing connections to third countries often required personal engagement by the leading EU politicians (see also Chap. 2). For example, it was Christos Papoutsis, the commissioner for energy at the time, who in 1997 proposed to connect European gas infrastructure to the Mediterranean Basin, Central Asia and Middle East and with the Eastern enlargement in mind to the South East European and Baltic regions (Europe Energy 1997). Two years later, the Commissioner van der Broek coined the expansion of the European gas infrastructure as the Five Seas Strategy: the Caspian, the Black, the Baltic, the Adriatic and the Aegean Seas (European Report 1999a). It was recognised early on that connections to the Baltic Sea should be targeted first, given the looming Eastern European enlargement. Therefore, the EU started the initiative on “Northern Dimension on the EU Energy Policy” in 1999. The EU politicians also realised that any infrastructure activities in the post-communist space should be developed with Russia's involvement, but first attempts, like the Helsinki Conference in 1999 to which Russian representatives were invited, were not successful (European Report 1999b). As mentioned earlier (Chap. 2) the newly independent Central Asian countries presented a new major gas “corridor”. The development of links to this region is generally known as the Southern corridor strategy. First contracts with Azerbaijan were signed as early as in 1994 (Baev and Øverland 2010: 1077). In this context the EU developed a technical assistance programme – the Interstate Oil and Gas Transport to Europe Program (INOGATE) in 1996. INOGATE works within the Baku Initiative and Eastern Partnership frameworks (INOGATE 2016), and even beyond the South Eastern region. However, any substantial development of the Southern corridor took much more time than initially expected. The following Section 5.3 addresses the developments in the Southern corridor in more detail.

### 5.3 2000 TO 2010s

Since 2000, there was a substantial change in the global as well as European energy markets, which created a number of new challenges for the European Commission. The growing dependence of European markets on natural gas (after the introduction of natural gas to Greece, Spain and Portugal and the completion of the Yamal pipeline) was accompanied by increasing gas prices. A major shift also occurred with the Eastern enlargement, which increased the overall EU's dependence on foreign gas supplies as well as made the EU more vulnerable to gas disruptions (Maltby 2013: 436). This period is also marked by two major disruptions (2006, 2009). In particular, the gas interruption in 2009 led to substantial debates about the security of supply and was decisive for the measures that were adopted in the gas security regulation (994/2010). Additionally, the cuts of production by 15–20% in the Groningen gas field (the biggest Dutch field) in 2015 (Natural Gas Europe 2015a) – after The Royal Netherlands Meteorological Institute linked gas extraction to a rise in earthquakes (VanTartwijk and Kent 2015) – have spurred the discussion on developing alternative routes, storage facilities and LNG infrastructure.

#### *The Commission's Formal Powers*

The key legislative output in the context of gas security and infrastructure was Directive 2004/67/EC, which was later amended by Regulation 994/2010. In the following, the two directives and the Commission's strategies are discussed. The first security of supply directive was motivated by concerns over the completion of the internal gas market, which was conditioned on a “minimum common approach to security of supply” (Directive 2004/67/EC). The negotiations on the first security of supply directive were during the period when interruptions of gas supply were unimaginable. For this reason, the first Commission's draft was met with complete opposition and had to go through significant amendments. Most importantly, the provisions on harmonisation of national legislation on gas reserves, which the Commission included in the first proposal, had to be completely dropped (Agence Europe 2003). At the same time, it was agreed to set up the so-called Gas Coordination Group, which would coordinate security measure in case of a gas interruption (European Commission 2009: 18).

A revision of the gas directive in 2010 was necessary because “member states still enjoy[ed] a large margin of discretion as to the choice of measures” (Regulation 994/2010). The gas regulation of 2010, for which the first draft proposal was presented before the crisis with

Ukraine, thus leaves less leeway to the member states and includes more clear procedures and definitions. The gas security regulation also received more support from the EU Parliament as compared to the first gas security directive. The European Parliament urged to put the major responsibility in the Commission's hands, especially when it comes to handling emergency situations (Agence Europe 2010a). Overall, "the role of the European Commission has been significantly advanced reflecting the changing needs of the unified gas market" (Proedrou 2012: 69). José Manuel Barroso, the President of the European Commission at the time, was decisive for the development of the European energy security strategy. His ambitious proposal was based on five pillars: active diplomacy for ensuring the diversification of suppliers, major energy infrastructure projects, a crisis response mechanism based on pooling oil and gas stocks, better use of local resources and enhancing energy efficiency policy for buildings and products (Agence Europe 2008). While some of the elements of Barroso's vision are included in the final regulation, the gas stocks remained controversial among the member states and therefore this measure – preferred by the Commission – was not included in the regulation (Agence Europe 2009a).

Table 5.1 offers a comparison of the gas security provisions from 2004 and 2010. Clearly, the gas security regulation from 2010 represents a major breakthrough as the definitions are clear and there are strict deadlines for the member states to implement certain measures to enhance their gas security. Notably, the regulation from 2010 provides a wider definition of who should be protected from a gas disruption. While the 2004 directive concentrated mostly on protecting households, the regulation of 2010 allows member states to include gas customers providing essential social services such as healthcare or childcare activities. Additionally, a clear and measurable definition of gas security and risk was necessary. As the Commission puts it in one of the accompanying documents, it is necessary to agree in the European context on what is "an acceptable risk of involuntary interruption of supplies to consumers" (European Commission 2009: 2). There was a major change regarding the definition of disruption in 2010. During meetings with the Gas Coordination Group in the context of negotiations for the gas security directive of 2010, the Commission proposed a new definition for a disruption, the so-called N-1 concept, which views a major disruption in cases when the largest supply or source is failing (European Commission 2009: 7). N-1 is defined as the "ability of the technical

capacity of the gas infrastructure to satisfy total gas demand in the calculated area in the event of disruption of the single largest gas infrastructure during a day of exceptionally high gas demand occurring with a statistical probability of once in 20 years” (Regulation 994/2010) and represents a major shift from the 20% threshold that was used in the directive from 2004. While the Commission’s idea of the N-1 standard was widely accepted, the Commission’s idea to require bi-directional

**Table 5.1** Comparison Directive 2004/67/EC and Regulation 994/2010 (own elaboration)

<i>Provisions</i>	<i>Directive 2004/67/EC</i>	<i>Regulation 994/2010</i>
<b>Protected customers</b>	Household customers (member states may extend the scope [...] to small and medium sized enterprises or other customers)	Households and customers providing essential social services such as healthcare and childcare activities, educational activities and other social and welfare services as well as services indispensable for the functioning of a member states (member states had to notify the Commission of their definition by December 2011)
<b>Major supply disruption</b>	Where the Community would risk to lose more than 20 % of its gas supply from third countries and the situation at Community level is not likely to be adequately managed with national measures	The failure of the single largest gas infrastructure, the so-called N-1 principle The preventive action plans must demonstrate that a supply disruption may be sufficiently compensated by market-based demand side measures
<b>Reporting</b>	Measures Storage capacity Long-term gas supply contracts Incentives for investment	By December 2011 member states should notify the Commission on their Competent Authority By March 2012 TSO should submit proposal for bi-directional capacity
<b>Role of the Commission</b>	Monitoring (May 2008 review)	At the request of the competent authority the Commission may declare a Union emergency or a regional emergency

(continued)



**Table 5.1** (continued)

<i>Provisions</i>	<i>Directive 2004/67/EC</i>	<i>Regulation 994/2010</i>
<b>Coordination</b>	Gas Coordination Group is established	In case of an emergence the Gas Coordination Group should convene The Commission can restrict participation of certain member states at the request of at least three member states The Commission might request the member state to change its action Gas coordination group should meet on a regular basis and share information
<b>National emergency measures</b>	Member states shall communicate to the Commission and publish	Joint Emergency Plans at regional level should be established where possible and necessary Emergency plans should be subject to peer review (Commission and Gas Coordination Group) Risk assessment should be conducted in accordance with the Commission's proposal Natural gas undertakings must ensure gas supply for protected customers for at least 30 days
<b>Financing provisions</b>		European Investment Bank or funding from regional, structural or cohesion funds

flows of interconnectors was not (European Commission 2009). Overall, the security of supply regulation received broad support because the industry realised that the impossible – Russia interrupting supplies to Europe – was possible (European Commission 2009: 5). Most importantly, many were surprised that the communication channels with Russia have failed. Russia notified Europe about disagreements between Gazprom and Naftogaz on December 18, 2008, but there was no notification that gas supplies to Ukraine would be interrupted

(European Commission 2009) (for more background information on the Ukrainian crises see Sect. 2.4).

While there was limited solidarity among the member states during the 2009 gas crisis, certain agreements made it possible that Russian gas was available to Czech Republic via the Yamal pipeline, Czech gas storage was made available to Slovakia and Austrian gas storage to Slovenia (European Commission 2009: 9). At the same time, inadequate coordination between Transmission System Operators in Slovenia and Germany created more problems for the neighbouring countries (European Commission 2009: 10). Overall, many weaknesses of the European gas market were discovered: lack of infrastructure and interconnections, lack of transparency, lack of coherent emergency mechanisms and most importantly failure of the market mechanisms to resolve the crisis (Vinois 2009). In the wake of the crises, the Commission also realised that there was no reliable information about gas flows, gas storage capacity (even the national regulators were not informed) and available pipeline capacity. This information is, however, essential in order to assess the economic and social costs of possible interruptions, as well as for the development of resilience strategies. Therefore, after the crisis, one of the major goals of the Commission and national regulators, now with the help of ACER, has been the collection of systematic information related to the EU gas market.

### *Policy Networks*

As in gas market liberalisation, the Commission makes active use of policy networks in the infrastructure development. However, the development and usage of networks to address infrastructure problems has been relatively slow. For example, an exchange platform similar to the Madrid Forum, the “Energy Infrastructure Forum” was inaugurated only in 2015 and now regularly meets in Copenhagen (European Union 2016b). One of the key actors in this case has been ERGEG which was created in 2003 and replaced by ACER in 2011. ERGEG was providing technical information to the Commission during consultations on gas regulation (European Commission 2009: 2) and played an important role in preparing proposals for how to address the weaknesses that became apparent through the gas crises (Agence Europe 2009f). The relationship between the Commission and ACER is addressed in more depth in Chap. 4. In the following, the role of the Gas Coordination Group is discussed, which is another example of networked governance.

The Gas Coordination Group that was established in 2004, but almost forgotten until the crisis in Ukraine, evolved through the crises of 2006 and 2009. The Gas Coordination Group now meets 6–8 times a year (Vinois 2009). Table 5.2 depicts the evolution of the members of the Gas Coordination Group: while the Council Directive 2004/67/EC leaves

**Table 5.2** Evolution of the Gas Coordination Group (own elaboration based on legal documents)

<i>Year and legislative act</i>	<i>Proposed representatives</i>
<b>Council Directive 2004/67/EC</b>	Under the chairmanship of the Commission Representatives of Member States Representative bodies of the industry concerned and of relevant consumers.
<b>Commission Decision 2006/791/EC</b>	Under the chairmanship of the Commission Max 2 representatives per member state Gas Infrastructure Europe (GIE) Eurogas The International Association of the Oil and Gas Producers (OGP) The International Federation of Industrial Energy Consumers (IFIIEC Europe) Eurelectric Bureau Européen des Unions de Consommateurs (BEUC)
Commission Decision 2011/C 236/09	Under the chairmanship of the Commission The Member States Gas Infrastructure Europe (GIE) Eurogas The International Association of the Oil and Gas Producers (OGP) The International Federation of Industrial Energy Consumers (IFIIEC Europe) Eurelectric The European Consumers' Organisation (BEUC) The Agency for the Cooperation of Energy Regulators ('the Agency') The European Network of Transmission System Operators for Gas ('the ENTSO for Gas') The Energy Community Secretariat European Federation of Energy Traders (EFET) Euroheat & Power the representative European association of the storage system operators

the group of representatives open to interpretation, Commission Decision 2006/791 is more specific and Decision 2011/C 236/09 includes new European bodies such as ENTSO-G and ACER. More importantly, the Gas Coordination Group also includes representatives from the Energy Community secretariat and storage system operators. This much broader set of members reflects a more holistic approach to European gas security that the EU has developed since the last gas crisis. Apart from the official EU representatives, the Gas Coordination Group also invites third party members, such as for example Gazprom (Russia) and Naftogaz (Ukraine), to its meetings, which is extremely important in order to maintain an atmosphere of dialogue with third countries.

### *Pipeline Diplomacy*

Ukrainian crises led the EU to a complete revision of its infrastructure policies. In 2009, the Council tasked the Commission to “carry out an assessment of network interconnection, identify gaps and speed up the revision of the trans-European energy network (TEN-E)” (Agence Europe 2009c). Gas is essentially a regional market and the infrastructure reflects the major import routes. Gas is brought to Europe through pipelines from the North, the North-East, the East, the South-East and the South (de Jong, et al. 2012). The key elements of the European gas infrastructure include: the importance of the Eastern routes, the low level of interconnection and the growing interest in LNG infrastructure. The special rapporteur to the European Parliament on the energy security directive pointed out that the failure to assist countries affected by gas disruptions in 2009 was mainly due to a lack of reversed flows and interconnectors (Agence Europe 2010b).

The Southern Corridor came as a diversification strategy of the EU, especially for Central and South East European countries (see also Sect. 5.1). It includes supplies from the Caspian Basin, Central Asia, the Middle East and the Eastern Mediterranean Basin (European Commission 2016d). Currently, the EU is interested in advancing a Trans-Caspian pipeline to bring Turkmen gas through Turkey to Europe (Natural Gas Europe 2015b). Diversifying supplies becomes increasingly important given the currently unstable situation in Ukraine (conflict of 2014). Yet it is not clear whether geopolitical considerations might prevent Turkmenistan from engaging in business with Europe. Gazprom has significant influence over Turkmenistan’s energy sector (Bilgin 2009: 4491), and previous failed projects, such as Nabucco, clearly show that the role of political interests should not be underestimated in the context of the Southern Corridor gas projects.

The Nabucco initiative came from Austria's OMV and Turkish Botas (Gas Connections 2002) in 2002, and was soon joined by MOL (Hungary), Bulgargaz (Bulgaria) and Transgaz (Romania) (Europe Energy 2002). The consortium under the leadership of OMV, a major Austrian gas company, could secure European financial support for the feasibility study (MTI EcoNews 2004). In 2008, the sixth shareholder, the German RWE, also joined the project. An agreement with the European Commission was signed granting exemptions from the regulated third party access. When transport agreement was signed with all transit countries in 2009, nothing indicated that the project could fail (Iranian Gas 2009). Even the gas security regulation 994/2010 mentions Nabucco as an important pipeline to diversify the European gas market. Meanwhile, in 2009, the German Chancellor at the time, Angela Merkel, voiced her opposition to support the project with EU finances given its unclear prospects (EurActiv 2009). Moreover, the Nabucco pipeline, similar to the competing Russian project South Stream, was criticised for making no economic sense (Baev and Øverland 2010: 1083). Nabucco planners had difficulties in finding adequate suppliers. While Iran was the preferred option at the beginning (Austrian News Digest 2004), eventually only Iraq and Azerbaijan were given more careful consideration. Iraq had the required capacity of non-contracted gas, but Azerbaijan was considered to be more politically stable (Smith Stegen and Palovic 2014). After almost a decade of planning, in 2013, it was announced that Nabucco has failed (EurActiv 2013a). It meant that the Austrian OMV, leading company in the project, lost about €50 mln of planning costs (Frankfurter Allgemeine Zeitung 2013). Nabucco was competing with the Trans-Adriatic-Pipeline (TAP) for access to the Shah Deniz II consortium. Some observers suggest that TAP was preferred by Azerbaijan because days before the decision was made, SOCAR (major Azeri energy company) was able to acquire 66% share in DESFA (Greek natural gas grid operator) (Sartori 2013: 5). The agreement was, however, put into limbo as the European Commission started an investigation on whether the agreement is in line with the EU merger regulation (European Commission 2014c).

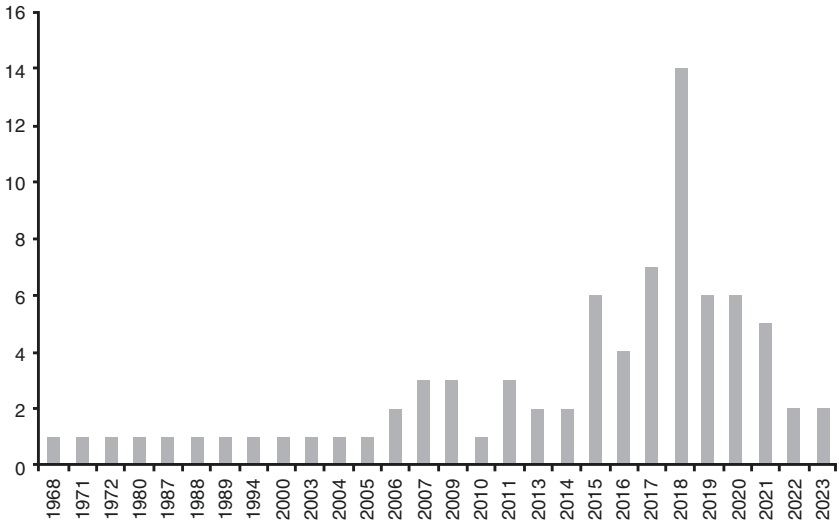
In the wake of the energy infrastructure package of 2013 (Regulation 347/2013 and 1391/2013 on guidelines for trans-European energy infrastructure and Regulation 1316/2013 on establishing the Connecting Europe Facility), many projects of common interest were proposed in the

gas sector. Specifically, the major goal was to end the isolation of the three Baltic states, Finland and Malta (European Commission 2015b). The newest priority projects are the following:

- *Western Europe*: third interconnector between Portugal and Spain; France/Spain link through Midcat; Shannon LNG terminal in Ireland
- *Central Eastern and South Eastern Europe*: LNG terminal in Croatia (Krk); Interconnectors between Poland/Slovakia, Bulgaria/Serbia, Greece/Bulgaria
- *Southern Gas Corridor*: major pipelines South Caucasus Pipeline, trans-Anatolian pipeline, trans-Adriatic pipeline (gas from Azerbaijan, Turkmenistan, Cyprus, Israel)
- *Baltic Sea region*: new gas interconnectors between Poland and Lithuania (GIPL) and between Finland and Estonia (Baltic connector)

Many of the new priority projects concentrate on the development of interconnectors and LNG infrastructure. Figure 5.1 depicts the evolution of LNG import terminals in the EU, with the projections up to 2023 based on the information provided by Gas Infrastructure Europe. As of April 2015, Poland had 5 LNG terminals under construction and France 13. The planned LNG terminals might significantly affect European gas infrastructure as the UK is planning 26 additional LNG terminals, France 23, Italy 37 and Greece 11. It thus comes as no surprise that the newest European energy package (in negotiation as of 2016) includes provisions on liquefied natural gas strategy.

While there has been significant progress in the infrastructure development after the infrastructure package of 2013, the recent discussion over Nord Stream 2 points to a major remaining weakness of the European gas security architecture: lack of coordination when negotiating bilateral gas deals (see also Chap. 2). The discussion over Nord Stream 2 generated major disagreements within member states. For example, the prime ministers of the Czech Republic, Croatia, Estonia, Hungary, Latvia, Poland, Romania and Slovakia, and the president of Lithuania sent a letter to Jean-Claude Juncker complaining that the new deal between Russia and Germany could increase their dependence on Russian gas and generally destabilise the region (Rettman 2016). While



**Fig. 5.1** LNG Import terminals under construction per year (own elaboration based on Gas Infrastructure Europe (2015))

the Commission’s stance on Nord Stream 2 is not yet clear, Maroš Šefčovič emphasised in a recent speech that “if built, Nord Stream 2 would have to fully comply, as any other infrastructure project, with applicable EU law, including on energy and environment” (European Commission 2016c).

#### 5.4 SUCCESSFUL STRATEGIES

Any supranational action in the sphere of infrastructure was possible only after a certain level of progress was achieved in the sphere of liberalisation. This is one of the main reasons why there was almost no legislative activity in the infrastructure and gas security sector in the 1990s. Consequently, the displays of the Commission’s formal power were first traceable only through agenda-setting, with almost no prominent cases of infringements. Interestingly, it seems that in infrastructure development, the personal leadership matters slightly more as compared to liberalisation. For example, José Manuel Barroso was decisive in the development of a coherent gas infrastructure strategy. At the same time, the projects necessary to enhance

the EU gas infrastructure often involve the participation of many states with highly heterogeneous interests. Given that the Commission still lacks a clear competence in external energy policy, the EU has experienced difficulties in promoting large-scale projects. As in liberalisation, the Commission could benefit from using policy networks in order to collect essential information and, through this, reach an agreement with member states.



## The Way Forward

**Abstract** Chapter 6 offers an overview of some of the most interesting insights based on the descriptive evidence provided in Chaps. 4 and 5. First, as one would expect, the Commission applies different strategies depending on the level of demand for energy policies. While in the periods of high level of incentives for coordinating energy policies, the Commission can rely more on its formal powers; during the periods of low level of incentives, the Commission has been relying on its informal tools. The second major observation is that the bundling of stakeholders' interests and the usage of network governance seems to lead to better coordination of energy policies.

**Keywords** Commission's strategies · Gas security framework · Policy networks

This study makes a contribution to the vivid scholarly debate on the past and future of European gas policies. The Commission plays the key role in the coordination of member states' policies and has a range of strategies it can utilise. These strategies are sometimes successful and sometimes not (in terms of achieving the envisioned goals), and it is interesting to embark on an exploratory study to find out why. [Chaps. 4](#) and [5](#) traced the formal and informal activities of the Commission in the gas liberalisation and infrastructure sector. While the findings are based on descriptive evidence and

thus should be treated with caution, one of the major conclusions is that the European Commission could substantially benefit from using network governance. In particular, the creation of ACER and ENTSO-G in the wake of the third energy packages has proved to be extremely successful and has enabled the Commission to finally link its liberalisation and infrastructure measures. In the periods before ACER, the Madrid Forum and CEER have played a major role in bundling the interests of the major gas stakeholders and in decreasing the information asymmetries through regular meetings. It was certainly a major missed opportunity that the Commission established an infrastructure forum in Copenhagen only in 2015. Additionally, especially within the infrastructure sector, the support of the EP helped in promoting stricter regulations. The role of the European Parliament was particularly strengthened after the Lisbon Treaty. However, even before that, the Parliament had played an important role in supporting the Commission's policies, especially when they were related to the protection of consumers' interests. The role of the EP in the energy policymaking has not been analysed systematically so far, and therefore, presents an interesting avenue for future research.

As suggested in the analytical framework (Chap. 3) the Commission's strategies depend on the type of environment in which it operates. While hard power measures (competition law, infringement procedures) are preferred when there is demand for security policies; soft power measures (seeking consensus, involving ad-hoc groups) might help in approaching reforms incrementally. When the Commission was faced with a legislative deadlock, it was forced to introduce legislative ambiguity. This seems to be a quite useful strategy because it motivates some member states to introduce stricter measures and demand more legislation in the future. At the same time, when there is broad support for a certain measure, the Commission should make sure to include clear definitions and deadlines in its legislative proposals (which was a major missed opportunity during the first gas security directive). Additionally, it seems to make sense to disaggregate controversial policies as much as possible in order to achieve incremental progress. If a policy is relatively established, the Commission can link different sectors to achieve better compliance (linking liberalisation and infrastructure efforts through ACER).

Finally, as noticed by many other observers of European energy policies, the Commission has used the so-called windows of opportunity after the gas crises to its advantage. This indeed made selling certain measures a bit easier compared to previous periods. As discussed in the study, the

Commission was often prevented from imposing expensive infrastructure measures like requirements on gas storages or bidirectional flows simply because the industry did not believe that Russia would ever interrupt gas supplies to Europe. It thus did not make sense to invest in expensive projects when the risk of possible interruptions was assessed as low. In this context, the gas security regulation in 2010 was a major breakthrough compared to the rather weak directive from 2004. After the gas crises the Commission was also able to further enhance a new important institution—the Gas Coordination Group (established in 2006 based on Directive 2004/67). This created stronger links between the Commission, industry and member states and allowed for the exchange of sensitive market information, which was previously not accessible for the Commission.

The EU is now in a new period of low oil prices, with many new gas market participants (especially through LNG) and relatively low levels of prices in the renewable energy sector (Weiss et al. 2016). It implies that the demand for gas security measures should decrease. How would this affect the EU's policies given its ambitious plans with the Energy Union and the emphasis that Jean-Claude Juncker's Commission has put on natural gas? The insights from this study suggest that the Commission might experience some difficulties in finding a compromise. A brief analysis of the new proposal on IGAs with third countries has shown that many member states and industry representatives vehemently oppose the Commission's suggestion that IGAs should be presented to the Commission before they are signed. Nonetheless, the Commission can strive to overcome the opposition by using network governance and by further cooperating with the European Parliament.

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