

THE KEY ROLE OF EUROPEAN INSTITUTIONS IN THE BARGAINING PROCESS OF THE EUROPEAN ENERGY MARKET

O PAPEL FUNDAMENTAL DAS INSTITUIÇÕES EUROPEIAS NO PROCESSO DE NEGOCIAÇÃO DO MERCADO EUROPEU DE ENERGIA

ABSTRACT In this paper we focus our attention on the bargaining process of the third energy package. This process of negotiation took place between the first months of 2007 and mid 2009 and was promoted by the European Commission for the purpose of going forward in the liberalization and integration of European energy markets. We wish to find the conditions under which the third energy package was finally approved, and we propose that better coordination between some relevant actors favoured the position of those supporting the proposed reform. In order to reach our goals we identify the relevant actors, discuss its strategic alternatives, the outcomes related to its strategic combinations and finally we mention the actors' preferences over possible outcomes.

RESUMO Neste trabalho focamos a nossa atenção sobre o processo de negociação do terceiro pacote energético. Este processo de negociação teve lugar entre os primeiros meses de 2007 e meados de 2009 e foi promovido pela Comissão Europeia com o objectivo de ir em frente na liberalização e integração dos mercados energéticos europeus. Queremos encontrar as condições em que o terceiro pacote energético foi finalmente aprovado, e propomos que uma melhor coordenação entre alguns atores relevantes teria favorecido a posição daqueles que apoiaram a reforma proposta. Para alcançar os nossos objectivos, identificamos os atores relevantes, foram analisadas as alternativas estratégicas, os resultados relacionados com suas combinações estratégicas e, finalmente, podemos mencionar as preferências dos atores sobre os possíveis resultados.

KEY WORDS

European Integration, Energy Markets, Bargaining, Electricity, Gas Markets

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Integração Europeia, Mercados Energéticos, Negociação, Eletricidade, Mercados de Gás

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INTRODUCTION

One of the most important issues in the process of European integration is the creation of the European Energy Market. This process started in 1988 with the publication of the White Book of the European Commission on the interior market construction –the main idea in that paper was to create a totally liberated commodity market, in which any consumer may buy electricity or gas from any supplier regardless of the ownership of the intermediary grid structures (European Commission 1988). However, it was not until 1992, with the signing of the Lisbon Treaty that the process got under way, and the actions in its construction started to intensify. It was at this point that four basic objectives were settled: 1) Improve the assurance of supply; 2) achieve lower prices; 3) respect the environment; 4) promote the saving of energy (European Commission 1988, 1992; García Mezquita 2006).

The process of construction of the European Energy Market was first designed in three stages (García Mezquita 2006), corresponding to a group of European Directives (First stage: three directives; second stage: two directives and third stage: two directives). All these directives were negotiated, and a long period of bargaining between member states started. Once the most of the measures were adopted a fourth stage came into action with a proposal for the negotiation of a third package of measures (Eikeland 2008). In this paper we will focus on the negotiation of the fourth stage of the construction of the European Energy Market, how majorities were formed and how options were combined before agreements were reached. We focus on the roles played by institutional actors at a supranational level, their capabilities, their preferences, their alternatives and the outcomes of the process. Thus, we would like to centre on answering the general question of: to what extent did European institutions (particularly the European Commission) exert their power in the decision-making processes.

The paper is structured as follows: in section one we present a summarized discussion of the theoretical background in which we will base our work; in section two we state our objectives, the questions that guide our work, and we make some statement on what we expect to find and how we expect to find it. In section three we draw an outline of how European laws are created, the background of the process and how the third energy package of policies was first proposed; in section four we speak about the relevant actors, their preferences and so on; in section five we make a scenario analysis and finally; in section six we outline our conclusions.

1. THEORETICAL BACKGROUND

Concerning European integration, a debate between two different approaches has dominated scholarly production. Intergovernmental approaches sustain that sovereign member states are the ones that matter most in the decision-making processes, furthermore, some say that the construction of the EU improves the power of nation-states rather than that of cross-border institutions (Milward 1992). “The Liberal Inter-governmental” model, developed by Moravcsik (1991; 1995), is a three-step model in which, first national leaders ‘collect’ their national interests concerning the EU in their own nations, secondly, a bargaining process between governments is carried on, and lastly, member states concede some sovereignty to supranational institutions for the purpose of gaining some credibility for future bargaining processes. Due the collection of national interests in the first step, member states concentrate great part of the analytical

power on this model. This model has raised much criticism, mainly because of the absence of analysis of institutions (Garrett & Tsibelis, 1996), but also because of a lack of methodological rigour and refinement (Wincott, 1995). Meanwhile, institutionalism was re-introduced in scholarly discussion of EU integration, and basically three different interpretations were developed of how institutions matter. Firstly, rational-choice institutionalism put the emphasis on how actors choose or design institutions in order to minimize costs in bargaining processes, or to obtain some gains. Secondly, sociological institutionalism including informal institutions, constructing a broader definition of institutions while treating actors' preferences as endogenous to institutions, thus institutions influence individuals' identities, preferences and behaviour. A difference that is worth mentioning is that while rational-choice institutionalism treats actors as utility maximizers, given a set of options and opportunities, sociological institutionalism sustains that actors proceed in certain ways asking themselves what the expected behaviour is in a given situation. Thirdly, historical institutionalism takes a mean position, focusing on how institutions matter over time, once they have been established by actors, how institutions escape from actors' control and shape their behaviour, through paths over which the actions unfold (Pierson, 2000).

As part of this discussion, the supranational *institutionalists* give, particularly to the European Commission, a leading role as broker, as well as an 'entrepreneurial' role in policy-making (Borràs, 2007). According to these views, member states do not control the whole scope of the European integration process, and it is the European institutions – such as the Commission – that fill the void left by member state governments (Pierson, 1998).

It is worth mentioning that, while European integration studies were dominated by international relations scholars before the 1990's, in the early years of that decade participation by political scientists increased significantly, culminating in a milestone settlement by Hix (1994; 1998). This also meant calling for scholars in comparative

politics to use their tools and methodology in the study of "European Community policies". Increased interest by political scientists comes mainly because of the intrusion of 'European issues' in national political arenas (Pollack, 2010), thereby increasing the importance of European issues in nation-state arenas and resulting in the increased importance of European institutions.

Taking in account the subject of this paper, what we will try to pursue is a multi level interpretation of the role of institutions. This may be pertinent since national governments played an important role, but so did European institutions (mainly the EC, and two DGs: Trade and Competition) as well as some private actors (lobbies and firms mainly). Furthermore, following Hix (2011), we think that the European Union can be studied as a political system even when it is not a state nor an international organization, but a *sui generis* entity with unique policies and architecture. Studying the EU with the tools of the political sciences should help us understand this new entity.

We will centre our analysis on actors' preferences and actions since we assume, following Scharpf (1997), that "social phenomena are to be explained as the outcome of interactions among intentional actors" and that institutions, and their general settings, are the frame in which these interactions occur.

Policy transfer might be seen as the degree of influence that certain actors have on the outcome of a decision-making process, and this is not given in a single way, Bulmer and Padgett (Bulmer 2005) have described three different forms of policy transfer in the EU: *hierarchical*, when there is some kind of coercive form of transfer; the *negotiation transfer* when there is some process of majority or consensus to create new common rules and; *facilitated unilateralism* when member states retain sovereignty but co-operate through EU institutions. The process, which it is our aim to describe, is of the second type, since the whole process has consisted in creating majorities and consensus.

By focusing our analysis on relevant actors, their preferences and strategies, we are hoping to isolate the con-

ditions under which the third package of policies was finally approved, how and to what extent different actors influenced the outcome.

2. OBJECTIVES

The aim of this project is to throw some light on the bargaining process in the construction of the European electricity market, specially, in the last stage, since from our point of view, relevant changes occurred that made this part of the process an interesting research subject. The whole package took into account both, electricity and gas markets, not as one but as parallel markets with similar needs for improvement. Even when it was clear that on its way towards liberalization each market had its pace, the policy package under study established similar goals for both markets, relevant actors were also different (concerning gas and electricity markets), but took part in the same process and thus, in this paper we will look at both markets while dealing with the whole bargaining process.

2.1 QUESTION

The main question that has guided our research of this bargaining process, and derives from the previous considerations and background is:

- Under what conditions was the third package of policies approved (Directives of 2009)?

In some way we are looking for the main changes during the 2003-2007 period that made the negotiation of a third package of policies possible. Even when the whole process was pictured in different stages, these were not drawn in detail, since great amounts of diplomacy and

bargaining power was needed from the very beginning. Thus, changes in member-states' political arenas, or at European level may have a significant impact on European level policy making.

Even when compliance of all Member States was not yet completed, it was quite clear that, if a better and more profound integration of the energy market was the goal, a decided step forward was also needed. The European Commission was aware of this situation and either a) saw the opportunity due to some new conditions in actors' positions or; b) thought that, even without ideal conditions, this might be its last opportunity to go forward in the process since the Commission forecast a worsening of general conditions to go forward in this process. (One, two or none of these possibilities might be true).

On the one hand, after the approval of the previous package of energy policies (2003 package), there was a considerable enlargement of the EU (the inclusion of Eastern countries), changes in the governments of Member States might have influenced their willingness to go forward in the process, more effective lobbying may have been responsible for a change of opinion in different actors or just a general change of opinion and, consequently, the opinions of relevant actors.

On the other hand, the desire of the Commission officials to improve its leading role in the policy making of the European Union, may be one of the inside forces. Thus, the project of increased liberalization of the energy markets may be seen as a "term project".

Taking in account the above questions and the considerations that follow them, we make two propositions that conducted our work:

Proposition 1: The Commission's proposal on a third energy package of policies was finally approved since coordination of different actors was more effective than some national states interests.

Proposition 2: Relative success of the process might be attributed to the leading role of the European Commission and to its increasing importance in policy making in the European Union.

In order to pursue our goals we will follow a qualitative method describing the scenario and focusing on: a) players involved in the process; b) their strategic alternatives; c) the outcomes associated with strategy combinations and; d) the preferences of the players over these outcomes. To do so, we use mainly second hand sources, such as declarations in reviews, diaries, specialized journals and so on. First hand sources are limited to official documents produced by actors, but in the case of European institutions these documents do not contain opinions of member State representatives, only the conclusions are summarized.

3. HOW ARE EUROPEAN LAWS CREATED?

The purpose of this section is to make an introduction to the general process of how decisions are made in the European Union. Since our interest is in secondary European law (primary refers only to Treaties), this is the process we will speak about. Energy issues are among those subjects that must pass through a process of 'co-decision', meaning that the European Parliament together with the Council (the representatives of the governments of the 27 countries) must approve what the European Commission proposes (TFEU: Treaty on the Functioning of The European Union, Art. 294). This process requires a great proportion of approval, since there is a double lock system, first a majority is required in the Council and, second, it is crucial to have the European Parliament's approval.

More precisely, the process of making European laws starts with the 'impact assessment' process, which is a period previous to the drafting of the proposal, consisting in looking for the advantages and disadvantages of what is proposed. The second step is the period of consultations that the Commission opens to know the opinions of interested parties, such as NGOs, local authorities, all kinds of organizations, firms and others; experts' advice is also sought, especially on technical subjects. The main objective of this step is to gather the opinions and needs of all parties involved so as to avoid unnecessary corrections.

After the drafting process come the review and adoption processes, where the European Parliament and the Council review the proposal made by the Commission and suggest amendments. If the Parliament and the Council do not reach agreement, a second reading is proposed after which Parliament and Council can again make more amendments. If both institutions agree, legislation is adopted, but if they do not, a conciliation committee is formed to try find a solution. It is worth looking in detail at the process in the European Parliament, since when the co-decision process is given – as in our case – EP has a blocking right. After the Commission –the only European institution empowered to start legislation – has presented a proposal, a member of European Parliament presents a report (this member is called a Rapporteur), before a committee that votes on it and is entitled to make amendments. The text passes from the committee to the plenary where it is revised, and possibly, approved. It is at this point that the European Parliament takes its position. If the Council and the Parliament reach agreement, the laws come into force after publication.

3.1 BACKGROUND OF THE PROCESS: PREVIOUS TO THE THIRD PACKAGE

In this section we will again come to the core of our subject of study, by drawing an outline of the creation

of the Interior Energy Market. The setting up of the interior energy market, is followed by means of the electricity and gas markets, it has been configured in different stages. García Mezquita (2006) describes three different stages between 1988 until 2003, while Eikeland (2008) describes also three stages but over a wider range of years 1988-2007, highlighting the last package of policies. The main objective was to progressively introduce elements of liberalization and competence into the energy activities of the member States. In 1992, the Commission formalized the regulations by which the interior market would be created, and established a calendar for the three stages of development (García Mezquita 2006), which would be complemented by adding some mechanisms of competence for the electricity activities.

The first stage was articulated by mean of three directives; the first of which made reference to the transparency of prices applied to industrial consumers of electricity and gas; the second and third directives referred to were relative to the transit of electricity and gas (respectively) over the big grids.

On the one hand, the first objective of the first stage was to guarantee the transparency in prices, assuming that such transparency may contribute to suppress some discrimination towards certain consumers, by making it possible for these to opt freely among energy sources and suppliers. The price paid by the industry for the energy consumed is a factor of its competitiveness.

On the other hand, in this first stage another objective was to facilitate the transit of electricity and gas over the big transport grids. The idea was that the increase of exchanges might contribute to the optimum use of the means of production and infrastructures. Later, during the year 2003, these directives, relating to the transit of electricity and gas were abolished and substituted by two regulations for the conditions of access to the European transport grids of electricity and gas.

The second stage was configured with the approval of the Directives of the European Parliament and Council

96/92/CE about the common norms for the interior market of electricity and 98/30/CE about the common norms for the interior market of gas. These measures establish a turning point on regulation, organization and structure of electricity and gas sectors of the European Union.

The Directive 96/92/CE was an important change in re-organizing the European electricity sector, introducing some free market measures in all areas of activity (generation, transport, distribution and commercialization). Regarding generation, the setting up of new plants was permitted, by opting for two procedures: authorization and licences. In transportation, for the first time the access by third parties to the grid appears, which can be regulated (by a toll) or negotiated (with the system operator); it also contemplates the possibility of establishing the figure of an only buyer. It becomes mandatory to separate the accounts for the firms implicated in more than one activity in the electricity market (legal unbundling). A calendar was also established for the opening of the electricity market with deferred access depending on the level of consumption.

Member States were free to some extent regarding the appliance of the directive, choosing the best fitted option for the organization and regulation of its electricity systems. It was mandatory to reach the same economic results and a comparable level of openness of the electric markets and a comparable level of access to them (Directive 96/92/CE was later substituted by the 2003/54/CE).

The third stage of the construction of the European energy market, described by Garcia Mezquita started in June 2003, with the approval of the Directives 2003/54/CE and 2003/55/CE about the common norms for the interior market of electricity and natural gas.

In this third stage liberalization is accelerated and harmonizes the process by eliminating some dispositions or options contained in past Directives but not used by any member State; at this stage new measures are also introduced for the improvement of competitiveness in energy markets. The opening of the market for the non-domestic

consumers was fixed for no later than 1 July 2004 and for domestic consumer from 1 July 2007.

During the last years of this stage, two regulations were approved, relative to the conditions of access to the European grids of electricity and natural gas, with the objective of easing the free circulation of energy among the member States. Regulations nom. 1228/2003 and 1775/2005 establish, among other issues, principles of harmonization on access tariffs to the grids and about the assignation of interconnection capacity and the management of the congestions in the trans-frontier exchange.

3.2 THE FOURTH STAGE (THIRD PACKAGE OF POLICIES)

The *Third Energy Package* was first proposed by the Commission in January 2007, and from there it started a bargaining process that ended in 2009 with the adoption of a final version of the package. The aim of this third package of policies was to go a step forward in the construction of the European Energy Market by including measures of "ownership unbundling of networks and production assets", while maintaining the "fall-back" option of an Independent System Operator (ISO), in order to avoid decisions on operations, maintenance and development of the network, continuing to be made the responsibility of the vertically integrated owner.

A different group of measures were about harmonization of the level of "powers and independence" of national energy regulators from industry and government under the premise that what should be promoted first is the internal (European) energy market and not only effective development of national markets.

Another important measure included was to strengthen the EU regulatory function by changing the voluntary co-operation approach, to a binding one. The aim of the Commission was to improve governance required for the harmonization of conditions for a better cross-border trade. Also important was the transparency of informa-

tion, in order to make it easier for new comers to compete and to avoid price manipulation.

Finally, another group of measures were established to maintain or improve the supply security by highlighting the importance of developing trans-European gas and electricity lines, to improve the monitoring of the supply/demand balance, to set up solidarity mechanisms with import-dependant member states, among others.

4. ACTORS

Regarding the actors, these are basically classified into:

a) governments: member states' governments; b) European institutions: EU Parliament, European Commission, European Council; c) Private agents: Firms, groups of firms, lobbies and NGO's, and; d) Non EU actors. All these are treated as "stake-holders" since they all have something to say about the policy-making on the energy market issue. Nonetheless, from the very beginning of the process actors are grouped in a different way; basically in groups "against" and "favourable" to the Commission's proposal, headed by certain countries and backed by firms, groups of firms and lobbies.

4.1 SOME IDEAS ON ACTORS' POSITIONS

As we have already stated before, the process of liberalization of the gas and electricity industries in Europe started in the late 80's of the past century and was drawn in different stages. Before the preparation of the second package of policies (that came into effect in 2003), a benchmarking of the Commission gave the alert about the lack of compliance by governments and about the rush of mergers in the energy industry that threatened to aggra-

vate the problem of concentration and unfair competition (Commission of the European Communities 2001, Eikeland 2008).

A new Commission was appointed in November 2004 and one of the objectives of the its new president, José Manuel Barroso was to re-launch the Lisbon Treaty by taking a more pro-active attitude in what concerned *competition policy* (Kreidman 2009). One of the pillars of this strategy was the internal energy market. To do so, two Directorates-General (DG) started a process of close cooperation, one dedicated to transport and mobility (DG TREN) the other dedicated to competition (DG Competition). These two DGs started a process of benchmarking from which they concluded that it was necessary to go even further forward in the liberalization of the gas and electricity industries in Europe.

After the idea of a new liberalization package became a claim of the council in 2007, both DG started to co-write the proposal. This was surprising for two reasons: first, DGs usually work under the premise that they should not interfere in the other's policy domain (Eikeland, 2008); and second, it seems that participation of DG Competition became capital in the inclusion and defence of the "ownership unbundling" that was the core of the proposal and the later negotiations.

The first proposal included basically two alternatives for member states' governments, firstly and most importantly "ownership unbundling"; secondly, and as a fall-back alternative the Independent System Operator model (ISO-model), that was more in line with the consensus-seeking procedure preferred by DG Energy.

We can also make a distinction between European level and local actors, where in the first group we find European institutions together with a group of Non-State actors, specially lobbies that act at the European level in order to influence the decision-making process; while, in the second group we find firstly national governments, but also firms that operate mainly under national-state premises and that have special influential power with local politicians (this is specially true when

we speak of state-owned firms, like in France, but it is also true when we speak about the firms called "national champions" like E.On in Germany or Gas Natural in Spain, among others). In the following sub-sections we will present actors and their positions in this order, firstly Europeans and secondly, local and member state actors.

4.1.1 EUROPEAN INSTITUTIONS

European Parliament: On 10th July, 2007, the Parliament Plenary Session backed the Commission's proposal, including "ownership unbundling", even when the vote showed a group of parliamentarians not supporting "ownership unbundling" and the split-up of groups along national lines. A notable example of this was the common opinion of the French representatives (across groups), who voiced strongly against the proposed directive and especially against its supposed effects on the obligations of public services.

European Commission: The Commission's opinion is an abstract of the first version of the proposal that contains the following points: 1) Ownership Unbundling; 2) The fall-back option of the "Independent System Operator"; 3) Harmonization of the level of power of national industry regulators, based on the highest - not the lowest - common denominator; 4) Strengthening of the EU-level regulatory function, higher empowerment of the ERGEG (European regulatory agency); 5) harmonization of the minimum standards of transparency demanded of the TSOs; 6) The Commission's proposal also included measures to strengthen planning and approval of priority trans-European gas and electricity networks (to improve the supply security); 7) Integration of the energy and climate package that settled the 20-20-20 goals. After the first meeting in the spring of 2007 a clause was also included that said that ownership unbundling must also be applied to third country companies, preventing the takeover of vertically integrated companies from outside the EU.

4.1.2 NON-STATE ACTORS AT EUROPEAN LEVEL

"Interest group interaction with EU institutions and national governments has historically played a crucial role in internal energy market policy development" (Eikeland 2008). This has much to do with the "consensus procedure" used in the past policy-making processes in the energy industry and, with the need for expert advice from agents, it gave them particularly good access to the Commission (Lehmann, 2003; Eikeland, 2008).

Lobbies in Brussels may be grouped into supply side organizations and demand side ones; supply-siders have also been classified as *Producer Interests*, which group Businesses, Professions and Labour, while demand-side lobbies (consumers), have also been grouped in a wider class together with Regions, Environmental and Social and Community lobbies, called *Civic Interests* (Lehmann, 2003). In the first group we have:

Eurelectric: represents national electricity associations or leading electricity enterprises in all member countries, other European countries and OECD. Like other supply-side organizations its general position was a "no" to the proposal (Eikeland, 2008), even when they consider that the "liberalization process has brought considerable benefits to the electricity industry" (Euroactive 2008), they call for the full implementation of the liberalization package in all member states and going forward in what concerns guidelines for congestion management, harmonization on transmission tariffs and a compensation mechanism for TSOs.

ETSO: represents the transmission system operators and, as well as the major part of the supply-side organizations it also said "no" to the proposal for "ownership unbundling", it also "argues for consistent (although not necessarily identical) regulatory principles and practice between member states in order to promote the development of the internal market and economic efficiency". It also encourages the Commission to establish draft guidelines on cross-border trade and congestion management. Continuing with regionalization,

as a initial stage of a single energy market, was also proposed by ETSO.

EFET: represents energy traders and they also said "no" to the Commission's proposal.

EREC: is the European Renewable Energy Council and completes the supply-side group, but with a different opinion of its group members. It holds a clear position in favour of "ownership unbundling", since it represented the improvement of conditions for independent producers of renewable energy.

Eurogas: is a trade association representing national gas industry grouping as well as individual companies including France's EDF and GDF, Gas Natural of Spain and RWE Gas Midstream in Germany. It aired its doubts about the Commission's 'ownership unbundling' plans. In a statement, it said that "other feasible solutions may exist" to achieve a more integrated EU gas market, adding that the ISO option is "a possible alternative to be studied".

The organizations that correspond to demand side are:

BusinessEurope: represents many energy-intensive industries that, nevertheless, are sometimes also represented by sector specialised organizations. As to what concerns the Commission's proposal, even when they said that it was a very positive step forward, it could not give a totally positive opinion, since BusinessEurope represents not just energy consumers but also some producers.

IFIEC-Europe: represents various national federations of energy-consumer industries and it is co-founder of the Alliance of Energy-Intensive Industries that proposed – together with other seven actions – the "full ownership unbundling".

BEUC: stands for the "*Bureau Européen des Unions de Consommateurs*" and represents national consumer organizations. It was also in favour of the "ownership unbundling".

4.1.3 THE POSITION OF MEMBER STATE GOVERNMENTS

Member States governments form the European Council, which is a very important piece in the co-decision process. Without a majority of governments in favour of the Commission's proposal, it does not succeed. Even if we give the most important details of the positions, it is important to say that in favour of simplification we will present some grouped countries and opinions [since they also acted in groups to achieve better results]. First we present the groups of countries that were opposed to the proposal, followed by those countries that were in favour of it; some background to member states' opinion is given when considered relevant:

Germany: From the very beginning of the process Germany was one of the leading countries that opposed the ownership unbundling. The economy state secretary Joachim Wuermeling once stated that "Germany is open to the discussion about ownership unbundling and also open to the idea of an independent network operator" (EU Observer, 10.01.2007), but still the German economy minister also said that he had doubts about compatibility of ownership unbundling and the German constitution.

In what concerns the German background: it is worth mentioning the reunification process that started in 1989-1990, their high dependence on coal and their lack of alternative indigenous energy sources (important development of photovoltaic and wind energy). E.ON is German and one of the biggest companies in the EU. In February 2008 E.ON negotiated with the DG Competition to sell its electricity transmission network in order to stop antitrust enquiries that may lead to huge fines (DG Competition 2008).

France: Without any doubt, the French government was, from the very beginning, the one that showed unbending opposition to Commission's proposal and especially to ownership unbundling. Even when the French government showed its preference for the weaker In-

dependent System Operator model, EDF, the largest French electricity firm expressed its opposition to "any kind of unbundling move" (EU Observer, 10.01.2007).

Concerning the French background, French scepticism on this matter can be interpreted due the distance between some liberal governance ideas and state-planned industry policies, which are more to the French taste.

Czech Republic: Czech EP Jan Březina (EPP-ED) pointed out that many countries that joined the EU after 2004 "are dependent on one supplier" and thus unbundling doesn't make sense. The perception of Czech representatives is of great vulnerability in front of other EU risks, and that therefore it is important for them to synchronize their concerns with those of the EU (Mišík 2010). The Czech Republic, together with other new member states (who joined the EU between 2004 - 2007), were protagonists of the 2009 gas crisis due the dispute between Russia and the Ukraine over gas prices that lead to the complete cut-off of the Russian gas supply. Even though, the Czech government stated a clear position on the limits they believe that EU energy policy should have; on the one hand the Czechs were against the two types of unbundling detailed in the Commission's proposal and suggested a third one (together with Group 1 that we will describe later), on the other hand the EU decision on member states energy mix was also a matter of dispute, since gas and nuclear energy are, by far, the most important sources in the Czech energy mix.

Slovakia: Was one of the countries that suffered the most severe consequences of the gas supply crisis of 2009, and the only one that blamed the Ukraine solely and directly. One of the consequences of the gas supply crisis was that countries like Slovakia and Czech Republic realized that supply from Russia is not 100% reliable (Mišík, 2010). Slovak representatives shared with the Czechs the position on three types of unbundling (instead of the two suggested by the Commission), and their worry about the EU deciding on the mix of member states. Like the Czech Republic, Slovakia's energy mix is hallmarked by natural gas and nuclear power.

Bulgaria: Together with Slovakia was one of the most affected countries by the gas supply crisis of 2009, since both countries depended exclusively on Russian gas supplies; this dependence on one supplier led the Bulgarian government to adopt a negative position towards ownership unbundling, arguing “negative social consequences” (Tsekova and Rangelova, 2010). It is worth mentioning that Bulgaria is a key piece in two alternative projects: first, the Nabucco pipeline –conducted by the EU- and, second, the South stream project –conducted by Gazprom and the Russian government-; both projects pass through Bulgaria and are seen as competitors. What is clear is that the Nabucco pipeline may help some State Members of the EU to improve their supply security avoiding dependence solely on Russian exports, while on the other hand Gazprom does not want to lose its privileged position.

Baltic Republics: Estonia, Latvia and Lithuania showed, from the very beginning, their opposition to the Commission’s proposal with the argument that ownership unbundling may lead to negative social consequences. In what concerns its markets, all three Baltic republics are making efforts in the electricity markets to comply with the EU directives and they have succeeded in different degrees, but what will be a major issue is the gas market, since all three countries depend 100% on the Russian gas supply.

United Kingdom: The UK was one of the most pro-active promoters of the ownership unbundling and the third energy package. This may be so due to the circumstance that liberalization in the UK is not a new matter since, the process of privatization and liberalization started during Margaret Thatcher’s government in the late 80’s and the early 90’s of last century. In July 2010 compliance of UK government with the Third Energy Package was at least 60% (DECC- Department of Energy and Climate Change, 2010).

Nordic States: Denmark, Sweden and Finland were in favour of the Commission’s proposal from the very beginning. Firstly, Denmark was one of the first countries

– together with the Netherlands and the UK- to show its favourable position. Secondly, in the case of Sweden, it was the Swedish opinion that, complete ownership unbundling should be applied together with the ISO model (Vilkens et al. 2008). Thirdly, Finland was the least enthusiastic of the group, but still supportive of the Commission’s proposal. It is worth mentioning that these three countries present different realities in what concerns their electricity and gas markets, on the one hand these three countries together with Norway are part of a single integrated electricity market, but, on the other hand, gas markets are not integrated and depend on different suppliers; while Finland depends a 100% on Russian gas, Denmark and Sweden do not buy any Russian gas at all.

Poland: In 2004 full ownership unbundling was introduced in Polish law, and by the time the Third Energy Package was prepared, production and grid management was already separated in both gas and electricity activities. Still, the same as some other Member States, Poland was not in the group of the most enthusiastic about the Commission’s proposal, but it gave its support after the introduction of a special clause that mandated ownership unbundling for third countries from outside the EU. The main concern was that the unilateral split-up of EU companies could weaken the power of negotiation with vertically integrated companies from third countries. It is worth mentioning that Poland has acted in some matters as an informal spokesperson for the Visegrad Four (Poland, Czech R., Slovakia and Hungary), and has attempted to act as a leader of this group (Mišík, 2010).

4.1.4 NON-GOVERNMENT ACTORS AT NATIONAL LEVEL

Private firms stated their position about the third energy package mainly through sector organizations (Euroelectric and Eurogas). However, it would be make matters clearer if we spoke briefly of some relevant firms.

E.On: This German firm is private owned, vertically integrated and one of the biggest companies in the European energy sector. It is worthy of mention not only because of its size but also because 1) it participated in a rush of mergers among European energy firms in the late ninety's and early two-thousand's that was contrary to the European institutions' will and plans since this was seen as an action favouring concentration, against liberalization and increasing competition; 2) It is a vertically integrated firm and before 2008 its idea was to retain the property of its distribution grid, but DG Competition opened diligences in order to sanction the firm for being suspected of abuse of market power. Then E.On negotiated to sell its transmission grid voluntarily if the DG Competition stopped the sanctioning procedure; all this happened while the third energy package was still being negotiated and the result reinforces the Commission's position for ownership unbundling.

EDF and GDF: These two French firms are both vertically integrated and both have a large participation by the French government. They were both fiercely opposed to the Commission's plans even after the inclusion of a third option. Liberalizing in France has never been a top priority and compliance with European liberalizing legislation in the energy sector has been slow, with only partial privatization of state owned companies. Furthermore, the opposing views of the European Commission and the firms of the French energy sector can be seen by the facts that 1) while Commission's plans were in the direction of increasing liberalization whereas, GDF was planning to merge with Suez to create one of the largest firms in the continent; 2) GDF was fined (together with E.On) with an historical fine in European energy sector for collusion from 1975 until 2005 (European Commission, IP/09/1099).

4.1.5 OUTSIDE EU ACTORS

Russian Gazprom: Gazprom is the Russian government owned Gas Company, and one of the biggest in the world;

it supplies Europe with around a quarter of the gas it consumes. Gazprom's (and Russian government interests) were not affected in the first place, but in March 2007 in a Commission meeting a specific clause was adopted specifying that ownership unbundling would also apply for third countries. No country was mentioned, but the clause was soon nicknamed the "the Gazprom-clause". Reaction from the Russian government was clear, accusing the EU of an under-cover expropriation or "appropriation of assets" that would harm the activities of the energy companies. Gazprom has been accused of being an instrument of the Russian government to "regain the geopolitical influence lost after the collapse of the economy and fall of the iron curtain" (Eikeland, 2008), and since early 2007 it has exhibited a very pro-active attitude to defend its interests, not just in what concerns to ownership unbundling, but also in the construction of the South stream project (gas pipe lines from Asia to Centre-Europe). The bitterness of Russia's reaction caused some worries among EU Member States about the supply stability coming from Russia.

4.1.6 GROUPS

From the very beginning of the process, just after the Commission presented its proposal, two groups were clearly formed focusing on one of the most important parts of the proposal, which was the "ownership unbundling". Germany and France led the first group, and their general position was against ownership unbundling. The second group did not exhibit a clear leader, but it was formed around the active promotion of "ownership unbundling". In the following tables these groups are bunched together with their general opinion and the non-government actors that subscribed to this opinion.

GROUP 1	Germany	
France		
Austria		
Bulgaria		
Greece		
Latvia		
Slovakia		
Luxemburg		
Non-State agents: Eurogas, (it should be noted that Gaz de France and EDF (France), RWE (Germany), and Gas Natural (Spain), are part of this organization).		

Group led by France and Germany, its opinion is that enforced unbundling may be unconstitutional and that might have negative social consequences.

This group exhibited from the beginning a strong opposition to ownership unbundling, furthermore, the French position was somewhat fierce and together with Germany, they headed the group's position. Between the two groups, this first, may be seen as the more homogeneous one, since seven of the eight countries depend to some extent on Russian gas (with the sole exemption of Luxemburg), and in what concerns electricity markets, the first group countries have chosen looser unbundling options for their electricity transmission systems (legal or independent system management operators; Jamasb and Pollitt, 2005 –For former EU members; Pollitt, 2009 for eastern and south-eastern EU countries). Private agents that form part of this group are mainly gas companies and the organizations that group them; this may be so because gas grids are, to some extent, more strategically significant than electricity grids. With the loosening of the unbundling option this group started to convince themselves that alternatives like the ISO-model – the loosest option – would be possible to adopt or at least the best possibility to comply with the upcoming

directives (Schmeltz 2010 for Austria; Lejins 2010 for Latvia). Since there were also different realities and different degrees of liberalization, the mean option, the ITO-model also persuaded some of these countries to support the Commission's proposal (Tsekova 2010 for Bulgaria in the case of electricity markets).

As to what concerns gas markets particularly, it is important to point out the role played by the out-of-EU actors (especially Russia) trying to persuade some EU member states to maintain their negative vote. With the eastern expansion of the EU some important dots of the Gazprom's gas grid lie well within EU borders, and its strategic relevance was highlighted during the Ukraine-Russia gas crisis and during the Georgia-Russia war, but also these facts convinced EU member states to speak "with a single voice in front of third countries" in matters of energy supply, since frequent crises demonstrated that to rely solely on Russian supply is contrary to EU security of supply. Frequent calls for unity caused the European Commission great concern, and the inclusion of this matter in the final agreement must be taken in account.

GROUP 2	United Kingdom	
Netherlands		
Denmark		
Finland		
Sweden		
Non-State organizations: Cefic, ESTO, Euroelectric, BusinessEurope and EREC also hold this opinion.		

Group 2 United Kingdom
These countries were "active promoters of ownership unbundling" (Euractive, 2008)

Former members of the EU and a heterogeneous group of private agents are part of this second group: renewable energy producers (EREC), consumer organizations or trans-sectorial organizations. This group did not exhibit a clear leader, but was definitely supportive of the Commission's proposal. It should also be said that besides Denmark who had opted for the legal unbundling model, the other four State-members of this group were already compliant with total ownership unbundling in electricity markets (Jamasb and Pollitt, 2005). It is also worth mentioning the active involvement of the United Kingdom representatives in the promotion of total ownership unbundling since the UK governments are not usually active in European matters, but it is most important since this country warned about the danger of neglecting the opportunity to increase liberalization in the gas and electricity markets (DECC, 2010).

Apart from the role played by member state governments, we must also mention the role of non-government actors, especially lobbies, looking out for consumers' interests. These interests were differently defended by Cefic (the European Chemical Industry Council) who soon put pressure on the whole process for increasing liberalization and coordination of the actors; while BusinessEurope was more prudent in expounding its opinion, since this lobby represents both consumers and energy producers. Its support of the Commission's proposal definitely helped to reinforce the idea that a true liberalization process was in process.

4.2 SECOND STAGE OF THE PROCESS

In June 2008, the second stage of the process started after the EU Council of Ministers and the dissident group (G1) reached a commitment by which a third option is added to the final proposal; this third option consisted in the inclusion of the Independent Transmission Operator model as a means to achieve a sort of owner-

ship unbundling. With this agreement the blocked position was unlocked and the whole package was ready to be approved; the period of compliance of eighteen months started on August 2009.

Under the third option finally approved, energy companies could hold the ownership of the grid, but must create "objective conditions" for the access of third parties to the grid. It is worth mentioning that the final negotiation was conducted under the presidency of the Czech president who was, at that time, president of the Council. It seems strange since the Czech Republic was not particularly enthusiastic about the Commission's proposal, but its energy vulnerability (its dependence on Russian gas), made the Czech government particularly sensitive to the synchronization of European and local concerns in energy matters.

Finally the proposal included three options of unbundling for the member-states: a) Total ownership unbundling (the option preferred by the Commission, consumer associations and only a few countries); b) the Independent System Operator or ISO-model, where vertically integrated firms can maintain the ownership of the grid, but management of the grid must be responsibility of an independent entity and c) the last and loosest version of unbundling, where companies retain ownership of their grids but must permit access to them by third parties. The inclusion of this third model convinced the necessary majority of countries, leaving France alone rejecting any kind of unbundling.

5.

SUMMING UP AND SCENARIO ANALYSIS (CONSTELLATION)

In this section we will make the scenario analysis taking into account the actor's capabilities, their strategic options and the related outcomes and payoffs. Actor's capabilities are the resources that allow actors to influence outcomes (Scharpf, 1997), while strategic options are the different possibilities that actors have to pursue their goals, and finally, outcomes and payoffs refer to what actors may gain or lose depending on the strategy selected.

5.1 ACTOR'S CAPABILITIES

Thus, in what concerns lobbies and private actors it should be said that in the first step of the drafting on any proposal, the Commission gives these agents the opportunity to give their opinion and make specific proposals, giving them privileged access to decision making (Eikeland, 2008). The lobbying activity at the European level has been increased, and specially in the recent years; there are about 2600 interest groups permanently based in Brussels and at least a tenth part of them correspond to national business associations (Lehmann, 2003). However, their capabilities are limited in the European Union decision-making processes, since, even conceding their power of influence they do not have a vote.

Secondly, to sum up member States' capabilities we would like to say that they constitute the European Council, but their power of influence is limited to a blocking majority. The EC have different degrees of agreement required in order to make decisions (either complete consensus or simple majority), this depends on the Treaty that applies to particular subjects. Generally decisions are made by consensus, but sometimes they adopt decisions by qualified majority. One important change that took place with the approval of the Treaty of Lisbon was the increase of areas that needed a qualified majority voting instead of unanimity. In the case of energy markets, decisions must be made with a qualified majority.

Thirdly, the European Parliament's capabilities are higher in co-decision procedures when an absolute majority is needed to pass decisions, and with the same procedure it can reject a proposal in the first reading. If a majority is not reached, a second and a third reading can be forced; powers and capabilities of European Parliament have been constantly increasing with each new treaty (although we will give more details in the section devoted to strategy, it is worth mentioning that MEPs usually vote in alignment with political groups and not national interests).

Fourthly, the Commission is the only European institution empowered to start legislation, and the one that drafts and conducts the whole process, but even so, the President of the Commission does not have a vote, either in the Council or in the Parliament.

And lastly, in what concerns out-of-EU actors, obviously, they do not have any vote or veto power, but they can pressure EU governments to create blocking majorities that favour their interests (in our case we are thinking of the Russian government and the public firm Gazprom).

5.2 STRATEGIC OPTIONS

Continuing with the summing up of the scenario, and as to what concerns strategic options, we would like

to start with those of the sceptical member States since they opted for different strategies; Germany, soon assumed that the Commission's proposal might be in conflict with German fundamental legislation, while France refused any kind of unbundling of the grid and Austria, at its time opted for pressure for a third model that had lately become the Independent Transmission (ITO) model, the loosest form of unbundling transmission grids.

Concerning lobbies, with the idea of increasing influence on European policy, firms are grouped in lobbies and lobbies are somehow divided - but not exactly - into supply-side and demand-side lobbies (generally speaking, lobbies that group firms are those of the supply side, while lobbies that defend consumers' interests are in the demand side). In recent years these lobbies have learnt how to coordinate their actions better so as to better defend their interests. This has been the case specially for the demand side lobbies while not so for the supply side ones. Grids are strategically more important for gas companies than for electricity ones. When a first draft of the Commission's proposal was presented the greater part of larger European companies was already compliant with unbundling, and for those that were not (like the case of E.On in Germany) selling their grids to someone else was not a major issue. In these circumstances, some lobbies had problems with establishing a clear position and strategy, as well as organizations like the BusinessEurope group, some energy intensive firms and also some producers, which resulted in a certain blurriness of opinions.

The European Commission had its preferences pretty clear (total ownership unbundling), and an innovative strategic approach (co-drafting of the proposal by both DG Competition and DG TRANS); still, the Commission, through DG Competition did not hesitate to threaten to use its powers of 'punishment' to pressure firms to go forward in ownership unbundling, as was finally the case of E.On, who negotiated the voluntary sale of its transmission grid to avoid sanctions due to market abuse.

The Parliament usually looks out for consumer's interests and because of this it was predictable that it would vote in favour of the proposal (Eikeland, 2008), furthermore, a simulation of voting gave the Commission the hope of a somehow easy support by the parliament. MEPs, as we said before, usually vote according to their political groups instead of voting in accordance with national interests, still, all the French representatives, decided to vote this time against the Commission's proposal, aligning their vote with national interests. Negotiations with some countries led to the inclusion of the third countries clause, in order to calm worries about losing market power in the face of non-EU companies.

The most important non-European actors to participate in the process were undoubtedly Gazprom and the Russian government. Strategy in this case was two-fold, on the one hand pressured directly the Commission, but it also used its relevance as a gas supplier to gain support among European governments. Russia decided to pressure not just through simple gas supply (Slovakia, Czech Republic, Estonia, Romania, Baltic republics) but also by promising investments with the construction of the South stream pipeline (Romania).

5.3 OUTCOMES AND PAY-OFFS

Finally, in the chapter of Outcomes and Pay offs, we would like to start with those obtained by the Commission, since its proposal was finally approved with relatively small changes i.e. the inclusion of a third option of ownership unbundling; this was the second best possible scenario for the Commission. The European Parliament approved it at the first reading (June 2008) nevertheless, it had to be renegotiated due the inclusion of the third option (March 2009).

Even if the group that opposed the Commission's Proposal was formed by at least eight countries, the inclusion of a third option is attributed to the leadership of two, i.e. France and Germany (Euractive, 05/05/2008 and 07/07/2009), and then, a certain capacity of influ-

ence must be attributed to them and the coordination within the first group of countries.

For the supply side organizations the undesired result was to lose ground or competitiveness with regard to non-EU companies, and so they were not obliged to follow the EU directives; this concern was solved with the inclusion of the third countries clause (also nicknamed the Gazprom clause). Due to the lack of compliance by certain companies like E.ON in Germany, DG Competition accused this company of market power abuse, but this firm negotiated to sell its transmission grid if the charge was dropped, and so it was.

Russian pressure reached the point that when decisions were made (2009) it was stressed several times that there was a need to speak "with a single voice" concerning European energy supply by third countries (Conclusions European Council, March 2009). Nevertheless, this pressure clarifies Russian fears and also possible EU-member's benefits, since fierce opposition from Russia had helped the contrary effect by unifying the response and giving more credibility to the Commission's arguments.

We would like to end this section speaking about some possible consequences and what key actors forecast.

Compliance with the third energy package is a major worry for the European Commission, given that the results, and relative success, of the negotiations does not constitute the real end of the road. The deadline for transposition of the third energy package ended at mid 2011, but the internal political life of many member states has provoked some delay in at least 20 of the 27 member states.

Apart from the compliance period it is worth to say that the loosest option of the package of policies will be used by at least 8 countries while only five will choose the total unbundling of the grid. What was the "fall-back" option, the Independent System Operator, or ISO-model has become the preferred option of Member States. The multiplication of unbundling models adds some uncertainty and this constitutes a major barrier to investment. According to some forecasting, natural gas will play a

key role in the transformation of the European energy system as the main substitute for coal and oil (European Commission 2011), due to such key role, increasing integration is a major priority as well as the diversification of supply sources of natural gas.

Energy markets move fast; new and existent trends picture new scenarios while new regulations and structures become old in only few years. The increasing demand of energy in Europe and abroad, together with the need of development of different sources and suppliers of energy, will stress the need to go forward in the integration of European energy markets. We may expect a new package of European policies and regulations in this sector, pulled by the needs of European families and firms.

6. CONCLUSIONS

In the light of the foregoing analysis of the actors, strategies and outcomes, we would like to end this paper with some statements about our conclusions:

The Outcomes favoured the position of the European Commission: Even when the first plan of the Commission was to include only total ownership unbundling, the further inclusion of alternative models could be seen as a step forward in the liberalization process of the energy markets, which is the final goal. A large group of all member states must make great legislative changes and efforts to comply with the directives that make up the third energy package.

Supply and demand side interests were differently coordinated: The first step of law making in The European Union (i.e. Impact assessment), has favoured the access to the Commission by interest groups, and this has encouraged the creation and growth of lobbies (Eike-

land, 2008; Lehmann 2003); nevertheless, these are differently coordinated, sometimes lobbies are too big and with a variety of interests. While increasing liberalization and integration of energy markets are supposed to favour consumer interests, these are most likely to support measures in this direction (this is true not just for consumers lobbies but also for “consumer representatives”, i.e. the European Parliament). Supply side interests, on the other hand, remain in the field of some private and public firms who were finally unable to defend their position against the stream.

More intensive activity of lobbies and private organizations gives more support to institutional approaches: Regarding the above statement, we consider that institutional approaches do not deny the importance of national-state governments (Pollack, 2010), but also stress the importance of supranational institutions. Increased lobbying activity towards European institutions (especially in the ‘impact assessment’ step of the law making process (Lehmann, 2003)), gave us some clues about the increasing importance of European institutions.

Outside-EU opposition, especially by Russia, helped the “in favour” group’s interest by clarifying the so far unclear benefits of increased liberalization: The real effects of liberalization on consumers’ benefits have not been a subject of discussion in this paper, nevertheless, doubts on its real impact has always been an obstacle for its promoters; evidence in favour appears to be circumstantial and based on case studies (Pollitt, 2008; Brunekreeft, 2008). Strong opposition by Russia paved the way by making it clear that the Commission’s proposal was in the correct direction for the reduction of Gazprom’s power in the gas Market. Even if the “in favour” group (G2) was more heterogeneous, coordination was easier since benefits were clearer for these actors, again, not because of incontestable scientific proof, but because of fierce Russian opposition.

Progression of the whole process, one step at the time: a proposal for liberalizing energy services like this, would not be possible in one single stage (it is worth re-

membering that some countries have already unbundled the ownership of former vertically integrated firms), and this design proved quite positive and constituted an example of how institutions matter, how institutions change over time and how these help to shape actors preferences.

Finally, we would like to end this part of the paper stating some pros and cons of the liberalization of the European energy market, as an evaluation of the process and a way of seeking a future horizon.

The most important positive consequence of the process of liberalization is the increasing of supply security, since member States and European entities can now better coordinate their response to a possible energy supply crisis. This is particularly important to central European countries and especially in gas supply.

If liberalization reaches an advanced stage, consumers might be able to choose among a wider range of suppliers or retailers, regarding specially two aspects: price per unit supplied and quality of the service.

The increasing competition among suppliers should lead to more efficient production and transport of energy. Especially we must expect a wider range of production methods (a more balanced energy mix) and an increasing participation of renewable energies (e.g. wind and solar energy in the case of electricity). Finally, in what concerns to more efficient transport of energy, we should expect an updating of the transport grids (in the case of electricity) to avoid losses and an increase in the number of interconnections with neighbour markets (in the case of natural gas) in order to be able to improve the quality of supply contracts.

On the other hand, we should also mention some possible negative consequences of the liberalization of the energy markets.

First of all, there are no conclusive proves of the positive effect of liberalization on energy prices. This process has been long and has required big amounts of effort and patience while one of the most desirable effects is just theoretically true. This ambiguity encourages the most

sceptical to resist and constitutes a constant obstacle to those who believe, while it maintains the uncertainty about the future configuration of the European energy markets.

Firms in the energy sector seem to have other priorities rather than opening or integrating markets, while some national governments have made of this a major issue; waving alternatively the national flag or their presumed worry for European integration, some politicians at national level have been more an obstacle than facilitators or leaders. Member States governments fear the loss of sovereignty and loss of power of their own regulatory agencies relative to the new European entities.

Apart from national particularities or personal leadership, some major obstacles for liberalization in the energy markets are the natural monopolies that we find in these kinds of commodity markets. The most common answer to such problem has been regulation, but this increases the complexity of markets, building new barriers while trying to demolish the old ones.

And last, the consensus seeking policy during the whole process had the consequence of the inclusion of multiple models while the most desirable outcome was the setting up of a single and more open model, i.e., total ownership unbundling (at least for the European Commission that started and lead the process). While compliance with the multiple model solution should be easier for Member States, it does not constitute a warranty of liberalization and we must expect a new bargaining process towards liberalization.

We have identified the players involved, their preferences and their strategies, so we have been able to reach some conclusions and to find some proof for the propositions set out in the first part of this paper; still stronger proof may be found through quantification of preferences and outcomes while going ahead with the isolation of players and their alternative strategies.

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