

**The London School of Economics and Political Science**

Non-EU Interest Groups in Brussels: Explaining the Lobbying  
Success of Foreign Interest Groups in EU Energy Policy

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A thesis submitted to the Department of Government of the  
London School of Economics for the degree of Doctor of  
Philosophy, London, September 2019.

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## **Abstract**

Although the number of non-EU interest groups seeking to exert political influence in Brussels has been rising, research examining factors behind their success is scarce. This thesis contributes towards filling this gap by examining the success of foreign groups in the energy policy domain. Specifically, it examines how the European Commission's initial preferences on both - the policies under consideration as well as the involved non-EU interest groups - affect the groups' prospects of lobbying successfully. Employing process-tracing and cross-case comparison, the thesis explores four cases of Commission proposals covering the main aspects of the EU energy policy: competitiveness, sustainability and security. The extant literature on lobbying as information exchange assumes that the Commission has strong preferences regarding outcomes, but not on policy measures generating the desired outcomes. Interest groups, in return, shape a Commission's proposal by providing expertise on which policies will lead towards the outcomes. The thesis complements this literature by arguing that in some cases, decision-makers have strong preferences concerning both - the outcomes and means necessary to achieve them - thus making interests groups' attempts to alter their positions less likely to succeed. However, in the absence of the Commission holding strong views on policies, there is no guarantee that an interest group will be successful. Instead, a group's success is affected by its status within the Commission. Drawing on research on the insider/outsider status of lobbyists, the thesis finds evidence that insiders are more likely to lobby successfully than outsiders. It contributes to this strand of literature by introducing an additional criterion underpinning the insider/outsider distinction, which concern specifically non-EU interest groups. Thus, the research suggests that a foreign interest group's prospect of lobbying successfully is affected by the Commission's positions on policies and involved lobbyists: how strong its initial view on issues under consideration is, as well as whether it sees interest groups as "insiders" or "outsiders".

## Acknowledgements

Completion of this PhD would not be possible without the support of many people, whom I would like to thank.

First, I have been very fortunate to be part of the incredible LSE community. I would like to thank the academic and administrative staff at the LSE Department of Government who were providing support, education, and training throughout all those years. I am very grateful for the LSE PhD Studentship, awarded back in 2014, which enabled me to undertake and complete the doctoral programme at the LSE Government Department.

I owe deep gratitude to my supervisor, Professor Mark Thatcher. Mark has been a caring and supportive mentor throughout the whole of the process; his guidance and feedback have made me understand what a good research project is and how to undertake one. I am also thankful to Dr Stephen Woolcock and Dr Sara Hagemann for their time and effort to provide comments on earlier drafts of my thesis. I am also grateful to my thesis examiners, Professor David Coen and Professor Anne Rasmussen, for their constructive feedback which helped me make improvements to the submitted version of my thesis.

My ‘thanks’ also goes to the professors and fellow students who in LSE doctoral seminars and other courses and workshops over the past few years read and commented on early drafts of my thesis’ chapters. I am in particular grateful to the participants of the *Political Economy and Public Policy* workshop and the *Comparative Political Economy: New Approaches and Issues in CPE* course. I also thank the participants of the 67th PSA Annual International Conference (Glasgow) who provided comments and suggestions related to my thesis research.

I am very thankful to the interviewees whom I spoke to for the purpose of my thesis research. By generously sharing their insights into the world of interest groups and EU policy-making, they made a tremendous contribution to my empirical analysis. I also thank the European Commission for sharing its documents for the purpose of this research.

Last, but not least, I would like to thank my loved ones. I am grateful to my husband Slobodan for his unconditional support and love all the way from the first day of my doctorate, when the end point seemed to distant and unreachable. My family in Belgrade – my mother Mirosava, my father Živadin, my sister Gordana, my brother in law Bojan, my sweet nieces Teodora and Sofija, and my parents in law, Živojka and the late Stevo – have been a constant source of support and inspiration prior to and during my stay in London.

Of course, my friends in Belgrade and London - Jared, Milan, Laura, Branislav, Marko, Uglješa, Suzanne, Marko, Daniel, Thaysa, Stefan, Maine, Jole, Kata, Marko and others – all played a role in helping me survive this long and rough journey.

Credit for the thesis completion goes to all those mentioned above; the responsibility for mistakes is only mine.

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## List of Abbreviations

ACEA	European Automobile Manufacturers' Association
AEGPL	European LPG Association
AmCham	American Chamber of Commerce
CEDEC	European Federation of Local Energy Companies
CEER	Council of European Energy Regulators
CEFIC	European Chemical Industry Council
CEO	Chief executive officer
CIA	Chemical Industries Association
DG	Directorate-General
DG COMP	Directorate-General for Competition
DG TREN	Directorate-General for Transport and Energy
EBB	European Biodiesel Board
ECSC	European Coal and Steel Community
ECT	European Charter Treaty
EASEE-gas	European Association for the Streamlining of Energy Exchange-gas
EEA	European Economic Area
EEF	European Energy Forum
EFET	European Federation of Energy Traders
ENTSOG	European Network of Transmission System Operators for Gas
ERGEG	European Regulators Group for Electricity and Gas
EREC	European Renewable Energy Council
ECSC	European Coal and Steel Community
ETSO	European Transmission System Operators
EU	European Union
EUCAR	European Council for Automotive R&D
EURACOAL	European Association for Coal and Lignite
Euratom	European Atomic Energy Community
EUROGAS	European Union of the Natural Gas Industry
EUROGIF	European Oil and Gas Innovation Forum
EUROMETAUX	European non-ferrous metals association
EUROPIA	European Petroleum Industry Association
EWEA	European Wind Energy Association
FDI	Foreign Direct Investments
FORATOM	European Atomic Forum
FQD	Fuel Quality Directive
GGPSSO	Guidelines for Good TPA Practices for Storage System Operators
GHG	Greenhouse gas
GIE	Gas Infrastructure Europe
GTE	Gas Transmission Europe
IFIEC	International Federation of Industrial Energy Consumers



IFPRI	International Food Policy Research Institute
IGA	Intergovernmental agreement
ILUC	Indirect land use change
IOGP	International Association of Oil & Gas Producers
ISO	Independent system operator
ITO	Independent transmission operator
JRC	Joint Research Centre
LNG	Liquefied natural gas
LPG	Liquefied petroleum gas
LUC	Land Use Change
MEP	Member of the European Parliament
MNE	Multinational enterprise
MOL	Hungarian Oil & Gas Company Plc
MPOC	Malaysian Palm Oil Council
MS	Member states
NGO	Non-Governmental Organisation
NRA	National Regulatory Authority
NS2	Nord Stream 2
PR	Public relations
REACH	Registration, Evaluation, Authorisation and Restriction of Chemicals
RED	Renewable Energy Directive
SEM	Single European Market
TPA	Third party access
TSO	Transmission system operator
UNICA	Brazilian Sugarcane Industry Association
UK	United Kingdom
US	United States
VIK	German Association of Industrial Energy Users and Self-Generators
WTO	World Trade Organisation

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## Introduction

Over the recent decades, the number of lobbyists in Brussels has grown to massive proportions. According to the Transparency International EU, more than 37,000 individual lobbyists are registered in Brussels (Freund, 2016), seeking to shape EU policies. Their number is similar to the number of EU staff, since the European Commission, the European Parliament and the Council combined employ around 43,000 people<sup>1</sup>. While most observers of the interest groups' growing engagement would agree that they represent a "mixed blessing" (Baumgartner and Leech, 1998, p. xv), very few would deny their relevance for EU policy-making. With more than 23,000 meetings held with high-ranking EU officials<sup>2</sup> during the last five years only, it seems that interest groups are capable of making a lot of noise in Brussels.

The rising number of interest groups has been accompanied by the development of literature aiming to explain the extent of their influence. The question who influences the EU law-making process and how has arrived at the centre of scholarly attention. Still, the fact that the European Union is embedded in a wider global environment and, thus, not insulated from the impact of third countries' actors has been little explored in the literature on interest groups. Although the role played by companies such as Russian Gazprom or American Google makes newspaper headlines and dominates debates over EU law, their lobbying in Brussels has not attracted much scholarly attention. This thesis seeks to fill this gap by examining the lobbying success of non-EU (foreign) interest groups in the energy policy domain. Non-EU interest groups are defined as companies and associations who seek to exert political influence in the EU, but whose countries of origin are outside the EU.

Foreign interest groups make up a significant proportion of the groups that are currently registered in the EU Transparency Register<sup>3</sup>. Approximately 1,100 out of 11,800 registered interest groups have offices outside the EU (see appendix I). In

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<sup>1</sup> Available at the European Commission's website: [https://europa.eu/european-union/about-eu/figures/administration\\_en](https://europa.eu/european-union/about-eu/figures/administration_en). [Accessed on 07/07/2019].

<sup>2</sup> Available at the EU Integrity Watch: <https://www.integritywatch.eu/>. [Accessed on 07/07/2019].

<sup>3</sup> Transparency Register contains information about interest groups that are represented at the level of EU institutions. See: <http://ec.europa.eu/transparencyregister/public/homePage.do?redir=false&locale=en>. [Accessed on 07/07/2019].

addition, three foreign countries - the US, Switzerland, and Norway - separately have more registered lobbyists in Brussels than ten member states, respectively: Bulgaria, Slovenia, Slovakia, Croatia, Cyprus, Malta, Estonia, Latvia, Lithuania, and Luxembourg (see appendix I). Their growing engagement is not a current trend only. In 2007, the number of certain non-EU countries' organisations had already surpassed the number of interest groups coming from some EU member states (Wonka et al., 2010, p. 7). What is more, non-EU actors, in particular US companies, were among the first established lobbyists in the EU (Coen, 1999; Cowles, 1996).

The rising engagement of foreign interest groups in the EU is hardly surprising. As one of the largest markets in the world, accounting for 500 million consumers<sup>4</sup>, many non-EU companies are seeking to expand their business into the EU. Since some of them have high stakes across the European Union, it is no wonder that these actors tend to shape EU decisions in line with their own interests. Besides, "the global reach" of many EU-made rules has reaffirmed the intention of foreign companies and associations to take part in policy debates held by EU officials (Korkea-Aho, 2016, p. 47). Hence, non-EU groups try to shape EU policies because of their possible effects on foreign interests, both inside as well as outside the EU.

While the rationale behind this growing engagement is clear (the supply side of lobbying), it might be puzzling as to why EU officials provide non-EU groups with access to the law-making process (the demand side of lobbying)? Unlike their domestic (EU) counterparts, foreign (non-EU) interest groups neither have their national representatives in the EU institutions, nor do they hold EU citizenship. This lack of "national patronage" has triggered several questions: Does EU membership matter for the prospect of lobbying success? Are foreign groups disadvantaged in comparison to domestic interest groups? Are they Brussels' outsiders? (Eliassen and Peneva, 2011; Hamada, 2007a; Korkea-Aho, 2016; Miard, 2014).

To address these questions, it is necessary to examine not only the supply but also the demand side of lobbying (Bouwen, 2002; Klüver, 2013b; Mahoney, 2004). To perform their institutional roles, the EU institutions need various sorts of "goods", such as expert knowledge and citizen support, provided by interest groups (Bouwen,

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<sup>4</sup> Available at the European Commission' website: [https://ec.europa.eu/growth/single-market\\_en](https://ec.europa.eu/growth/single-market_en). [Accessed on 07/07/2019].

2002, p. 369; Klüver, 2013b, p. 3). Therefore, to understand foreign groups' lobbying success, it is important to understand EU institutions' objectives and related needs for certain "goods", on the one hand, and the ability of these groups to meet these needs of the EU institutions, on the other hand.

Following the resource dependency and exchange theory developed by Bouwen (2002, p. 369-382) and building on the findings offered by prior studies on non-EU interest groups in Brussels (e.g. Cowles, 1996; Eliassen and Peneva, 2011), the European Commission should be the most likely lobbying target for foreign business groups, due to their capacity to provide expertise (aiming at increasing output legitimacy), and *vice versa* because of these groups' lack of capacity to provide other "access goods" needed by the European Parliament and the Council (aiming at increasing input legitimacy). The thesis, therefore, explores the success of foreign lobbyists during the preparation of energy-related policy proposals by the European Commission (the policy formulation phase).

However, while the provision of expertise to the European Commission (Commission) is a necessary condition for lobby groups to make an impact, it is still insufficient to give a full account of their lobbying success. Firstly, the Commission's need for expertise provided by interest groups, as well as its preferences over policy measures, vary among proposals. Secondly, all foreign interest groups involved in lobbying during a legislative process provide the Commission with certain types of information: statistics, analysis, and/or arguments. Since groups often have competing interests, and since they provide different figures and competing arguments, the question is: whose figures/arguments will achieve the greatest impact?

The thesis, therefore, asks: *Whether, how, and why European Commission's initial preferences - over policies under consideration and over involved non-EU interest groups - affect the groups' prospects to lobby successfully?*

The underlying assumption of the scholarship on lobbying in the EU is that information asymmetry exists in favour of the interest groups (Chalmers, 2013, p. 39). Arguably, the Commission is understaffed and overwhelmed by many issues on its agenda (Chalmers, 2011, p. 472; Bouwen, 2009, p. 20). Consequently, it often faces difficulties when dealing with complex problems, especially when these feature highly technical issues. As a result, the Commission might have strong preferences over

outcomes, but be uncertain about policies that shall generate the desired outcomes (Klüver, 2013a, p. 61-62). As experts on narrow, particular issues, interest groups can shape the Commission's proposals by providing technical knowledge on what policies will lead towards the desired outcomes (Klüver, 2013a, p. 62). Put simply, policy-makers know what they want to achieve, but they do not have the required expertise on how to achieve the desired outcomes. This supposed lack of expertise provides a window of opportunity for groups to influence decision-makers' preferences by providing knowledge about the link between policy measures and their consequences.

The thesis, however, makes the argument that the Commission sometimes has strong early preferences, not only over outcomes but also over policy measures necessary to achieve them, regardless of input from interest groups. These preferences may be based on institutional expertise, predefined policy priorities, as well as previous experience, beliefs, and the knowledge of individual Commissioners. The initial positions taken by the Commission may affect the prospects of groups' successful lobbying. When the Commission has strong initial views on policies under consideration, attempts by opposing interest groups to alter its preferences will be less likely. Conversely, supportive interest groups - those whose preferences converge with the Commission's, would find themselves in a more advantageous position to make an impact when Commission's early preferences for the considered policy measures are strong.

The absence of Commission's strong views on policies, however, does not guarantee that an interest group will be successful. Instead, a group's success is also affected by its status enjoyed among Commission officials. Drawing on the research on insider/outsider status of lobbyists (Broscheid and Coen, 2003; Coen, 2010; Grant 1978; 2004; Maloney, Jordan and McLaughlin, 1994), the thesis suggests that insiders might be more likely to lobby successfully than outsiders. The thesis contributes to the literature on insiders and outsiders by introducing an additional criterion attached to the traditional insider/outsider distinction, which concerns specifically non-EU interest groups – the importance of their particular non-EU origin for the achievement of the Commission's policy objectives. Specifically, the thesis argues that those non-EU interest groups whose countries of origin are strategically important for the achievement of the EU objectives are more likely to be given the status of an insider – and consequently - to lobby successfully.

Thus, the thesis suggests that a foreign interest group's lobbying success is affected by the Commission's positions on policies and involved lobbyists: how strong its initial view on the issues under consideration is, as well as whether it sees interest groups as "insiders" or "outsiders".

This research explores four cases of Commission proposals covering the main aspects of EU energy policy: competitiveness, sustainability, and security<sup>5</sup>. Since the very beginning of European Union integration, energy has been at the top of the EU policy agenda. More importantly for this research project, the energy domain has been attracting a considerable number of lobbyists. Approximately 4,500 out of all currently registered entities in the Transparency Register (11,800) declare that energy is among their fields of interest. Where non-EU interest groups are concerned, more than one-third of these groups report energy as a domain of their interests. This is not surprising since the EU is the largest energy importer in the world (European Commission, 2014a, p. 4). Yet, while energy has been at the top of the EU agenda, engendering considerable lobbying, the literature about lobbying in the energy sector is still scarce. Reviewing the scholarship on interest groups in the EU, Bunea and Baumgartner (2014, p. 1424) have shown that eight out of 196 analysed articles examined lobbying in the energy domain. The present study offers a contribution to further developing the research on lobbying in this policy domain.

In particular, the thesis examines legislative provisions that concern: (1) ownership unbundling (separation) of vertically integrated gas companies; (2) third-party access to natural gas infrastructure; (3) indirect land-use change caused by the production of biofuels; and (4) energy security. Several case studies – of foreign companies/associations – are analysed within these four cases of EU energy legislation. The research employs process-tracing and cross-case comparison as the main methods.

The thesis contributes to the literature on non-EU interest groups. To the author's best knowledge, Rasmussen and Alexandrova's (2012) and Korkea-Aho's (2016) articles are the only two studies so far which, in a systematic manner, consider non-EU lobby groups. Other authors exploring foreign lobby groups focus only on a single country's groups - Hamada (2007a; 2007b) on Japanese groups, Cowles (1996) and

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<sup>5</sup> For more about the EU energy objectives see the European Commission (2006b).

Coen (1999) on the US groups, Pang (2004) on Korean groups, and Eliassen and Peneva (2011) and Miard (2014) on Norwegian groups. Among these studies, only Cowles' (1996) and Coen's (1999) studies offer empirical findings on factors behind non-EU interest groups lobbying success. All the other studies investigate, primarily, the lobbying strategies employed by foreign interest groups.

The thesis aims to further these studies by examining interest groups coming from several foreign countries. Additionally, the thesis departs from the extant research by examining factors that can explain non-EU groups' lobbying success, rather than their lobbying strategies. As already mentioned, the Cowles' (1996) and Coen's (1999) studies are the only ones exploring determinants behind the lobbying success of the US companies. However, their empirical findings concern only the experience of companies coming from a single country – the United States. The experience of the US companies might be unique, given that the American firms were among the pioneers when it comes to lobbying in Brussels. Since their early positioning in Brussels is not necessarily shared by other foreign groups, it seems important to analyse interest groups from several non-EU countries to comprehend whether the determinants of the US interest groups' success travel across actors with different foreign origins.

Besides, the studies on non-EU interest groups offer conflicting assumptions and empirical findings over the lobbying success of foreign interest groups. While one strand argues that a lack of national patronage within the EU may hamper a group's success (for instance Eliassen and Peneva, 2011, p. 29), the other holds that non-EU companies can still be as successful as their EU counterparts (Korkea-Aho, 2016). The thesis seeks to address this question by offering an explanation that the lack of EU membership by itself is not necessarily a lobbying disadvantage; instead, the success of foreign interest groups depends on the Commission's positions on both policies under consideration and the involved lobbyists.

Furthermore, the thesis offers conclusions that could be used in the literature on lobbying regardless of an interest group's country of origin. It complements the literature on informational lobbying by arguing that, in some cases, decision-makers have strong preferences over both - the outcomes and means required to achieve them, thus making interests groups' attempts to alter their positions less likely. Additionally,



the research contributes to the strand of literature that explores the insider/outsider status of lobbyists by introducing an additional criterion underpinning the insider/outsider distinction, which concerns specifically non-EU interest groups.

The thesis proceeds as follows. Chapter 1 presents the theoretical framework used to explain whether and how the European Commission's initial preferences on both the policies under consideration as well as the involved non-EU interest groups affect the groups' prospects of lobbying successfully. Before turning to the main research question and the thesis' central argument, the chapter provides an overview of the engagement of foreign interest groups in the EU and explains why studying non-EU interest groups is important. The chapter then turns to those few extant studies that have explored foreign interest groups in Brussels and thereafter elaborates the research question. It then proceeds to a summary of determinants of lobbying success in the literature on domestic (EU) interest groups. Finally, the last section presents the theoretical framework, explaining whether and how the Commission's initial preferences affect non-EU interest groups' prospects of lobbying successfully.

Chapter 2 discusses the research design of the thesis. It starts with definitions of the main concepts, such as lobbying, interest groups, and foreign interest groups. After that, the chapter turns to the definition of lobbying success and how it differs from other related concepts, such as influence and access. The following section provides justification for the case selection. The chapter then turns to data sources, and then the methods that are employed for the analysis of the case studies.

Chapters 3, 4, 5, and 6 contain the empirical analyses of four case studies covering three main aspects of EU energy policy: sustainability, competitiveness, and security. Chapter 3 looks into the legislative provisions regulating ownership unbundling, i.e. the separation of vertically integrated gas companies, and the Gazprom clause. Chapter 4 analyses the provisions on third-party access to natural gas infrastructure. Chapter 5 examines the regulation of indirect land-use change (ILUC) related to the production of biofuels. Chapter 6 deals with the Energy Security Package.

Following the empirical chapters, the thesis presents a comparative analysis of their findings, discussing how well they fit the theoretical expectations set out in Chapter 1. The concluding chapter (Chapter 8) summarises the analysis reflecting on its broader theoretical implications.

## **Chapter 1: Theoretical Framework**

This chapter presents the theoretical framework, aiming to explain whether and how the European Commission's initial preferences on the policies under consideration and the involved non-EU interest groups affect the groups' prospects of lobbying successfully. The first section in this chapter provides an overview of the engagement of foreign interest groups in the EU. Following that, a brief description of lobbying in the energy domain is presented. The subsequent section explains why studying non-EU interest groups is important. The chapter then turns to those few existing studies that have explored foreign interest groups in Brussels and thereafter elaborates the thesis' research question. It then proceeds to a summary of determinants of lobbying success in the literature on interest groups in general, regardless of an interest group's nationality, aimed at positioning the thesis' theoretical expectations within this broader literature on lobbying in the EU. Finally, the last section presents the thesis' theoretical expectations about foreign groups' access to EU policy-makers and how the latter's initial preferences affect the non-EU interest groups' prospects of lobbying successfully.

### **1.1. Non-EU interest groups in Brussels**

From theories explaining the process of European integration to approaches aimed at understanding how the EU functions (see Bache et al., 2014, p. 5-44), interest groups have been seen as significant actors in EU policy-making (Bache et al., 2014; Bache and Flinders, 2004; Hix, 2005; Klüver, Braun, and Beyers, 2015). While their relevance has already been noted in the early days of European integration (Haas, 1958), the presence of interest groups in Brussels only started to increase rapidly during the 1980s, owing to the growing transfer of competencies from the national to the EU level (Bache et al., 2014, p. 309; Coen and Richardson, 2009, p. 5; Klüver, 2010, p. 175-176). Witnessing the shift of authority from the member states towards the supranational institutions, lobby groups realised that in a newly created environment, their interests could no longer be guarded only through engagement at the national level. Instead, lobbying at the EU level became more appealing. And, "once some groups started to shift their activity to Brussels", others could not "afford

to be left out” (Bache et al., 2014, p. 311). The terms ‘interest groups’, ‘groups’, ‘lobby organisations’, ‘lobbyists’, and ‘organised interests’ are used interchangeably.

Though it might be difficult to provide an accurate estimate of the exact number of interest groups in the EU and their growth over the years, Grande (1996, p. 320) has referred to the Commission’s estimation of 3,000 organisations that were active in Brussels in 1992, whereas Wonka et al. (2010, p. 4) have provided a dataset of around 3,700 groups in 2007. The latest figures obtained from the EU Transparency Register show that the number of registered groups doubled between 2012 and 2018 – from 5,431 to 11,901 (Joint Transparency Register Secretariat, 2018 p. 7). As for individual lobbyists, those employed by interest groups, estimates vary from 10,000 in 1992 (Grande, 1996, p. 320) to 37,000 in 2016 (Freund, 2016). Certainly, many groups and lobbyists have not been covered by the mentioned estimations, meaning that the total number is probably even higher. Nevertheless, the trend of increasing engagement of interest groups in Brussels is clear, lending credence to the assertion that lobbying is an important activity in the EU’s capital.

The growing number of organised interests in Brussels was followed by an expansion of academic research on their lobbying activities. Operating in a complex system of multi-level governance where decisions are made at different territorial levels (Bache and Flinders, 2004, p. v) has provided both “a window of opportunity” and “a hard time” for organised interests seeking to shape EU policies. Lobbying in such a multi-layered environment has attracted scholars aiming to explain the interest groups’ characteristics, diversity, tactics and, most importantly, the extent of their influence relative to other actors. Still the fact that, in parallel with domestic interest groups, actors from third countries also try to shape EU legislation has been largely overlooked. Instead, the literature has been focussed on determinants of EU lobby groups’ influence, whereas the question of how successful non-EU groups are in shaping EU laws - has remained overlooked.

A vast portion of scholarship studied the European Union’s relationships with non-EU countries by analysing the role of the EU as a global actor (Bretherton and Vogler, 2006; Manners, 2006; Smith, 2011), its external policy (Birchfield, 2013; Niemann and Bretherton, 2013; Smith, 2016), and its diplomatic relationships (Cross, 2016; Woolcock, 2011). Usually, however, the EU influence over other states’ policies has

received the most attention. How non-EU *countries* shape EU policies has remained largely an unexplored theme (Newman, 2018; McGuire and Lineque, 2010, p. 1345-1346; Rasmussen and Alexandrova, 2012, p. 615). The literature about non-EU *companies* and *organisations* that are involved in EU policy-making is even scarcer (Rasmussen and Alexandrova, 2012, p. 615). Only a few studies so far have examined foreign interest groups in the EU. The terms ‘non-EU’, ‘foreign’, ‘outside the EU’, and ‘external’ are used as synonyms.

Many newspaper stories are run under headlines about foreign groups lobbying in the EU: “Google spent €31m to influence EU copyright law” (EUobserver, 04 July 2018), “U.S. firms lead EU lobbying league” (Macdonald, 2015), “Follow the new silk road: China’s growing trail of think tanks and lobbyists in Europe” (Corporate Europe Observatory, 2019), etc. Though real-world instances underpin the claim that foreign interest groups have been following the footsteps of their EU colleagues, most of these actors’ lobbying activities did not capture the scholars’ attention.

A significant portion of interest groups in Brussels represents third countries interests. According to the latest data obtained from the EU Transparency Register, around 1,100 out of 11,800 registered interest groups have a foreign origin.<sup>6</sup> Only interest groups that have registered head-offices in non-EU states were counted (see appendix I). Foreign groups with offices inside the EU member states were excluded,<sup>7</sup> following a similar approach by Korkea-Aho (2016, p. 46). Besides, many non-EU companies seek to make an impact not directly, but through European consultancy firms and/or business associations representing foreign in addition to domestic (EU) interest groups<sup>8</sup>. Similarly, foreign companies often lobby through their subsidiaries<sup>9</sup>

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<sup>6</sup> Data obtained from the Transparency Register on 01 Jun 2019. See appendix I.

<sup>7</sup> For example, the American Chamber of Commerce EU, the Japanese company Ajinomoto Europe, and American Facebook are excluded since they have offices in Belgium, France, and Ireland respectively, not outside the EU. Although these groups represent foreign interests, they have not been counted because it would be difficult to analyse the territorial origin of interests represented by each of the 11,800 groups. Since the register allows the search for groups by the location of their head-offices, only those lobbyists with registered offices outside the EU were counted.

<sup>8</sup> For example, the Norwegian company Gassco is not registered in the Transparency Register as an individual company; instead, the company’s interests are represented through an association - Gas Infrastructure Europe (Gassco is a member of this association).

<sup>9</sup> For instance, a Gazprom’s subsidiary WINGAS.

and joint ventures<sup>10</sup> operating in the EU market. The proportion of non-EU lobbyists is, thus, probably even higher, given that the following categories have not been included in this figure of 1,100 foreign groups: (a) non-EU interest groups with offices inside a member state; (b) non-EU interest groups' representation through European associations and consultancy firms, and (c) foreign companies' subsidiaries.

The largest number of non-EU groups are those from the US (394), followed by Switzerland (251), Norway (89), Canada (34), Japan (25), Turkey (22), and Ukraine (18) (see appendix I). Other studies examining the territorial origin of interest groups provide similar figures (Korkea-Aho, 2016, p. 46; Wonka et al., 2010, p. 7). In addition, three foreign countries - the US, Switzerland and Norway - have more registered interest groups in Brussels, respectively, than ten EU states individually - Bulgaria, Slovenia, Slovakia, Croatia, Cyprus, Malta, Estonia, Latvia, Lithuania, and Luxembourg (see appendix I). The fact that some non-EU countries have more registered groups than the ten EU countries additionally strengthens the assumption that foreign organisations represent relevant actors in Brussels.

Furthermore, certain non-EU companies have established regular contact with senior policy-makers in the EU. For instance, over the last five years, representatives of Norwegian Equinor<sup>11</sup>, Swiss Novartis International, and the American Chamber of Commerce EU have attended 42, 20, and 104 meetings, respectively, with the European Commissioners and members of their cabinets<sup>12</sup>. Besides, of the ten interest groups with the highest number of meetings with EU officials between 2015 and 2019, three have the American origin - Google (203 meetings), Microsoft (110 meetings), and Facebook (106 meetings).<sup>13</sup>

Finally, the lobbying budgets of some foreign companies and associations are exceptionally large, even when compared with domestic (EU) interest groups. According to an interactive database made by Transparency International EU, 1.53% of all registered organisations spend annually more than one million euro on

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<sup>10</sup> For example, South Hook LNG Terminal Company - a joint venture of Qatar Petroleum, Exxon, and Total.

<sup>11</sup> Equinor is formerly known by the name Statoil.

<sup>12</sup> Data obtained from the EU Transparency Register. [Accessed on 01/07/2019].

<sup>13</sup> EU Integrity Watch's database. Available at: <https://www.integritywatch.eu/>. [Accessed on 01/07/2019].

lobbying<sup>14</sup>. All other lobbyists declare less than this on lobbying, with most of them spending less than 100,000 € per year (see table 1). Some of the biggest lobbying spenders have a foreign origin. For instance, the American multinationals Google and Microsoft Corporation, the Chinese Huawei, the Swiss Novartis International AG, the Norwegian Equinor, and the Malaysian Employers Federation all spend more than two million euro annually on lobbying in the EU.<sup>15</sup>

**Table 1.** Lobbying budgets declared by interest groups in the Transparency Register.

<b>Lobbying expenses</b>	<b>Number of interest groups</b>	<b>Percentage*</b>
0 €	495	4.1%
Less than 10,000 €	3216	27.2%
10,000 – 50,000 €	4133	34.9%
50,000 – 100,000 €	1357	11.4%
100,000 – 500,000 €	1839	15.5%
500,000 – 1,000,000 €	591	5%
1,000,000 – 2,000,000 €	105	0.88%
2,000,000 – 5,000,000 €	64	0.54%
More than 5,000,000 €	14	0.11%

\* Based on the author's calculation.

Source: Compiled from the EU Integrity Watch's database. Available at: <https://www.integritywatch.eu/organizations>. Accessed on 01/07/2019.

Thus, at least 9% of all registered interest groups have a foreign origin. The number is not final since it excludes non-EU organisations with head-offices inside the EU, as well as European consultancy companies and associations speaking on behalf of both domestic and non-EU stakeholders. In addition, the three foreign countries - the US, Switzerland, and Norway - separately have more lobbyists in Brussels than the ten member states individually. Some non-EU groups (for example, Google and Facebook) exceed a vast majority of domestic groups when the number of high-level meetings with the Commission's officials is considered. Finally, the impressive lobbying budgets of several non-EU companies provide additional confirmation that non-EU interest groups represent a significant lobbying force in the EU.

<sup>14</sup> Compiled from the EU Integrity Watch's database. Available at: <https://www.integritywatch.eu/organizations>. [Accessed on 01/07/2019].

<sup>15</sup> Data obtained from the Transparency Register. [Accessed on 01/07/2019].

Why does the European Union attract foreign interest groups? Firstly, non-EU groups, to be precise, US firms, “have brought” lobbying to the EU. These firms were among the firstly established lobbyists in Brussels (Coen, 1999; Cowles, 1996). Moreover, they “have acted as a catalyst for change in the European business-government relationship” (Coen, 1999, p. 27). Part of the reason for their early presence in the capital of Belgium was the restricted influence over policy-making in member states (Coen, 1999, p. 35; Cowles, 1996, p. 346). To compensate for the absence of a “national patron” among EU countries, the US companies concentrated their lobbying activities on the Commission (Cowles, 1996, p. 346-347). In doing so, they have created one of the most powerful organisations in Brussels – the American Chamber of Commerce EU. In contrast, until the early 1990s European companies preferred to lobby at the national level since their interests were safeguarded by the member states’ veto powers in the Council (Coen, 1999, p. 35). However, with the increase of supranational competencies and the parallel growth of legislation adopted under the co-decision procedure, the focus of EU interest groups has started to shift from member states to EU institutions.

The reason behind the US and other foreign companies’ engagement in Brussels rests with the attractiveness of the European single market for foreign actors. As one of the world’s largest markets, accounting for 500 million citizens, the EU market attracts many foreign companies aiming to extend their businesses there. Since some of them have high stakes in Europe, it comes as no surprise that these non-EU actors have tended to shape EU decisions in line with their interests. For instance, the recent Commission’s report on foreign direct investments (FDI) shows that 2.8% of unlisted firms and 9.3% of firms that are listed in the EU stock exchange have a non-EU owner (European Commission, 2019, p. 7). What is more, these companies control at least 35% of EU total assets in the considered sample and provide approximately 16 million jobs (European Commission 2019, p. 1). Foreign companies, therefore, have strong reasons to try to defend their businesses inside the EU.

Another sound reason for the increasing presence of non-EU interest groups is “the global reach of EU law” (Korkea-Aho, 2016, p. 47). Thanks to its market size, “regulatory capacity” (Bach and Newman, 2007, p. 830), and “normative power” (Birchfield, 2013; Manners, 2006), the EU has been empowered with the ability to shape rules and policies beyond its borders (for more, see Cremona and Scott, 2019).

As a result, actors from outside the EU have incentives to try to shape EU policies because of their possible effects on foreign interests not only inside, but outside the EU as well.

Given that non-EU companies lack political representation in the EU, they can only make an impact either indirectly through their countries' diplomatic channels or directly by engaging in the EU law-making process. Public officials' communication through established diplomatic relations, however, differs from non-EU groups lobbying in the European Union. While the former concerns primarily external policies substantively affecting other countries and often involves mutual concessions (reciprocity), the latter mostly concerns EU internal policies. This is not to say that foreign lobby groups cannot influence other countries' external policies. Gawande's Krishna's, and Robbins' (2006) research showing that lobbying by foreign actors had a significant influence on US trade policy is a case in point. Instead, the intention here is to say that the main concern of this thesis is to explain the influence of foreign actors on the EU legislation governing mainly the EU internal market, rather than its external policy.

Still, even when trying to engage in debates on internal EU rules, foreign actors can be, and often are, supported by their governments. Their assistance, however, should not be overstated. A study of Norwegian interest groups shows that foreign governments and their diplomatic missions to the EU are of less importance for the Norwegian groups than the groups' direct contacts with EU law-makers (Eliassen and Peneva, 2011, p. 25). Norwegian organisations occasionally even lobby on behalf of their government, instead of the other way around, due to these groups' access to "inside parts of the EU decision-making system not open to (...) the Norwegian government" (Eliassen and Peneva 2011, p. 25). Similarly, Cowles (1996, p. 351) describes relations between the American Chamber of Commerce EU (AmCham) and the US Mission to the EU as a "two-way" information exchange in which AmCham "receives the view of Washington DC on policy matters", while the US Mission to the EU "benefits from the intelligence network" of AmCham.

The literature on the Europeanisation of interests groups further reinforces the assumption that traditional diplomatic relations between member states and third countries have been losing value as channels through which foreign companies and



associations seek to influence EU legislation. As mentioned earlier, the growing transfer of competencies from the national to the EU level has triggered the shift of lobbying activities from member states to the EU institutions because a group's interests can no longer be protected only by its government<sup>16</sup> (Bache et al., 2014, p. 309-310). For the same reason, non-EU interest groups cannot rely only on their governments' traditional relations with member states when trying to exert influence in the EU. The motivation – a shift of power from member states to supranational institutions triggering the increased engagement of domestic (EU) interest groups at the EU level - has also pushed non-EU actors to move their lobbying activities from diplomatic channels with governmental intermediation to direct communication with EU policy-makers. Otherwise, why would these groups invest effort and resources to open offices in Brussels, employ lobbyists, write position papers, and undertake other costly lobbying activities if they can rely on their governments' diplomacy alone? After all, as suggested by Rasmussen and Alexandrova (2012, p. 615): “it is often in everyday politics rather than at the high-level summits that many of the issues of concern to foreign interests are reconciled”. Nonetheless, it is important to note here that this does not mean that foreign origin and foreign governments are irrelevant. On the contrary, both are important, as will be explained in detail later. The point here is that the transfer of power from member states to EU institutions has limited the value of exerting influence *via* diplomatic relations with the former in favour of the latter. Besides, the EU external policy and its relations with third countries sometimes differ from those of individual member states.

In sum, non-EU groups try to shape EU policies because of their possible effects on foreign interests inside the EU, as well as abroad. As a result of growing delegation of competencies to the EU institutions, governmental relations between an interest group's country of origin and a member state have been losing utility as a lobbying channel. Hence, foreign actors have to seek direct communication with policy-makers at the EU level. This explains the rising number and engagement of non-EU lobby organisation in Brussels. However, despite their growing presence in the EU, foreign groups have not received sufficient attention in the extant literature.

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<sup>16</sup> However, as shown by some studies, transfer of competencies from member states to the EU did not equally affect all interest groups – some groups have reoriented their lobbying towards the EU institutions but others retain their lobbying on the level of member states (see Beyers and Kerremans, 2012, and Klüver, 2010).

## 1.2. Lobbying in EU energy domain

Since the early days of the European integration up until today, energy has been at the top of the EU policy agenda. From the treaties establishing the European Coal and Steel Community (ECSC) in 1951 and Euratom in 1957, energy has been seen as an essential good for European citizens' well-being, "the life blood" of the EU society (European Commission, 2011a, p. 2). Thus already by the 1960s, member states had recognised the need to "work together" on energy-related issues (European Commission, 2014a, p. 4). However, the creation of the European energy market has been slow-moving, due to member states' resistance to give up their sovereignty on energy issues. As a result, neither the Treaty of Rome (1957) nor the Maastricht Treaty (1992) provided the EU with competence in the energy domain (Yafimava, 2013, p. 2). It was not until the Lisbon Treaty that the legal basis for EU competencies on energy-related issues was established (Talus, 2016, p. 12).

Still, EU legislation on energy started to develop even before the Lisbon Treaty was introduced, mostly because the energy domain has been seen as a part of the European single market. The Community legislator was thus "able to expand its energy *acquis communautaire*" (Yafimava, 2013, p. 2) by using its competencies (mostly competition law) over the single market (Yafimava, 2013, p. 2; Talus, 2016, p. 12). This was especially after 1994, when the European Court of Justice took the position that electricity is a commodity "like any other", thus reinforcing the Commission's ability to propose rules that would govern the European energy market even without any formal competencies over the energy domain (Yafimava, 2013, p. 2).

Today, the outgoing Commission under the Presidency of Jean-Claude Juncker has left behind a finalised project establishing the *European Energy Union*, aiming to bring together energy systems across Europe (European Commission, 2015a, p. 2). The creation of a new portfolio of the Commission Vice-President for Energy Union in 2014 confirmed that energy remains one of the top policy priorities.

Rather than being significant for policy-makers only, the energy sector has also been attracting a considerable number of lobbyists. Approximately 4,500 out of all the currently registered entities in the EU Transparency Register (11,800) declare that

energy is among their fields of interest<sup>17</sup>. This is not necessarily to say that energy is an exclusive or even the most important field of interest for all these groups given that the register allows stakeholders to declare more than one domain of their interest. For instance, an organisation - “Airlines for America” - refers to energy as one of its fields of interest, even though its lobbying concerns other policy domains too. In any case, the significance of the EU energy policy for interest groups, regardless of whether it has been of primary or secondary importance for them, can be hardly challenged.

This claim is additionally supported by the number of high-level meetings with lobbyists on energy-related issues that take place. Maroš Šefčovič, the Commission Vice-President for Energy Union, and his cabinet members held 1,280 meetings with lobbyists between 2014 and 2019. Over the same period, Miguel Arias Cañete, Climate Action and Energy Commissioner, and his cabinet attended 1,476 meetings with interest groups.<sup>18</sup> When combined, since both cover the same portfolio, the number of meetings on energy policy exceeds the number of meetings held by the Commissioners in charge of any other portfolio<sup>19</sup>.

Foreign interest groups are also considerably interested in EU energy legislation. Approximately one-third of currently registered non-EU interest groups declare energy as one of their fields of interest.<sup>20</sup> This is not surprising since the EU consumes more energy than it produces (European Commission, 2014a, p. 4). The most recent data illustrates that the EU is the world’s biggest energy importer, with 53% of its energy needs being satisfied from external (non-EU) sources at the cost of 400 billion euro (European Commission, 2015a, p. 2).

While energy has been among the top policy priorities at the Brussels’ agenda, attracting a significant number of interest groups, studies about lobbying in the energy sector are rare. Reviewing the literature on interest groups in the EU, Bunea and Baumgartner (2014, p. 1424) have shown that eight out of 196 analysed articles focus

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<sup>17</sup> Data obtained from the Transparency Register on 01 Jun 2019. The register allows a search of interest groups by domains of their interest. [Accessed on 07/07/2019].

<sup>18</sup> Transparency International EU. Available at: <https://www.integritywatch.eu/>. [Accessed on 07/07/2019].

<sup>19</sup> If analysed individually, the number of meetings with lobbyists covering four other portfolios – digital economy, financial markets, jobs and growth, and the digital market - surpasses the number of meetings held by Maroš Šefčovič and Miguel Arias Cañete, separately.

<sup>20</sup> Data obtained from the Transparency Register on 01 Jun 2019. [Accessed on 07/07/2019].

on energy policy. But, as they note, the literature usually overlooks the question where lobbying happens most often (Bunea and Baumgartner, 2014, p. 1424). Hence, advancing studies on lobbying in the energy domain would improve the understanding of interest groups' activities in the European Union.

### **1.3. Why studying non-EU interest groups is important?**

Foreign interest groups comprise a significant portion of the groups that have strong interests to seek influence over EU decision-making, but are they substantially different from domestic organisations and, if so, why?

The apparent feature distinguishing foreign from domestic interest groups is their country of origin – while the former come from non-EU countries, the latter have EU origins. The terms 'domestic interest groups' and 'EU interest groups' are used as synonyms, and concern both interest groups that are organised at the level of an EU member state (e.g. the French Automobile Manufacturers' Association and the German BMW) and groups whose members are active in more than one EU state (e.g. the European Automobile Manufacturers' Association). Non-EU groups, on the other hand, are those with a foreign origin (e.g. the American Chamber of Commerce EU and the Russian company Gazprom). In addition, some groups have mixed membership: for example, the International Association of Oil and Gas Producers represents the interests of both the EU (e.g. Hungarian MOL) and third countries' companies (e.g. the Kuwait Oil Company)<sup>21</sup>.

The country of origin, thus, represents the main difference between foreign and domestic groups or, more specifically, the non-EU origin with regard to the former. This feature is usually described as the lack of 'EU membership', 'EU representation', 'EU citizenship', 'EU national patron/patronage' and 'EU governmental safeguards' (Bernhagen and Mitchell, 2009; Coen, 1999; Cowles, 1996; Eliassen and Peneva, 2011; Hamada, 2007a; Miard, 2014). Korkea-Aho (2016, p. 45) studied foreign interest groups in the EU under the title "Mr Smith goes to Brussels", whereas Cowles (1996, p. 350) referred to the US companies in Brussels as "European firms of American parentage". In any case, the non-EU origin is the distinctive feature of these

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<sup>21</sup> Chapter 2 provides the definition of foreign interest groups and their distinct features in comparison to domestic groups and groups with mixed membership.

groups when comparing them with domestic groups. However, even when the lack of EU membership is taken into account, one could wonder, to use the words of Maggetti, Radaelli, and Gilardi (2013, p. 11), “so what”? Why is the lack of EU origin important, and is it important at all?

To answer this question, it is necessary to start with foreign groups’ access to EU institutions. When trying to shape EU legislation, interest groups tend to use various channels to present their positions *vis-à-vis* decision-makers. Though access to the EU institutions does not automatically “translate into influence” (Dür, 2008a, p. 1221), it still represents a necessary condition for having an influence (Bouwen, 2002, p. 366). The rule ‘the more, the better’ applies in this respect. The key concern of this thesis is to explain the success of foreign groups rather than just their access to policy-makers (the differences between access, success, and influence are clarified in the second chapter). Yet, the extant studies on non-EU lobbyists have considered the question of these groups’ (limited) access to EU policy-makers as one of the main consequences of the lack of EU membership (Coen, 1999; Cowles, 1996; Eliassen and Peneva, 2011; Korkea-Aho, 2016; Miard, 2014; Pang, 2004). Do foreign groups have an equal chance to gain access to policy-makers as their EU counterparts? The existing studies offer conflicting findings.

Rasmussen and Alexandrova (2012, p. 616-617) argue that the Commission is open to non-EU interest groups because it needs expertise about foreign market developments, because it aspires to be transparent about how decisions are made, and because it is interested in the opinions of those foreign companies that make investments and provide jobs in the EU. The authors, nevertheless, did not test these assumptions. By exploring the influence of the American Chamber of Commerce (AmCham) on the Commission, Cowles (1996) has shown that AmCham’s limited access to member states’ governments (at the national level) had motivated the chamber to concentrate its lobbying activities on the Commission. The author demonstrates that AmCham has had regular access to the Commission, but underlines that “there are times, however, when the demarcation between ‘European firms’ and ‘European firms of American parentage’ becomes evident” (Cowles, 1996, p. 350). By examining how foreign groups lobby throughout the whole policy cycle, Korkea-Aho (2016) has shown that EU institutions are generally open to non-EU groups.

On the other hand, a study exploring Norwegian groups' lobbying strategies has revealed that "without patrons, there seems to be a lack of 'ears' in the EU institutions" for positions preferred by Norwegian companies (Miard, 2014, p. 84). What is more, some of the Norwegian organisation have been feeling that, due to a lack of national patronage, they need to invest extra resources, when compared with domestic groups, to make an influence in the EU (Eliassen and Peneva 2011, p. 7). Similarly, a study on Japanese firms lobbying in Brussels provides an example of a Japanese firm exclusion from a meeting held by the Commission for the reason that Japanese companies do not "represent European views" (Hamada, 2007a, p. 415).

Therefore, the question remains open: Do foreign groups have restricted access to EU policy-makers? Since the literature still has not provided the final say to this question, it is important to advance studies concerning non-EU interest groups by examining not only their access to decision-makers but rather their lobbying success. The main objective of interest groups is to shape EU policies in line with their interests; access to EU officials represents only a channel through which they can exert influence. The thesis, therefore, aims to address this debate by examining the success of foreign groups. In addition, one of the sections below (1.7.1.) provides a summary of findings related to access to EU institutions by foreign groups since these findings have been used to guide process-tracing employed by this research project.

#### **1.4. Extant studies on non-EU interest groups**

Academic research on foreign interest groups in the European Union is modest. To the authors' best knowledge, Rasmussen and Alexandrova's (2012) and Korkea-Aho's (2016) articles are the only two studies so far which in a systematic manner have considered the activity of non-EU lobby groups in the EU. Other authors exploring foreign lobby groups focus only on a single country's lobby groups - Hamada (2007a; 2007b) on Japanese groups, Cowles (1996) and Coen (1999) on the US groups, Pang (2004) on Korean groups, and Eliassen and Peneva (2011) and Miard (2014) on Norwegian groups. In addition, in an article exploring the determinants of firms' direct lobbying, Bernhagen and Mitchell (2009) have identified foreign companies as a distinct category of interest groups by analysing the likelihood of their direct engagement at the EU level. Finally, a number of studies have recognised that foreign

groups compete with domestic organisations for influence in Brussels (e.g. Coen, 2009, p. 155; Wonka et al., 2010, p. 7). How does the thesis contribute to this literature?

In their study, Rasmussen and Alexandrova (2012, p. 614) analysed foreign groups' engagement during public consultations held by the Commission. The authors have found that non-EU lobby groups coming from democratic and wealthier states with close economic ties with the EU tended to be more active in Brussels than groups from less developed countries (2012, p. 614). However, countries, rather than individual interest groups, were the units of the analysis (Rasmussen and Alexandrova 2012, p. 629). Also, the authors only analysed the level of non-EU groups' activities during the Commission's public consultations; other channels of influence were not examined (Rasmussen and Alexandrova 2012, p. 629). Finally, the study did not explore the reasons underpinning the non-EU groups' success, but rather their level of activity during the consultations. Therefore, it is necessary to go beyond Rasmussen and Alexandrova's methodology in order to explain any success of the foreign groups.

Korkea-Aho's (2016, p. 47) article examined why and how non-EU actors participate in the EU decision-making process. The study provided an analysis of the lobbying carried out by foreign groups during the creation, implementation, and enforcement of the EU regulation on chemicals - REACH<sup>22</sup>. It has demonstrated that the global influence of the EU legislation is a key reason behind the engagement of foreign groups in the EU (Korkea-Aho 2016, p. 47). The author also showed that the European Union is open to interest groups coming from third countries by allowing them to participate in EU policy-making. Similar to Rasmussen and Alexandrova (2012), Korkea-Aho (2016) does not explain the factors behind the foreign groups' success; instead, the author provides empirical data on the reasons behind their engagement and the strategies they employed in that respect. Since the article is based only on a single case study, further analysis covering a larger number of cases is necessary to shed some light on the lobbying success of foreign groups. The following paragraphs briefly explain the main findings of studies exploring non-EU lobby groups coming from a single country.

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<sup>22</sup> REACH is an acronym for Registration, Evaluation, Authorisation and Restriction of Chemicals.

By comparing the lobbying activities of Norwegian and Swedish companies during the revision of the EU Emissions Trading System, Miard's (2014) article examined the effect of EU membership on the lobbying strategies of interest groups. The empirical findings indicate that the lack of EU membership has had adverse effects on the ability of Norwegian firms to lobby at the EU level. Unlike their Swedish counterparts, Norwegian companies have been less able to lobby alone, through national associations, and institutions at the level of member states (Miard 2014, p. 73). Eliassen and Peneva (2011) also explored Norwegian interest group lobbying strategies. The authors confirmed Miard's (2014) findings that Norwegian organisations lobby more frequently indirectly, *via* European associations, than directly, as individual groups. Their analysis also shows that the most important institution for the Norwegian groups' lobbying activities is the Commission. These groups see "continuity in the representation and preferably from a Brussels office" as a key condition to lobbying successfully (Eliassen and Peneva, 2011, p. 23). When asked to estimate the efficiency of their lobbying, the Norwegian groups responded with "an average score of 3.36 out of 5" (Eliassen and Peneva 2011, p. 26).

Hamada's (2007a) study explains the lobbying strategies employed by Japanese companies in the EU. The author investigated the effects of both Japanese and European corporate culture on the Japanese firms' preferences for specific lobbying strategies (Hamada, 2007a, p. 404). The main finding is that Japanese companies have adapted their strategies to a specific environment of EU decision-making, but the extent of their adaptation is intermediated by sectoral and corporate factors (Hamada 2007a, p. 408). Pang's (2004) article examines the lobbying strategies of Korean firms. Drawing from a detailed analysis of EU policy-making on trade, Pang (2004) provides recommendations on what strategies Korean firms should employ to improve their position *vis-à-vis* EU law-makers.

Bernhagen and Mitchell (2009) did not explore foreign interest groups; instead, they examined determinants motivating large companies to engage in direct lobbying at the EU level. One of the explored factors was the lack of EU membership; the authors hypothesised that non-EU companies had strong incentives to lobby the EU institutions directly due to the absence of governmental safeguards within these institutions (Bernhagen and Mitchell, 2009, p. 161). Their empirical findings have confirmed the assumption.



The mentioned studies share an interest in examining non-EU groups' lobbying strategies. Most of these studies share a view that, in comparison to domestic groups, foreign groups often face obstacles when trying to gain access to EU decision-makers since the former use their governmental representatives in EU institutions as lobbying channels, while the latter lack this sort of national safeguard (Eliassen and Peneva, 2011; Hamada, 2007a; Miard, 2014; Pang, 2004). Nevertheless, when it comes to the question of what lobbying strategies groups tend to employ to compensate for lack of EU membership, the extant studies offer different conclusions. For instance, whereas Bernhagen and Mitchell (2009) have provided evidence that foreign groups tend to lobby directly, Miard's (2014) and Eliassen and Peneva's (2011) studies have demonstrated the limited ability of non-EU groups to lobby alone; instead, more frequently, these groups tend to lobby through EU associations. Hamada's (2007a) paper, however, shows that lobbying strategies might be determined by non-EU groups' cultural background, as well as specific sectoral and corporate factors (e.g. firm size).

Variations in empirical findings testify that a uniform theoretical framework should be applied across lobby groups coming from different countries in order to draw more plausible conclusions about their lobbying. This thesis aims to achieve this by examining interest groups with different foreign origins. Moreover, rather than exploring lobbying strategies, the main goal of the thesis is to explain lobbying success. Among the mentioned studies, only Eliassen and Peneva (2011) considered lobbying success, by asking the Norwegian groups to provide a self-assessment of their success in Brussels. These groups have seen "continuity in the representation" as the main condition to lobby successfully, surpassing other determinants of lobbying success, such as hiring lobbying experts, coordinating activities with other stakeholders, and lobbying resources, respectively (Eliassen and Peneva 2011, p. 23). These findings will be further discussed in the following section.

Finally, Cowles (1996) and Coen (1999) examine the influence of US companies, most notably the American Chamber of Commerce EU (AmCham), on lobbying culture and decision-making process in Brussels. The authors agree that the US companies, individually as well as *via* the American Chamber of Commerce, have been among the most prominent lobbyists in Brussels since the establishment of the European Economic Community. Their early establishment has enabled the US firms

to create close and regular contacts with the Commission, thus becoming “a role model” for European interest groups’ activities in the EU capital (Coen, 1999, p. 35; Cowles, 1996, p. 352). AmCham’s recognition that “information is power” (Cowles 1996, p. 348) has resulted in the creation of specialised committees, aimed at assisting the Commission (Coen 1999, p. 35). Even though the supremacy of AmCham was challenged during the 1990s (Coen 1999, p. 36), AmCham has remained one of the most influential actors in Brussels (Cowles 1996, p. 355).

Thus, Cowles’ (1996) and Coen’s (1999) articles, together with Eliassen and Peneva’s (2011) report, represent the only studies offering empirical findings on factors behind the lobbying success of non-EU groups. A long-term presence in Brussels coupled with regular contacts with policy-makers are seen as the main determinants of lobbying success for both the US companies (Coen, 1999; Cowles, 1996) and Norwegian interest groups (Eliassen and Peneva, 2011). In addition, early recognition of the “power of information” has made AmCham one of the most powerful lobbyist in Brussels (Cowles, 1996; Coen, 1999). These findings will be used for the development of the main argument in this thesis, which will be discussed in more detail below. For now, it is important to note that the experience of AmCham and the US companies might be unique, given that the American firms were among the pioneers when it comes to lobbying in Brussels. They were among the first interest groups to engage in lobbying at the EU level. What is more, the US companies have shaped the lobbying culture in Brussels (Coen, 1999, p. 27). Since other foreign groups do not necessarily share their experience of early positioning in the EU, it is important to analyse groups coming from several non-EU countries to establish whether the determinants of the US interest groups’ success travel across groups with different foreign origins.

In sum, while foreign interest groups represent an important lobbying force in Brussels, only a few studies have examined their lobbying activities. By focusing mostly on the lobby groups of individual countries, the extant studies offer different findings with respect to strategies employed by foreign groups. One contribution of this thesis, therefore, will be to provide an analysis of interest groups coming from several foreign countries by applying a uniform methodology and theoretical framework across all groups. Secondly, the extant studies mostly explore lobbying strategies instead of lobbying success. The empirical findings on lobbying strategies

offered by the existing literature are beneficial for tracing the activities of the interest groups examined as a part of this research project. On the other hand, this thesis' departs from these studies by exploring the interest groups' success, rather than their lobbying strategies only.

Finally, Cowles' (1996) and Coen's (1999) studies are the only studies exploring the determinants of non-EU groups' lobbying success. Their findings indicate that provisions of expertise and a long-term presence in Brussels represent the most important factors behind AmCham lobbying success. The latter is also seen as the most important determinant of the lobbying success of Norwegian interest groups (Eliassen and Peneva, 2011, p. 23). The former is also recognised by Rasmussen and Alexandrova (2012) and Hamada (2007a). The subsequent sections discuss these points in more detail.

## **1.5. Research question**

The research question addressed by the thesis is: whether, how, and why European Commission's initial preferences - over policies under consideration and over involved non-EU interest groups - affect the groups' prospects to lobby successfully? It is argued that the success of foreign interest groups depends on Commission's initial positions on policies and involved lobbyists: how strong its initial views of an issue under consideration is, as well as whether it sees interest groups as "insiders" or "outsiders".

Lobbying assumes the interaction between policy-makers and interest groups in which both sides have their objectives to pursue. It is usually described as an exchange relationship between mutually dependent actors (Bouwen, 2002, p. 368; Klüver, 2013b, p. 29). To understand interest groups' lobbying success, therefore, it is important to consider both the demand and supply side of lobbying (Klüver, 2013b, p. 25-40; Mahoney, 2004). The supply side, as defined by Mahoney (2004, p. 442), concerns motivation behind groups' engagement in a policy debate. It is about the goals that lobby groups are trying to achieve. Correspondingly, the demand side of lobbying concerns the objectives that EU institutions try to achieve based on their institutional roles and policy preferences (Klüver, 2013b, p. 29). To perform their institutional roles, the EU institutions need different types of "goods", such as

expertise and citizen support (the demand side) (Bouwen, 2002; Klüver, 2013b). However, groups do not have equal capacity to provide these goods (Bouwen, 2004, p. 341). Groups' access to EU institutions, hence, depends on their ability to deliver goods needed by the policy-makers (the supply side).

Thus, to understand foreign groups' lobbying success it is necessary to explore the objectives of EU institutions and their requirements for certain "goods", on the one hand, and the capacity of interest groups to meet the needs of EU institutions, on the other hand. As already explained, the motivation behind the growing engagement of foreign actors in the EU has been the impact of EU-made rules on their business, both inside the EU as well as abroad. What is less clear, however, is the demand side – how to explain EU policy-makers' engagement with foreign groups? What objectives are EU institutions trying to pursue, and what kind of goods can foreign groups provide in this respect?

As an intermediary between the EU institutions and citizens, interest groups are often perceived as actors whose main role is to facilitate citizen participation in the EU policy-making process (Eising and Lehringer, 2010, p. 190). Interest groups' input in that respect is seen as one of the solutions to the problem of a "democratic deficit"<sup>23</sup> in the decision-making process (input legitimacy<sup>24</sup>) (European Commission, 2006a, p. 2). On the other side, information provided by organised interests is valuable for the EU institutions because it allows for the better laws to be delivered (output legitimacy) (European Commission, 2006a, p. 2).

Having a non-EU origin, foreign groups cannot offer goods aimed at increasing input legitimacy. Unlike their domestic (EU) counterparts, foreign interest groups do not hold EU citizenship. What they can provide, however, is expert knowledge aimed at increasing output legitimacy. Following the resource dependence and exchange theory (Bouwen, 2002, p. 382), the Commission should be the most likely venue for foreign interest groups to try to make an impact, due to their capacity to provide expertise (output legitimacy), and *vice versa* because of these groups' lack of capacity

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<sup>23</sup> For more about the debate on democratic deficit see Follesdal and Hix (2006) and Moravcsik (2008).

<sup>24</sup> For more about input and output legitimacy see Scharpf (1997) and (2009).

to provide other “access goods” mostly needed by the European Parliament and the Council (input legitimacy).

The thesis, therefore, explores the lobbying success of foreign companies and business associations during the policy formulation stage - the preparation of policy proposals by the European Commission. It assumes that foreign interest groups rely on the provision of expertise to shape Commissions’ proposals. This is especially since the present research project examines foreign business groups – large companies and business associations.

However, while the provision of expertise to the Commission is a necessary condition to achieve influence on its policy-making, it is still a factor that cannot fully explain foreign groups’ lobbying success. Firstly, the Commission’s need for external expertise - provided by interest groups - varies among proposals (Broscheid and Coen, 2007, p. 349; Klüver, 2013b, p. 58;). While some proposals concern minor changes to the existing legislation, other proposals design policies that cover a new issue area and/or a highly technical issue. Thus, the Commission’s requirement for external expertise depends on the nature of a specific issue (Klüver, Braun, and Beyers, 2015, p. 451; Klüver, 2013a, p. 58;), which might define the value of information provided by lobbyists.

Secondly, Commission’s preferences over certain policy measures vary from one policy proposal to another. In some cases, the Commission may favour specific policy objectives and, correspondingly, those policies that are seen necessary for the achievement of those objectives. In other cases, it may have preferences over policy outcomes, but not over what measures will lead to those desired outcomes (Klüver, 2013a, p. 61-62). The information provided by interest groups, thus, might have different effects depending on whether they have been delivered to like-minded or opposing Commissioners.

Finally, all interest groups taking part in lobbying during a legislative process provide the Commission with some sort of information: figures, statistics and/or arguments. Since groups often have competing interests, they might provide different figures and competing arguments. Besides, lobbyists often ‘babble’ – they provide information that is the least damaging to their interests (biased information) (Broscheid and Coen, 2007, p. 350). Overwhelmed by a huge amount of information

provided by interest groups, how does the Commission decide whose information to follow through? Whose figures/arguments will make an impact? The insider/outsider distinction might be relevant in this regard (Broscheid and Coen, 2003; Grant, 2004).

In sum, the Commission's need for external expertise, as well as its preferences over policy measures, differ from one policy proposal to another. Its relationships with interest groups also vary. So does the value of information from one proposal to another, and from one interest group to another interest group. This casts doubt on the expectation that provided information *per se* will be sufficient for a full account of lobbying success.

The thesis, therefore, proposes the theoretical framework aimed at explaining foreign groups' lobbying success through the analysis of the dynamics between messengers (foreign interest groups), and the recipient (the Commission), rather than through analysis of the value of information (expertise/knowledge) *per se*. This by no means disputes the assumption that lobbyists utilise information when trying to make an impact. The thesis shares the view that useful information "buys" access to the EU institutions (as explained in the following sections). However, the thesis also recognises that the provision of information by lobbyists does not take place in a vacuum (Mahoney, 2004, p. 444). The Commission often has strong initial preferences over policies under discussion. Also, the Commission often has a history of relationship with involved groups. The purpose of the thesis, therefore, is to examine whether and how Commission's initial views – both of the policies under consideration as well as of the involved non-EU interest groups - affect those groups' prospects of lobbying successfully.

In doing so, the thesis complements the literature on informational lobbying by arguing that, in some cases, decision-makers have strong initial preferences over both - the outcomes and means required to achieve them, thus making interests groups' attempts to alter their positions less likely. Namely, the extant literature on lobbying in the EU recognises that the Commission has its own objectives to pursue (Klüver, 2013a; Mahoney, 2004). However, these studies, based on the "informational asymmetry" in favour of interest groups (Chalmers, 2013, p. 39), often assume that the Commission has preferences over policy outcomes, but not on policy measures generating the desired outcomes (Klüver, 2013a, p. 61-62). Hence, interest groups are

supposed to be influencing a Commission proposal by providing expertise on the link between policy measures and the desired outcome (Klüver, 2013a, p. 62).

The thesis, however, argues that this is not always the case. Sometimes, the Commission has strong early preferences over both the outcomes and means required to achieve them, regardless of the interest groups' input. Those preferences are labelled 'early' or 'initial' in order to emphasise that these are the Commission's original preferences, formed independently of the subsequent information provided by lobbyists. Commission's early preferences may be based on its institutional expertise, its policy priorities - as defined at the beginning of a mandate, or on the experience, beliefs, and knowledge of individual Commissioners.

Secondly, drawing on the research on insider/outsider status of lobbyists (Broscheid and Coen, 2003; 2007; Coen, 2010; Grant, 2004), the thesis suggests that insiders might be more likely to lobby successfully than outsiders. It contributes to this strand of literature by introducing an additional criterion underpinning the insider/outsider distinction, which concerns specifically non-EU interest groups – the importance of their particular non-EU origin for the achievement of the Commission's policy objectives. The thesis suggests that those non-EU interest groups whose countries of origin are strategically important for the achievement of the EU policy goals are more likely to be granted the status of insider and, consequently, to lobby successfully.

As for the studies on non-EU interest groups, as mentioned earlier, they offer conflicting conclusions over the lobbying success of foreign interest groups. While one strand argues that a lack of national patronage within the EU may hamper a group's success (for instance Eliassen and Peneva, 2011, p. 29), the other holds that non-EU companies can still be as successful as their EU counterparts (Korkea-Aho, 2016). The thesis seeks to address this question by offering an explanation that the lack of EU membership by itself is not necessarily a lobbying weakness; instead, the success of foreign interest groups depends on the Commission's positions on both – policies under consideration and the involved lobbyists.

## 1.6. Determinants of EU interest groups' lobbying success

Before turning to the theoretical framework that is developed here to explain non-EU groups' lobbying success, a brief overview of determinants of lobbying success featuring in the literature on interest groups in the EU is in order. This section's objective is to review the theoretical expectations and empirical findings on lobbying success in general – regardless of an interest group's nationality, and then to position the thesis' theoretical expectations within this broader literature on lobbying in the EU.

The common ground in the literature on interest groups is that lobbying in the EU is based on the provision of information (Bouwen, 2002; Broscheid and Coen, 2007; Chalmers, 2013). Unlike the “gangster style” of lobbying in the US (in Gardner, 1991, p. 63, as cited by Woll, 2012, p. 203) where lobbyists often defend their interests by pressuring decision-makers, interest groups in Brussels prefer a “soft-spoken” approach when dealing with policy-makers (Woll, 2012, p. 193). Hence, in the EU, unlike in the US, information constitutes the “currency of lobbying” (Chalmers, 2013, p. 39)<sup>25</sup>.

However, although the saying “information is power” represents the shared wisdom among scholars and policy practitioners, discussions on what type of information, when and how converts to influence are still far from being settled (Chalmers, 2013, p. 40; Chalmers, 2011, p. 472). As a result, it is hard to conclude the debate on lobbying in Brussels merely by refereeing to the provision of information. Surely, interest groups feed policy-makers with information, but whether information will translate into an impact or not depends on many factors.

Klüver, Braun, and Beyers (2015) have provided a comprehensive overview of numerous determinants that affect interest groups' ability to influence EU legislation. These are divided into two groups: groups' characteristics and contextual factors<sup>26</sup>. Thus, *a group's features* – its type (e.g. citizen vs business group), resources, and the level of organisation (member states vs European level of organisation) – might affect

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<sup>25</sup> For more about informational vs pressure-based lobbying in the EU see Bouwen and Mccown (2007) and Gullberg (2013).

<sup>26</sup> For other comprehensive analyses of determinants of lobbying influence in the EU see Coen and Richardson (2009) and Mahoney (2007).



the group's lobbying success (Klüver, Braun, and Beyers, 2015, p. 448). Besides groups' features, contextual factors are also highlighted as important by studies on interest groups' success in the EU. Klüver, Braun, and Beyers (2015, p. 450-455) differentiate between the two sorts of contextual factors: (a) policy-related factors such as – a policy type, the level of complexity of an issue under consideration, its salience, the level of conflict surrounding the considered issue, and the size of lobbying coalitions advocating in favour of or against a policy proposal; and (b) institutional factors – differences between and within the EU institutions, and institutional variations across different national systems. Lobbying is said to always takes place in “the complex interplay” between the two groups of determinants – groups' characteristics and contextual factors (Klüver, Braun, and Beyers, 2015, p. 449). The extent of interest groups' influence will further be determined by lobbying tactics and strategies (Chalmers, 2013; Dür and Mateo, 2016), and by the way in which a considered issue is framed and presented to policy-makers (De Bruycker, 2016; Klüver, Mahoney, and Opper, 2015).

In sum, the scholarship on lobbying in the EU shows that interest groups try to make an impact by providing information in exchange for the access to the decision-making process which affords an opportunity to shape EU laws. Groups' provision of information and the related influence depends on the preferences and institutional demand of EU policy-makers (the demand side) and on the preferences and capacity of interest groups (a group's type, resources, organisational level) to meet these demands (the supply side). But also, the exchange of information between lobbyists and policy-makers takes place in a specific context which is also a factor that affects groups' prospect to lobby successfully. Thus, there is a range of factors that affects the level of interest groups' engagement, access, and subsequent (lack of) influence, namely: groups' characteristics, contextual factors (policy-related and institutional factors), lobbying tactics, strategies, and framing.

The thesis does not dispute the above-mentioned theoretical expectations and empirical findings and it shares the view that lobbying in the EU concerns information exchange primarily. The thesis also agrees that lobbying takes place in a context of the interplay between various factors such as groups' features, policy-related and institutional factors, as suggested by Klüver, Braun, and Beyers (2015).

The following sections provide more insights into the thesis' contributions to particular aspects of the literature on lobbying. At this place it is important to stress the following – the purpose of the thesis is to investigate *foreign* business interest groups and their lobbying success in the EU. Hence, while acknowledging the significance of contextual factors, the thesis' main objective is to shed some light on foreign groups as a distinct type of interest groups in comparison to EU (domestic) groups. It seeks to understand these groups' position, status, and the prospect to shape EU policies from within Brussels. Thesis, therefore, takes into account the fact that context matters, but the attention is primarily focused on a particular type of interest groups, namely non-EU groups.

The present study, furthermore, deals only with foreign *business* groups, meaning that foreign citizen groups (e.g. NGOs) are outside of its scope. The thesis' starting premise is that business interest groups should not be seen as a “homogenous group” of lobbyists (Hamada, 2007b, p. 10). Namely, many studies have examined lobbying in the EU through the lens of business vs citizen groups' ability to influence EU legislation (Dür and De Bièvre, 2007a; Dür and Mateo, 2012; Schneider and Baltz, 2003). This has been justified by the argument that EU policies should not be biased in favour of resource-rich corporate interests and at the expense of citizen groups. On the other hand, literature on winners and losers in business vs business groups competition is rare (for exceptions see Bouwen, 2004; Coen, 2009; 2010; Eising, 2007a; Dür, Bernhagen, and Marshall, 2015), despite the fact that in addition to competing with citizen groups, business groups also compete with each other. In doing so, they differ with regards to their organisational structure (e.g. an individual firm vs an association of firms), resources (e.g. small vs large firms), and the organisational level (e.g. national vs EU level). Besides neglecting those major differences and the fact that business groups' interests are frequently competing, extant studies on lobbying often overlook the difference between EU and non-EU business groups. The thesis aims to address this gap by examining whether the prospect of a business group's lobbying success is affected by its foreign origin. Note that the thesis examines primarily resource-rich foreign business groups, that is large companies and business associations gathering such companies. This means that its findings could be generalised primarily to the resource-rich foreign groups, rather than those lacking sufficient financial resources.

The thesis' main argument includes institutional factors, which, alongside policy-related factors are subsumed under the group of contextual factors. Literature on interest groups in the EU agrees that lobbying and subsequent influence varies between and within EU institutions, namely the Commission, the European Parliament, and the Council (Bouwen, 2002; Coen and Richardson, 2009; Klüver, Braun, and Beyers, 2015). With regards to the Commission, which is the thesis' main concern, interest groups' lobbying success may be affected by which Directorate-General (DG) is responsible for a policy proposal, as well as who is a Commissioner in charge of the proposal (Klüver, Braun, and Beyers, 2015, p. 453). Different Commissioners might have different backgrounds, experience, political views, and ties with their home countries which might affect groups' influence. Similarly, due to different sectoral jurisdictions and culture, DGs might have different policy views and preferences (Klüver, Braun, and Beyers, 2015, p. 453). Lobbying is also affected by the Commission's "hierarchical differentiation", a factor denoting whether lobbying takes place at the level of Commissioners' of the civil servants' cabinets (Bouwen, 2009, p. 25). The thesis takes this into account as a part of the analysis which concerns the demand side of lobbying – Commission's preferences and institutional needs that could be potentially met by foreign interest groups.

The thesis, however, does not incorporate policy-related factors into its main argument. Certainly, prior literature has demonstrated that policy type, issue salience, issue complexity, and the level of conflict surrounding a policy proposal under consideration, are relevant for interest groups' strategic choices and resultant levels of influence. Nonetheless, the thesis' main concern, as mentioned above, is to examine foreign groups' lobbying success rather than other factors which affect groups' lobbying success, regardless of the type of involved lobbyists (whether those are EU or non-EU groups). It analyses policy proposals featuring varying degrees of complexity, salience, and conflict and the only constant policy-related factor is policy type, given that solely the energy policy domain is examined. Based on Lowi's (1964) typology differentiating between regulatory, distributive, and re-distributive policy domains, scholars have argued that different policy types affect interest groups' mobilisation, their strategical choices, and the extent of their influence (Coen and Katsaitis, 2013, p. 1108; Dür and Mateo, 2013, p. 661; Klüver, Braun and Beyers, 2015, p. 451; Rasmussen, 2012). According to Broscheid and Coen (2007, p. 362)

energy should be classified as a regulatory policy domain, meaning that the demand for technical expertise and input legitimacy is higher in comparison to the distributive policy domains. This point will be further discussed in section 1.7.3. For now, it is important to stress that since the thesis examines a single policy domain, its findings speak more to the analysis of regulatory rather than distributive and re-distributive policy areas.

## **1.7. Explaining non-EU groups' lobbying success**

The following section analyses the question of foreign groups' access to the Commission. After that, the chapter presents a section setting up the theoretical framework for the explanation of the Commission's positions on issues under consideration, and a subsequent explanation of the Commission's positions on involved lobbyists. The chapter concludes by setting out the framework for the empirical analysis.

### **1.7.1. Access to the EU institutions**

As mentioned earlier, the starting assumption in the literature on interest groups is that lobbying in the EU is based on the provision of information (Bouwen, 2002; Chalmers, 2013; Woll, 2012; Broscheid and Coen, 2007). This position is also shared by the authors examining non-EU interest groups (Coen, 1999; Cowles, 1996). The thesis takes this as point of departure. Furthermore, the basic aim of the present research project is to examine foreign *business* groups. Since the resource dependence and exchange theory developed by Bouwen (2002) dominates the literature on business interest groups (Bunea and Baumgartner, 2014, p. 1421), it will be used as the starting point in this research project, as well.

Bouwen (2002, p. 368) argues that the relationship between public actors and business groups should be seen as an exchange relationship based on mutual dependence. Interest groups need access to policy-makers. In exchange for access to the EU institutions, they provide policy-makers with three sorts of information, the so-called "access goods": (1) expertise and technical knowledge; (2) information vital for comprehending the EU's broader interests – what would be most gainful for a

particular sector at the EU level; and (3) information about domestic interests - that is, the needs of a particular sector at a member state level (Bouwen, 2002, p. 369). EU institutions need three sorts of information to increase input and output legitimacy (see Scharpf, 1997). Input legitimacy, which concerns the participation of citizens in the EU decision-making process and the consequent democratisation of this process (Scharpf, 1997, p. 19), is advanced through information about the EU and domestic encompassing interests (Bouwen, 2002, p. 371). Output legitimacy, referring to the effectiveness of EU *acquis* in dealing with pressing issues (Scharpf, 1997, p. 19), is provided through the provision of expertise and technical knowledge (Bouwen, 2002, p. 371).

Different institutions mostly demand different types of access goods based on their role in the decision-making process (Bouwen, 2002, p. 378). The Commission mostly needs expertise and technical knowledge, the European Parliament information about European interests, while the Council primarily needs information on domestic interests (Bouwen, 2002, p. 378-382). However, interest groups do not have equal capacity to provide information needed by EU institutions (Bouwen, 2002, p. 375). It is large companies that can provide the looked-for expertise (Bouwen, 2002, p. 376). Information about EU interests is usually provided by European associations (for example, the European Banking Federation), while national associations provide information about the needs of an individual sector at a member state level (for instance, the Belgian Bankers' Association) (Bouwen, 2002, p. 377). The author concludes that those business groups "who can provide the highest quantity and quality of the critical access goods" will enjoy "the highest degree of access to the EU institution" (2002, p. 382).

This thesis starts from Bouwen's resource dependence and exchange theory (2002), as the most prominent framework so far for explaining the access of business interest groups to policy-makers. However, the theory has been criticised on multiple grounds. First, in his study aiming to empirically test the previously outlined theoretical expectations, Bouwen himself disconfirmed the assumption that large firms have privileged access to the Commission, by showing that the European associations had slightly better access to the Commission than the large companies (Bouwen, 2004, p. 355). Bouwen concluded that the Commission's need for information about the EU's

broader sectoral interests had been underestimated in relation to technical expertise (2004, p. 358).

Secondly, scholars have shown that the list of types of information that interest groups can provide to policy-makers is broader and more complex than Bouwen's study (2002) suggested. While some scholars followed Bouwen's distinction between technical expertise and information about stakeholders' and constituents' preferences (Klüver, 2013b, p. 43), others have come up with more sophisticated typologies. Chalmers (2013, p. 46) thus differentiated between information about the feasibility of a policy measure, information about a proposal's economic and social effects, information aimed at clarifying or highlighting the technical and scientific details, information on public opinion, and legal information. Similarly, Mahoney (2008, p. 83-84) distinguished between information ("arguments") about widely shared goals, highly technical information, information about a proposal's costs, information about feasibility of the proposal's implementation, its potential discriminatory nature, and information about public opinion.

Thirdly, while Bouwen's study stresses the significance of information as the key access good (2002, p. 369), other scholars were of the view that besides information, interest groups can provide a range of other goods that policy-makers need. Klüver (2013b, p. 19) thus defines access goods as information, "citizen support", and "economic power". She went on to argue that an interest group can gain a seat at the table not only when it possesses valuable information, but also when it has a "broad membership base" (2013b, p. 46). It is thus suggested that policy-makers will be eager to listen to a group that enjoys public support in order to advance the legitimacy of policy proposals and to increase constituencies' support. Public officials also need economically powerful stakeholders on their side because the latter's impact on investments, employment, and economic growth is significant (Klüver, 2013b, p. 50).

Fourthly, Chalmers (2013, p. 40) criticised Bouwen's and related studies for presenting the exchange relationship between interest groups and policy-makers as a "mechanical process" in which certain types of groups are allegedly predisposed to be in possession of specific information that particular EU institutions need. His analysis shows that there is no strong link between a group's type and a type of information (Chalmers, 2013, p. 51). Instead, "cause-effect" logic" stressing potential

consequences of a policy initiative makes the most frequently used type of information by all interest groups (companies, professional associations, NGOs etc.) (Chalmers, 2013, p. 51).

Fifthly, Bouwen's study has been challenged on the basis that it considers primarily the demand side factors (Chalmers, 2013, p. 42; Eising, 2007a, p. 385). Supply side factors have been neglected even though they also affect interest groups' access to the policy-making process. Thus, it has been argued, interest groups can deploy certain tactics to increase the value of provided information (Chalmers, 2013, p. 42-43). Information processing – how groups collect and analyse needed information, how they monitor law-making, anticipate the informational needs of policy-makers, and prioritise among different information - may also explain variations in groups' access and their consequent influence (Chalmers, 2011, p. 472). Access to the policy-making process also depends on whether a group already has established contacts with the policy-makers (Chalmers, 2014, p. 981).

Sixty, Bouwen's exchange theory could be challenged for overlooking differences within EU institutions. Coen's and Katsaitis's (2013, p. 1113) study shows that the diversity of groups engaged in lobbying during the policy formulation phase varies across policy domains. The explanation put forward is that DGs have different informational demands – those dealing with regulatory issues largely demand technical information aimed at increasing the output legitimacy, whereas the DGs handling distributive policy areas need political information to increase the input legitimacy (Coen and Katsaitis, 2013, p. 1108). In their study of groups participation in European Parliament's hearings, Coen and Katsaitis (2019, p. 762) have reached the same conclusion. A study by Gornitzka and Sverdrup (2011, p. 50), which analyses groups' participation in Commission's advisory groups, also found that the actors' access varied greatly across different policy domains. DGs featuring a larger staff (surprisingly) and a bigger density of interest groups (unsurprisingly) tended to engage more with interest groups than those with smaller staff and smaller number of interest groups respectively (Gornitzka and Sverdrup, 2011, p. 62). Eising (2007a, p. 388-389) also suggested that Bouwen's theoretical framework fails to account for the differences in groups' access at different hierarchical levels, such as the political leadership level and the working level, within institutions.

In sum, Bouwen's exchange theory has been criticised for overlooking the complexity and broadens of different types of information provided by interest groups. Also it does not take into account other access goods (citizen support and economic power) which, in addition to information, lobbyists can provide in exchange for access. Bouwen's exchange theory was further contested for assuming that certain types of information can be provided only by specific, 'predestined' interest groups. Finally, it has been suggested that the theory needs to take into account the sectoral and hierarchical differences within EU institutions.

Yet, subsequent studies produced empirical support for some of the assumptions of the exchange theory. First, it has been shown that the ability to deliver information can indeed gain a business group improved access to EU policy-makers (Eising, 2007b, p. 352). Second, the provision of "technical information" can improve interest groups' access to the Commission (Chalmers, 2013, p. 49). Third, business groups use technical information and information about the economic costs of a proposal more often than other types of information (Chalmers, 2013, p. 51; Mahoney, 2008, p. 107). Forth, EU institutions, especially the Commission, prefer to engage with lobbyists representing wider European interests, rather than those representing national interests (Chalmers, 2014, p. 988; Eising, 2007a, p. 399).

What can we learn from the above literature about foreign groups' access to EU policy-makers?

To remind, the thesis explores *foreign* interest groups as a distinct type of interest groups in comparison to domestic (EU) groups. The later include both, interest groups that are organised at the level of an EU member state (e.g. the French Automobile Manufacturers' Association and the German BMW) and groups whose members are active in more than one EU state (e.g. the European Automobile Manufacturers' Association). Further, the thesis examines foreign business groups as a distinct type of interest groups in comparison to the foreign citizen groups. It, therefore, implicitly assigns certain background features to this type of interest groups – namely, foreign business groups. This is established practice in the lobbying literature, where scholars have used to explore lobbying access, strategies, and influence by comparing different types of interest groups, for instance business vs citizen groups (Dür and De Bièvre, 2007a; Dür and Mateo, 2012). Still, it is noteworthy that background features of



groups belonging to the same type might vary substantially, as shown in Baroni et al.'s study (2014, p. 156). The study warns against some long-standing assumptions such as the supposed advantage of business groups (in comparison to citizen groups) in terms of resources, given the variations in resources and other features across business actors (Baroni et al., 2014, p. 156).

The thesis takes this warning seriously. It recognises that within the so-called type of business interest groups there could be major variations. Indeed, one of the thesis' implicit assumptions is that business groups do not represent a homogenous cluster of actors. Instead, they differ with regards to their organisational structure (e.g. an individual firm vs an association of firms), resources (e.g. small vs large firms), and the organisational level (e.g. national vs EU level). Also, the thesis does not assume business groups' superiority in terms of resources, as suggested by Baroni et al. (2014).

While recognising the existence of major differences across business groups in terms of resources and organisational structures, the thesis, nevertheless, assigns two constant features to foreign business groups. The first feature is the lack of EU nationality. The second feature relates to the nature of advocated interests – namely, these groups try to defend their particular businesses, rather than interests of some broader parts of society which are often advocated by citizen or “diffuse” interest groups (see Beyers, 2004, p. 216; Pollack, 1997, p. 573). These two characteristics - non-EU nationality and representation of business rather than broader societal interests – will be considered to have implications for the foreign business groups' access the EU policy-making process.

In general, access to policy-makers in the EU could be made at both levels - the national (member states) and the EU level - thanks to the multi-level structure of the EU decision-making process. Concerning the former, foreign groups could be deprived of access to the decision-making process at the member states level since EU states' policy-makers prioritise groups representing their constituency. For example, Cowles (1996, p. 346) demonstrates that the limited access of US companies to decision-makers in member states has served as the motivation behind a shift of their lobbying activities towards the Commission. On the other hand, foreign companies might be well-integrated into a member state's market, providing investments and jobs

for its citizens, which is why the state's policy-makers might be interested in hearing what these companies have to say, as suggested by Rasmussen and Alexandrova (2012, p. 617). In this case, access would be granted to them based on their "economic power" (Klüver, 2013b, p. 50).

Following the logic of access - the more "access goods" interest groups possess, the more access to policy-makers they will gain – set by Bouwen (2002), foreign groups would be in an underprivileged position in comparison to domestic groups when the access to EU institutions is concerned. Having a non-EU origin, these groups cannot offer two out of three types of information which, according to Bouwen, aim at increasing input legitimacy - information about domestic interests and information about European interests - since they represent neither national nor EU interests. For the same reason, foreign groups cannot offer what Klüver (2013b, p. 45) calls "citizen support" either. Citizen support, as an access good, arises from a group's "broad membership base" and from the fact that it represents a significant share of EU citizens (Klüver, 2013b, p. 46). As such, this access good cannot be offered by foreign stakeholders, given that they do not represent EU citizens. What foreign groups can offer, nonetheless, is expertise and technical knowledge (output legitimacy). But what is meant by expertise in this specific case?

As previously discussed in this section, Bouwen (2002, p. 369) defines expertise as business groups' knowledge of how the market functions. Other authors have developed more sophisticated typologies of information types used by interest groups to gain access. Chalmers (2013) and Mahoney (2008) differentiate between information about the feasibility of a policy measure, information about its economic and social consequences, technical or scientific information, etc. The thesis supports Mahoney's point that it is particularly hard to list all types of information provided by lobbyists due to their richness and broadness (Mahoney, 2008, p. 82). And even when scholars make such an effort, typologies take different forms thus making a comparison between studies extremely hard. Still, the literature has provided the two empirical findings that will be useful for the purposes of this research. The first is that the most widely used type of information by all sorts of interest groups are ones on the "cause-effect-logic" which indicates the potential consequences of a policy initiative (Chalmers, 2013, p. 51). The second is that business groups use technical information

as well as information about the economic costs of a proposal more often than the other types of information (Mahoney, 2008, p. 107).

The thesis, therefore, assumes that similarly to domestic (EU) business groups, foreign business groups will also try to secure access to the policy-making process by providing primarily technical information and information about the economic consequences of a policy proposal. They will use their knowledge and expertise about the European market to advance their interests *vis-à-vis* policy-makers. Having this type of information is not the exclusive privilege of business groups only, as shown by Chalmers (2013), but it does represent the type of information that business groups use more often than other types of information. Further, foreign groups can provide expert knowledge about foreign markets and this might be valuable for EU officials given the global impact of EU laws as well as the reverse influence of foreign markets on the EU single market (Rasmussen and Alexandrova, 2012, p. 616).

Following Bouwen's (2002) framework and foreign business groups' ability to provide expertise, these groups should have better access to the Commission than to the European Parliament and the Council. Commission which initiates and prepares EU laws, needs technical expertise more than the other two institutions. The assumption is in line with Miard's study (2014) showing that Norwegian groups have limited access to the European Parliament and the Council. Similarly, Eliassen and Peneva (2011) have shown that Norwegian interest groups prefer communication with the Commission, over the other two institutions. The Commission thus represents the most likely venue for foreign groups to make an impact.

Still, as shown by Coen and Katsaitis (2013), the Commission's need for expertise varies among policy domain. In regulatory policy domain, the Commission mostly needs technical expertise aimed at advancing output legitimacy (Coen and Katsaitis, 2013, p. 1117). On the other hand, in distributive policy domains the need for technical information is lower and for input legitimacy higher (Coen and Katsaitis, 2013, p. 1117). Hence, it should be expected for foreign business groups to have better access to those Directorates-General (DGs) whose portfolios cover regulatory policies.

Is it possible for foreign business groups to provide other access goods besides their expertise about EU and foreign markets, and economic power? As explained earlier, these groups cannot trade citizen support and information about EU citizens'

preferences (input legitimacy) for access. Still, EU laws affect not only EU citizens but also foreign actors inside and outside the EU. Korkea-Aho categorises worldwide influence of EU legislation into three groups: (a) “extraterritoriality” – when EU-made rules apply to conducts that take place outside the EU; (b) “territorial extension” - when EU laws affect conduct and laws abroad; and (c) “border crossing transnationalisation” – when EU laws are intended to regulate the EU market, but in practice they also affect foreign actors aspiring to enter the EU (2016, p. 53-55). If the basic idea of the input legitimacy is to enable those who are affected by EU laws to express their voice when laws are made (European Commission, 2002a, p. 19), then it would be reasonable to assume that input can also be made by those foreign actors affected by EU legislation.

The thesis has no intention to engage with normative debates regarding the degree to which the EU should or should not be open to hearing what foreign actors have to say about EU laws (more details about this and similar normative questions could be found in Korkea-Aho, 2016). Instead, the thesis discusses input legitimacy merely as an access good. In doing so it makes an argument that the Commission might be interested in preferences of those foreign business groups whose businesses are affected by EU *acquis*. This, in turn, should be these groups’ ticket for access to the EU decision-making process.

On the other hand, the Commission might prioritise gathering information about the needs of actors representing member states’ and EU-wide interests over those speaking on behalf of foreign actors. Previous research has shown that EU institutions, especially the Commission, prefer to engage with lobbyists representing wider European interests, rather than those representing an individual member state’s position (Chalmers, 2014, p. 988; Eising, 2007a, p. 399). Hence, it could be hypothesised that interest groups representing foreign interests would take the third position after those representing EU-wide interests and national interests, respectively. This does not imply that the Commission is closed for foreign actors’ preferences. It just means that if there is a large number of interest groups seeking access (“access overload” (Coen, 1997, p. 96)), the Commission might be more interested in hearing domestic (EU) interests’ representatives than those coming from foreign countries.

In addition, foreign groups may open up additional channels to policy-makers *via* membership of national and European associations. Still, the question of foreign groups' membership in these associations might also be questioned due to the lack of EU citizenship. For example, Cowles (1996, p. 346) shows that US companies were treated as a *persona non grata* in many national business associations during the 1980s, and when this was not the case, their influence in these associations was limited. However, as demonstrated by Coen (1999, p. 37), during the 1990s, American firms managed to integrate into EU-wide business associations, and even to take leading positions in some of them. The experiences of Japanese companies were, nevertheless, different: Hamada (2007a, p. 410) refers to Toyota's unsuccessful application for membership of the European Automobile Manufacturers' Association (ACEA).

Overall, the Commission should be the most accessible institution for foreign interest groups since the good they can provide - expert knowledge – is needed mostly by the Commission. In addition, groups can also rely on lobbying via member states if they provide investments and jobs in the concerned state. Finally, they can lobby through national and European associations, but only if they are granted membership in these associations (table 2).

**Table 2.** Foreign interest groups' prospect of access to policy-makers in the EU.

<b>EU institutions and actors</b>	<b>Access by foreign groups</b>
European Commission	The most accessible institution
European Parliament	Limited access
Council of Ministers	Limited access
Member states	Limited access Exception: Companies which provide investments and jobs.
National associations	Limited access
EU-wide associations	More accessible than national associations.

As mentioned earlier, the main purpose of this thesis is to shed some light on the determinants affecting the success of foreign groups' lobbying rather than their access to decision-makers only. Similarly, the research project aims to explain non-EU interest groups' activities at the EU level, instead of focusing on lobbying at the level

of member states. However, an analysis of the access of foreign groups to policy-makers is important for the following reasons. Firstly, it justifies the examination of non-EU interest groups' engagement during the preparation of legislation by the Commission, given that following the resource dependence theory, the Commission should be the most accessible institution for foreign interest groups. The extant studies on non-EU lobby organisations also share the assumption that foreign groups prefer communication with the Commission over the other EU institutions.

Secondly, an analysis of potential access points that could be used by foreign companies and associations is necessary for tracing foreign actors' lobbying activities. Scholars employing process-tracing usually examine the "groups' preferences, their access to decision-makers, decision-makers' responses to the influence attempts, and the degree to which groups' preferences are reflected in outcomes" (Dür, 2008b, p. 562). Thus, in order to explore lobbying success, it is necessary to identify potential access points that groups may use when trying to make an impact.

Thirdly, the thesis aims to explain non-EU interest groups' activities at the EU level, rather than within member states. More specifically, it explores lobbying success during the policy formulation phase, led by the Commission. As the exclusive initiator of EU legislation, the Commission is not formally obliged to follow member states' preferences while preparing legislative proposals. Nevertheless, it usually is aware of member states' preferences, even before tabling a proposal. As a policy entrepreneur (Kingdon, 1984, 179), it strives for the proposal to eventually gain the approval of the European Parliament and the Council. Consequently, the Commission seeks the support of interest groups "with a high degree of economic power" in member states to please these countries and get the needed approval of the Council (Klüver, 2013b, p. 52). For the same reason, economically powerful interest groups might use national channels when trying to shape the Commission's proposals. This is why it is necessary to understand the likelihood of non-EU companies gaining access to policy-makers at the national level. If they make huge investments or provide jobs in an EU state, foreign companies might use the state as channels through which they may influence the Commission's proposals.

### 1.7.2. Commission's early position on issues under consideration

European Commission's main interest has been to maintain its competences (Klüver, 2013b, p. 32). In order to do so, the Commission needs to draft policy proposals that will gain the approval of the European Parliament and the Council. Still, the Commission also acts as a "competence-maximiser" who seeks both more competence and "more Europe" (Pollack, 2003, p. 36, 39). In addition to these "basic" and "role-specific" interests (Klüver, 2013b, p. 32), the Commission also consistently pursues certain policy objectives – such as the internal market liberalisation – *vis-à-vis* other actors (Pollack, 2003, p. 40). Lastly, the Commission has specific preferences that concern each individual policy proposal (Klüver, 2013b, p. 32). Thus, whereas survival has been its main interest, the Commission also has other long-standing preferences, such as expansion of its competences (role-specific preferences) or internal market liberalisation (policy objectives). Finally, the Commission has some less general preferences, which relate to individual policy initiatives. It is this latter category of Commission's preferences that the thesis focuses on.

The underlying assumption of the scholarship on informational lobbying, including the resource and dependence theory, is information asymmetry in favour of interest groups (Chalmers, 2013, p. 39). It has been argued that the Commission is understaffed and overwhelmed by the many issues on its agenda (Chalmers, 2011, p. 472; Bouwen, 2009, p. 20). Whereas areas covered by the Commission's competencies have been growing, the size of its staff has remained small, similar to the size of a mid-sized city's administration (Bouwen, 2009, p. 20). The Commission, thus, often faces difficulties when dealing with complex problems. As a result, the Commission may have strong preferences over outcomes, but not on policies generating the desired outcomes (Klüver, 2013a, p. 61-62).

On the other hand, as experts on particular issues, interest groups possess sought-after technical knowledge (Bouwen, 2002; Chalmers, 2011; Klüver, 2013a). Operating in the EU market on a daily basis, companies and business associations have been accumulating "know-how", thus gaining advantages over European bureaucrats with regard to the needed expertise. Hence, they can shape the Commission's proposals by providing technical knowledge on what policies will lead towards the desired outcomes (Klüver, 2013a, p. 62). Put simply, policy-makers know what they want to

achieve, but they do not have extensive expertise on how to achieve it. This supposed lack of expertise provides a window of opportunity for groups to influence decision-makers' preferences by providing knowledge about the link between policies and their consequences.

The thesis, however, makes the argument that the Commission sometimes has strong early preferences, not only over outcomes but also over policy measures necessary to achieve them regardless of input from interest groups. These preferences may be based on institutional expertise, predefined policy priorities, as well as previous experience, beliefs, and the knowledge of individual Commissioners.

The assumption that the Commission is “too distant from the market” (Bouwen, 2002, p. 369), should not be overstated. Indeed, the Commission sometimes drafts proposals that concern completely new issue areas which, previously, have not been regulated at the EU level. In these cases, interest groups can have more expertise than the Commission. Still, frequently, the Commission actually evaluates and proposes improvements of the existing laws, meaning that it does not deal with an issue without any previous knowledge on the subject.

This is especially since, in addition to its role as the legislative initiator, the Commission monitors and evaluates the implementation of EU *acquis* in each member state<sup>27</sup>. It makes annual reports assessing whether EU legislation delivers the looked-for changes across the Union. In doing so, the Commission is also empowered with the right to gather information about market participants, including the possibility of conducting investigations in the case of a suspected breach of EU law. Additionally, the Commission has its own in-house experts. In this way, the Commission has been accumulating “technical and institutional expertise” about the European internal market (Majone, 1996, p. 72). Finally, as shown by Kassim et al. (2013, p. 43), it would be wrong to assume that the Commission is staffed by bureaucrats mostly detached from the real world, since at least one third of the Commission staff (based on a sample of 1,900 employees) had worked in the business sector before joining the Commission.

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<sup>27</sup> See the European Commission's website: [https://ec.europa.eu/info/about-european-commission/what-european-commission-does/law\\_en#ensuring-correct-implementation](https://ec.europa.eu/info/about-european-commission/what-european-commission-does/law_en#ensuring-correct-implementation). [Accessed on 07/07/2019].



Still, this does not refute the widely accepted assumption in the literature on lobbying that the Commission needs information from interest groups due to the insufficient number of staff which has to deal with the growing number of issues covered by the Commission's competencies. Nonetheless, the most recent data shows that the number of proposals made by the Commission for adoption under the ordinary legislative procedure has been declining, instead of growing: from 159 in 2011 to 48 in 2015 (European Commission, 2016a, p. 3). Besides, as shown by Gornitzka's and Sverdrup's study (2011, p. 63), DGs with larger number of staff tend to engage more with interest groups than those with smaller staff. These findings challenge the long-standing assumption that the Commission depends on external expertise provided by interest groups because it lacks sufficient number of staff.

This certainly does not mean that interest groups' expertise and even information asymmetry in their favour do not deserve to be noted. The point made here is that the Commission has developed its own expertise on the European single market, which might govern its preferences regardless of input from interest groups.

Furthermore, at the beginning of each mandate, a College of Commissioners collectively, as well as each Commissioner individually, set up policy priorities and roadmaps aimed at analysing pressing problems in the EU, policy options that could improve the *status quo*, and preferred outcomes.<sup>28</sup> Led by this list of predefined policy priorities, the Commission might have strong preferences over certain policy measures seen as necessary for the achievement of its policy priorities.

Additionally, Commissioners in charge of a proposal might also have initial preferences based on their previous knowledge, beliefs or experience. Kassim et al.'s study (2013, p. 109-112) found that the views, preferences, and ideologies of Commission officials derive from their nationalities, "functional loyalties", previous working experience, and gender. Further, Commissioners' links with their home countries may also shape their preferences (Klüver, Braun, and Beyers, 2015, p. 453; Thomson, 2008, p. 169; Wonka, 2007). Even more, as Wonka (2007, p. 175) shows, governments tend to appoint those Commissioners whose preferences are close to their own – those who share the government's policy views and party affiliation. All this

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<sup>28</sup> For more, see the European Commission's website: [https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law\\_en](https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law_en). [Accessed on 07/07/2019].

means that those in charge of a policy proposal have certain policy views formed before coming into office and those are independent from interest groups' input.

Finally, a portfolio covered by a Commissioner could affect her or his preferences. Policy domains that fall under Commissioners' jurisdiction have varying degree of specificity (Hartlapp, Metz, and Rauh, 2013, p. 426). For instance, DG Environment has more narrowly defended jurisdictions and related tasks and priorities than DG Internal Market. This might affect interest groups' mobilisation and their prospects of influencing policy initiatives. As an illustration, fossil fuels producers lobbying against a proposal on CO<sub>2</sub> emissions might find it easier to influence the DG Energy than the DG Environment. This is because DG Environment takes into account only the environmental aspects of a proposal, whereas DG Energy has to find a good balance between environmental and other energy-related concerns (e.g. security and competitiveness), which might leave more room for making a compromise with fossil fuels producers. Furthermore, Kassim et al.'s research (2013, p. 116) found ideological variations across DGs based on sectoral differences. For example, officials in DG Social Policy and Environment are less "pro-market" oriented than those in DG Competition (Kassim et al., 2013, p. 116).

In sum, the Commission sometimes has strong early preferences not only over outcomes (consequences) but also over policies (measures) aimed at achieving desired outcomes. These initial preferences could be based on institutional expertise, predefined policy priorities, and previous experience, beliefs, and knowledge of individual Commissioners and other officials in charge of a policy proposal. Commission's early preferences might affect the prospect of interest groups lobbying successfully. When the Commission has strong initial views on policies under consideration, attempts by opposing interest groups to alter its positions would be less likely. Conversely, supportive interest groups - those whose preferences align with Commission's early preferences - will find themselves in a better position to secure their interests. Commission's strong initial preferences, therefore, are likely to have an indirect impact on the lobbying success of a supportive camp; convergence in positions between the Commission and the supportive camp will play stronger role when the Commission has strong initial views on policy initiatives.

How does the Commission's early position affect the likelihood of foreign groups' lobbying success?

In order to pursue its objectives, the Commission may organise networks of like-minded stakeholders, to support its positions and to counter the opposing bloc. As noted by many authors, the Commission has been shaping representation of interest groups in Brussels by organising more or less formal consultative committees, advisory and expert groups (Bouwen, 2009; Broscheid and Coen, 2003; 2007; Mahoney, 2004). By selecting policy areas where advisory groups will be established and by choosing interest groups which will participate in these groups, the Commission has been extending "the influence of the groups most in line with its agenda" (Mahoney, 2004, p. 462). Therefore, if the Commission has strong early preferences over a policy measure, it can increase the influence of like-minded stakeholders. The Commission also may drag into a debate those interest groups who otherwise would not engage in debate.

On the other side, however, the Commission may strategically engage in dialogue with an opposing camp, in order to weaken their opposition, and via them – the opposition of member states. As mentioned earlier, the Commission's main interest is to present policy proposals that will gain the approval of the European Parliament and the Council (Klüver, 2013b, p. 32). When pursuing its objectives, the Commission cannot afford for any stakeholder to be too hostile (Interview 3). Therefore, if the Commission has strong early preferences over a policy measure, it can engage in a dialogue not only with like-minded groups, but also with strong opponents in order to try to find a compromise with them and via them to weaken member states' opposition.

Finally, the Commission may use its competences to put pressure on interest groups opposing its preferred policy. As mentioned at the beginning of this section, one of the Commission's long-standing preferences has been a liberalisation of the internal market (Pollack, 2003, p. 39, 322). To enforce the rules governing the internal market competition, the Commission has been empowered with the right to conduct inspections, antitrust investigations, sectoral screenings and so on<sup>29</sup>. The Commission

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<sup>29</sup> See the European Commission's website: [https://ec.europa.eu/competition/antitrust/overview\\_en.html](https://ec.europa.eu/competition/antitrust/overview_en.html). [Accessed on 07/07/2019].

may use these investigative powers and the information collected to “build its case” against a bloc opposing its preferred policy measures.

### **1.7.3. Commission’s early position on interest groups: insiders vs outsiders**

The previous section has put forward the argument that the Commission sometimes may have initial preferences over issues under consideration. The absence of the Commission’ strong views on policies, however, does not guarantee that an interest group will be successful. Instead, a group’s success is also affected by its insider/outsider status. The present section elaborates on this issue in more detail.

As mentioned earlier, interest groups rely on the provision of information when trying to shape EU laws. In doing so, they provide different sorts of information to policy-makers. Yet, regardless of the type of information, interest groups have to rely on the provision of information if they aspire to make an impact. As pointed out by an interest group’s representative:

“Serious lobbying has to be based on facts and figures. Just to say, ‘we want this’ and ‘we don’t want that’ amounts to nothing. The basis always has to be science”  
(in Chalmers, 2013, p. 51).

However, all interest groups taking part in lobbying during a legislative process provide the Commission with some sort of information: figures, statistics or arguments. As corroborated by Chalmers’ study, the most frequent type of information that has been used by all types of interest groups is the “cause–effect” information which outlines the consequences of a policy initiative (2013, p. 51). Since groups often have competing interests, they might provide different numbers and competing arguments. For instance, during the negotiations on the Renewable Energy Directive (RED), some lobbyists provided figures showing that biofuels produced from vegetable oils produce three times more greenhouse gas (GHG) emissions than biofuels produced from sugarcane. Producers of vegetable oils, on the other hand, provided figures to show that the production of oil-based biofuels generates much lower levels of GHG emissions. The question is: whose figures/arguments will make an impact?

The insider/outsider distinction might be relevant in this regard. Drawing on the research on insider/outsider status of lobbyists (Broscheid and Coen, 2003, 2007; Coen, 2010; Grant, 1978; 1995; 2004), the thesis suggests that insiders might be more likely to lobby successfully than outsiders. It contributes to this strand of literature by introducing an additional criterion underpinning the insider/outsider distinction, which concerns specifically non-EU interest groups.

Let start with the extant literature on the distinction between lobbying insiders and outsiders. The insider/outsider distinction was made by Grant in 1978 (Grant, 2004, p. 408), although similar typologies could be found in earlier studies on interest groups such as that of Schattschneider from 1935 (Binderkrantz, 2005, p. 713; Maloney, Jordan, and McLaughlin, 1994, p. 18). According to Grant's typology, an insider has following characteristics: (a) an insider is recognised as a "legitimate spokesperson" for actors sharing common interests; (b) an insider follows the rule to always present "an accurate well-researched case, neither exaggerated nor untruthful"; and (c) an insider is willing to accept a policy outcome, even when the outcome is not entirely in line with her interests (Grant, 2004, p. 408-409). Grant (2004, p. 409) makes a further distinction between "core" insiders (who engage in debates on various topics), "specialist" insiders (who engage with specific topics only), and "peripheral" insiders (who are able to achieve only a small impact). Outsiders, on the other hand, are either "outsiders by necessity" – meaning that they aspire to become insiders but lack the needed skills and/or resources, or are "outsiders by choice", meaning that they do not want to cooperate with governments' officials on grounds of ideological divergence (Grant, 2004, p. 409). Insiders were said to be more successful because they have better access to the policy-making process, as a result of their use of insider strategies (direct contacts with policy-makers) in contrast to the outsider strategies (e.g. demonstrations or media campaigns) (Grant, 2004, p. 409-410; Grant, 2001).

Maloney, Jordan, and McLaughlin (1994, p. 28) suggested that Grant's typology does not distinguish groups' *strategies* from groups' *status*. While status is a matter of policy-makers' choice, strategy refers primarily to a group's choice of actions (Maloney, Jordan, and McLaughlin, 1994, p.28). According to Grant (1995, p. 18), the insider/outsider distinction implies both groups' status, assigned by decision-makers and strategies which groups tend to employ when trying to make an impact. The argument made by the author is that status and strategies are inseparable in the

sense that “pursuing an insider strategy is a precondition of winning an insider status” (Grant, 1995, p. 15-16). Other authors, on the contrary, hold that the strategic choices made by groups should be separated from the status that policy-makers assign to them (Binderkrantz, 2008, p. 176; Dür and Mateo, 2016, p. 18; Maloney, Jordan, and McLaughlin, 1994, p. 28). To avoid terminological confusion between strategies and status, scholars have renamed the insider and outsider divide into a direct vs indirect strategies distinction (Binderkrantz, 2008, p. 176), voice vs access (Beyers, 2004, p. 213), ‘wet suit’ vs ‘business suit’ strategies (Grant, 2004, p. 410), or inside and outside strategies (Dür and Mateo, 2016).

The insider (inside, direct, access, or ‘business suit’) strategies refer to direct contacts between interest groups and policy-makers realised through meetings, phone calls, participation at conferences etc. (Chalmers, 2013, p. 43; Dür and Mateo, 2016, p. 70). The outsider (indirect, voice, ‘wet suit’) strategies, on the other hand, relate to interest groups’ attempts “to mobilise citizens” and to “pressure public officials” (Kollman, 1998, p. 3) – by organising media campaigns, public presentations, and protests, and by mobilising constituencies and associations’ members (Beyers, 2004, p. 214; Chalmers, 2013, p. 43; Kollman, 1998, p. 8).

Strategical choices are, nevertheless, constrained by numerous factors (Binderkrantz, 2008, p. 176; Maloney, Jordan, and McLaughlin, 1994, p. 32-36). An interest group’s choice of a strategy depends, firstly, on its type; business groups tend to employ inside strategies more often than non-business groups (Binderkrantz, 2008, p. 177; Dür and Mateo, 2016, p. 4). But some studies have shown that strategic choice is not conditioned by a group’s type – both business and citizen groups often combine two strategies (indirect and direct) (Beyers, 2004, p. 234). Secondly, strategic choices depend on a group’s resources; resource-rich groups are more likely to focus on inside than on outside lobbying (Dür and Mateo, 2016, p. 5). Thirdly, strategy selection might be constrained by a group’s status. Groups with the insider status will often restrain from using outside strategies - especially confrontational outside strategies (e.g. protests) - because this type of strategies could jeopardise the groups’ relationship with the policy-makers (Grant, 2001, p. 343). Still, as noted by some authors, the lack of the insider status does not mean that a group will automatically turn to outside strategies (Binderkrantz, 2005, p. 694). Also, varying strategies are not necessarily

mutually exclusive and interest groups often use different types of strategy simultaneously (Binderkrantz, 2005, p. 703; Beyers, 2004, p. 234; Page, 1999, p. 212).

Fourth, which strategy will be chosen also depends on a policy issue under consideration – its type (Dür and Mateo, 2016, p. 75), the level of politicisation (Binderkrantz, 2005, p. 709), and the popularity of considered policy measures and alternatives (Kollman, 1998, p. 12). Thus, business groups that are active in distributive policy domains use insider strategies more often than those active in regulatory sectors (Dür and Mateo, 2013, p. 665). In policy areas that are highly politicised interest groups tend to resort to both types of strategies (the insider and outsider) (Binderkrantz, 2005, p. 709). If a group favours policy measures that are popular, or comparatively more popular than the alternatives, it will likely employ outside strategies (Kollman, 1998, p. 12-13).

Fifth, strategy choices depend on the institutional setting (Beyers, 2004; Dür and Mateo, 2016, p. 5). For attempts to access executive institutions, resource-rich business groups tend to employ insider strategies (Dür and Mateo, 2016, p. 5). To influence Commissioners' cabinets, interest groups often use both types of strategies though insider strategies are prioritised when DGs are being approached (Beyers, 2004, p. 233).

To sum up, while Grant (1978), who first came up with the insider/outsider distinction, treated a group's status and strategy as one variable, other authors have suggested their separation (Binderkrantz, 2008; Maloney, Jordan, and McLaughlin, 1994). The argument has been that status is granted by policy-makers, while strategy is a matter of interest groups' choice of action. There has been a recognition, though, that interest groups are not completely free when making strategy choice, as they may be constrained and influenced by various factors: group type, resources, the nature of an issue under consideration, and the institutional setting. Further, it has been shown that inside and outside strategies are not mutually exclusive – both insiders and outsiders can use either type of strategy.

The focus of the thesis will be on the status, rather than strategies of foreign groups. It embraces the call to treat status and strategy as analytically separate aspects, though, of course, in reality they are not fully insulated from each other. Later in this section, this issue of analytical separation will be discussed in more detail. The section will

now proceed to discuss interest groups' status, the thesis' main focus in relation to the insider/outsider typology.

One of the main characteristics of groups enjoying the insider status is their willingness to provide objective information that would be “neither exaggerated nor untruthful” (Grant, 2004, p. 408). To do so, interest groups have to make “a trade-off” between presenting biased information that would maximise their interests (“cheap talk”) and objective and useful information that would improve the policy (Broscheid and Coen, 2003, p. 167). But why would an interest group decide to provide objective information, especially when it contradicts its interests?

Firstly, interest groups will provide objective information if they can receive a reward for providing such information (Broscheid and Coen, 2007, p. 350). To stimulate lobbyists to provide objective, instead of biased information, the Commission has created a reward mechanism for providers of useful information – privileged access to its forums, events, and other important fora discussing policy proposals (Broscheid and Coen, 2007, p. 350) and privileged access to information about Commission's plans, decisions, and grants (Broscheid and Coen, 2003, p. 171). Outsiders, on the other hand, often present biased views (“bubble”) – they make recommendations and present their positions regardless of Commission's positions and its preferences (Broscheid and Coen, 2007, p. 350). Hence, interest groups will provide objective information in exchange for a reward – access to the EU policy-making process.

Secondly, interest groups have incentives to provide reliable and truthful information because they are interested in building a positive reputation in Brussels (Coen, Grant, and Wilson, 2010). Lobbying in the EU, as in other places, is “a marathon, not a sprint”. The impact that most interest groups would prefer to make would not be one-off, but repeated. Hence, an immediate success is important, but so is the ability to make influence in the long run (Coen, Grant, and Wilson, 2010, p. 13). That is why many lobbyists will be motivated to establish the reputation as suppliers of objective - not biased - information. As one interviewee said:

“(…) So credibility is big (…) we have established long-term credibility. We never cheated, we never failed to deliver. When we say this, we mean this”  
(Interview 4).



Besides providing reliable and truthful information, an insider should develop “a broad political profile across a number of issues”, in order to have better access to the policy-making process at later dates when issues that are of crucial importance for the insider will be put on the policy agenda (Coen, 2010, p. 291). Insiders also should participate in collective actions through participation in EU business associations which could improve their “European credentials” (Coen, 2010, p. 299). Also, firms can gain insider status due to “their cross-border production, size, and length of time in Brussels” (Coen, 2010, p. 296). Finally, an insider should create a relationship with policy-makers based on “an element of ‘give and take’” on behalf of both - lobbyists and EU policy-makers (Coen, 2010, p. 297).

The above has discussed interest groups’ motivation to provide useful information. But, what about the demand side? Why would the Commission allow privileged access to some groups (insiders)? Why had the division between insiders and outsiders been established in the first place? As shown by some authors (Broscheid and Coen, 2003; Broscheid and Coen, 2007, p. 359; Coen, 1997, p. 96), the restriction of interest groups’ access was a reaction to the “access overload” at the beginning of the 1990s, when the number of groups seeking to shape EU laws soared.

Broscheid and Coen (2003) present a formal model based on a complex set of factors including the number of lobbyists, lobbying costs and benefits, as well as policy-makers’ decision to choose insiders. One of the main findings is that, if lobbying costs are high (if the technical expertise that the policy-makers need is costly), the number of lobbyists seeking to participate in the policy-making process will be low (Broscheid and Coen, 2003, p. 178). Hence, all interest groups participating in such policy-making processes should be considered insiders. If, on the other hand, the costs are low, the number of lobbyists will increase (Broscheid and Coen, 2003, p. 179). Consequently, the policy-makers will decide to separate the insiders and outsiders, i.e. they will enable access only to some interest groups (the insiders). Why? Value of rewards granted to insiders for providing objective and truthful information (e.g. privileged access) depends on a number of lobbyists (which in turn depends on lobbying costs); hence, a reward loses its value as a number of interest groups grows (Broscheid and Coen, 2003, p. 167). Consequently, the interest groups will not have strong incentives to provide useful information, so the Commission will be given biased information. To prevent this situation – having too

many interest groups doing “cheap talk” instead of giving useful information - the Commission has created a system which distinguishes between insiders and outsiders (Broscheid and Coen, 2003, p. 177-179).

The fact that the Commission had managed to establish “informal rules of game” (Grant, 2004, p. 409), which have in practice restricted access to the policy-making process to some interest groups (insiders), has led scholars to describe the EU system of interest representation as “*élite pluralism*” (Coen, 1997, p. 98). Still, the number of insiders, the value of their relative benefits, the lobbying costs, and the value of information that insiders provide might vary among policy domains (Broscheid and Coen, 2007; Coen and Katsaitis, 2013).

Namely, the regulatory policy domains, which mostly need the technical information (which increases the output legitimacy), have greater concentration of interest groups that mostly provide technical information (i.e. business groups) (Coen and Katsaitis, 2013, p. 1109). On the other hand, in the distributive policy domains, where the need for technical information is lower and where the demand for input legitimacy is higher, the number of groups providing political information is larger (i.e. NGOs) (Coen and Katsaitis, 2013, p. 1109). This supports the argument that, while the EU system of interest intermediation could generally be qualified as “*élite pluralism*” (Coen, 1997, p. 98), it takes various forms at the level of sub-systems, varying among policy domains and their respective demand for certain types of information (Coen and Katsaitis, 2013, p. 1117).

Furthermore, it is possible for an interest group to be seen as an insider when certain policy initiatives are discussed, while being assigned the status of an outsider when other initiatives are on the agenda (Page, 1999, p. 211). Page (1999, p. 211) provided an example where one of the interviewed interest groups which claimed to have a close relationship with the British Department of Health also stated that the group was ‘less happy’ when other departments are considered. Hence, caution is needed when judging who the insiders and outsiders are. This comes also with a note, mentioned above, that the value of information provided by insiders varies among policy domains (Broscheid and Coen, 2003; Coen and Katsaitis, 2013) so does their status too. Besides, a long-standing relationship between an insider and policy-makers imply, among other things, the insider’s willingness to engage into debates on various policy

issues, not only those of her utmost interest but also those that she finds less important (Coen, 2010, p. 291). Therefore, a lobbyist can be granted with an insider status when certain policy initiatives are discussed, and at the same time, to be seen as an outsider, a group whose opinion is less important, when other issues are debated.

Outsiders can be “outsiders by necessity” and “outsiders by choice” (Grant, 2004, p. 409). The former are interest groups which lack the skills and/or resources to become insiders, and the latter are groups which do not want to cooperate with governments’ officials because of ideological disagreements (Grant, 2004, p. 409). Grant’s typology was initially developed to explain interest groups’ status in Britain. In the EU context, one additional category of “outsiders by choice” could be identified, namely those holding that their interests are best advocated at the member state level. The literature on Europeanisation suggests that the growing transfer of competencies from the national to the EU level has triggered a shift of lobbying activities from member states to the EU institutions (Bache et al., 2014, p. 309-310). However, as shown by some studies, transfer of competencies from member states to the EU did not equally affect all interest groups – some groups have reoriented their lobbying towards the EU institutions but others retain their lobbying on the level of member states (see Beyers and Kerremans, 2012, and Klüver, 2010). It is, therefore, possible that at the EU level some interest groups represent “outsiders by choice”, not because of ideological differences with EU policy-makers, but simply because they believe that their interests could be better pursued at the national level.

Returning to the question of status vs strategy, the thesis, as noted, embraces the view that status and strategy should be separated, especially because empirical findings indicate that interest groups tend to combine both inside and outside strategies (Binderkrantz, 2005, p. 695). Additionally, it has been shown that, even when interest groups employ outside strategies aiming to put pressure on the policy-makers, they usually choose “the least confrontational” strategies (Binderkrantz, 2005, p. 703). The latter indicates that outside strategies do not necessarily lead to the erosion in the relationships between the insiders and policy-makers, as suggested by Grant (2001, p. 343). Also, strategy choices are constrained by numerous factors so the groups are not completely free when choosing a strategy. Finally, both inside and outside strategies can be used in various directions – to put pressure on law-makers, to mobilise support, to secure the group’s survival, to persuade the policy-makers, to shift the direction of

the debate, and so on. After all, strategies aiming to mobilise public can be used not only by interest groups but also by policy-makers. As President Franklin Roosevelt once said to a group of advocates: “You’ve convinced me. Now go out and make me do it” (in Dreier, 2011).

On the other hand, status and strategy, as two aspects of the insider/outsider distinction, are not fully independent of each other. As explained earlier, insiders are those who provide objective information in return for a reward – privileged access to the policy-making process. This means that the insiders’ reward is the direct contacts they have achieved with the policy-makers. Put simply, there is a direct link between the insider status and the insider strategy. However, it is important to make a distinction here between the inside strategies (defined as direct contacts with policy-makers through meetings, phone calls, etc.) and the privileged access to policy-makers. Continuity and regularity, as well as the extent of access, are significant in this respect. Insiders do not have some or rare, but frequent and regular contacts with relevant policy-makers. This particularly applies to the EU context where the Commission regularly runs public consultations which are open to all interested parties. Thus, as a general principle, all interest groups can achieve some sort of access to the Commission, but only the insiders have regular access to Commission’s expert and advisory groups and the other forums where policy proposals have been discussed. Additionally, insiders enjoy the reputation as providers of accurate and reliable information and have to meet other criteria mentioned above. Hence, it is not important only to access the Commission, but also to be recognised as a provider of objective information, which in turn requires the existence of regular and long-term relationships.

Still, as mentioned earlier, the status enjoyed by interest groups does not travel across all policy domains and issues. Instead, it depends on the number of lobbyists that are active in a policy domain and/or policy type. Following Broscheid and Coen (2007, p. 362) the domain that this thesis focuses on - the energy policy domain - belongs to the group of regulatory policies. Being a regulatory policy, energy, thus represents a policy domain where technical expertise and the related output legitimacy is mostly needed (Coen and Katsaitis, 2013, p. 1117). In comparison to other policy domains, it has been shown to have a relatively large number of both, interest groups, and Commission’s advisory groups (Broscheid and Coen, 2007, p. 362).

However, Dür and Mateo (2016, p. 81) classify energy as a distributive policy. Their classification of policy domains follows Lowi's typology (1964) which differentiates between distributive, redistributive, and regulatory policies. Dür and Mateo (2016, p. 74) suggest that the level of conflict surrounding an issue under consideration is determined by its policy type. Distributive policy domains have been characterised by concentrated benefits and diffused costs (Lowi, 1964), which is why these domains attract mainly business actors with concentrated gains and little or no opposition from other groups (Dür and Mateo, 2016, p. 74). Hence, in the distributive policy domains, the thinking goes, business groups rely on inside rather than outside strategies because they want to avoid public attention (2016, p. 74).

Thus, while Broscheid and Coen (2007) and Coen and Katsaitis (2013) classify energy policy as a regulatory policy, for Dür and Mateo (2016) energy policy is a distributive policy. This difference is understandable given the general difficulty to categorise one policy sector either as regulatory or (re)distributive (Freeman, 1985, p. 483; Rasmussen, 2012, p. 16). It is, in fact, reasonable to suggest that the energy domain share certain features with each of the three policy types. Still, it is suggested here in the thesis that the energy policy domain is probably closer to the regulatory than distributive policy type. Dür and Mateo (2016, p. 74) make the assumption that energy, like the other distributive sectors, is characterised by concentrated gains and diffuse costs, but often time this has not been the case. The energy sector, namely, often sees policy initiatives implying concentrated benefits and concentrated costs (Binderkrantz, Christiansen, and Pedersen, 2014, p. 882). This is why Binderkrantz, Christiansen, and Pedersen (2014, p. 886), similarly to Broscheid and Coen (2007) and Coen and Katsaitis (2013), classify energy-related legislation as part of the business regulation.

To sum up, insiders are those who provide non-biased information by taking into account the Commission's preferences as well. Secondly, insiders have to develop a portfolio that is broader than their specific, narrow interests. Thirdly, insiders should have a long-term presence in Brussels. Fourthly, they should be well integrated into broader business coalitions through participation in business associations. Fifthly, insiders are open to making a compromise between their own and the Commission's position. Finally, the insider status may be granted to a company based on its structural power. The focus of this thesis is on interest groups' status, but, at the same time, it

acknowledges that achieving direct contacts with policy-makers are the key strategy that insiders use. However, the privileged access to Commission's advisory groups and other forums represents the reward that insiders seek to gain.

In addition to the above criteria, the thesis examines one additional criterion explaining the distinction between insider and outsider lobbyists which is related to the specific feature of foreign interest groups, their non-EU origin. Namely, insiders are foreign actors coming from countries which are strategically important for the achievement of EU policy objectives.

The starting assumption of this argument is that many EU policies are aimed at improving the competitiveness of EU companies relative to non-EU companies. Having non-EU nationality, therefore, may be a drawback on the side of foreign companies when trying to make an impact in Brussels. For instance, Cowles (1996, p. 342) describes how, in reaction to the “ ’threat’ of American firms” because of their relative size compared to European companies, the Commission has re-directed its “competition policies drawn up to prevent European cartels (...) towards American MNEs<sup>30</sup>”. For similar reasons, Japanese Toyota in Europe has been trying to portray itself as a European, rather than a Japanese, company (Interview 4).

However, it would be wrong to assume that non-EU actors represent a homogeneous group of actors. There are companies and associations whose countries of origin have close economic and political ties with the EU. As a result, these interest groups may be strategically more important for the Commission than groups coming from “distant” countries. An insider, thus, may be important because the Commission wants to improve or maintain close relations with its country of origin. An insider could also be important because it comes from the country which shares the Commission's values, especially concerning market liberalisation. The insider in that case may be considered a valuable partner, being on the forefront of complying with EU policy objectives both inside the EU as well as abroad. The assumption is in line with the findings of Rasmussen and Alexandrova (2012, p. 628-629), showing that participation in Commission's public consultations of non-EU actors coming from

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<sup>30</sup> MNEs – Multinational enterprises.

resource-rich countries with close economic relationships with the EU is greater than those from non-resource rich countries.

Overall, lobbying does not take place in a vacuum (Mahoney, 2004, p. 444). The Commission has a history of relations with particular interest groups. They might prove themselves as providers of reliable and useful information, solution-oriented actors whose preferences are either close to those of the decision-makers or open to adjustments in line with the Commission's objectives (insiders). Others might oppose the decision-makers' preferences without sufficiently absorbing the opinions of the other side (outsiders). This research project contributes to this strand of literature by introducing an additional criterion attached to the traditional insider/outsider distinction which concerns specifically non-EU interest groups – the importance of their particular non-EU origin for the achievement of the overall policy priorities of the Commission. The thesis, thus, suggests that those non-EU interest groups whose countries of origin are strategically important for the achievement of the EU energy aims are more likely to be granted the status of insider and, consequently, to be more effective in their lobbying efforts.

How does a group's status affect its prospect of lobbying successfully?

As seen earlier, the literature around insiders/outsiders assumes that insiders have better access to the Commission than outsiders (Broscheid and Coen, 2007; Coen, 2010; Grant, 2004). Though access to the EU institutions does not automatically "translate into influence" (Dür, 2008a, p. 1221), it still represents a necessary condition for making an impact (Bowen, 2002, p. 366). An outsider may be deprived of access to the Commission and its advisory and expert groups, and thus of a possibility to shape EU laws. It is important to note that, as explained earlier, an outsider may be an "outsider by choice" not only because its ideology and preferences do not match with the Commission's (Grant, 2004) but also because it might want to focus its lobbying on the national level. However, regardless of whether a group is an outsider as a result of its own, or of the Commission's choice, the thesis assumes that the outsider status affects her prospect of lobbying successfully because her access to the Commission is limited anyway.

Secondly, a foreign group may be less successful if its interests run counter to the interests of domestic (EU) groups, in which case the Commission may choose to

protect the interests of the domestic groups, at the expense of the foreign group. The Commission's primary responsibility is to protect the interests of EU citizens. Many EU policies are aimed at improving the competitiveness of EU businesses relative to non-EU businesses. Therefore, if there is a clash between domestic and foreign interest groups, the Commission may decide to follow the preferences of domestic, rather than foreign groups.

However, as mentioned, there are companies and associations whose countries of origin have close economic and political ties with the EU. As a result, these interest groups may be strategically more important for the Commission than groups coming from "more distant" countries. An insider, thus, may be important because the Commission wants to improve or maintain close relations with its country of origin. An insider could also be important because it comes from a country which shares the Commission's values, especially the ones on market liberalisation. Consequently, the Commission might grant access to all foreign group affected by a policy proposal, but it would eventually follow the preferences of stakeholders from a "close", rather than a "distant" non-EU country.

#### **1.7.4. Framework for the analysis**

Based on the above assumptions, this section sets out the framework for the thesis' empirical analysis. As posited, the thesis suggests that Commission's early preferences on issues under consideration decrease the likelihood of a lobbying success of groups that oppose the Commission. The absence of Commission's strong views on policies, however, does not guarantee that an interest group will be successful. Instead, a group's success also depends on its status enjoyed among the policy-makers: insiders tend to be more successful than outsiders. The matrix below summarises the thesis' main argument.



**Figure 1:** Prospect of successful lobbying, depending on lobbyists’ status and initial Commission’s’ preferences.

	Insider	Outsider
Commission’s strong initial preferences for certain policy measures	Low	Very low
No strong initial preferences for certain policy measures	Very high	High

The matrix shows that insiders tend to be more successful than outsiders when the Commission does not have strong preferences on issues under consideration. However, when Commission’s early preferences are strong both – insiders and outsiders tend to be less successful.

In order to identify Commission’s early preferences, each case study traces the preparation of legislative proposals from the appointment of Commissioners to draft a considered proposal through to its adoption. The aim of this approach is to explore early positions on policy measures taken by the Commission and/or Commissioners. They are labelled ‘early’ or ‘initial’ in order to emphasise that these are the Commission’s original preferences, formed independently of the subsequent information provided by lobbyists.

However, defining the Commission’s initial position is a challenging task. Firstly, following the “faces-of-power debate” (Dahl, 1957; Lukes, 2005; Shapiro, 2003, p. 53) interest groups can exert influence during different stages of the policy cycle, from agenda-setting to implementation (Dür, 2008a, p. 1220). Thus, whether something is on the Commission’s agenda or a list of priorities, it may already have been influenced by external stakeholders. It is possible to take a step further and argue that interest groups may shape the process of selection of decision-makers, and thus the content of policies as well. Indeed, how should we ever know “what the ‘genuine interests’ of an actor are?” (Dür, 2008a, p. 1221).

This thesis shares the view that it is almost impossible to identify preferences that are deprived of any external influence. As a solution to this problem, the Commission’s preliminary position papers – such as a green paper or a strategy paper - are used to extract the Commission’s early preferences, following the similar approach used by Klüver (2013a, p. 66; 2013b, p. 94). This certainly is not a perfect

way to address challenges related to identifying Commission's genuine preferences, especially given that Commission officials are in contact with interest groups from the moment they enter the office. For that reason, the thesis follows the preparation of a proposal from the appointment of a College of Commissioners to the adoption of that proposal. All available data sources that could reveal where a legislative idea comes from are included. Besides, as one Commission official said:

“So we make a vision document, but with questions saying these are the issues, this is how we see them, do you agree, how would you do it, and so on. But we ask questions then. In order to develop a document which has questions you need to have a certain vision which you want to test. Otherwise, it goes in all directions, and no one knows actually what you are aiming for. We would never ask: ‘actually we do not really know what to do, what would you propose’. Instead, we say: ‘this is what we think it would be a good way of doing it, do you agree, do you see alternative ways, reasons, can you give evidence why it would work or not work?’” (Interview 6).

Commission's preferences on issues under consideration might be expressed collectively – through the Commission's strategies and policy priorities – or individual Commissioners might favour certain policy options over others.

After identifying (the lack of) Commission's early preferences, the analysis will proceed to gauge the interest groups' preferences, or their ideal positions, related to particular policy measures. To trace the lobbying activities of non-EU groups, the framework presented in one of the previous sections examining the potential access points of foreign groups (section 1.7.1.) is used. As a reminder of this framework, interest groups will try to access the decision-makers within the Commission through bilateral meetings and the working with the Commission's advisory groups. In addition, they can rely on lobbying through a member state, if they have provided investment and jobs in that state, or through national and European associations, if they have been granted membership. Interest groups can also use outside lobbying tactics – public events, media campaigns, and so on (Chalmers, 2013, p. 43).

To differentiate between insiders and outsiders, besides their access to the Commission, the thesis also examines: (1) foreign groups' economic power; (2) whether a group has a long-term presence in Brussels (e.g. offices in Brussels) prior to the adoption of a policy proposal; (3) whether a group is oriented towards building

a consensus or not; and (4) whether a group's country of origin is strategically important for the EU.

Foreign groups' economic power is measured by their market share in the EU. Since foreign companies and associations operate not only in the European Union, but outside the EU as well, these actors' market share in the EU seems as a suitable indicator of their economic power in the EU and a consequent relevance for EU policy-makers. In order to examine whether a group's country of origin is strategically important or not, documents issued by the Commission are analysed for each individual case: the strategies, the green paper, the Commission's communications with the European Parliament and the Council, and the other relevant documents. The group will be considered as strategically important for the EU, if its country of origin is mentioned in those documents as "strategically important", "significant" for the accomplishment of EU objectives, or if improvement of EU relations with its country is explicitly mentioned by the Commission as an objective of the EU energy policy.

As for foreign groups' access to the Commission, it would be difficult, almost impossible, to obtain data about the exact number of the meeting that the analysed stakeholders held with Commission's officials between 2006 (when the debate on the first examined proposal launched) and 2016 (when the last of the analysed proposals was tabled). Instead, a qualitative approach based on the analysis of various sources will be used to provide approximate estimation of the groups' access to policy-makers in Brussels. The following chapter elaborates on the research design in more detail.

## **Chapter 2: Research Design**

This chapter presents the research design of the thesis. It starts with definitions of the main concepts, such as lobbying, interest groups, and foreign interest groups. Thereafter, the chapter turns to the definition of lobbying success and how it differs from other related concepts, such as influence and access. The following section provides justification for the case selection. The chapter then turns to data sources, and then the methods that are employed for the analysis of the case studies.

### **2.1. Main concepts**

This section provides definitions of the main concepts that are relevant for the present research project. It starts with the definitions of lobbying, interest groups, and foreign interest groups, and subsequently it discusses the definition of lobbying success and its comparison with the other related concepts – access and influence.

#### **2.1.1. Lobbying, interest groups, and foreign interest groups**

The thesis uses the Commission's definition of lobbying according to which "lobbying means all activities carried out with the objective of influencing the policy formulation and decision-making processes of the European institutions" (European Commission, 2006a, p. 5). Accordingly, lobbyists are "persons carrying out such activities" through a number of organisations (European Commission, 2006a, p. 5). Thus, all activities carried out by lobbyists, through different organisations, with the purpose of shaping the decision-making process, throughout the whole policy-cycle, are considered as lobbying.

According to Beyers, Eising, and Maloney (2008, p. 1106), for an actor to be qualified as an interest group three components must be present: an "organised form of political behaviour", the objective to shape policy outcomes, and a waiver of the intention to hold public office. Among those actors who satisfy the three conditions above, the variation can be significant (Beyers, Eising, and Maloney, 2008, p. 1107). The Transparency Register of the European Union differentiates between the six types

of interest groups: (1) consultancy firms (e.g. PR firms); (2) companies, trade and business associations; (3) non-governmental organisations (NGOs); (4) think tanks and academic institutions; (5) groups representing religious communities; and (6) associations representing regional and other sub-national public authorities.<sup>31</sup>

This thesis focuses on companies and business associations, as well as consultancy firms if their services are used by non-EU interest groups to advance their interests in Brussels. Since NGOs, think tanks and research institutions, and religious communities usually represent interests that are not related to actors from one specific non-EU territory, they are omitted. Also, the majority of the extant literature on foreign interest groups has focused on non-EU companies and business associations, but not on other types of interest groups. Finally, foreign business groups make the largest share of groups representing foreign interests<sup>32</sup>.

The apparent feature distinguishing foreign from domestic interest groups is their country of origin – while the former come from non-EU countries, the latter have EU origins. However, the difference between domestic (EU) and foreign (non-EU) interest groups is not always straightforward. As suggested by Korkea-Aho (2016, p. 50-51), many companies are actually multinationals and transnationals, with head offices outside the EU and subsidiaries and joint ventures within the European Union. For example, American multinational corporation Facebook has its registered head office in the US, but it also has a subdivision registered in Ireland. In contrast, some organisations representing foreign interests have registered offices in the EU. For instance, the American Chamber of Commerce EU represents the interests of US companies, but its office is registered in the EU. Additionally, some interest groups have mixed membership - they represent both foreign and domestic companies. For example, Hungarian MOL and the Kuwait Oil Company are both members of the International Association of Oil and Gas, a business association actively involved in debates on the EU energy policy. Finally, some consultancy firms represent EU and

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<sup>31</sup> Transparency Register. Available at: <http://ec.europa.eu/transparencyregister/public/consultation/search.do?locale=en&reset=>. [Accessed on 07/07/2019].

<sup>32</sup> See the Transparency Register. Available at: <https://ec.europa.eu/transparencyregister/public/homePage.do?redir=false&locale=en>. [Accessed on 07/07/2019].

non-EU clients all together. An example is the consultancy firm Fleishman-Hillard, which represents the interests of South Korean Hyundai and the British bank Barclays.

For the purpose of this research project, non-EU interest groups are defined as companies and associations who seek to exert political influence in Brussels, but whose countries of origin are outside the EU. The definition, thus, excludes business associations with mixed membership (EU and non-EU), joint ventures with mixed ownership (EU and non-EU), and consultancy firms representing both domestic and foreign clients. The activities of consultancy firms are analysed only if their services are used by non-EU interest groups in particular cases. As for multinationals, even though they might have branches and subsidiaries in the EU, they are considered foreign as long as they have registered head offices outside the EU. Prior studies have also analysed multinationals with a foreign origin. Coen (1999) and Cowles (1996), for instance, have explored American multinationals, while Hamada (2007a) has examined the Japanese multinational, Toyota.

Domestic or EU interest groups, on the other hand, are those who are organised either at the level of a member state (e.g. the French Automobile Manufacturers' Association and the German BMW) or at the EU level - groups that are active across more than one EU state (e.g. the European Automobile Manufacturers' Association). Sometimes, as mentioned earlier, foreign companies have seats in these domestic (national and wider EU) associations. They, nevertheless, remain predominantly European and they have been analysed only as a channel through which foreign groups may seek to exert political influence.

### **2.1.2. Measuring lobbying success**

How is lobbying success defined and measured? Before turning to this definition, it is important to clarify the differences between lobbying "access", "success", and "influence".

Influence can be defined as an interest group's ability to shape a policy outcome in line with her preferences (Dür, 2008b, p. 561). It assumes a causal relation between the groups' preferences regarding a policy decision and the policy decision itself (Dahl, 1957, p. 202-203; Dür, 2008b, p. 561; Nagel, 1975, p. 29). Therefore, an actor

is *influential* if her preferences are satisfied by a policy outcome (Bernhagen, Dür, and Marshall, 2014, p. 203). Similarly, an actor is *successful* if her ideal position is reflected in an outcome. In both cases, the distance between a group's preferences and an outcome is measured (Dür, 2008b, p. 566). Still, an important difference remains. When a group's lobbying success is measured, the key task is to measure the extent to which its preferences are satisfied by an outcome. When influence is measured, the aim is not only to identify the extent to which a group's preferences are reflected in a policy outcome, but also to attribute the intended outcome to the groups' resources and/or strategies (Bernhagen, Dür, and Marshall, 2014, p. 203).

Some authors use interest groups access to EU institutions as "a proxy for influence" (Dür, 2008a, p. 1221). The rule "the more, the better applies" in this case - the more access a group has, the more influential it will be. Although access to EU policy-makers represents a necessary condition for making an impact (Bouwen, 2002, p. 366), it does not automatically "translate into influence" (Dür 2008a, p. 1221). Access, therefore, should not be equated with influence.

Despite its central position in the academic research on interest groups, interest groups' influence has been sought to be measured only in a small number of studies (Bernhagen, Dür, and Marshall, 2014, p. 202; Dür, 2008b, p. 561). Methodological challenges related to measuring influence include difficulties in defining the concept of influence as well as the complexity of EU policy-making. Lobbying in the EU takes place at several territorial levels (e.g. supranational, national, sub-national). Lobbyists can exert influence during different phases of the policy-making process (Dür, 2008b, p. 561). A number of actors are simultaneously trying to shape a policy proposal (Klüver, 2013b, p. 59). Finally, interest groups lobby and, at the same time, if necessary, they seeking to counter the lobbying activities of the groups on the opposite side of a debate (Dür, 2008b, 561). Therefore, it is extremely challenging to attribute a policy decision to a groups' lobbying efforts, which is why a lobby group's influence often leads to "methodological dead-ends" (Chalmers, 2011, p. 471).

The choice of this thesis is to measure lobbying success rather than lobbying influence. As suggested by Klüver (2013b, p. 59), lobbying is "a collective enterprise"; each policy proposal mobilises simultaneously a number of interest groups who, in parallel, try to shape EU policies. Hence, as mentioned above, it would be particularly

challenging to attribute a policy outcome to a single foreign group's lobbying efforts (influence). This is particularly the case given the fact that the thesis examines foreign groups only, instead of all the groups participating in the preparation of the observed policy proposals (though, for each case study, the thesis provides - in addition to the positions of the involved foreign groups - an overview of the positions of all the domestic (EU) stakeholders).

The thesis, therefore, measures foreign groups lobbying success as the distance between a group's ideal position and a final policy proposal (Dür, 2008b, p. 566). Following Mahoney (2007, p. 37), an ordinal scale measuring lobbying success is used: a group achieved none of its goals, achieved some of its goals, or the group reached all of its objectives. This approach allows for taking into account the fact that policy-making in the EU is based on consensus building, rather than on the "winner takes all" mode (Mahoney, 2007, p. 37).

Still, even if a policy proposal matches an interest groups' preferences, this does not mean that the proposal was made as the result of the lobbying efforts of that particular group. Process-tracing is a useful method for addressing this problem since it allows for tracing the causal mechanism between groups activities and a policy outcome (Dür, 2008b, p. 562). As mentioned earlier, it is hard to attribute a policy proposal to a single interest group. Still, if an interest groups lobbying activities can be identified, then it would be possible to attribute a policy proposal to the group's activities, in addition to other involved groups' efforts. Hence, instead of attributing a Commission's policy proposal to a single foreign group, the thesis investigates the group's contribution to "a collective success" of interest groups with similar positions.

On the other side, even if a policy proposal does not match a group's ideal position, this does not mean that the group has not being successful because it may have succeeded in avoiding the worst case scenario (Dür, 2008b, p. 561). Using an ordinal scale to measure lobbying success provides as a useful strategy in this respect, because it allows "room for degrees of success" (Mahoney, 2007, p. 37). Besides, if a group's ideal position is not reflected in the final proposal, it would not be assumed automatically that the group has not been successful; instead, further analysis will follow to reveal whether the group has managed to escape an even more undesirable outcome.



## 2.2. Case selection

This thesis provides an analysis of four case studies – policy proposals - covering the main aspects of EU energy policy: competitiveness, sustainability, and security. In particular, the following proposals are examined:

(1) Proposal for the Directive concerning common rules for the internal gas market, adopted in 2007. This case explores lobbying by non-EU groups over the most important segment of this directive: the ownership unbundling (separation) of vertically integrated gas companies, as well as the same obligation being imposed on foreign companies (the so-called ‘Gazprom clause’);

(2) Proposal for the Regulation on conditions for access to natural gas transmission networks and related amendments to this Regulation, adopted in 2007. This case examines non-EU group lobbying over provisions on the third-party access (TPA) regime to gas networks (pipelines and storage). The Commission’s proposed amendments to the Regulation, adopted in 2017, are also examined. The aim of the proposed amendments was to extend EU energy regulation to offshore import pipelines - those bringing gas from third (non-EU) countries to the EU;

(3) Proposal for the Directive amending Directives relating to the quality of petrol and diesel fuels and the promotion of the use of energy from renewable sources, adopted in 2012. This case examines non-EU group lobbying over provisions concerning indirect land-use change related to biofuels production; and

(4) Energy Security Package, drafted by the Commission in 2016. This case examines non-EU group lobbying over a wide range of measures proposed as part of the so-called SoS Regulation, Decision on intergovernmental agreements, and Strategy on LNG, which all together had made the Energy Security Package.

The thesis, therefore, explores energy-related legislation. Since the energy domain has been attracting a considerable number of lobbyists, it seems a suitable domain for analysing the activities of non-EU interest groups in Brussels. However, it is fair to note that by focusing on a single policy domain, the external validity of the empirical findings might be challenged. One could rightly question whether the findings obtained through the analysis of the energy domain can be generalised and applied to other domains. This is especially since the energy domain has been often described as

a “highly politicised” sector (Talus, 2013, p. 4). The EU’s dependence on external energy suppliers brings to the fore the political intricacies of energy-law making, which might affect foreign groups’ lobbying patterns. A question arises then whether the energy policy domain is so unique that the lobbying logics observed in this domain might not be generalised to other domains?

Energy is often seen not as “a regular trading good”, but instead as “a strategic commodity” (Mayer, 2008, p. 252). Indeed, the energy domain has been often described as a “highly politicised” sector (Talus, 2013, p. 4) given its critical importance for the security and “the well-being” of EU citizens (European Commission, 2011a, p. 2). Some scholars hold that in highly politicised sectors, the role played by interest groups “is almost peripheral, or absent”, and that national governments take the front seat (Greenwood, 2003, p. 20). In such policy areas, political information that foster consensus building is more needed than in the “low politics” areas (Coen and Katsaitis, 2016, p. 1116). Additionally, EU energy law-making features high salience, its debates attracting considerable public attention and lobbyists’ interest. All these factors – increased involvement of national governments, policy-makers’ need for political information, and salience, are expected to hinder business groups’ prospects to influence Commission’s proposals.

On the other hand, recent data illustrates that 53% of the EU energy needs has been satisfied from external (non-EU) sources (European Commission, 2015a, p. 2). The EU’s energy dependence on foreign actors might produce a moderating effect on interest groups’ success, especially if the latter lack EU citizenship. It could be argued, therefore, that foreign companies and associations enabling the EU to meet its energy needs should be successful precisely because of the EU’s dependence on their energy supplies. In other words, these groups have “structural power” (Dür, 2008b, p. 561). But it could equally be hypothesised that for the same reason - their economic weight - foreign companies might be less successful. Namely, they can be seen as a sort of “threat” due to their relative size in comparison to EU firms, as shown by Cowles’s study (1996, p. 343). The thesis takes into account those concerns, in the way outlined below.

Firstly, the thesis shares the view that the energy domain is one of “high politics”, but is likewise mindful that it also includes “low politics” initiatives. Two concepts

related to the energy sector reflect its strategic and political importance, namely: (1) energy security: policy-makers' concern to obtain a sufficient amount of energy from external sources; and (2) public service: policy-makers' concern to meet the expectation that the states are the "controllers of last resort", i.e. the ultimate guarantors of energy supplies for all citizens (Talus, 2013, p. 272). This is a classical paradigm of the energy sector which has dominated the energy sector until the end of 1980s.

However, a new paradigm replaced the old vision during the 1990s, when the principle of competitiveness and the creation of an EU internal energy market were put at the core of EU energy law-making (Talus, 2013, p. 273-276). Competitiveness was seen as an effective solution to concerns related to the security of supply (Andersen, Goldthau, and Sitter, 2017, p. 6). But still, this did not lead to the vanishing of the "old paradigm". The creation of an internal EU energy market has faced many obstacles including those related to interventions aiming to preserve the security of supply (Talus, 2013, p. 286). Nonetheless, the EU has managed to develop a set of legislation which advances a market-based approach to the energy sector. One of the most significant changes in that respect has been a shift in power from the member states to the supranational institutions. While the pre-liberalisation era and agenda were driven by the member states, the emergence of the new era and paradigm have been driven by the Commission (Talus, 2013, p. 287).

Hence, a suitable depiction of the energy sector is neither the one based on the old paradigm dominated by national governments and energy monopolies, nor the one focusing only on market-driven changes. Perhaps the best depiction of the energy sector today is one suggesting that it is a policy domain which oscillates between the "markets" and "empires" (Youngs, 2009, p. 6). It involves a lot of "high politics", which features policy initiatives aiming to advance energy security and political objectives, but it consists of "low politics" initiatives too— those aiming to regulate the conduct of market participants and to advance the liberalisation of the EU energy market (Andersen, Goldthau, and Sitter, 2017, p. 4).

Secondly, extant literature assumes that business groups tend to be less influential in "highly politicised" debates because the influence of member states prevails (Greenwood, 2003, p. 20). The higher intensity of member states' lobbying indicates

the importance that national governments give to policy initiatives (Rasmussen, 2014, p. 4), so the technical information that business groups loses some of its value (Coen and Katsaitis, 2013, p. 1116). Still, the energy sector attracts a considerable number of lobbyists, both in absolute (see section 1.2.) and relative terms (see Broscheid and Coen, 2007, p. 362). It involves many policy issues that are highly complex and technical, even when they are politicised attracting high public attention. In addition, the energy policy domain has seen a relatively large number of Commission's advisory groups as well as prevalence of business groups over citizen groups (Broscheid and Coen, 2007, p. 362). All these reasons lend credence to the assumption that the Commission values expertise provided by business groups.

Furthermore, even if member states are "heavily" involved in discussions on energy-related laws, they can still benefit from interest groups' input. Similarly, the Commission can also use the input provided by business groups to defend its case *vis-à-vis* member states. Therefore, the thesis acknowledges the importance of member states' interest in the energy policy domain, whilst also recognising the significance of interest groups' input.

It is noteworthy that the Council makes energy-related decisions by qualified majority voting. In particular, decisions related to the EU energy market, energy security, energy efficiency, and cross-border infrastructure are decided by qualified majority (Article 194 of the Lisbon Treaty). The Lisbon Treaty also defines energy as an area of shared competence between the member states and the EU (Article 4), subject to the ordinary legislative procedure (Article 194). This provides additional support for the notion that the role of member states in the energy sector is weakened in favour of the supranational institutions.

Thirdly, while the energy policy sector has certain *sui generis* features, it also has some shared characteristics with other policy domains. As mentioned, the EU is heavily dependent on energy imports. However, it also imports large amounts of other goods. For instance, the EU depends on the importation of raw materials and, similarly to energy, supplies of raw material are concentrated in several producing countries. Bolivia supplies to the EU almost 80% of antimony, South Africa provides 60% of EU's platinum, and China provides around 75% of EU's graphite and 80% of EU's indium (European Commission, 2011c, p. 21). Although concerns about energy

security often politicise energy-related debates, other policy domains are not immune to debates on security issues either. For instance, the security of food supply has been seen as an important issue in the sector of agriculture (European Commission, 2011d, p. 6). Cybersecurity issues are crucial in the digital market.<sup>33</sup> So, the high salience of debates that is observed in the energy sector is observed in some other sectors too.

Finally, the thesis addresses the issue of external validity by examining legislation that covers different aspects of EU energy policy: sustainability, security, and competitiveness. EU energy policy is driven by these three main objectives (see for instance European Commission, 2006b). A diversity of topics might enhance the external validity of the findings since covering each of the topics separately, as well as the complex relationships between the three objectives, might provide some insights that could be applied to other domains (portfolios) covered by EU policy-making. The aspect of sustainability could be related to the environmental and climate change portfolio, security to the foreign affairs and security policy, while competitiveness could be applied to all other portfolios, especially the portfolio covering competitiveness.

Overall, a high degree of politicisation and the EU's dependence on imported energy make the energy policy distinctive from other policy domains. These characteristics might affect foreign groups' lobbying prospects in two directions: they can be more successful because the EU is dependent of external energy suppliers, but, *vice versa*, this circumstance can also make it harder to lobby successfully because of the greater involvement of members states. To engage with this issue, the thesis starts from the view that the energy domain is rife with "high politics" but also consists of "low politics" initiatives. Secondly, the thesis argues that, when trying to shape EU energy laws, the Commission will value business groups' technical information because the energy domain involves many highly technical issues. Thirdly, the thesis takes into account the fact that the role played by member states in the energy sector has been weakened in favour of the supranational institutions. Fourthly, it recognises that the field of energy shares some characteristics with other policy domains. Finally, to enhance the external validity of its findings, the thesis examines cases that cover different aspects of the energy policy, namely competitiveness, environment, and

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<sup>33</sup> See the European Commission's website. Available at: <https://ec.europa.eu/digital-single-market/en/policies/75984/3587>. [Accessed on 07/07/2020].

security, which share some of the characteristics of other policy domains (e.g. the internal market, climate policy, and foreign policy).

Of course, in any study that examines lobbying in a single policy sector, the problem of limited external validity can hardly be fully dispelled. Contextual factors, including those related to a policy domain (see section 1.6.), do affect interest groups' lobbying prospects and this might reduce the generalisability of the thesis' findings to other sectors. Two elements mitigate this problem though. First, the energy policy domain attracts a vast portion of interest groups; this requires more academic research in the domain, which has so far been scarce.

Second, the thesis recognises the significance of contextual factors, but, its main focus is to examine foreign groups' lobbying success, rather than other factors that affect groups' lobbying success regardless of their nationality (EU or non-EU). Clearly, foreign business groups' lobbying success in the energy domain is affected by the specific context, i.e. high politicisation of the energy sector, which, following the literature, is expected to constrain business groups' lobbying effectiveness. Similarly, given the EU's energy dependence on external suppliers, it could be argued that this limits foreign business groups' lobbying prospects because EU policy-makers would try to reduce the formers' control over the EU energy market. In that sense, the energy domain might constitute the least-likely case for foreign groups to make an impact. At the same time, however, it could be hypothesised that for the same reason (their economic weight), foreign business groups should be more successful than in other policy areas where the EU is self-sufficient. If foreign business groups can be successful elsewhere, it will likely be the case in a policy domain where the EU is the most dependent on foreign actors, especially if the latter supply "a strategic good" (which energy is). From this perspective, the energy domain could make for the most-likely case for foreign groups to make an impact. Having most-likely and least-likely cases in an analysis can significantly advance external validity of its findings (Dür, 2008b, p. 565; George and Bennett, 2004, p. 121).

The thesis examines four case studies which overall cover more than 20 individual policy measures. Several case studies – of foreign business groups - are analysed within these four cases of EU energy legislation. The selection of particular case studies is based on the following.

Firstly, the thesis explores ‘effects-of-causes’ (the effects of the Commission’s preferences on the success of foreign groups), meaning that it seeks to analyse effects of a cause “across a population of cases” (Mahoney and Goertz, 2006, p. 230). Therefore, it was important to select cases that provided variations on the explanatory variable - Commission’s prior preferences on issues under consideration and involved interest groups. This type of case selection “causes no inference problems” (King, Keohane, and Verba, 1994, p. 137). Instead, the case selection that provides variations on an independent variable increases the generality of findings and limits the selection bias (King, Keohane, and Verba, 1994, p. 137). Each of the examined cases provides variations on both – the Commission’s preferences on issues under discussion, as well as involved interest groups.

Table 3 below reviews the variations in the Commission’s prior preferences on policy measures, across the observed cases. The four cases, overall, cover more than 20 individual policy measures. Besides, the cases have seen the alteration of three Commissions, i.e. three Commission mandates. As table 3 shows, each case study involves a leading Commissioner (Energy Commissioner) and a joint leading person on a policy proposal under consideration. Preferences of Commissioners in charge of a policy proposal either converge or diverge.

**Table 3.** Variations on the explanatory variables across cases.

I Case	II Case	III Case	IV Case
Commission led by José Manuel Barroso (2004-2009)	(a) Commission led by José Manuel Barroso (2004-2009)  (b) Commission led by Jean-Claude Juncker (2014-2019)	Commission led by José Manuel Barroso (2009-2014)	Commission led by Jean-Claude Juncker (2014-2019)
Andris Piebalgs, Commissioner for Energy  Neelie Kroes, Commissioner for Competition	(a) Andris Piebalgs, Commissioner for Energy  Neelie Kroes, Commissioner for Competition  (b) Maroš Šefčovič, Vice-President  Miguel Arias Cañete, Commissioner for Climate Action and Energy	Günther Oettinger, Commissioner for Energy  Connie Hedegaard, Commissioner for Climate Action	Maroš Šefčovič, Vice-President  Miguel Arias Cañete, Commissioner for Climate Action and Energy
No strong early position on ownership unbundling.  Strong preferences for reciprocity towards external suppliers (The Gazprom's clause).	(a) <u>Third Energy Package (2009)</u> No strong position on long-term contracts, exemptions from TPA to new infrastructure, access to storage, and price formation.  Strong preferences for the establishment of the single European grid, harmonization of powers and independence of national regulators, as well as cooperation among them.  (b) <u>Amendments (2017)</u> Strong preferences for the amendments - the Third Energy Package is applicable to offshore parts of import pipelines.	No strong position on how to deal with the issue of indirect land use change (ILUC).	No strong early position on joint purchasing mechanism.  Strong preferences for regional cooperation, creation of an obligatory solidarity mechanism, better ex ante assessment of both intergovernmental as well as commercial agreements' compatibility with the EU market rules, and diversification of energy supplies.
Neelie Kroes supported full ownership unbundling since the beginning of her mandate.  Andris Piebalgs wanted to find a compromise solution.		Connie Hedegaard was cautious on the conventional biofuels since the beginning of her mandate.  Günther Oettinger wanted to find a compromise solution.	



The present case selection also features variations within the cases. The following foreign groups are analysed: Russian energy company Gazprom, Norwegian energy company Equinor, the US energy company ExxonMobil (Exxon), the Ukrainian company Naftogaz, Malaysian Palm Oil Council (MPOC) – trade and business associations which represents Malaysian palm oil,<sup>34</sup> and Brazilian Sugarcane Industry Association (UNICA) - trade association for the Brazilian sugarcane industry<sup>35</sup>.

**Table 4.** Variations in the explanatory variables within the cases.

	Structural power (share in overall gas/bioethanol/biodiesel consumption in the EU)	Year of Brussels office's opening *****	Fields of interests (number)	Membership in main EU associations (number)*	European Parliaments' industry forums (number)	Commission's expert groups (number)
<b>Equinor (Norway)</b>	13% of gas consumption in 2005 *	2002	13	8	2	/
	20% of gas consumption in 2012 **					
<b>Exxon (US)</b>	7% of gas consumption in 2005	early 2000s	17	7	1	1
	10% of gas consumption in 2010 ***					
	0% of biofuel consumption					
<b>Gazprom (Russia)</b>	24% of gas consumption in 2005 *	2013	13	2	/	/
	20% of gas consumption in 2012 **					
<b>Naftogaz (Ukraine)</b>	Transit country for Russian gas to the EU	2015	5	4	1	/
<b>MPOC (Malaysia)</b>	2% of biodiesel consumption in 2012 ****	2008	10	/	/	/
<b>UNICA</b>	2.8% of bioethanol consumption *****	2008	6	/	/	/

Source: EU Transparency Register. Last time accessed on 1 June 2019. Available at: <http://ec.europa.eu/transparencyregister/public/homePage.do?redir=false&locale=en>.

\* Source: International Energy Agency (2008, p. 62).

\*\* Source: Adapted from International Energy Agency (2014, p. 175).

\*\*\* Source: ExxonMobil (2008, p. 2); ExxonMobil (2012, p. 2).

\*\*\*\* Source: Adapted from Ecofys (2014, p. 189-190) and UNICA's position paper.

\*\*\*\*\* Source: Interest groups' websites.

<sup>34</sup> See the Transparency Register:

<http://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=390816633798-09>. [Accessed on 07/07/2019].

<sup>35</sup> See the Transparency Register:

<http://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=868501130379-95>. [Accessed on 07/07/2019].

Table 4 shows variations among groups when it comes to their structural power, presence in Brussels, fields of interest, and their membership in the EU institutions' advisory groups and EU business associations. It should be noted that the table 4 provides data on membership in EU industry associations and in the Commission expert group for 2019. Since the four cases cover the period between 2005 and 2016, foreign actors' membership in forums, groups, and associations will be analysed for each case individually, within the given period. Also, each case study will consider in more detail the groups' access to the Commission, as well as the strategic importance of their countries of origin.

Besides being led by variations in the independent variable, the within-case selection was also led by data availability. The thesis has chosen the above foreign groups because the available data enables analysing their lobbying activities, positions and related (lack of) success. The initial idea was to expand the sample and add companies from some other foreign countries, for instance SOCAR from the Azerbaijan Republic and Sonatrach from Algeria. However, publicly available data about these companies' lobbying activities were scarce. Neither the companies, nor other stakeholders (including EU institutions, NGOs, and media) were publishing data about these companies' lobbying activities in Brussels. This is surprising given their importance for the EU. Algeria is the third energy supplier to the EU, after Russia and Norway. Sonatrach plays a significant role in the development of the Southern Gas Corridor, one of the largest energy projects aiming to bring gas from the Caspian region to the EU. Early interview requests were sent to the two companies, but none responded.

In general, there have been varying levels of transparency among energy companies. Some are more transparent in relation to their lobbying in Brussels. For instance, on their websites usually in the section "news", Gazprom and UNICA publish information about their meetings with EU officials, though probably the published 'lists' of meetings are not complete. Exxon, on the other hand, does not publish this sort of information. Equinor and MPOC are somewhere in between. Lacking data on foreign groups' lobbying activities, coupled with the fact that some of the analysed cases date back to 2005 when lobbying in Brussels was even less transparent, has in itself poses serious challenges for an empirical analysis.

Hence, it was necessary to select cases that satisfy two criteria: (1) have variations in the independent variable; and (2) enable a sufficient amount of reliable data. Here examined are policy proposals lobbied by at least three foreign interest groups with variations on the independent variable, of course where it was possible to trace the lobbying activities. The other cases were omitted. For instance, a policy initiative on environmental concerns related to shale gas extraction was explored during the early phase of this research, but it was eventually omitted because the companies that it has attracted come mainly from a single non-EU country – the US.

Finally, as mentioned in section 1.6., interest groups' lobbying activities can be affected by policy-related factors such as the policy type, the level of complexity of an issue under consideration, its salience, and the amount of conflict that the issue generates (Klüver, Braun, and Beyers, 2015, p. 450). To address this issue, the thesis analyses policy proposals with varying degrees of complexity, salience, and conflict. The only constant policy-related factor is policy type, given that the thesis studies lobbying in the energy policy domain only.

The literature on interest groups provides evidence showing that low issue salience (“quiet politics”) makes a favourable condition for business groups to make an impact, due to their expertise and low stakeholders' involvement (Culpepper, 2011, p. 4). Conversely, high issue salience (“noisy politics”) makes it harder for business groups to shape policy initiatives because of the involvement of multiple actors trying to influence policy outcomes (Culpepper, 2011, p. 146). This does not mean that business interest groups will lose each time when faced with an issue of high salience, but it implies that their influence might weaken (Culpepper, 2011, p. 146). While, in general, energy constitutes a policy domain of high salience, across particular energy policy initiatives variations can be observed. Some policy measures attract considerable public and media attention. Others do not.

To control for the impact of issue salience, the thesis examines policy measures featuring varying degrees of salience (for a similar approach see Klüver, 2013b). Ownership unbundling, whose provisions are examined as part of the first case study is an example of a highly salient issue. Ownership unbundling was mentioned in more than 100 articles published by the EurActiv since 2006. The N-1 infrastructure standard, which is analysed within the fourth case study, is an instance of a low

salience issue. Only one article on this policy measure was published by the EurActiv. Scholars sometimes use the number of interest groups involved in a policy debate as a proxy for issue salience (Klüver, 2013b, p. 119). The policy measures that are analysed in the thesis afford variations in this aspect as well. For instance, the number of stakeholders' responses to Commission's consultations on the indirect land use change was 145 (the third case study), whereas only 37 stakeholders engaged with the Commission's consultations on amendments to the third energy package (the second case study).

Scholarship on lobbying assumes that business groups tend to be more successful when highly complex and technical policy proposals are being made and when the policy initiative on the table does not generate conflict (Klüver, Braun, and Beyers, 2015, p. 450-452). In this thesis, issue complexity and level of conflict vary among the examined policy proposals. Some of the examined issues are less technical and relatively simple to understand. The 'Gazprom clause' - a provision prohibiting foreign companies from acquiring control over a transmission system operator in the EU, unless otherwise permitted by an international agreement – is one such example. Provisions on indirect land use change related to biofuel production, are, on the other hand, highly technical and more complex. The degree of conflict also varies among the examined policy measures. For instance, while most stakeholders opposed the establishment of the European Centre for Energy Network, they were divided on provisions concerning third party access to storage (the second case study).

Therefore, there could be a potential intervening effect of an issue's characteristics on foreign groups' lobbying success, and to address this, the thesis includes cases with varying degrees of salience, complexity, and conflict. It is also important to remind that the thesis examines business groups only. This means that if there is an intervening effect of the policy-related factors, this will affect equally all the business groups analysed in the case under consideration. If for instance, Equinor supports the establishment of the European Centre for Energy Network, and if Exxon opposes the proposal, they will try to make an impact under the equal policy-related context – e.g. low issue salience.

In sum, alongside data availability, the main case selection criterion has been to maximise variations on the explanatory variable. The thesis also provides variations

on policy-related determinants – issue salience, issue complexity, and degree of conflict, whereas policy type has been held constant.

### **2.3. Data**

Gathering data on interest groups' lobbying activities, their access to the policy-making process, and the related lobbying success/influence is a challenging task. Despite the tools put in place to advance lobbying transparency in Brussels, a large part of interest groups' activities in the EU (as probably elsewhere) occurs beyond public scrutiny. Though the EU Transparency Register was set up to advance the transparency of interest groups' activities and to improve the accountability of EU officials in that respect, interest groups' registration is still voluntary. Thus data about many interest groups that are active in the EU is still missing. Further, although since 2014 the Commission publishes lists of meetings with stakeholders, it does this only at the level of Commissioners and their cabinets. Interest groups' meetings with policy officers at the working level, still take place under the radar. To complicate matters further, lobbying in the EU occurs at different levels (EU, national, sub-national) and also at different stages of the policy-making process. Such a complex and multi-layered structure of the EU, combined with a lack of transparency, poses challenges to data collection on interest groups' activities. This thesis has sought to mitigate this problem by expanding its search of sources to maximise the amount of relevant data that can shed light on the analysed processes.

In general, the research project rests on the analysis of official documents issued by the EU institutions and usually available on their official websites, as well as information that could be found on official websites of the analysed foreign actors. Specifically, the thesis uses information obtained from the European Commission's website. The European Union Transparency Register, which contains information about interest groups registered in Brussels, was another important source of information. The websites of companies/associations have also provided data used here. The websites of NGOs who monitor lobbying in Brussels - Transparency International EU, Integrity Watch, Corporate Europe Observatory, and AsktheEU.org, - have provided relevant insights about the interest groups' activities in Brussels.

Finally, media reports and academic research have been valuable for this research project.

Eight semi-structured interviews conducted with Commission officials and interest groups' representatives have been used to complement the findings obtained through the analysis of other empirical materials. Seven interviews were held in person in Brussels during 2019. One was held via Skype call in the same year (appendix II). The interviews are anonymised, as granted during the initial contact with the interviewees. Five interviewees are former or present Commission officials – two Commissioners, a Head of a Unit in DG Energy, and two policy officers. Four of them were involved in the preparation of the discussed policy proposals. The other three interviewees are representatives of big foreign interest groups based in Brussels, two of which are part of the thesis' sample, and the third one being a non-EU company outside the thesis' scope. In addition, an interview was conducted with a representative of one more analysed group. However, since a consent form has not been signed by the interviewee, this interview was not used in the present research project. Three remaining analysed foreign groups refused to be interviewed.

Having both comparative advantages and disadvantages for studying interest groups, all the mentioned data sources have been cross-validated. The most important advantage of so-called “observational data” - for instance Commission's documents or interest groups' position papers - is that they cannot be misinterpreted by a researcher (Beyers et al., 2014, p. 175). But, at the same time, they are often limited and incomplete. Unlike observational data, interviews allow for capturing contextual details and less formal aspects of interactions between policy-makers and interest groups (Beyers et al., 2014, p. 176), thus complementing the publicly available data and shedding some new light on the cases under consideration (Dür, 2008b, p. 563). Interviews, however, are often seen as non-reliable sources given interviewees' tendency to “consciously or unconsciously misrepresent a situation” (Dür, 2008b, p. 563). The best way to overcome the respective pitfalls of the two methods is to combine their data with an eye to maximising their respective strengths.

To process-trace the Commission's preferences, the thesis has analysed different sorts of Commission documentation that could be found on its official website – roadmaps, working programmes, policy priorities, strategies, green papers, reports,

proposals, and other similar documents. In addition, relevant memos, speeches, and statements given to the media and before other institutions were used as well. These observational data sources have been coupled with interviews. Four semi-structured interviews with officials that were involved in the preparation of the examined proposals were conducted. The interviewees were asked about the Commission's preferences on the examined issues before consultations with interest groups, about lobbying activities of examined interest groups during the preparation of proposals, and the Commission's preferences after consultations that had been held with these groups (see appendix II). The similar approach was followed by other scholars as well (e.g. Rasmussen, 2012).

The main challenge in this respect was to obtain data on the Commission's preferences related to the policy proposals tabled in 2007. Interviewees' recollection of past lobbying activities and lobbying success/influence might be biased, leading to misinterpretations of what actually happened (Dür, 2008b, p. 563). Gathering public data on lobbying which took place a long-time ago is further complicated because interest groups' activities were less transparent back at the time. Besides, the Commission's website was changed several times during the observed period - between 2006 to 2016.

Several research strategies have been employed here to address this challenge. First, the examined companies that were active when the Commission's proposals were adopted in 2007 are all prominent, so the interviewees were able to recollect, at least partly, their lobbying activities. Second, a search was performed not only of the current Commission's website but also of its prior versions and the archived pages which are no longer available in the current version. This includes archived media reports containing statements made by Commission's representatives. Finally, academic research on the examined policy initiatives, especially those studies based on interviews with involved interest parts, which were carried out immediately after the adoption of policy proposals in 2007, have proved particularly valuable (e.g. Eikeland, 2008).

Interest group preferences were identified through the analysis of a number of sources. Foreign actors' position papers submitted during public consultations organised by the Commission have been the most relevant source in this respect since

these papers usually cover all relevant questions discussed during the preparation of a Commission's proposal. The Commission publishes documents featuring the stances of the public and private actors who take part in public consultations. Only position papers submitted during public consultations in 2006 are no longer available at the Commission's website; hence, these papers were obtained through a request sent to the Commission. In addition, other sources have been used: a company's annual reports, documents containing data about their strategies and goals and other relevant information which could be found on their official website; foreign actors' public statements; interviews; and secondary sources.

When it comes to interest groups' lobbying activities, since the end of 2014, the Commission publishes a list of bilateral meetings with stakeholders, as well as information about the topic of each meeting. The same data can be found on the EU Transparency Register, together with other relevant information: lobbying budgets, policy domains where groups are active, particular pieces of legislation they are interested in, the people in charge of lobbying on behalf of various groups, membership in other organisations, individuals with accreditation for access to the European Parliament, and so on<sup>36</sup>. Also, the thesis benefited from using the website "EU Integrity Watch"<sup>37</sup>, which combines data about lobbying meetings obtained from the Commission's website with data obtained from the EU Transparency Register.

For a list of meetings before 2014, a number of sources were employed. Companies' websites containing information about their meetings with the EU officials, usually in the "news" or "news archive" sections, were checked. Hundreds of news have been analysed for this purpose: all available online news from 2005 for Equinor, Gazprom, and Exxon, all news from 2010 for UNICA and MPOC, and all news from 2014 for Naftogaz. Another important source of information in this respect were reports issued by NGOs, as well as their websites containing information about lobbyist meetings. Furthermore, media reports and other secondary sources were also used in this respect. Concerning multilateral meetings, those organised through the Commission's advisory and expert bodies, the Commission's website usually contained information about agendas, participants, and the conclusions of such

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<sup>36</sup> The Transparency Register. Available at: <http://ec.europa.eu/transparencyregister/public/homePage.do>. [Accessed on 07/07/2019].

<sup>37</sup> EU Integrity Watch. Available at: <https://www.integritywatch.eu/>. [Accessed on 07/07/2019].



meetings. For the energy policy, the most important forums for discussion were: the Madrid Forum, the European Regulators Group for Electricity and Gas (EREG), European Energy Forum, the Gas Coordination Group, and so on. Also, the lobbying activities of interest groups were examined through their membership in EU industry associations, whose websites provide relevant data. Since the thesis examines not only the recent Commission's proposals but also two proposals made in 2007, membership in EU business associations was analysed for the respective years, as part of each individual case study.

Finally, some data about interest groups' lobbying activities were obtained through interviews with their representatives. Two out of six examined interest groups agreed to take part in interviews. In addition, a representative of one foreign company which has not been analysed as a part of this study was also interviewed. The interviewees were asked to provide their views on the interest groups' preferences concerning the analysed cases, their lobbying activities, as well as a self-assessment of their companies/associations' lobbying success (see appendix II). Data provided by interviewed Commission officials were also used in this respect.

It is important to acknowledge that publicly available data usually contain information about interest groups' bilateral meetings with Commissioners, members of their cabinets and senior officials. Interest groups are supposed to have more contacts with officials at the working level (civil servants) than with senior officials and Commissioners (Bouwen, 2009, p. 25). To address this issue, namely the lack of publicly available data on bilateral meetings between interest groups and civil servants, the interviewed interest groups were asked about their lobbying activities. The interviewed Commission's officials were asked too about interest groups' activities. Additionally, the length of a group's presence in Brussels (how long it has had an office in Brussels) could be considered an indicator of the frequency of contacts between the group and civil servants. If a group has an office close to the Commission building, it is reasonable to assume that its contacts with Commission's officials are more intensive than if it does not have an office in Brussels. Finally, most data about interest groups' participation in Commission's consultancy groups are publicly available.

In the end, it is difficult, virtually impossible, to obtain data about the exact number of the meeting that the analysed stakeholders held with Commission's officials between 2006, when the debate on the first examined proposal launched, and 2016, when the last of the analysed proposals was tabled. The alternative approach that has been taken here is a qualitative analysis based of various sources which has served to provide an approximate estimation of the groups' access to policy-makers in Brussels. Given that quantifying the number of contacts and comparing them between groups has not been possible, the aim of this approach has been to reveal whether a group had contacts with Commission's officials and whether it tried to influence Commission's proposals.

#### **2.4. Methods**

Following Dür (2008b), in order to analyse foreign groups' lobbying success, the thesis employs process-tracing and cross-case comparison as its key methods. In addition, preference attainment degree assessment and attributed influence methods are used, as well.

Since the aim of the research is to trace how Commission's preferences affect prospect of foreign lobby groups to lobby successfully, the most adequate method is process-tracing. This method allows for the identification of a causal link between an explanatory variable and an outcome (George and Bennett, 2004, p. 6). It also allows for a "complex interaction" - such as the interaction between interest groups and policy-makers - to be documented (George and Bennett, 2004, p. 22). Thirdly, process-tracing is suitable for studies exploring 'effects-of-causes' (George and Bennett, 2004, p. 207; Dür, 2008b, p. 563). Since the thesis examines effects of the Commission's preferences on the success of foreign groups, process-tracing represents an appropriate method in this respect. Finally, process-tracing is particularly beneficial for studies exploring the success and/or influence of interest groups in the EU. As mentioned earlier, interest groups can exert influence during different stages of the policy-making process and through different channels (Dür, 2008b, p. 561). Hence, without process-tracing, examining the different paths through which interest groups try to shape EU decision-making would be challenging.

Nevertheless, while enabling acquisition of detailed knowledge about the examined cases, process-tracing, as a method, does not provide a guarantee that all alternative explanations are eliminated, especially when there is a fit between various causal mechanisms and the evidence produced through the process-tracing (George and Bennet, 2004, p. 222). Process-tracing, as a method, suffers from an additional problem – namely, it can provide only internal validity (George and Bennet, 2004, p. 22). Although it allows for in-depth knowledge about a case under consideration, the potential to generalise findings about the considered case to other cases of the same type are limited.

There are also difficulties in the applicaiton of process-tracing to studying interest groups' lobbying influence, which, according to some authors, „can not be overcome even in well-designed studies“ (Dür, 2008b, p. 563). As explained earlier, some data about interest groups' lobbying activities in the EU will inevitably be missing and this can lead to gaps in knowledge about a causal mechanism, which consequently, might lead to an overestimation or underestimation of the interest groups' influence in the given case (Dür, 2008b, p. 563). It is also hard to provide an accurate estimate of the extent of a group's influence because „a yardstick is lacking“ (Dür, 2008b, p. 563). Finally, studies using process-tracing might overestimate the significance of lobbying activities and, failing to recognise that sometime an interest group can achieve more with less lobbying effort (Dür, 2008b, p. 563).

In response to those challenges in the use of process-tracing, several caveats are in order. First, as a reminder, the thesis looks into lobbying success rather than lobbying influence. As explained (see section 2.1.2.), when a group's lobbying success is measured, the key task is to measure the extent to which its preferences are fulfilled by the observed outcome. The difference with measuring influence is that the aim is not only to identify the extent to which the group's preferences are reflected in the given policy outcome, but also to attribute the intended outcome to the group's resources and/or strategies (Bernhagen, Dür, and Marshall, 2014, p. 203). The problem of overestimation or underestimation of groups' impact is thus less pronounced when lobbying success is being measured. Also, following Mahoney (2007, p. 37), the thesis applies an ordinal scale for measuring lobbying success. This approach allows a “room for degrees of success” (Mahoney, 2007, p. 37) which might mitigate the problem of a missing „yardstick“.

The third problem that more access and greater lobbying effort do not necessarily mean more influence (Dür, 2008b, p. 563), is a serious one. What makes a key impact on a policy-maker – a useful message or frequent contacts with a messenger (an interest group) or another, third factor? This is hard to claim with certainty. The thesis embraces Dür's (2008b, p. 563) view that this methodological issue cannot be completely resolved. However, it also takes the view that it could be mitigated by combining different methods and data sources, which the present research project has done.

The thesis, therefore, couples process-tracing with the method of cross-case comparison for checking findings obtained through process-tracing. Qualitative studies usually tend to combine „cross-case comparisons and within-case analysis“ (George and Bennet, 2004, p. ix). The thesis makes no exception in this respect.

Comparison of case studies is based on „a most-similar case design“ (George and Bennet, 2004, p. 81). This research design implies that selected cases are similar in all aspects except for an independent variable whose variance then accounts for the differences in the dependent variable (George and Bennet, 2004, p. 81). Case studies examined in the thesis cover the energy policy domain and policy proposals adopted by the Commission. This excludes some of the variables that might affect interest groups' lobbying success, but which are beyond the focus of this research, such as institutional variations and policy type. Within-case studies (foreign interest groups) consist of resource-rich foreign business groups which excludes the effect of factors such as group resources and group type. This enables drawing conclusions about the effects of the independent variable (Commission's preferences) on the explanatory variable (foreign groups' lobbying success).

Nevertheless, as explained earlier (see section 2.2.) the thesis examines policy initiatives with varying degree of salience, complexity, and conflict arising from a considered policy. These factors might affect interest groups' lobbying success. Namely, business groups are supposed to be less successful if an issue is highly salient, less complex and if it generates less conflict, and *vice versa* (Culpepper, 2011, p. 146; Klüver, Braun, and Beyers, 2015, p. 450-453; Rasmussen, 2014, p. 3-6). Applying this to the thesis, if a group is less successful on issue X, it is possible that this is the case

not because of the thesis' independent variable (Commission's preferences) but because of an issue's characteristics. This might create an inference problem.

The thesis addresses this problem by acknowledging the relevance of the policy-related factors. While an issue's characteristics might affect interest groups' prospect to lobby successfully, it is also worth reminding that, firstly, the thesis examines business groups only, and, secondly, it provides a within-case analysis in addition to a cross-case analysis. This means that if there is an intervening effect of the policy-related factors, this will equally affect all the business groups that are analysed in a given case. If for instance, Equinor supports the establishment of the European Centre for Energy Network, while Exxon opposes the proposal, they will try to make an impact under an equal policy-related context – e.g. low issue salience. Besides, since both are business actors, the issue salience should affect them in the same direction – both should be more successful if the issue is less salient. In other words, while policy-related factors vary among policy proposals, they are held constant within each individual policy proposal. Also, they should have an equal effect on all the analysed interest groups given that those groups represent business interests.

In order to estimate whether a foreign group has been successful in a particular case, the thesis employs an additional method - preference attainment degree assessment. This method compares a policy outcome with a group's preferences (Dür, 2008b, p. 566), as already explained in one of the previous sections. The distance between the final decision and the group's favoured position reveals the degree of the group's influence (Dür, 2008b, p. 566). Finally, one way to deal with the problem of 'counter' lobbying is to employ the attributed influence method by asking interest groups to assess their own influence (Dür, 2008, p. 565). Still, since only two of the examined groups were interviewed, information about the self-assessment of groups not being interviewed has to be found in other data sources: public statements and comments made by interest groups after the adoption of a proposal.

### **Chapter 3: Ownership Unbundling and the Gazprom clause**

This chapter examines the (lack of) lobbying success of non-EU interest groups during the preparation of the Commission's proposal on ownership unbundling, i.e. separation of vertically integrated gas companies. The question of unbundling took on an 'external' dimension too - the proposal contained a provision prohibiting foreign companies from acquiring control over a transmission system operator in the EU unless otherwise is allowed by an international agreement (European Commission, 2007c, p. 7). The provision has become known as the 'Gazprom clause', by the name of its supposed target (Youngs, 2009, p. 38; Van Vooren and Wessel, 2014, p. 450).

The considered policy measures have not been part of the Commission's priorities defined at the beginning of its mandate. The Commission did not express at the outset strong early preferences for ownership unbundling. Andris Piebalgs, the Energy Commissioner at that time, first hesitated to propose ownership unbundling as a policy measure, but he started to change his position during 2006, despite bitter opposition from member states and the biggest industrial actors. Unlike the Energy Commissioner, the Commissioner for Competition, Neelie Kroes, was backing the introduction of ownership unbundling since the early days of the Commission's mandate. Next, when it comes to the Gazprom clause, the long-term Commission's objective, even before its appointment in 2004, has been to create a framework for energy cooperation with external suppliers, which would be based on "fair and reciprocal access to markets and infrastructure" (European Commission, 2006b, p. 15). This was the rationale behind the proposed Gazprom clause. Thus, although the Gazprom clause was not part of the Commission's policy priorities defined at the beginning of its mandate in 2004, the Commission's support for the key element of the clause - cooperation with external suppliers based on reciprocity - can be traced back to the mid-1990s. This chapter examines the lobbying success of the four interest groups - Gazprom, Equinor, Exxon, and AmCham, which have had different characteristics related to the status distinction between insiders and outsiders.

### 3.1. Background

Already, at the beginning of the 1990s, the Community legislator recognised the need to transform the European gas market (Lowe et al., 2007, p. 23). At that time, the EU energy market was nationally divided and controlled by a few vertically integrated companies, with little or no gas trade among member states (Talus, 2013, p. 16). The liberalisation process that started during the 1990s was aimed at removing national monopolies, fostering competition within the gas sector, and stimulating gas trade in Europe (Scholz and Vohwinkel, 2016, p. 56; Scholz and Purps, 2012, p. 76). The underlying intention of the gas market liberalisation process was the creation of an internal European-wide energy market that would allow for sufficient levels of market competition, not only within member states but also among them. One of the main obstacles that emerged during the liberalisation process was the possibility of vertically integrated companies using their monopolies over the gas infrastructure to obstruct fair competition in the sector (Talus, 2013, p. 78; Lowe et al., 2007, p. 23). Thus, the separation (unbundling) of these energy companies was seen as a necessary step towards enabling competition in the gas market.

Vertically integrated gas companies perform at least one of the functions of transmission, distribution, or storage (midstream), and at least one of the functions of production (upstream) or supply (downstream) (Article 3 of the Directive 2009/73/EC<sup>38</sup>) (see Figure 2). Since these companies control the transmission infrastructure and, at the same time, produce or sell gas, it was assumed that they would obstruct other firms' access to the transmission infrastructure. The aim of unbundling was, therefore, to separate the competitive (gas production and supply) from the non-competitive (e.g. gas transmission) segments of the gas network, and to allow new entrants access to the non-competitive parts of the gas network (Talus, 2013, p. 78-79).

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<sup>38</sup> European Parliament and the Council (2009a).

**Figure 2.** The constellation of pipelines in the natural gas business.

Production	<b>Upstream</b>
Upstream pipelines Pipelines that are part of a gas production field.	
Transmission pipelines Pipelines transporting gas from production fields to distribution companies.	<b>Midstream</b>
Distribution pipelines Pipelines used to convey gas through local or regional pipeline networks.	
Storage facilities Facilities used for the stocking of natural gas.	
Supply Sale and resale of gas to customers.	<b>Downstream</b>

Source: Adapted from the Directive 2009/73/EC (European Parliament and the Council, 2009a).

Provisions on unbundling were initially introduced in 1998 when the First Energy Package<sup>39</sup> was adopted. The Gas Directive, which was a part of the First Package, contained an obligation for vertically integrated enterprises to establish separate accounts for different activities: transmission, distribution, and storage (Article 13 of the Directive 98/30/EC). The so-called *account* unbundling, however, did not foster market competition. Instead, it established a sort of “quasi-independence” of different entities within the vertically integrated companies (Talus, 2013, p. 80).

As a result, provisions on unbundling were reinforced by the Second Energy Package<sup>40</sup>, adopted in 2003. The new Gas Directive set the requirement for integrated companies to create not only separate accounts but also separate *legal* entities for their transmission and distribution activities (Article 9 and Article 13 of the Directive 2003/55/EC). Distribution and transmission system operators were now obliged to be independent “at least in terms of their legal form, organisation, and decision-making” from other activities that were not related to distribution and transmission, respectively (Article 9 and Article 13 of the Directive 2003/55/EC). It was assumed that by creating

<sup>39</sup> The First Energy Package consists of 2 directives adopted in 1996 and 1998: (1) Directive 98/30/EC concerning common rules for the internal market in natural gas (the First Gas Directive) (European Parliament and the Council, 1998).; and (2) Directive 96/92/EC concerning common rules for the internal market in electricity.

<sup>40</sup> The Second Energy Package consists of 4 directives adopted in 2003 and 2005: (1) Directive 2003/55 concerning common rules for the internal market in natural gas (the Second Gas Directive) (European Parliament and the Council, 2003).; (2) Regulation 1775/2005 on conditions for access to the natural gas transmission network (European Parliament and the Council, 2005); (3) Directive 2003/54/EC concerning common rules for the internal market in electricity; and (4) Regulation 1228/2003 on conditions for access to the network for cross-border exchanges in electricity.



legally separated entities, these would operate independently of the parent enterprise (Talus, 2013, p. 80).

However, rules on legal unbundling did not create the intended outcome either, i.e. sufficient separation of the different gas network activities that would enable new entrants to access the gas market (Talus, 2013, p. 81). The issue of unbundling – whether the provisions on unbundling requested by the Second Gas Directive are sufficient (legal unbundling, if fully implemented) or further legislation in this regard (introduction of ownership unbundling) is necessary - triggered one of the most heated energy-related debates in Europe. Unlike legal unbundling, introduced by the Second Gas Directive, ownership unbundling assumed the separation of ownership in different parts of the gas infrastructure. The question of unbundling took on an ‘external’ dimension too – a provision prohibiting foreign companies from acquiring control over a transmission system operator in the EU (under the same rules as EU companies), unless otherwise allowed by an international agreement (European Commission, 2007c, p. 7). This proposal has become known as the Gazprom clause. The debate ended up with the adoption of the Third Gas Directive in 2009. The Directive was a part of a wider set of gas and electricity-related legislation known as the Third Energy Package<sup>41</sup>.

The leading Commissioner on the issue of ownership unbundling was Commissioner for Energy, Andris Piebalgs. Another important person involved in drafting the Commission’s proposal was Commissioner for Competition, Neelie Kroes.

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<sup>41</sup> The Third Energy Package consists of 5 legislative acts adopted in 2009: (1) Directive 2009/73/EC concerning common rules for the internal market in natural gas (European Parliament and the Council, 2009a); (2) Regulation 715/2009 on conditions for access to the natural gas transmission (European Parliament and the Council, 2009d); (3) Directive 2009/72 concerning common rules for the internal market in electricity; (4) Regulation 714/2009 on conditions for access to the network for cross-border exchanges in electricity; and (5) Regulation 713/2009 establishing an Agency for the Cooperation of Energy Regulators.

## **3.2. Early positions**

### **3.2.1. The Commission's early position**

#### ***3.2.1.1. Hearings before the European Parliament***

In 2004, José Manuel Barroso was nominated for the position of Commission President. Whereas his nomination was approved by the European Parliament, the proposed College of Commissioners, including the Hungarian candidate for Energy Commissioner, László Kovács, as well as Neelie Kroes, the Dutch candidate for Commissioner for Competition, met with opposition from the European Parliament. László Kovács was criticised for the lack of considerable experience in the energy policy domain (EurActiv, 01 October 2004). Neelie Kroes, on the other hand, faced criticism for having too much experience in the business sector (earlier membership in a number of companies' supervisory boards) that supposedly could impede her from acting independently from the business community in Brussels (the New York Times, 28 September 2004). While Neelie Kroes managed to defend her nomination, arguing that she would continue to demonstrate her "personal commitment to applying the highest ethical standards" (Kroes, 2004), László Kovács' candidacy for Energy Commissioner was withdrawn. Instead, the position of Energy Commissioner was given to another Latvian candidate, Andris Piebalgs.

On his appearance before the European Parliament's Committee on Industry, Research and Energy, Andris Piebalgs, did not show a preference for any new measure with regard to unbundling. Instead, he stated the following:

"We must ensure better competition in the market. At present, it remains dominated by the historical operators and few consumers ever change their supplier. If we are to guarantee that the real benefits of the internal market reach citizens in terms of jobs and lower prices, then difficult decisions have to be taken. However, I think we must await the results of the implementation of the second electricity and gas package to determine which, if any, further EU measures are necessary" (Piebalgs, 2004).

Thus, although acknowledging that the energy market was still dominated by a few vertically integrated enterprises, the Commissioner believed that priority should

be given to the full implementation of the measures introduced by the Second Gas Directive. The Directive was adopted only one year before the new Commission, under Barroso, took office; therefore, it was decided that the future measures should wait for the full and proper implementation of the Second Package. Also, at that time, the member states were not of the opinion that the energy domain necessitates a wider action at the EU level (Interview 3).

The Commissioner for Competition, Neelie Kroes, however, was determined to push for a more proactive application of the EU competition law in the energy sector. In her statement made before the European Parliament in 2004, she proposed screenings of obstacles to competition in telecommunications, postal services, transport, and the energy sector (Kroes, 2004). The idea was accepted by other Commissioners, including Andris Piebalgs (European Commission, 2005a, p. 8).

Under Regulation 1/2003, following indications that competition in a sector may be restricted, the Commission has the right to conduct investigations by collecting information from stakeholders and carrying out inspections, if necessary (Article 17). Warnings suggesting that competition in the gas market might be distorted were gas price increases, new entrants' complaints of difficulty in getting access to gas networks, limited cross-border trade, and a lack of transparency (European Commission, 2005b, p. 2-3). As a result of these warnings, Neelie Kroes, in agreement with Andris Piebalgs, opened up a sectoral investigation aimed at revealing the suspected malfunctioning of the gas market. In May 2005, the Commission sent out over 3,000 questionnaires to stakeholders with the aim of establishing "the facts for a solid competition analysis" in the energy sector, making this inquiry "one of the most thorough investigations in the Commission's history" (European Commission, 2007a, p. 19).

At this early stage, therefore, Andris Piebalgs did not express strong preferences with regard to ownership unbundling. When Commissioner for Energy took office, there was a perception within the DG Transport and Energy (DG TREN) that the Second Package was good enough, and that the reason why the internal market faced obstacles was the insufficient implementation of this legislative package (Interview 3). DG Competition (DG COMP), on the other hand, took a more pro-active position. In her communication on the opening of the sectoral inquiry, Neelie Kroes stressed

the complaints concerning the ineffectiveness of the unbundling provisions (European Commission, 2005b, p. 3). While stating that the sector inquiry would look into a potential breach of the competition law, she added that “the design of network rules appears not always to take into account in a sufficient manner the needs of a competitive market at a European level” (European Commission, 2005b, p. 3). Even though it was not clear from her statement which network rules she was referring to, it seems that she did not share the opinion of DG TREN that the market rules laid down in the Second Gas Directive were sufficient enough to create competition in the energy market.

### ***3.2.1.2. Preliminary reports on the sector inquiry***

In November 2005, DG COMP published the initial findings of the energy sector inquiry. The preliminary findings were that, despite the legal unbundling that was put in place by the Second Gas Directive, the vertically integrated companies still favoured related firms (European Commission, 2005c, p. 16). These initial findings were presented to the Council by Neelie Kroes in December 2005, when again concerns related to vertically integrated companies and insufficient unbundling were raised by the Commissioner. On the same occasion, Commissioner Kroes stressed her intention to use the competition powers to deal with market malfunctions under the current regulation, whilst at the same time calling for the launch of a debate on “a future regulatory framework” for energy markets in the EU (European Commission, 2005d, p. 2).

In February 2006, a preliminary report on the inquiry was published confirming the initial findings: the “systematic conflict of interest” triggered by the inadequate separation of vertically integrated companies (Interview 3; European Commission, 2007a, p. 14). While acknowledging the importance of this issue, Andris Piebalgs again noted that the question regarding whether ensuring the implementation of the Second Gas Directive would be sufficient to guarantee competition or whether further legislative action – the revision of the Second Directive and introduction of ownership unbundling - would be needed was still open for discussion (Piebalgs, 2006). However, he added, firstly, that the Commission would launch infringement

procedures against countries that had not ensured compliance with the Second Gas Directive. Secondly, he announced that in a period to come, DG TREN would examine a number of areas, including “the adequacy of the unbundling measures” (Piebalgs, 2006, p. 4).

Neelie Kroes, however, was certain that the provisions on legal unbundling set by the Second Package were not sufficient for the development of the gas market, even if fully implemented, and that ownership unbundling would be the right solution for the lack of market competition.

“[...] Finally, market structure is a real concern. I’m talking about the bundling of generation, supply, pipelines and grids, and distribution. Owners and operators of critical networks often compete with companies that need to have access to these same networks. Can we expect such integrated companies to treat competitors in a fully fair manner? Their own self-interest would suggest not. In this respect, I very much welcome the move that is being made in the country I know best towards full structural unbundling. Personally, I believe that this will allow a more efficient market to develop” (Kroes, 2006).

Since the Netherlands, her home country, had already introduced ownership unbundling (in her speech referred to as ‘full structural unbundling’), Neelie Kroes believed that, given the positive Dutch experience in this, the European Union should follow this example. At that time, only a few countries - Denmark, the UK, the Netherlands, and Sweden - had already introduced ownership unbundling of vertically integrated gas companies in their markets, thus taking a step further than that required by the Second Gas Directive (European Commission, 2005e, p. 12). All other countries had lagged, with many delays in the implementation of the provisions regarding legal unbundling (the Second Gas Directive).

Thus, after the first results of the sector inquiry arrived, Neelie Kroes openly stated that ownership unbundling would be the right solution for the lack of market competition. DG TREN also started to shift from the position that legal unbundling is sufficient (if fully implemented) towards the stance that the most appropriate solution lies in ownership unbundling (Interview 3), though it was still open for further discussion on this issue.

### 3.2.2 Interest groups' early positions

Even before the preliminary report on the inquiry arrived, DG TREN had organised initial consultations with stakeholders on the internal gas market in 2005. Firstly, in 2005, DG TREN published a “Report on progress in creating the internal gas and electricity markets” (European Commission, 2005e). Stakeholders were asked to provide their positions on the considered issues. Approximately 50 responses arrived, including those made by Equinor (European Commission, 2005f, p. 180). Network users took the position that ownership unbundling might be necessary, whereas network operators took the view that the Second Gas Directive and legal unbundling were sufficient to ensure the independence of different parts of the gas network (European Commission, 2005f, p. 14). The Commission summarised the debate by urging member states to fully implement provisions concerning legal unbundling (since implementation had been delayed in many member states).

In addition, the issue of unbundling was also discussed by the European Regulators Group for Electricity and Gas (ERGEG). ERGEG was an advisory group to the Commission, comprised of national regulators.<sup>42</sup> In 2005, the ERGEG presented “A roadmap towards a single European Gas Market”, explaining the European regulators’ positions on the gas market regulation (ERGEG, 2005a). Stakeholders were asked to comment on the paper in November 2005. Overall, 26 responses were received, including comments made by Exxon (ExxonMobil, 2006a). In 2006, the ERGEG organised another round of consultations concerning the ‘Guidelines for Good Practice on Regulatory Accounts Unbundling’.<sup>43</sup> Seventeen responses were received from stakeholders, including Exxon’s re-submitted position paper (ExxonMobil, 2006b). The analysed documents show that the national energy regulators favoured ownership over legal unbundling. As for the companies and associations that took part in these consultations, most of them, including Exxon, opposed any further measures regarding unbundling.

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<sup>42</sup> See the CEER’s website: [https://www.ceer.eu/eeer\\_about](https://www.ceer.eu/eeer_about). [Accessed on 07/07/2019].

<sup>43</sup> Available at: [https://www.ceer.eu/eeer\\_consult/closed\\_public\\_consultations/crosssectoral/ggp\\_account\\_unbundling](https://www.ceer.eu/eeer_consult/closed_public_consultations/crosssectoral/ggp_account_unbundling). [Accessed on 07/07/2019].

To sum up, at the beginning of the Commission's mandate, DG TREN believed that the Second Gas Directive provided an adequate regulatory framework and that all the challenges facing new entrants were the result of delays in the implementation of the Second Directive. However, when the first results of the sectoral inquiry arrived, DG TREN started to question its previous position (Interview 3). DG COMP, on the other hand, took a clear position: the rules concerning gas infrastructure should be reinforced. In February 2006, after the preliminary report on the inquiry was published, Neelie Kroes openly expressed her support for ownership unbundling. National regulators also favoured this position through the ERGEG. Companies were divided over the issue; while new entrants started to advocate in favour of ownership unbundling, most of the established energy companies, including Exxon, opposed further regulation in this respect.

### **3.3. The Commission's preliminary position paper**

In March 2006, DG TREN published a green paper: "A European Strategy for Sustainable, Competitive and Secure Energy", putting forward suggestions and policy measures that could form the basis for new energy policy (European Commission, 2006b). This document confirmed the previously expressed position of the Energy Commissioner: the provisions on the unbundling of the Second Gas Directive needed to be implemented. However, it was added and highlighted in bold, that if progress towards a more competitive market did not result, further policy measures would be considered (Europe Commission 2006b, p. 7). One of the measures put forward for further discussion was the possible introduction of "more effective unbundling" provisions (European Commission, 2006b, p. 18).

During the same month (March 2006), the Commission opened infringement procedures against those countries that have not transposed the Second Gas Directive (European Commission, 2006h). Besides this, following an earlier announcement by Neelie Kroes that the Commission was planning to launch individual antitrust investigations (Kroes, 2006), DG COMP carried out "unannounced inspections" of gas enterprises in five countries - Germany, Austria, Italy, Belgium, and France (European Commission, 2006e). The investigations resulted in the opening of antitrust

proceedings against two companies: E.ON (Germany) and Gaz de France (European Commission, 2007d). Thus, under the leadership of Neelie Kroes, DG COMP had extended its role in the internal energy market in a way that had not been seen in the past (Eikeland, 2011a, p. 253; Riley, 2006, p. 6).

In addition, the question of unbundling developed an external dimension. Namely, when it came to external energy suppliers, most notably Russia, the main objective of the Commission, which could be traced back to the past, was to create a framework for energy cooperation based on competitive market rules (Youngs, 2009, p. 80). The Energy Charter Treaty<sup>44</sup> (ECT) was seen as the crucial instrument for the accomplishment of this objective (European Commission, 2006b, p. 15). Though having signed the ECT in 1994, Russia did not ratify it. Since then, the Commission had been seeking alternative ways to persuade Russia to embrace the EU market-based rules in the energy policy domain (Youngs, 2009, p. 81). Thus, the Commission's green paper called for the development of common foreign energy policy in relation to major non-EU energy suppliers. It was indicated that partnerships with external suppliers, especially Russia, should be based on "fair and reciprocal access to markets and infrastructure" (European Commission, 2006b, p. 15). Simultaneously, it was stressed that energy relations with the US and Norway should be improved (European Commission, 2006b, p. 16).

The green paper indicated a shift in DG TREN's position towards ownership unbundling. Even though it was not explicitly stated, the document put forward the possible reinforcement of unbundling provisions. Albeit, Andris Piebalgs, hesitated to propose ownership unbundling as a policy measure, he started to change his position during 2006 (Interview 3). In addition, the green paper emphasised that the energy partnership with Russia should be established on a reciprocal basis, while relations with the US and Norway in this policy domain needed to be improved. Unlike Energy Commissioner, Commissioner for Competition, Neelie Kroes, backed the introduction of ownership unbundling since the early days of the Commission's mandate.

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<sup>44</sup> The Energy Charter Treaty represents a legal framework aimed at improving energy cooperation between the EU and non-EU contracting parties. Available at: <http://www.energycharter.org/process/energy-charter-treaty-1994/energy-charter-treaty/>. [Accessed on 07/07/2019].



### 3.4. Interest groups' positions

In March 2006, the Commission opened a public consultation on the green paper, aiming to survey stakeholders' views on the proposed policy options. In general, the industrial consumers (energy-intensive industries) provided support for ownership unbundling, whereas the main energy companies opposed this option (European Commission, 2006c, p. 25) (for the full list of interest groups' positions, see appendix III).

The role played by industrial energy consumers changed between 2003 and 2007, mostly thanks to the new role played by DG COMP in the European energy market (Eikeland, 2011a, p. 257). Before 2003, DG COMP did not want to get engaged with industrial actors, partly because it wanted to avoid being seen as dependent on business groups (Eikeland, 2011a, p. 257). However, later on, it established strong and regular contacts with energy-consuming industries (Eikeland, 2011a, p. 257). As a result, the associations representing industrial energy consumers - such as the Alliance of Energy-Intensive Industries, the International Federation of Industrial Energy Consumers (IFIIEC), the Chemical Industries Association, VIK (German Association of Industrial Energy Users), etc. - would present a joint position, urging the EU to adopt a legislation on ownership unbundling<sup>45</sup>.

The energy companies, conversely, created a huge opposing block. The only exceptions to this were the UK energy companies: the BG Group, Centrica, and the National Grid. Still, while opposing any further measures on unbundling, the resistance of the energy companies "was not desperate", probably because some of them underestimated what could be done (Interview 3). The energy domain, at that time, was still dominated by member states' policies rather than wider EU actions. Companies, especially those representing national champions, believed that, with the support of their governments, it was highly unlikely that the Commission would make a move towards ownership unbundling if member states (especially Germany and France) disagreed. One of their strongest arguments referred to companies' property rights (Interview 3). Arguably, an obligation forcing companies to separate ownership of gas infrastructure would constitute some sort of unlawful expropriation. While

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<sup>45</sup> Interest groups' position papers submitted during the public consultations in 2006.

Andris Piebalgs, believed that this is a strong argument on the side of energy producers, Neelie Kroes rejected this argument, by stating that ownership unbundling does not represent an unlawful expropriation (Kroes, 2007).

As for the member states, indeed, there was little backing for new legislation. Instead, they preferred full implementation of the existing Second Energy Package before considering further measures. Germany and France, together with a group of six other member states (Greece, Slovakia, Latvia, Austria, Bulgaria, and Luxemburg) comprised the most vocal opposition to the proposal. These countries complained that the idea of unbundling vertically integrated companies is “unconstitutional and could have negative social consequences” (European Parliament, 2009b).<sup>46</sup> The UK, Denmark and the Netherlands were among the few member states arguing in favour of legislation on mandatory ownership unbundling (European Commission, 2006c, p. 16).

With respect to the relations with external suppliers, the proposal for the establishment of a more common external energy policy was supported by nearly all contributors (European Commission, 2006c, p. 34). Many stakeholders, including the UK, France, the Benelux countries, the Czech Republic, and Poland<sup>47</sup>, explicitly emphasised that priority should be given to the ratification of the Energy Charter by Russia, together with more transparent access conditions to non-EU markets for EU investors.

### ***3.4.1. Non-EU actors***

When it comes to Russia, the main Commission’s objective has been to promote energy cooperation based on competitive market rules (Youngs, 2009, p. 80). At that time, energy cooperation between Gazprom, Russian joint-stock energy company<sup>48</sup>, and EU companies was largely based on bilateral agreements. Through these

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<sup>46</sup> See also EurActiv (01 February 2008) and EWEA (17 March 2008).

<sup>47</sup> Interest groups’ position papers submitted during the public consultations in 2006.

<sup>48</sup> For more see the Gazprom’s website: <https://www.gazprom.com/investors/stock/>. [Accessed on 07/07/2019].

agreements, Gazprom provided its European partners with gas supplies in exchange for the access to the downstream sector in the EU (see for instance Youngs, 2009, p. 86-91). These partnerships, nevertheless, were exclusive in a sense that only a limited number of EU companies were allowed to access the Russian market and purchase Russian gas. The Commission intended to force Russia to open up its domestic market, under fair conditions, to all EU companies, without discrimination. The Energy Charter Treaty (ECT) was seen as the key instrument for accomplishing this objective. However, Russia refused to ratify ECT. As a result, the Commission sought to reach a consensus among member states to “speak with a single voice” with Russia about opening up its market for all European companies, without discrimination (European Commission, 2006b, p. 15).

In the year preceding the start of negotiations on the third package, Gazprom’s strategy was to expand its presence in the EU (Gazprom, 2007, p. 60; Heinrich, 2008). Besides this, the company had important shares in several European transmission system operators (See table 5). Given the above, the proposed market reform and, especially, the rules on unbundling were seen as measures which could put at risk Gazprom’s expansion strategy as the company could be constrained from taking control over the EU infrastructure (Heinrich, 2008, p. 9). Commenting on the proposed gas market reform, the Wall Street Journal (21 September 2007) described Russia’s position in the following way: “Moscow will have to be able to make a Potemkin-style division of Gazprom to get around any future EU restrictions”. As a result, Gazprom’s representatives voiced, on various occasions, their disagreement over the eventual introduction of ownership unbundling.<sup>49</sup> For Gazprom, it was not reasonable for the Commission to advocate in favour of the “Gazprom clause”, as this would reduce investments in the EU energy market (Miller, 2008b; 2008c). Gazprom’s point of view was that extremely costly investments in infrastructural projects can be undertaken only by vertically integrated companies, not by ‘unbundled’ companies. While emphasising that “Gazprom will remain the guarantor of energy security for the European consumers”, the company’s Chairman of Management Committee, Alexey Miller, also warned that Gazprom is developing its relations with “new markets such

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<sup>49</sup> See for example a speech of Stanislav Tsygankov, Head of Gazprom’s International Business Department (Tsygankov, 2008), or a speech of Alexey Miller, Chairman of Gazprom Management Committee (Miller, 2008b).

as North America and China” and that “attempts to limit Gazprom’s activity in European market (...) will make no good results” (in BBC, 20 April 2006).

**Table 5.** Participation of third countries’ investors in EU gas infrastructure in 2006.

<b>Gazprom</b>	
Eesti Gas (Estonia)	37.2%
Europolgaz (Poland)	48%
Gasum (Finland)	25%
Interconnector (UK-BE)	10%
Latvijas Gaze (Latvia)	34%
Lietuvos Dujos (Lithuania)	37.1%
Wingas (Germany)	49.99%
VNG (Germany)	5.26%
<b>Equinor</b>	
Swedegas (Sweden)	30%
Netra gas pipeline (Germany)	23.1%
Etzel gas storage facility (Germany)	20.1%
<b>Exxon</b>	
BEB Erdgas und Erdoel (Germany)	50%

Source: European Commission (2007e, p. 106); Equinor (2007); Lewiner (2008).

The largest Norwegian energy company, Equinor<sup>50</sup>, also aimed to expand the company’s presence in the downstream sector and to increase gas deliveries to Europe (Equinor, 2007, p. 12). Unlike Gazprom, Equinor did not strongly oppose ownership unbundling (Interview 5), since the company did not have as many assets as Gazprom in the EU (see table 5). Secondly, the process of gas market liberalisation, including discussions on unbundling, had influenced the company’s strategic thinking about how the gas industry could look and what role Equinor could play (Interview 5). Equinor saw the future liberalisation of the EU gas market as an opportunity for the company to shift its business strategy and adapt to further changes. In that sense, Equinor started to move towards a position in which ownership over infrastructure meant less. Still,

<sup>50</sup> For more see the Equinor’s website: <https://www.equinor.com/en/about-us.html>. [Accessed on 07/07/2019].

instead of ownership unbundling, Equinor proposed an independent system operator (ISO), citing the example of the Norwegian company GASSCO as a role model (Equinor, 2006). The Independent system operator (ISO) model involves situations where a company which produces or supplies energy may formally own network assets, but the full control over the transmission network must rest with an independent company (European Commission, 2007c, p. 6). Asked to comment on unbundling models, an Equinor representative replied that “an ISO-type system already exists in Norway” and “is working well” (in EUobserver, 10 January 2007). He explained that the company preferred an ISO over ownership unbundling because it needed “to keep pipeline assets on its books in order to secure good credit ratings and raise cheap capital on the international money markets for investments in new gas and oil fields” (in EUobserver, 10 January 2007; Interview 5). For vertically integrated companies, it was important to maintain ownership of infrastructure not only because they wanted to advance their presence at the EU market, but also because they could get bank credit which could be used for investments in energy production if they kept ownership of pipeline assets. This was the main reason why Equinor took a position that an ISO model might be the preferred option over ownership unbundling, though the company was not strictly against ownership unbundling, either.

Thus, unlike Gazprom, who opposed ownership unbundling without reflecting on the Commission’s preferences towards further market liberalisation, Equinor decided to adjust its business strategy to the forthcoming changes in the EU gas market. Also, unlike its Russian counterpart, the Norwegian company backed the Commission’s determination to expand EU competition rules into non-EU producing countries by referring to “legislative and regulatory constraints in energy-producing countries” (Equinor, 2006, p. 8). Equinor regarded the Energy Charter Treaty as a significant instrument in this respect.

At the beginning of negotiations on the third energy package, ExxonMobil, the US energy company<sup>51</sup>, opposed a further unbundling regulation. In response to the earlier mentioned ERGEG public consultations, Exxon expressed doubts about future measures on unbundling, arguing instead in favour of full enforcement of the Second

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<sup>51</sup> For more see the Exxon’s website: <https://corporate.exxonmobil.com/Company/Who-we-are/Our-history>. [Accessed on 07/07/2019].

Gas Directive (Exxon, 2006b). However, during consultations on the Commission's green paper, Exxon did not express any particular preferences concerning ownership unbundling. The American Chamber of Commerce (AmCham EU) – where Exxon was a board member - did not refer specifically to unbundling in its position paper, either. However, it took the view that the existing legislation (the Second Package and legal unbundling) “should be given the time necessary to achieve its intended results” (AmCham, 2006, p. 2). This could be explained by Exxon's intention to change its business strategy, as had Equinor. In 2007, when Exxon completely withdrew from the transmission business in the EU and sold its assets in the German market (BEB Erdgas und Erdoel)<sup>52</sup>, the company's position slightly evolved in a more liberal direction. Commenting on the UK energy market, Exxon stated that ownership unbundling in the UK had provided for good market conditions (Exxon, 2008a).

As for reciprocity in energy relations with foreign producing countries, Exxon backed the Commission's efforts to promote “regulatory reforms and positive alternatives to command-and-control practices” (ExxonMobil, 2006c, p. 9). The position was supported by AmCham who took the view that the EU partnerships with producing states should be based on “reciprocal access to each other's markets and infrastructure” (AmCham, 2006, p. 9).

### **3.5. Non-EU interest groups' lobbying activities**

At the time when the Commission launched the initiative for energy market reforms in 2006, the relations between Russia and the EU were, to an extent, strained. Following the criteria differentiating between insiders and outsiders, it would be hard to grant Gazprom either status at that point. The Russian-Ukrainian gas dispute in January 2006, caused concerns in Brussels, leading to some decision-makers within the Commission to doubt Gazprom's reputation as a reliable energy partner. After a dispute over the price Ukraine was supposed to pay to Gazprom for the gas deliveries, Gazprom cut off gas supplies to Ukraine in January 2006. This dispute raised the alarm

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<sup>52</sup> The Shell's official website: <http://royaldutchshellplc.com/2007/11/23/statement-by-royal-dutch-shell-plc-shell-and-exxonmobil-divest-from-german-gas-pipeline-assets/>. [Accessed on 07/07/2019].

in the EU, since, at that time, around 80% of Russian gas to the EU has been transported through the Ukrainian territory (Parfitt, 02 January 2006). While “some believed that Gazprom is a reliable supplier, others did not” (Interview 3). On the other hand, Gazprom was the largest energy supplier to Europe, covering approximately 20% of the EU gas needs. For that reason, it was important for the Commission to engage in conversation with Gazprom (Interview 3).

“I understood, at least at that time, that Russians are important and that they are always suspicious. Whatever you do, they always feel that you are doing something against them. So you try really hard to be transparent and to engage with them. With their ministers, it has been usually easier, but with the company, it was more difficult. But the strategy was always to engage as much as possible, because that meant less problem for us, for them, for everybody” (Interview 3).

With approximately 20% of the market share, Gazprom had secured a seat at the table discussing the future of the EU gas market. Nevertheless, after the first Russian-Ukrainian gas dispute in 2006, some decision-makers within the Commission started to doubt its reputation of being a reliable energy supplier. At the same time, Gazprom started to question the Commission’s intentions towards the company.

In addition to maintaining communication with the Commission, Gazprom turned to its partners in the member states. In the period between January 2006 and April 2009, the company held more than 50 meetings with member states’ ministers and heads of states.<sup>53</sup> Representatives of Gazprom held consultations with the President of France, Nicolas Sarkozy, the Slovenian President, Danilo Turk, the Prince of Luxembourg, the Chancellor of Austria, and other high-ranking officials from member states. Most meetings were held with public officials from Bulgaria and Austria, and somewhat fewer with officials from Germany, Luxembourg, Italy, Slovenia and Hungary. Over the same period, Gazprom held about 50 meetings with representatives of EU energy companies. The most frequent were meetings with Italian companies (ENI and Enel), German energy businesses (VNG Gas AG, E.ON and Wintershall Holding), BP (the UK), Gaz de France (France), OMV (Austria), and MOL (Hungary). Communication was the most intensive before the Commission tabled its proposal in

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<sup>53</sup> Data obtained from the Gazprom’s official website.

September 2007, as well as prior to the adoption of the Council’s common position on the Commission’s proposal, in June 2008.

Over the same period, Gazprom updated its bilateral agreements for natural gas supplies with some of the main EU companies such as E.ON Ruhrgas (until the end of 2035) and Italian ENI (until the end of 2035), as well as some member states such as Austria (until the end of 2027) (Gazprom, 2006, p. 51). In addition, in 2007, the company hired GPlus consultancy to represent its interests in the EU. According to the Corporate Europe Observatory, GPlus worked to bring together Gazprom, on the one hand, and EU officials and media, on the other (Corporate Europe Observatory, 2014, p. 13).

The lobbying strategies of Equinor and Exxon differed from those employed by Gazprom. Firstly, whereas the two companies used public consultations hosted by the Commission to express their position, Gazprom did not. Secondly, when compared to Gazprom, the Norwegian and the US companies communicated more frequently with the Commission through EU business associations. As the table below shows, Exxon and, especially, Equinor were better integrated and connected with the most influential associations in the EU than Gazprom.

**Table 6.** Interest groups’ membership in EU associations in 2006.

<b>Association</b>		<b>Membership</b>	<b>Board</b>
<b>Eurogas</b>	Represents European gas sellers and distributors.	Russian Gas Society (associated member)	
<b>International Association of Oil and Gas Producers (IOGP)</b>	Represents energy producers from all over the world.	Equinor Exxon	Equinor Exxon
<b>European Federation of Energy Traders (EFET)</b>	Represents energy traders.	Equinor	
<b>Gas Infrastructure Europe (GIE)</b>	Represents the gas infrastructure industry.	Exxon	
<b>EASEE-gas</b>	Represents the gas industry.	Equinor Gazprom Exxon	

Source: Websites of the respective associations.



During 2006 the Commission consulted five forums of stakeholders (advisory and expert groups) on a regular basis (European Commission, 2006c, p. 11). Three of them were of particular importance for the gas-related legislation: (1) the High Level Group on Competitiveness, Energy and the Environment (HLGCEE) – which members included members of the Council and the European Parliament, the Commission, industry representatives, and consumer groups<sup>54</sup>; (2) the European Forum of Energy and Transport (EFET) – which members included a number of stakeholders<sup>55</sup>; and (3) the Gas Regulatory Forum (Madrid Forum) – which included member states, national regulators, industry representatives, and consumers<sup>56</sup>.

The Gas Regulatory Forum (Madrid Forum) was the most important for discussions about the EU gas market. At these meetings, the energy industry was mostly represented by associations such as Eurogas, the International Association of Oil and Gas Producers (IOGP), the European Federation of Energy Traders (EFET), Gas Infrastructure Europe (GIE), and EASEE-gas. Membership in these associations had provided an opportunity for Equinor and Exxon to have their voices heard during meetings in Madrid. It should be noted that Gazprom took part in meetings in Madrid twice, in 2005 and 2007, Exxon on three occasions, whereas Equinor was represented via the Norwegian government, who participated in these meetings on a regular basis. On the other hand, none of the companies under consideration took part in meetings organised by the other two groups: the HLGCEE and EFET. Yet, a representative of Gas Infrastructure Europe (GIE) was among the members of EFET and, at that time, only Exxon was a member of GIE (see table 6).

In addition, Equinor and Exxon regularly commented on reports, recommendations, and other documents issued by: (1) the European Regulators Group for Electricity and Gas (ERGEG) – a Commission’s advisory group that consisted of national regulators; and (2) the Council of European Energy Regulators (CEER) - established for the cooperation of the energy regulators<sup>57</sup>.

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<sup>54</sup> See the European Commission (2005h).

<sup>55</sup> See the European Commission (2004).

<sup>56</sup> See the European Gas Regulatory Forum: [https://ec.europa.eu/info/events/32nd-madrid-forum-2019-jun-05\\_en](https://ec.europa.eu/info/events/32nd-madrid-forum-2019-jun-05_en). [Accessed on 07/07/2019].

<sup>57</sup> See the CEER’s website: [https://www.ceer.eu/eer\\_about](https://www.ceer.eu/eer_about). [Accessed on 07/07/2019].

In addition to this, in the period between 2006 and September 2007 (when the Commission adopted the final proposal for the third energy package), Equinor's representatives met high-ranking Commission representatives on five occasions.<sup>58</sup> The company also had contacts with other Commission staff in Brussels on a regular basis.

The difference in lobbying styles could be partly explained by lobbying experience in Brussels. In contrast to Gazprom, who only opened its representative's office in Brussels in 2013, Equinor opened its EU Affairs Office as early as 2002 (Equinor, 2005, p. 60). Similarly, Exxon had its own EU Affairs team representing the company in the EU<sup>59</sup> since the beginning of the 2000s. In addition, Exxon has been a board member of AmCham EU, who was among the first established lobby organisations in Brussels.

Secondly, unlike Gazprom, Equinor liked to be listened to, but it did not try to make a political debate (Interview 3).

“Equinor is a very politically correct company. They tried to be friendly, engaging, knowledgeable (...) but there is a huge difference in style between Gazprom and Equinor (...) Unlike Equinor, Russians were always suspicious” (Interview 3).

Thirdly, the public image of the companies under consideration differed substantially. In media reports<sup>60</sup> Gazprom has often been mentioned in a negative context. Titles containing words such as “threat”, “warning”, “dispute”, and “risk” reveal, to a certain extent, the public reputation enjoyed by the company in Brussels. Gazprom's representatives themselves shared this impression. Alexey Miller, Gazprom's Chairman of the Management Committee, once said: “One gets the impression that certain European officials are still unable to decide what it is they fear more – a real energy shortage, or the fictitious ‘Russian threat’” (Miller, 2008a). Even Gplus (a public affairs and communications consultancy hired by Gazprom) has had a bad reputation, just because it represents Gazprom (Interview 5). What is more,

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<sup>58</sup> Data obtained from the Equinor's website.

<sup>59</sup> See the Exxon's website: <https://www.exxonmobil.eu/en-eu/company/about-us/european-union-affairs/european-union-affairs>. [Accessed on 07/07/2019].

<sup>60</sup> Sources: EurActiv and EuroNews between 2006 and September 2007 (when the Commission's proposal was adopted).

Gazprom attracted, and still attracts, far more media attention in the EU than most of its counterparts. Between 2006 and September 2007, EurActiv realised four news stories on Equinor, five on Exxon, and approximately 30 on Gazprom.

“Once when Miller [Alexey Miller, Gazprom’s Chairman of Management Committee] came (...) it was like a king is coming. I have never seen any company, even 2% of such public attention (...) The building was occupied by media” (Interview 3).

Overall, it could be said that Equinor and Exxon shared more characteristics of a lobbying insider than Gazprom. They already had established offices in Brussels. They were better integrated into the network of EU associations. They showed more willingness to adjust their businesses to the future market liberalisation favoured by the Commission. Finally, the two companies had a foreign origin that matched the Commission’s vision of the EU external energy policy.

### **3.6. The Commission’s proposal**

At the end of 2006, it became clear that Andris Piebalgs was convinced that ownership unbundling was a necessary step forward. Still, as mentioned earlier, at that time, ownership unbundling was an extremely unpopular policy option (Interview 3). The vast majority of energy producers and member states (including France and Germany) opposed ownership unbundling.

However, despite the strong opposition, in September 2007, the Commission adopted the proposal for a new gas directive, putting forward the possibility for member states to opt for one of the following forms of unbundling: (1) ownership unbundling; or (2) an independent system operator (ISO) (European Commission, 2007c). The Independent system operator (ISO) model involves situations where a company which produces or supplies energy may formally own network assets, but the full control over the transmission network must rest with an independent company (European Commission, 2007c, p. 6). While the Commission preferred ownership unbundling, the ISO model was introduced as a “bargaining chip” if ownership unbundling did not receive sufficient support (Interview 3; Eikeland, 2011a, p. 252).

By proposing the ISO model, in addition to ownership unbundling, a compromise was made. The opinion of the Commissioner for Competition, Neelie Kroes, did not evolve from her previously expressed support in favour of ownership unbundling. Even though she took the view that the creation of a rather complicated ISO model “will deliver effective separation of the network”, she expressed hope that “many companies will see that it is in their interest to move from the ISO model to full ownership unbundling” (Kroes, 2007). Energy Commissioner, on the other side, decided to make a compromise for two reasons. Firstly, because the camp opposing ownership unbundling led by France and Germany was particularly strong; therefore, it would be highly unlikely for the proposal to pass through the Council without the second option. Secondly, the argument employed by the energy industry – the expropriation of companies’ property – was seen by the Energy Commissioner as a relevant argument that should be taken into account (Interview 3).

The compromise with the external dimension of the proposal, nevertheless, was not made. The Commission took the position non-EU companies have to obey the same unbundling rules as their EU counterparts (European Commission, 2007c, p. 7). The Commission imposed one additional requirement with regard to third-country companies, suggesting that a non-EU actor cannot take control over a transmission system (or operator) in the EU “unless this is permitted by an agreement between the EU and the third country” (European Commission, 2007c, p. 7). This requirement became known under the name of its “supposed target”: the ‘Gazprom clause’<sup>61</sup> (Youngs, 2009, p. 38; Van Vooren and Wessel, 2014, p. 450). Thus, non-EU companies were to be treated in the EU market in the same manner as EU companies were treated in third countries’ markets (i.e. reciprocity). The Gazprom clause was introduced for two reasons: (1) as a carrot to force external energy suppliers to open up their domestic markets for EU companies (Youngs, 2009, p. 39); and (2) as a carrot to weaken the resistance of eastern member states that afraid that, in the absence of such provisions, Gazprom could take the opportunity to buy more assets in the EU (Eikeland, 2011a, p. 254).

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<sup>61</sup> Gazprom’s representatives called it the ‘anti-Gazprom clause’ (Miller, 2008c).

But still, even though a compromise was made (through the introduction of a second ‘lighter’ option), what seemed puzzling was the Commission’s determination to propose ownership unbundling, despite the huge opposition of member states (Eikeland, 2011a, p. 244). After the Council’s meeting in Jun 2007, Andris Piebalgs said: “The majority is not with me” (EUobserver, 07 June 2007). So why did the Commission decide to make a decision despite such strong opposition?

Firstly, the UK support was considered an important factor behind the Commission’s decisions (Interview 3). The UK was regarded as the prime advocate of ownership unbundling. The country’s position towards further market liberalisation in general terms, and ownership unbundling specifically, supported by Denmark and the Netherlands, prevented the creation of a united opposition among member states. This was important for the Commission since it would be highly unlikely to propose a measure opposed by almost all member states.

Secondly, while energy producers were united in opposing ownership unbundling, another camp of stakeholders was created to advocate in favour of the proposed measure – energy-intensive industries and consumer groups. In the period between 2003 and 2007, the influence of the energy supplier and energy-intensive industry shifted towards the latter (Eikeland, 2011a, p. 257). By defending the rights of and connecting more strongly with industrial energy consumers, DG COMP played a significant role in this process (Eikeland, 2011a, p. 258).

Thirdly, as mentioned earlier, the sector inquiry, infringement procedures against member states, and antitrust investigations against certain vertically integrated companies were also important in this respect. Following antitrust proceeding against E.ON, the company agreed to unbundle its assets in return for the Commission dropping the investigations against it (The Guardian, 29 February 2008). It seems that the Commission believed that this would reduce the companies’ incentives to lobby their governments against the proposed ownership unbundling (Eikeland, 2011a, p. 253). The statement given by Germany’s Deputy Energy Minister, Peter Hintze, confirms this intention: “It’s very astounding. The timing coincidence of these events... It’s a very questionable game” (The Guardian, 29 February 2008).

### 3.7. Lobbying success of non-EU interest groups

Gazprom was among the strongest opponents of both ownership unbundling and the Gazprom clause. Equinor took a position that the ISO model should be the preferred option over ownership unbundling, though the company was not strictly against ownership unbundling either. Concerning the Gazprom clause, during public consultations, Equinor expressed the opinion that relations with producing countries needed to be based on reciprocity, which was the exact intention behind the Gazprom clause. Similarly, Exxon, in the beginning, argued against ownership unbundling; however, after selling some of its assets in Germany, it seems that the company made a shift from its previously expressed position. As for relations with producing countries, Exxon's position was similar to Equinor's. AmCham followed the same line of thought.

Hence, the actor whose preferences were the most embedded in the Commission's final position was Equinor, followed by Exxon. The proposal was the least favourable for Gazprom (see table 7).

**Table 7.** Comparison of the estimated degree of success of the analysed non-EU groups.

<b>The Commission's proposal (2007)</b>	<b>Equinor</b>	<b>Exxon</b>	<b>Gazprom</b>
Ownership Unbundling	√x	√x	x
ISO	√	N/A	x
The Gazprom clause	√	√	x

√ - support; x – oppose; √x– partly support; N/A- no position.

#### *3.7.1. Commission preferences on the discussed issues*

At the beginning, DG TREN favoured full implementation of the Second Directive over the new legislation on unbundling. Still, after the preliminary results of the inquiry arrived, a shift in position was made – DG TREN started to question the adequacy of the Second Gas Directive in dealing with malfunctions in the gas market. Neelie Kroes,

on the other hand, was convinced from the beginning that ownership unbundling was the best solution. The Commission's determination to secure fair treatment of the EU companies in Russia, based on reciprocity, was clearly expressed, even before public consultations on the green paper were organised. How did the Commissioners' preferences on the discussed issues affect the companies' prospects of lobbying successfully?

Firstly, the Commission had used the competition law to advance the development of the gas market. As early as her hearing before the European Parliament, Neelie Kroes announced that the Commission would use all the tools at its disposal to push for a more proactive application of the competition policy. Sectoral screenings, unannounced inspections of gas companies, and antitrust investigations were important in this respect. The fact that the Commission had strong cases against some of the most high-profile energy companies in Europe seems to have helped the Commission prove its point, that ownership unbundling is needed, and to make a consensus more likely (Interview 3; Eikeland, 2011a). Finally, DG COMP's networking with energy-consuming industries created a strong block backing the Commission's intention to introduce ownership unbundling.

Secondly, it appears that DG TREN wanted to defend its preferences before interest groups, instead of the other way around.

“We tried to speak with everyone, to really understand their position and arguments. Then you try to explain your [the Commission's] argument, knowing that perhaps you will not convince them, but at least they have been listened to, and arguments were exchanged.” (Interview 3).

Andris Piebalgs was reluctant to propose ownership unbundling, not because full ownership was seen as a preferable option, but because the opposing camp, led by Germany and France, was so strong that it was hard for the proposal to get through the Council. Hence, role-play by interest groups was seen as significant in this respect.

“Interest groups are, at least for very challenging proposals, crucial. You cannot afford for anybody to be extremely hostile. Information is significant. It [information provided by interest groups] gave the direction of political compromise. Perhaps you do not get too much new information, but you become

aware of where the political compromise could be found (...) We have been very open to listening. And also it was a precondition to get it [the proposal] through the Council.” (Interview 3).

Therefore, rather than receiving expertise or technical knowledge, it was important to get information about how political compromise could be made. Additionally, by sharing its views and by discussing its position with interest groups, the Commission also wanted to avoid, or at least to relax, the resistance of member states.

Interest groups, thus, managed to escape the worst-case scenario – ownership unbundling was not the only option; instead, an alternative (ISO) was proposed in addition, leaving the possibility for member states to opt between the two options. This, however, did not mean that member states and energy companies, including Gazprom, were pleased with the final outcome. On the contrary, following the release of the Commission’s proposal, a bloc of member states led by Germany and France sent a letter to the Commission and the European Parliament, arguing that the Commission’s proposal was “not compatible with national law and the free movement of capital” (EurActiv, 01 February 2008; EWEA, 17 March 2008). In addition, the member states took the view that ownership unbundling would not increase investments and competition in the energy domain. Instead, a third option – the independent transmission operator (ITO) model - was proposed, alongside ownership unbundling and the ISO model.

### ***3.7.2. Commission’s position on the interest groups***

Gazprom was clearly an important company because of its size and market share in the EU, which is one of the criteria for a company to be seen as an insider. Nevertheless, according to all the other characteristics of the company, it was closer to being an outsider. Gazprom did not have an established presence in Brussels, it was not a member of most of the EU associations, and it did not have a broad portfolio of engagement. The company was focused on pursuing its own interests (against further liberalisation of the European gas market) without considering sufficiently the Commission’s preferences.



“Gazprom tried to fight the Third Package as much as it could, but it failed (...) They [Gazprom] asked: ‘Guys what do you want?’ We have gas, we have networks, we have skills. So the cheapest way actually is that we are integrated. And what do you ask from us – that we sell gas at the border to somebody who will then resell this gas. You will pay more.’ (...) That was logical for them [Gazprom]. Because if you do not believe in competitive forces, then vertical integration sounds like a logical idea. But that was not the way the European market worked” (Interview 3).

While getting directly engaged with the Commission, Gazprom also issued several statements with a threatening tone. Alexey Miller, Gazprom’s CEO, for instance, stated that Gazprom could develop its relations with new markets (e.g. China), away from the EU, and that any restriction of Gazprom’s activities in the EU “will make no good results” (in BBC, 20 April 2006). This confrontational style of communication has been seen as uncharacteristic to insiders (Grant, 2001, p. 343).

Equinor and Exxon shared more characteristics of a lobbying insider than Gazprom. Similar to Gazprom these companies were seen as important because of their size and market share – 13% (Equinor) and 7% (Exxon) of overall EU gas consumption in 2005. However, unlike Gazprom, they already had established offices in Brussels. They were better integrated into the network of EU associations. They were more open towards changing their business strategies. The whole process of gas market liberalisation, including discussions on unbundling, influenced Equinor’s strategic thinking about how the gas industry could look and what role Equinor could play in that regard (Interview 5). The company did not see the situation as black or white; instead, it was important to create a system that could work. For that reason, Equinor did not take as strong a position on unbundling as its Russian counterpart.

“It might not be helpful [for a lobbyist] if you did not prove to be helpful [solution-oriented] before or you have very, very narrow agenda and you do not see all interests of the EU, but only your own interests” (Interview 5).

Besides, the green paper, adopted by the Commission in 2006, had emphasised the importance of both energy suppliers: Russia and Norway. Nevertheless, while stating that Norway is one of the EU most important energy partners and that the EU should

facilitate Norway's efforts to develop resources in Europe (European Commission 2006b, p. 16), partnership with Russia was portrayed in a different way:

“The EU, as Russia's largest energy buyer, is an essential and equal partner in this relationship. (...) A true partnership would (...) mean fair and reciprocal access to markets and infrastructure including, in particular, third-party access to pipelines. Work should start on an energy initiative based on these principles” (European Commission, 2006b, p. 15).

The problems associated with its country of origin that were recognised by decision-makers in Brussels did not prove to be helpful for Gazprom's lobbying efforts. The Commission's determination to secure reciprocity between the EU and Russia one way or another (through the Energy Charter Treaty or the Gazprom clause), have not left much room for Gazprom to fight against these provisions.

The company did not make a secret of its intention to alter the Commission's proposal. Commenting on the Commission's proposal, Alexey Miller stated that a lot of Gazprom's European partners supported Gazprom's views and that the company would coordinate its efforts with them “in order to persuade European officials that one should not saw off the bough on which he is sitting” (Miller, 2008c).

### **3.8. Conclusion**

The case study indicates that the Commission's initial preferences affect interest groups' lobbying success. In particular, the analysed case suggests that the Commission might have strong early preferences not only over outcomes (the gas market liberalisation) but also over policies aiming to achieve the desired outcomes (Gazprom clause). Besides, the case indicates that Commissioners in charge of a proposal also might have initial preferences based on their previous knowledge, beliefs, personal or their countries' experience. Thus Neelie Kroes, Commissioner for Competition had the strong preferences for ownership unbundling due to her country's positive experience with ownership unbundling.

The empirical findings provide support for the assumption that the Commission might use competition law to advance its preferences. DG COMP's launch of the

sectoral screening, inspections of gas companies, and opening of antitrust investigations against E.ON and Gaz de France is a case in point. It seems that the fact that the Commission had strong cases against these and other large companies helped the Commission to demonstrate that ownership unbundling is a necessary step forward and to make a consensus with stakeholders opposing ownership unbundling more likely. The case also finds support for the assumption that the Commission may organise a network of allies to shift a debate into a direction preferred by the Commission. DG COMP has established regular contacts with energy-consuming industries, thus creating a strong block backing the Commission's intention to introduce ownership unbundling.

On the other side, the case indicates that the absence of the Commission's strong early preferences increases the likelihood of groups' lobbying success. The gas industry managed to escape the worst-case scenario, since ownership unbundling was not the only option; instead, an alternative – ISO - was added, leaving the possibility for member states to choose between the two options. The argument put forward by the energy industry – supposed expropriation of companies' property – was seen by the Energy Commissioner as a relevant argument that should be taken into account. At the same time, however, the ISO model was seen as a “bargaining chip” aimed at appeasing the opposing member states. In this way, the Commission has defended its basic interest – to get approval by the Council.

The case, however, does not find support for the assumption that insiders (Equinor, Exxon) have better access to the Commission than outsiders (Gazprom) when it comes to bilateral meetings with Commission officials, and interest groups' access to Commission's advisory groups (e.g. Madrid Forum). One of the reasons for that is Gazprom's economic power. As one of the biggest energy suppliers to Europe, Gazprom was able to secure a seat at the table discussing the future development of the EU gas market. However, the case confirms that access does not necessarily “translate into influence” (Dür, 2008a, p. 1221). While acquiring access to the Commission, the company did not manage to successfully defend its “ideal position”. The case also provides support for the assumption that interest groups coming from countries that are strategically important for the EU (Norway and the US) are more likely to lobby successfully.

## **Chapter 4: Third-Party Access to Natural Gas Transmission Networks**

This chapter examines the level of lobbying success of non-EU interest groups during the preparation of the Commission's proposal on third-party access (TPA) regimes to gas networks (pipelines and storages). The proposal was tabled in 2007 and eventually adopted in 2009 as part of the Third Energy Package. The chapter also analyses the Commission's proposed amendments to the Third Energy Package, adopted in 2017. The aim of the amendments was to extend the Third Energy Package to offshore import pipelines, namely those that bring gas from third (non-EU) countries to the EU.

The provisions on TPA proposed in 2007 have not been part of the Commission's priorities defined at the beginning of its mandate. However, DG Competition had early preferences on certain measures such as the establishment of a single European grid, harmonisation of powers and independence of national regulators, and cooperation among them. On the other hand, measures such as long-term contracts, exemptions from TPA to new infrastructure, access to storage, and price formation, have not been identified as part of the Commission's early preferences. As for the amendments proposed in 2017, the Commission has strongly advocated in favour of these changes. Although these amendments have not formally been part of the Commission's policy priorities, the rationale behind their adoption was to protect one of its policy priorities - the diversification of energy sources. The chapter examines the lobbying success of the four companies - Gazprom, Equinor, Exxon, and Naftogaz – which varied among themselves as regards their status of insiders/outsideers.

### **4.1. Background**

Similarly to other network industries, the gas industry also depends on a network – the pipelines, storage and other facilities within a given market. Since, in most cases, it does not make economic sense to duplicate a network, gas transportation and supply in a given market will depend on this single network (Talus, 2016, p. 20; European Commission, 2006d, p. 17). As a consequence, the owners of the gas infrastructure are “considered to be in control of a natural monopoly” (European Commission, 2006d, p. 17). The European Union is no exception in this respect, as the majority of gas

which is consumed in the EU is transported from distant non-EU countries (e.g. Russia and Algeria).

Historically, the main partners of gas producers outside the EU were national champions (monopolies) which were importing gas to the EU (European Commission, 2006d, p. 18). Relations between the producers and importers were based on long-term contracts which aimed to ensure that a buyer could not easily replace the energy provider (security of demand for producers) and that the provider could not easily switch to other buyers (security of supply for buyers) (Vavilov and Trofimov, 2015, p. 139; Talus, 2011b). The underlying objective of these long-term contracts was to guarantee investments in the development of gas infrastructure, while, at the same time, allowing customers to benefit from reliable energy supplies (European Commission, 2007a, p. 85).

Because of the market concentration (the domination of vertically integrated companies), long-term relations between producers and importers, and dependence on a single gas network, access by third parties to the gas infrastructure was seen as an essential tool allowing for market competition to develop (Talus, 2016, p. 20). Third-party access (TPA) provisions were introduced in 1996. The idea was to prescribe conditions under which an owner of gas infrastructure (e.g. pipelines and storage) had to provide to third parties (anyone apart from the network owners) access to this infrastructure on a non-discriminatory basis, sometimes even against her own will (Talus, 2013, p. 71).

The First Energy Package (Directive 98/30/EC<sup>62</sup>) prescribed an obligation for member states to offer TPA to gas infrastructure in the form of either the negotiated or regulated access regime. Under the *negotiated access regime*, gas companies negotiated, under the previously published commercial conditions, access to the gas network (Article 15 of the Directive 98/30/EC). Under the *regulated assess regime*, member states (not companies) were setting rules - tariffs and other terms - under which third parties could obtain access (Article 16 of the Directive 98/30/EC). The Directive, however, provided several possibilities for derogation from the TPA rules. According to Article 17, gas companies were allowed to refuse access to infrastructure either “on the basis of a lack of capacity” or pre-existing contractual obligations or

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<sup>62</sup> European Parliament and the Council (1998).

“where the access to the system would prevent them from carrying out the public-service obligations”.

Since these provisions did not provide a sufficient level of market opening, the Second Energy Package (adopted in 2003) eliminated the possibility of negotiated access and limited its application only to particular parts of the gas infrastructure, i.e. storage (Talus, 2013, p. 74). Owners of pipelines were obliged to provide regulated TPA, grounded in the previously published tariffs and methodologies used for their calculation, set by member states and approved by national regulatory authorities (NRA) (Article 3 of the Regulation 1775/2005<sup>63</sup>). Besides, technical rules regarding TPA such as the “capacity allocation” management<sup>64</sup>, “congestion” management<sup>65</sup>, and transparency requirements were introduced as well. Finally, the Directive 2003/55/EC<sup>66</sup> prescribed the possibility for new infrastructure to be the exempted from TPA provisions (Article 22), with an aim to create incentives for investments in new pipelines, storage and other costly gas facilities that were needed to satisfy the increasing gas demand. Still, the Directive attached conditions under which an exemption could be granted in order to protect competition in the European gas market (Article 22).

While the Second Energy Package set an obligation for member states to provide regulated TPA to pipelines, it did not prescribe the same obligation for gas storage. Instead, the choice of a third-party access regime (negotiated or regulated) was left to member states. Also, storage operators were obliged to offer TPA only when the access to storage was “technically and/or economically necessary for providing efficient access to the system for the supply of customers” (Article 19 of the Directive 2003/55/EC). Moreover, as mentioned earlier, the Directive left the possibility for new infrastructure, including storage facilities, to be exempted from the TPA provisions. To compensate for the lack of EU regulation on access regimes to storage facilities, the Commission and national energy regulators adopted a non-binding guideline on access to storage, the Guidelines for Good TPA Practices for Storage System

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<sup>63</sup> European Parliament and the Council (2005).

<sup>64</sup> Capacity represents the maximum flow which a network user can use according to a transportation contract (Article 2 of the Regulation 1775/2005).

<sup>65</sup> Congestion management represents the management of a pipeline capacity with the aim of achieving optimal use of the capacity (Article 2 of the Regulation 1775/2005).

<sup>66</sup> European Parliament and the Council (2003).

Operators (GGPSSO) (ERGEG, 2005b). Storage operators then committed themselves to respect these guidelines voluntarily.

However, despite prescribing a number of rules related to TPA, the Second Energy Package did not provide a sufficient level of market opening for new entrants (European Commission, 2007a, p. 4). Therefore, the debate about the European gas market was opened in 2005. One important part of the discussion was the question of ownership unbundling, discussed in the first case study. Another concerned provisions on third party access and related policy measures. This chapter firstly analyses policy measures on TPA proposed by the Commission in 2007 and adopted by the Council and the European Parliament in 2009 as part of the Third Energy Package. Thereafter the chapter turns to the Commission's amendments to the Third Package (the Third Gas Directive and related regulation) that were tabled in 2017.

## **4.2. The Third Energy Package (2007)**

This section analyses the participation of non-EU lobby groups in the preparation of the Commission's proposal on third-party access (TPA) regimes to gas networks (pipelines and storage) adopted in 2007. The leading Commissioner on the issue of third-party access was the Energy Commissioner, Andris Piebalgs. Another important person involved in the preparation of the Commission's proposal was the Commissioner for Competition, Neelie Kroes.

### **4.2.1. Early positions**

#### **4.2.1.1. The Commission's early position**

##### ***4.2.1.1.1. Hearings before the European Parliament***

As already mentioned in the first case study (ownership unbundling), in 2004 the new Commission under the Presidency of José Manuel Barroso was appointed. In the newly formed Commission, the position of Energy Commissioner was given to the Latvian nominee - Andris Piebalgs. Similar to the previous case study, during the hearing before the European Parliament in 2004, Andris Piebalgs did not mention any specific regulatory measures regarding TPA regimes (Piebalgs, 2004). Instead, the

priority was given to the full implementation of the previous legislation. Furthermore, the Regulation on conditions for access to the gas transmission networks (which has been part of the Second Energy Package together with the Second Gas Directive) was still under negotiation between the Council and the European Parliament when Andris Piebalgs was appointed. Though the previous Commission, under Romano Prodi, had made a proposal on the Regulation in 2003, the final agreement between the Council and the Parliament was not reached until July 2005. Therefore, before taking the position of Energy Commissioner, Andris Piebalgs did not express strong initial preferences for TPA to gas networks because when he was nominated, the Second Regulation was still under negotiations.

As explained in the previous chapter, the Commissioner for Competition, Neelie Kroes, initiated “sector-wide investigations” with the aim of revealing barriers to competition in certain policy domains (Kroes, 2004). The initiative was approved by the Commission and presented to the Council in February 2005 (European Commission, 2005b).

#### ***4.2.1.1.2. Preliminary reports on the sector inquiry***

In November 2005, DG Competition (DG COMP) published the initial findings of the energy sector inquiry. The results confirmed many of the concerns related to TPA, underpinning the decision to open the sectoral investigations: (1) “market concentration” – the dominance of gas companies that controlled gas imports to the EU through long-term contracts with non-EU gas producers; (2) “vertical foreclosure” – limited access to gas infrastructure for new entrants and limited liquidity of gas markets ; (3) lack of integration between national markets – restricted cross-border gas trade and fragmentation of the EU gas market along member states’ borders; (4) lack of transparency – lack of information necessary to provide for non-discriminatory access to gas infrastructure; and (5) a gas price issue – wide-spread use of oil price indexes in gas import contracts (European Commission, 2005c, p. 2-3).

These initial findings were presented to the Council by Neelie Kroes in December 2005 (Kroes, 2005). Speaking about further steps that should be taken regarding TPA, Commissioner Kroes stressed that it would be important to tackle two things: (1) how to limit the adverse effects of exemptions from TPA; and (2) how to establish a



common European grid, as suggested by the Council Presidency<sup>67</sup>(Kroes, 2005). At that time, as shown by the inquiry, the EU gas market was nationally divided, with limited cross-border gas trade. Part of the reason behind the lack of integration was the lack of a gas infrastructure that would connect member states. Another sound reason was the lack of common rules that would regulate gas transportation between the member states. A third important reason was that many pipelines connecting member states (so-called transit pipelines) were exempted from TPA provisions under the Second Gas Directive (European Commission, 2005c, p. 2). Hence, as will be explained below, Neelie Kroes saw the establishment of the European grid (a gas network) as one of the priorities of the future EU energy policy.

In February 2006, the “Preliminary Report on Energy Sector Inquiry” was adopted. The report confirmed the major concerns raised by the initial findings: the market opening for newcomers had not been achieved (European Commission, 2006d, p. 37). Inadequate unbundling of the vertically integrated companies (discussed in the first case study) was seen as one of the major obstacles. Other problems related to third-party access (TPA) were also identified.

Firstly, the report concluded that long term supply contracts between a few dominant producers and importers had aggravated access to gas in both upstream and downstream markets (European Commission, 2006d, p. 4). Given the long duration and exclusivity of these contracts, new entrants were usually precluded from an opportunity to obtain gas directly from producers. Since national gas markets were not liquid enough to provide available gas in the short term, entrants were not in a position to buy gas on hub markets either (European Commission, 2006d, p. 38). Secondly, as already mentioned, the Second Gas Directive had prescribed the possibility for new gas infrastructure to be exempt from TPA rules (Article 22). The results of the inquiry, however, indicated that new infrastructure usually ended up in the hands of already dominant market players, thus creating further barriers to market entry for smaller companies (European Commission, 2006d, p. 73-74).

The third problem to be identified by the inquiry concerned access to gas storage. The investigation had revealed that negotiated TPA represents a preferred form of access to storage in many member states (European Commission, 2006d, p. 51).

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<sup>67</sup> See the Secretary of State for Foreign and Commonwealth Affairs (2006).

However, numerous concerns over negotiated access regimes were raised by new entrants: the lack of transparency, insufficient use of storage, and high access prices (European Commission, 2006d, p. 51). Furthermore, many storage facilities were actually excluded from TPA provisions due to exemption possibilities provided by the Second Package (European Commission, 2006d, p. 52). The inquiry also revealed that the available storage capacity (capacity that was not booked or derogated from TPA) was very scarce, partly due to long-term reservations made by the dominant market players (European Commission 2006d, p. 52). Finally, it was concluded that compliance with the voluntary Guidelines for Good TPA Practices for Storage System Operators (GGPSSO) was unsatisfying (European Commission, 2006d, p. 51).

Fourthly, the inquiry demonstrated that companies rarely engaged in the gas trade between member states (European Commission, 2006d, p. 55). Access for new entrants to pipelines connecting member states' markets (the so-called "transit pipelines") was limited due to the predominance of long-term contracts (European Commission, 2006b, p. 4). The analysis also revealed a lack of transparency with regard to the information on the conditions under which TPA was provided (European Commission, 2006b, p. 85). Finally, the report pointed to concerns related to the gas price formation. The problem was seen in linking the gas price to the oil price in most of the import contracts, thus failing to establish a "market-based pricing mechanism" that would follow changes in gas supply and demand (gas to gas competition), instead of other fossil fuel prices (European Commission 2006d, p. 5).

Even though the report concluded that it was "too early to draw conclusions" on remedies to the market malfunctions, certain preliminary conclusions were drawn (European Commission, 2006i, p. 189). First, it was stressed that the inquiry findings would be beneficial for the Commission's antitrust investigations (European Commission, 2006i, p. 189). In 2006 the Commission carried out inspections of gas companies in a few member states (European Commission, 2006e), as explained in the first case study. Second, the report highlighted that the transparency obligations from the Second Package should be strengthened, as well as the powers of the national regulators (NRAs) and cooperation between them, and the rules on interconnectors between member states' infrastructure (European Commission, 2006i, p. 190).

Overall, the preliminary report on the energy inquiry identified many malfunctions related to TPA. Albeit at that stage, DG COMP was still unsure which measures would be the most appropriate to deal with these issues, it was emphasised that the transparency obligations, the powers of NRAs, and rules governing interconnectors between states should be further strengthened. All other regulatory issues were still open for discussion with stakeholders. Hence, another round of public consultations, asking interest groups to provide their views on the preliminary report, was organised in 2006. Commenting on the major findings of the report, Andris Piebalgs promised to share his conclusions about whether further Commission action was needed by the end of 2006 (Piebalgs, 2006).

#### **4.1.1.2. Interest groups' early positions**

In September 2005 the tenth meeting of the European Gas Regulatory Forum (the Madrid Forum), an advisory group to the Commission, was held with the aim of discussing the challenges and future developments of the gas market. The most significant business associations that took part at the tenth meeting in 2005 were: the European Federation of Local Energy Companies (CEDEC), the European Association for the Streamlining of Energy Exchange (EASEE-Gas), the European Federation of Energy Traders (EFET), the Union of the Electricity Industry (Eurelectric), Eurogas, Gas Infrastructure Europe (GIE), and the International Association of Oil and Gas Producers (IOGP)<sup>68</sup>. In addition, industrial energy consumers, such as UNICE (since 2007, known as BusinessEurope), representing national business federations, and the European Chemical Industry Council (CEFIC), and IFIEC Europe, representing the interests of industrial energy users, were also present. When it came to foreign stakeholders, the Norwegian government was invited to take part, as well as a representative from Gazprom. Exxon's representative took part as a member of the EASEE-Gas delegation.

All stakeholders agreed that effective competition in the European gas market still was not achieved. However, different views were expressed regarding whether the full

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<sup>68</sup> The European Gas Regulatory Forum: [https://ec.europa.eu/energy/topics/markets-and-consumers/wholesale-energy-market/gas-network-codes/madrid-forums\\_en#madrid-forum-meetings-2005-2017](https://ec.europa.eu/energy/topics/markets-and-consumers/wholesale-energy-market/gas-network-codes/madrid-forums_en#madrid-forum-meetings-2005-2017). [Accessed on 07/07/2019]

implementation of the existing legislation would be sufficient (the Regulation on TPA had just been adopted), or whether further regulatory measures should be introduced. As the meeting's conclusions show, GIE and Eurogas, took the position that the Second Energy Package contained all the needed measures aiming at delivering market competition (European Gas Regulatory Forum, 2005). Similarly, the IOGP emphasised the significance of regulatory stability for future investments in the gas sector. On the other hand, the EFET, representing energy traders, as well as associations that represented the large industrial energy consumers (e.g. CEFIC and IFIEC) pointed out a need for the improvement of certain aspects of the market legislation (e.g. transparency) (European Gas Regulatory Forum, 2005). The Commission, however, still did not take a clear position on further steps related to TPA; while remaining open to future legislation, the Commission gave priority to the full implementation of the Second Package (European Gas Regulatory Forum, 2005).

In addition to the Madrid Forum, the European Regulators Group for Electricity and Gas (EREG) represented another significant forum for discussions on energy market-related issues, as explained in the previous chapter. In 2005, the EREG presented "A roadmap towards a single European Gas Market", explaining the European regulators' preferences in regards to the future development of the EU gas markets (EREG, 2005a). Issues identified as those seeking further improvements were: cooperation among national regulators, transparency, effective access to gas networks, and availability of sufficient amounts of gas (EREG, 2006a, p. 3). The stakeholders were asked to comment on the paper in November 2005. Overall, 26 responses were received, including comments made by Exxon. Positions taken by stakeholders were similar to those expressed during the Madrid Forum meeting. Exxon's position will be discussed in more detail in the sections below.

During the same year, DG TREN published a report on the gas market. Stakeholders were also asked to provide their positions on issues considered within the report. Approximately 50 responses arrived, including those made by Equinor (European Commission, 2005f, p. 180). While the positions of stakeholders will be discussed in subsequent sections, it is important to note here that the DG TREN still had not expressed any clear preferences over further policy measures. Instead, it was emphasised that the immediate core action should be the implementation of the Second Package (European Commission, 2005e, p. 2).

Thus, at the beginning of the Commission's mandate, DG TREN did not take any position on provisions concerning third-party access regimes. This was because, when the new Commission under the Presidency of José Manuel Barroso was appointed, the Second Energy Regulation, proposed by the previous Commission under Romano Prodi, was still under negotiation between the Council and the European Parliament. DG COM, on the other hand, took the position that that transparency obligations under the Second Package – related to TPA to gas infrastructure - should be strengthened, as well as the powers of the national regulators and cooperation between them. National regulators backed this position throughout ERGEG. In addition, Neelie Kroes suggested the establishment of a common European grid. Interest groups were divided on the issue: while gas industrial associations, such as GIE, Eurogas, and IOGP, took the position that the Second Energy Package contained all the measures necessary to deliver competition, representatives of energy consumers and traders (e.g. the EFET, CEFIC and IFIEC), as well as new entrants, pointed out the need for improvement of internal gas market legislation.

#### **4.2.2. The Commission's preliminary position paper**

In March 2006, DG TREN published a green paper: "A European Strategy for Sustainable, Competitive and Secure Energy". It was decided that, by the end of 2006, after the full implementation of the Second Energy Package and completion of the inquiry, the final decision would be "made on any additional legislative measures needed" to ensure non-discriminatory TPA (European Commission, 2006b, p. 6). However, it was added that certain areas "need particular attention" (European Commission, 2006b, p. 6).

Firstly, it was suggested that a single European grid (network) that could be created through the establishment of a European grid code, i.e. common rules to regulate cross-border gas trade, is needed (European Commission, 2006b, p. 6). The reason underpinning this proposal was the creation of a single European energy market that would succeed in the fragmented national market with little cross-border trade. With the aim of assisting work on developing network codes, the Commission considered the creation the European Centre for Energy Networks, bringing together the network

operators<sup>69</sup> (European Commission, 2006b, p. 6). It was also stressed that the harmonisation of powers and the level of independence of national regulators, as well as cooperation between them, should be properly addressed (European Commission, 2006b, p. 6). As for the cooperation, a question put forward was whether the existing cooperation was sufficient (i.e. the cooperation between national regulators through the ERGEG) or whether increased cooperation was needed through the creation of a European energy regulator (European Commission, 2006b, p. 6).

It was concluded that these measures should be “addressed as a priority”, whereas the final decisions on any other measures would be made by the end of 2006 (European Commission, 2006b, p. 18). Thus, for the first time, DG TREN put forward clearly defined options that had to be considered by the stakeholders. Measures related to other TPA issues that had been defined as problematic by the DG COMP’s sectoral inquiry – long-term contracts, exemptions from TPA to new infrastructure, access to storage and oil price indexation – were not explicitly mentioned in this document, whatsoever.

To sum up, during 2006, both DG COMP and DG TREN expressed more clearly defined preferences towards increasing the national regulators’ powers and cooperation between them. Additionally, Neelie Kroes and Andris Piebalgs had argued in favour of the creation of a single European grid that would succeed nationally divided gas markets. Nevertheless, complaints related to the long-term contracts, the gas price formation mechanism, new infrastructure exemptions from TPA provisions, and provisions concerning negotiated access to storage were not addressed in the form of clearly defined proposals. Even though energy consumers and new entrants raised these issues, the decision-makers still did not make a final pronouncement on necessary remedies.

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<sup>69</sup> Network operators are operators of distribution systems, transmission systems, and storage facilities (Article 2 of the Directive 2009/73/EC).

### 4.2.3. Interest groups' positions

The green paper was discussed during the eleventh Madrid Forum meeting in May 2006 and in subsequent public consultations. The stakeholders' views are presented in the following paragraphs.

*A European grid code.* While some stakeholders supported the establishment of a European grid code, most of them opposed the idea either entirely or by emphasising that the proposal “requires more clarification on its content and added value” (European Commission, 2006c, p. 22). Member states were divided on the issue. Some states (e.g. France and Slovenia) agreed on the need for common rules. Others, such as Estonia and the UK, did not find the proposal appealing. The gas companies were mostly against grid codes, whereas the industrial energy consumers favoured the establishment of common rules (see appendix IV). As for foreign companies, Equinor was one of the rare gas companies that fully endorsed the development of the European grid (Equinor, 2006). Similarly, Exxon agreed that the development of a European gas market should be supported by “a single European gas grid within a framework of harmonised regulatory regimes” (ExxonMobil, 2006c, p. 4). Norway and Ukraine also backed the proposal. Although Gazprom did not take part in the public consultations, it seems from statements made by its representatives on other occasions, that the creation of network codes was not well received by the company<sup>70</sup>. The aim of these codes was the harmonisation of the gas trade between member states through the introduction of a number of technical rules concerning capacity allocation, congestion management, third-party access, tariffs, and so on. The rules required the reorganisation of pipeline capacity usage, including the long-term booked capacities, an issue that was seen as challenging by Gazprom (Yafimava, 2013, p. 29-52).

*The European Centre for Energy Network.* To assist the work on the development of network codes, the Commission proposed the creation of the European Centre for Energy Networks, bringing together gas network operators (European Commission, 2006b, p. 6). The proposal, however, did not receive considerable support among the domestic interest groups and member states (European Commission, 2006c, p. 27). Exxon did not back the idea either. The company argued that many forums (for instance the Madrid Forum) for energy cooperation already existed and that the

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<sup>70</sup> See Konoplyanik (2011) and Komlev (2011).

improvement of these existing forums' effectiveness would be more beneficial than the creation of new bodies (ExxonMobil, 2006c, p. 5). While underlining that "closer cooperation between transmission system operators" should be supported, Equinor also emphasised that if the European Centre for Energy Networks was established, it needed "to be complementary to the transmission system operators and not interfere with market dynamics" (Equinor, 2006). Other foreign actors taking part in consultations did not express a position on this issue.

*The energy regulators.* Most of the stakeholders (member states, network operators, and energy consumers) opposed the establishment of a European regulator (European Commission, 2006c, p. 23). Instead, the stakeholders agreed that the Commission should increase the powers and the independence of national regulatory authorities (NRAs) (European Commission, 2006c, p. 23; appendix IV). Industry representatives, including Equinor, took a similar position. Equinor preferred the development of strong national, rather than European, regulators because, arguably, most regulatory challenges were related to national energy markets (Equinor, 2006). Exxon and the American Chamber of Commerce (AmCham) took the position that a two-step approach should be applied: Commission should advance the powers and independence of NRA at first and, thereafter, it should reconsider cooperation among regulators (ExxonMobil, 2006c, p. 2; AmCham, 2006, p. 2). Exxon warned that an "excessive bureaucratic regime" might discourage investments which were needed for a future development of the gas infrastructure (ExxonMobil, 2006c). Gazprom did not express a view on this issue.

Whereas some policy measures did not find a place in the green paper, some of the issues discussed by the sectoral inquiry were addressed by stakeholders on various occasions. Their positions were as follows.

*Long-term contracts.* The significance of long-term contracts for securing investments in gas infrastructure and providing energy security was acknowledged by both, large industrial consumers and the energy producers (European Commission, 2006c, p. 26). While many member states shared this view, the UK referred to long-term contracts and the oil price indexation as the main obstacle to the market competition (European Commission, 2006c, p. 26). Exxon, AmCham, Equinor, and Gazprom shared the view of their European counterpart. They favoured long-term



contracts as instruments necessary to bring infrastructure investments in Europe, thus opposing any regulatory changes in this respect.

*TPA to pipelines.* As for exemptions from TPA to new infrastructure, most of the gas companies expressed an opinion that these exemptions should be maintained (European Commission, 2007b, p. 216; ERGEG, 2008). They argued that the exemptions protected the investors against regulatory risks “after the investment in infrastructure has become a ‘sunk cost’” (European Commission, 2007b, p. 216). Regulators, consumers, and new entrants, on the other hand, took the position that exemptions should be granted only in a limited number of cases (European Commission, 2007b, p. 216). The foreign companies, Equinor (Equinor, 2006), Exxon (ExxonMobil, 2008b), and Gazprom (Komlev, 2011) backed the position of their EU counterparts; exemptions should be maintained in a form prescribed by the Gas Directive, without further limitations.

*TPA to storage.* While vertically integrated companies provided support for negotiated rather than regulated TPA to storages, gas consumers and new entrants, complained that the negotiated TPA regime has been preventing access to the gas infrastructure (European Commission, 2007b, p. 213). Equinor recommended “a liberal regime” regarding TPA exemptions to storages, which would attract the necessary investments for the development of new storage capacities (Equinor, 2006). The company also supported negotiated TPA to storages (Equinor, 2010), as did its American colleague Exxon (ExxonMobil, 2004). Even though Gazprom did not take part in the public consultations, WINGAS, then a joint venture of the German BASF and Gazprom (currently a subsidiary of Gazprom), also favoured the Second Gas Directive leaving storage operators with the opportunity to choose between negotiated and regulated TPA to storage (WINGAS, 2004). As for GGPSSO, given that the implementation of the voluntary GGPSSO was unsatisfying, ERGEG recommended to the Commission the introduction of binding legislation for TPA to gas storage (ERGEG, 2006b, p. 8). Both Gazprom’s subsidiary WINGAS and Exxon took the position that guidelines should remain voluntary. Equinor did not comment on this issue.

*Gas price.* Concerning the gas-oil price link, vertically integrated companies and gas producers argued in favour of the oil price indexation, whereas national regulators,

newcomers, and traders considered the oil price indexation either as an indicator of the market malfunctioning or as a practice that should be removed from import contracts (European Commission 2007b, p. 219-220). Exxon (ExxonMobil, 2006c) AmCham (AmCham, 2006), and Gazprom (Kupriyanov, 2012) backed the position of the former. The rationale was that any interventions in this respect would distort market-based signals which create the gas prices (ExxonMobil, 2006c, p. 2). Equinor did not comment on this issue.

#### **4.2.4. Non-EU interest groups' lobbying activities**

As mentioned earlier, at the time when the proposal on TPA was drafted, Russia was one of the most significant energy suppliers to Europe. Hence, “within the context of the consumer-producer dialogue”, it was important for the Commission to exchange its views with Gazprom (European Gas Regulatory Forum, 2005). Exxon was also a “longstanding participant” at the EU energy market, involved in energy production, processing, and storage (ExxonMobil, 2010b, p. 1). Similarly, Norway had been among the top gas suppliers to Europe (second only to Russia), which is why, most of the time, EU officials were interested in hearing what Equinor had to say about developments in the European gas market (Interview 5).

The three companies had access to some of the most important forums for discussion about energy market developments, even though to different extents, as explained in the previous chapter. Gazprom, Equinor, and Exxon had their representatives at the Madrid Forum meetings. However, unlike Gazprom, Equinor and Exxon were more active during the public consultations organised by the Commission and ERGEG, thus using additional lobbying channels. For example, Exxon took part in all the public consultations on gas-related issues organised by ERGEG in 2004 and 2005<sup>71</sup>. In addition, Equinor and Exxon were better integrated with the most influential industry associations than Gazprom (see table 8). Membership in these associations had provided the two companies with an opportunity to have additional channels within the Commission's advisory and expert groups. Besides this, they had their representatives in IOGP's Board and,

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<sup>71</sup> Available at the CEER's website:  
[https://www.ceer.eu/ceer\\_consult/closed\\_public\\_consultations/gas](https://www.ceer.eu/ceer_consult/closed_public_consultations/gas). [Accessed on 07/07/2019]

consequently, had more influence over the association's positions. The IOGP was among the most active business groups in debates on the internal gas market.

**Table 8.** Interest groups' membership in EU associations in 2006.

<b>Association</b>	<b>Description</b>	<b>Membership</b>	<b>Board</b>
<b>Eurogas</b>	Represents European gas sellers and distributors.	Russian Gas Society (associate member)	
<b>International Association of Oil and Gas Producers (IOGP)</b>	Represents global energy producers.	Equinor Exxon	Equinor Exxon
<b>European Federation of Energy Traders (EFET)</b>	Represents energy traders.	Equinor	
<b>Gas Infrastructure Europe (GIE)</b>	Represents the gas infrastructure industry.	Exxon	
<b>EASEE-gas</b>	Represents the gas industry.	Equinor Gazprom Exxon	

\* If left empty, none of the companies under consideration was a member of a respective association/Board.

Source: Associations' official websites.

Following January 2006, Gazprom's reputation among the Europeans started to change. The Russian-Ukrainian gas dispute in January 2006, triggered a reconsideration of the energy partnership with Russia. On the one hand, some EU officials started to question Gazprom's reputation of being a reliable supplier. On the other, Gazprom itself had become suspicious of the EU's intentions towards Russia (Interview 3). In his speech in February 2006, Andris Piebalgs said:

“(...) It is clear that recent events in the European energy markets, and the experience of rather cold conditions this winter, have raised somewhat deeper questions about how the European Union should plan for its future energy needs. Many are beginning to question the current approach under which energy networks are planned, operated and regulated at a national level, and it is only after the event that we make some effort to achieve an integrated market” (Piebalgs, 2006).

This position was also reflected in the green paper, where it was stated that the EU needed “a new energy partnership with Russia” that would be based on “fair and reciprocal access to markets” (European Commission, 2006b, p. 15). At the same

time, it was stressed that cooperation with Norway and other global partners that face similar energy challenges, such as the US, should be facilitated (European Commission, 2006b, 14-16). Thus, from that point onward, Gazprom's reputation of being a reliable gas supplier started to vanish, while energy cooperation with Norway and the US began to attract more attention among decision-makers.

#### **4.2.5. The Commission's proposal**

In January 2007, DG COMP published the final report on sector enquiry. The report was adopted, together with the DG TREN's energy strategy (European Commission, 2007f) and a report on the future development of the internal energy market (European Commission, 2007g). This time, all three documents confirmed that a new regulation would be introduced. The measures proposed by these documents were almost identical to those adopted as a part of the final Commission's proposal.

Firstly, the powers and independence of NRAs were about to be harmonised and increased (European Commission, 2007f, p. 7). The Commission took the view that NRAs needed ex-ante powers over many areas of the gas market, including all aspects of TPA to gas infrastructure (European Commission, 2007g, p. 13). Secondly, enhanced cooperation between transmission system operators (TSOs) was also seen as a necessary step forward. Thirdly, the creation of either a European energy regulator or formalisation of the role of the ERGEG, with the aim of improving regulatory cooperation at the EU level, was proposed (European Commission, 2007g, p. 14). As for access to gas storage, the Commission took the position that the voluntary Guidelines for Good TPA Practices for Storage System Operators (the GGSSO) adopted in 2005, should become legally binding (European Commission, 2007g, p. 16). However, when it came to long-term contracts and exemptions from TPA regimes, no further legally binding measures were proposed. Instead, the guidelines were seen as an appropriate mechanism to deal with problems associated with this issue (European Commission, 2007g, p. 16). Documents did not provide any proposals related to either negotiated access to storage or the price formation mechanism, i.e. the linkage between oil and gas prices.

Still, even after the adoption of these documents in early 2007, the Commission organised the targeted consultations<sup>72</sup> (European Commission, 2007e, p. 11). In addition, ERGEG was consulted about the upcoming legislative measures (European Commission, 2007e, p. 11). Equinor took part in the consultations organised by the ERGEG. The industrial associations taking part in the targeted consultations were, among others, GIE and Eurogas. During that time, Exxon was a member of GIE, while the Russian Gas Society was an associated member of Eurogas. Besides this, during 2007, before the Commission adopted the final proposal, Equinor's representatives met EU Commission officials on two occasions.<sup>73</sup>

After numerous debates, consultations, and meetings, the final proposals were tabled in September 2007. Discussed policy measures were covered by two proposals adopted simultaneously: the proposal on rules concerning internal gas market (European Commission, 2007c) and the proposal on the conditions for TPA to gas networks (European Commission, 2007h). The proposals contained the following elements: (1) the strengthening of the NARs' market powers and independence; (2) the creation of a European regulator – the Agency for the Cooperation of Energy Regulators; (3) the establishment of the European Network of Transmission System Operators for Gas (ENTSO); (4) the development of the European grid codes (a set of rules regulating cross-border trade) (European Commission 2007c; European Commission, 2007h). When it came to TPA to storage, the Commission proposed making the principles in the GGPSSO guidelines legally binding in addition to improvement of regulatory oversight by NARs (European Commission, 2007h, p. 17). Negotiated access related to gas storage did not find a place in the Commission's proposal. As for the exemption rules, the Commission did not propose changes in this respect, apart from providing the European Agency with the "decision power on exemption requests" for cross-border gas infrastructure and making a guideline to assist NRAs (European Commission, 2007h, p. 12). As for long-term contracts, the Commission did not suggest any legally binding provisions. Instead, it decided to

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<sup>72</sup> Participants: (1) Regulators - ERGEG; (2) Gas industry – ETSO, GTE, Eurelectric, Eurogas, GEODE, and GIE; (3) Renewable energy associations - EWEA and EREC; (4) Energy-intensive consumers – IFIEC, EuroMetaux, EFMA, Cefic, Cimeurope, VEMW, VIK, MEUC Limited, and UEAPME; (5) Traders and new entrants – EPSU and EMCEF; (6) Consumers and NGOs – BEUC, World Wildlife Fund (European Commission, 2007e, p. 11-12).

<sup>73</sup> Data obtained from the Equinor's website: (1) in June 2007 when the Energy Commissioner, Andris Piebalgs, visited Norway; and (2) in May 2007 during the 14th European Gas Conference in Oslo.

provide guidance on compliance of long-term contracts with the EU competition rules (European Commission, 2007h, 18). The price formation mechanism was not changed, either.

#### 4.2.6. Lobbying success of non-EU interest groups

As the table below shows, the companies' preferences did not differ from the Commission's final position on most of the discussed issues. While Gazprom did not express a position on the regulators' powers, cooperation between them and network operators, Equinor and Exxon supported an increase of powers and the independence of national regulators. Conversely, they were not enthusiastic about the creation of the new bodies – a European Regulator and European Network of Transmission System Operators. As for the introduction of grid codes, unlike Equinor and Exxon, Gazprom did not support the proposal.

**Table 9.** Comparison of the estimated degree of success of the analysed non-EU groups.

The Commission's proposal (2007)	Equinor	Exxon	AmCham	Gazprom
Strengthening of national regulators' powers and independence.	✓	✓	✓	N/A
European regulator.	x	✓x	✓x	N/A
European Network of Transmission System Operators.	✓x	x	N/A	N/A
European grid codes.	✓	✓	N/A	x
No changes to long-term supply contracts.	✓	✓	✓	✓
No changes to the negotiated TPA to storage.	✓	✓	N/A	✓
No substantial changes to rules on the exemption from TPA for new infrastructure.	✓	✓	N/A	✓
No changes to the price formation mechanism.	N/A	✓	✓	✓

✓ - support; x – oppose; ✓x – partly support; N/A – no position.

### *3.7.1. Commission's preferences on the discussed issues*

It seems that the proposal on the provisions related to third-party access (TPA) was more in line with the energy companies' preferences than the proposal on unbundling, discussed in the previous chapter. The same College of Commissioners made both proposals; nevertheless, unlike the previous one, this proposal was more favourable for the gas industry.

But, before turning to the question of why the Commission's proposal did not address some issues, the Commission still did propose some relevant changes, such as the creation of new institutions – the Agency for the Cooperation of Energy Regulators and the European Network of Transmission System Operators for Gas (ENTSO) – as well as the improvement of regulators' powers and independence. Secondly, the proposal suggested the establishment of European grid codes; these codes would have a considerable influence on the EU gas market in the coming years (see Yafimava, 2013). As for storages, the Commission proposed making the principles contained in the GGPSSO guidelines legally binding.

Although from the beginning the Commission argued that third-party access (TPA) should be provided to everyone in a non-discriminatory manner, DG TREN was not certain which, if any, further measures should be introduced for that objective to be realised. This was because when the new Commission under the Presidency of José Manuel Barroso was appointed, the Second Energy Regulation, proposed by the previous Commission under Romano Prodi, was still under negotiations between the Council and the European Parliament. DG COM, on the other hand, took the position that the powers of the national regulators and cooperation between them should be strengthened, already in 2005. National regulators backed this position through the ERGEG. In addition, Neelie Kroes suggested the establishment of a common European grid following the UK Presidency's conclusions in 2005.

Most of stakeholders supported an increase in the power of the national regulators. However, an overwhelming majority opposed the creation of the European energy regulator. Similarly, the majority of stakeholders was not enthusiastic about the establishment of the European grid code. Still, the Commission did not alter its preferences in this respect. This confirms that when the Commission has strong initial

views on policies under consideration, attempts by opposing interest groups to change its positions would be less likely.

Equinor and Exxon provided support for the creation of the European energy code. Similarly, the companies supported the increase of powers and independence of the national regulators. On the other hand, Equinor and Exxon did not support the creation of the new bodies – a European Regulator and European Network of Transmission System Operators. Nevertheless, they did not lobby strenuously against these proposals.

Some problems identified by the sector inquiry, however, were not addressed by the Commission's proposal. The gas industry did manage to keep some issues out of the green paper and the final proposal – long-term contracts, price formation (the gas-oil price linkage), criteria for exemption from TPA, and negotiated access to storage. Still, the lobbying success of the interest groups should not be overstated. Another important reason behind this Commission's decision was the lack of member states' support for the introduction of changes in this respect (Interview 3).

“At that time (...) long-term contracts were still preferred by everybody, by Russians, but also European companies, as well as formulae based on oil indexation. This has changed the latter, with more diversification of supply and changes in the demand pattern. But at that time, it was seen as normal, so we could not do anything” (Interview 3).

Additionally, access to gas storage was seen as a sensitive issue by member states (Interview 3). Storage plays a specific role in the gas sector since, in addition to the commercial utility, it is also used as a tool for maintaining the security of supply.

Finally, it should be taken into consideration that the debate on TPA provisions took place at the same time as the preparation of the proposal on ownership unbundling since both proposals constituted a part of the same legislative package - the Third Energy Package. Still, ownership unbundling was “a star” of the negotiations over the Third Package, attracting most of the decision-makers', the interest groups', and even the researchers' attention. It might also be that the Commission did not want to introduce too many changes at the same time because it would have had to fight several battles at the same time.



“My experience with the Commission is that they choose their battles carefully. The reactions they got to the sector inquiry arguably told them that there were sensitivities there. If you propose a monster package of changes, it might be too much. It is possibly better to put this into a package that is a smaller bite” (Interview 5).

### ***3.7.2. Commission’s position on the interest groups***

As explained in the first case study (chapter 3), at the time when the proposal was discussed, Gazprom was a Brussels’ outsider more than an insider. Equinor, Exxon, and AmCham had already established themselves as insiders.

Still, all the examined foreign actors were pleased with the fact that the Commission did not introduce measures related to long-term contracts, oil price indexation, and negotiated access to storage. While it would be wrong to attribute the intended policy outcome only to their lobbying efforts, as explained above, these companies certainly played a role in influencing the Commission’s (lack of) position on these issues. Long-term supply contracts regulate the relationships between EU energy importers and non-EU energy producers. Precisely their longevity provides incentives for producers to make costly investments in infrastructure which brings gas to the EU. Hence, foreign companies’ opinion mattered in this respect. This confirms that when the Commission does not have strong preferences over specific policy measures, both insiders and outsiders tend to be more successful.

### **4.3. Amendments to the third energy package (2017)**

In November 2017 the Commission proposed amendments to the Third Energy Package (2009) to extend the application of the Third Package to pipelines connecting member states with non-EU countries (European Commission, 2017a, p. 2). Before 2017, the Third Energy Package and its major provisions (e.g. ownership unbundling, TPA rules, etc.) did not explicitly apply to the offshore parts of import pipelines (Talus, 2019, p. 2). By introducing amendments, the Commission sought to clarify that the EU energy legislation will apply to all pipelines up to EU borders (European Commission, 2017a, p. 2).

### **4.3.1. Early positions**

#### **4.3.1.1. The Commission's early position**

Many experts believed that the proposed amendments targeted the Nord Stream 2 pipeline project (see Yafimava, 2017; Talus, 2019). Nord Stream 2 is a pipeline bringing gas from Russia to Germany via the Baltic Sea (Nord Stream AG, 2018a). The project was named Nord Stream 2 (NS2) to be distinguished from the Nord Stream pipeline which also brings Russian gas to Germany. Gazprom is the owner of the company Nord Stream 2 AG (NSAG).<sup>74</sup>

Since the agreement to build the pipeline NS2 was made in 2011, the project started facing criticism in the EU. Donald Tusk, European Council President, was of the view that NS2 as a project does not contribute to the diversification of EU energy sources (EUobserver, 18 December 2015). Central and Eastern European countries worried that the Nord Stream 2 would put at risk the security of supply in these countries (EUobserver, 17 March 2016). In response to these concerns, Jean-Claude Juncker, President of the European Commission, made the statement that NS2 would not be built “in a legal void, or only according to Russian law” (in Reuters, 16 June 2016). He added that the impact of NS2 “goes beyond the legal discussions” since “if built, Nord Stream 2 could alter the landscape of the EU’s gas market” (in Reuters, 16 June 2016).

The main legal issue was the question of whether the Third Energy Package applies to sub-sea (offshore) parts of the NS2 pipeline (Hancher and Marhold, 2019, p. 289). Whereas NSAG argued that the Third Package does not apply to sections of the pipeline going through Baltic Sea (offshore), the Commission took the opposite position. The main political issue was the question of whether NS2 will jeopardise one of the Commission’s policy priorities - to diversify EU’s energy supplies and routes (Šefčovič, 2016). EU have already been heavily dependent on Russian gas. Hence, one of the Commission’s objectives has been to diversify gas supplies away from Russia, the objective that supposedly ran counter to what was intended by NS2. Another concern was that the Ukrainian status of the main transit country for Russian

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<sup>74</sup> See the website of the Nord Stream 2: <https://www.nord-stream2.com/>. [Accessed on 07/07/2019].

gas could be challenged. In 2016 Maroš Šefčovič, Vice-President of the Commission, stated:

“Despite economic and political challenges, Ukraine continues to be a reliable gas partner and transit country. It is in the interest of all parties that Ukraine remains a significant gas transit corridor” (Šefčovič, 2016).

In 2016 the Commission asked its legal service to provide an opinion on the issue. The response of the Commission’s legal service was negative – the Third Energy Package does not apply to offshore parts of NS2 (Talus, 2019, p. 2; Yafimava, 2017, p. 2). After receiving this response, the Commission turned to the Council by asking for a mandate to negotiate an agreement on the NS2 pipeline (European Commission, 2017b). On that occasion Maroš Šefčovič said:

“As we have stated already several times, Nord Stream 2 does not contribute to the Energy Union’s objectives. If the pipeline is nevertheless built, the least we have to do is to make sure that it will be operated in a transparent manner and in line with the main EU energy market rules” (in European Commission, 2017b).

To underpin its request, the Commission emphasised the potential conflict between the Russian and the EU law due to the legal uncertainty related to offshore parts of NS2 (Yafimava, 2017, p. 1; Talus, 2019, p. 2). After analysing the Commission’s request, the legal service of the Council rejected the potential conflict of laws because the Third Package did not apply to the offshore parts of the pipeline - a condition that was seen as necessary for the conflict of laws to take place (Yafimava 2017, p. 2-3). Since there was no conflict of laws, it was concluded that there was no ground for the Commission to take over negotiations on NS2.

In September 2017, in President Juncker’s letter of intent to the European Parliament and the Council (European Commission, 2017c), the Commission mentioned for the first time that it would propose amendments to the Third Energy Package (Wilson, 2019, p. 5; European Parliament, 2019, p. 5). As soon as November 2017, the Commission tabled the proposal.

#### 4.2.1.2. Early positioning of interest groups

Following the launch of NS2 project in 2015, the CEO of the Ukrainian company Naftogaz, Andriy Kobolev, stated: “If Nord Stream-2 operates, Ukraine will be dead as a transit land for Russian gas” (Reuters, 06 November 2015). Just a few months later, the company filed the complaint against NS2 to the Commission because of its supposed incompatibility with the Energy Community<sup>75</sup> regulations (Naftogaz, 2016). Naftogaz shared its concerns with high-ranking Commission officials on several occasions between June 2015 and June 2017<sup>76</sup>.

Representatives of NS2 also held meetings with Energy Commissioner, Miguel Arias Cañete, Maroš Šefčovič, and members of their cabinets on several occasions between June 2015 and June 2017<sup>77</sup>. According to the minutes of the meetings<sup>78</sup>, the Commission kept the company informed about its worries regarding NS2 and the measures being taken by the Commission to investigate legal aspects related to the pipeline<sup>79</sup>. The company’s representatives, on their side, tried to reassure the Commission by emphasising that NS2 aims to enhance, not reduce, the security of supply in Europe and to complement, not substitute, the existing import routes through Ukraine (Nord Stream, 2018a, p. 10).

#### 4.3.2. The Commission’s proposal

Only two months after announcing that it will propose amendments to the Third Energy Package legislation, the Commission tabled the proposal. What was particularly unusual was that the Commission neither provided an impact assessment of the proposed changes nor organised *ex-ante* public consultations on the proposal. Instead,

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<sup>75</sup> Energy Community is an international organisation established with an aim to create a “pan-European energy market” between EU member states and their neighbouring countries. See: <https://www.energy-community.org/aboutus/whoweare.html>. [Accessed on 07/07/2019].

<sup>76</sup> List of meetings is available at the Transparency Register. See: <http://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=769349815543-90>. [Accessed on 07/07/2019].

<sup>77</sup> List of meetings is available at the Transparency Register. See: <http://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=662856722412-20>. [Accessed on 07/07/2019].

<sup>78</sup> Minutes of meetings available at the AskTheEu.org: [https://www.asktheeu.org/en/request/access\\_to\\_documents\\_related\\_to\\_m](https://www.asktheeu.org/en/request/access_to_documents_related_to_m). [Accessed on 07/07/2019].

<sup>79</sup> Ibid.

stakeholders were asked to express their opinion only after the proposal was made (*ex-post*). This was one of the reasons why the proposed changes have been opposed by many stakeholders<sup>80</sup>.

Under the proposed amendments, the Third Energy Package became applicable to “pipelines to and from third countries, including existing and future pipelines, up to the border of EU jurisdiction” (European Commission, 2017a, p. 2). Since the amendments would create “legally complex stations” - different regulatory regimes for the two ends of the same pipeline (one in the EU and another in a third country) – the Commission proposed an international agreement for ensuring “a coherent regulatory framework for the entire pipeline” (European Commission, 2017a, p. 2). If such an agreement could not be reached, the pipeline would operate in line with EU legislation (European Commission, 2017a, p. 2).

#### **4.3.3. Interest Groups’ positions**

While stakeholders coming from Poland and Central and Eastern European countries backed the proposed amendments, other companies raised concerns over the drafted changes.

In contrast to the Commission’s view that the proposed amendments clarify EU gas legislation, NS2 took the position that it actually creates legal uncertainty due to the potential conflict of Russian and EU law (Nord Stream AG, 2018b, p. 1). NS2 also raised the voice against retroactive application of the proposed amendments, which, according to the company, should be avoided. Finally, NS2 complained that the Nord Stream pipelines would be disadvantaged in comparison to pipelines from Norway, which had received “more favourable treatment as ‘upstream gas pipelines’” (Nord Stream AG, 2018b, p. 2).

Upstream pipelines are pipelines that are either part of an energy production project or used to transport gas from the place of extraction to the place of processing or loading (Article 2 of the Directive 2009/73/EC). They are actually part of a gas production field. Under the Third Energy Package upstream pipelines were exempted

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<sup>80</sup> For stakeholders’ feedback see European Commission (2017d).

from TPA and other related provisions, unlike transmission pipelines – those transporting gas between member states. Since pipelines bringing gas from Norway to the EU are treated as upstream pipelines, they have been exempted from many TPA provisions. Nord Stream pipeline, on the other hand, was to be treated as a transmission pipeline under the proposed amendments; hence, all rules applying to transmission pipeline (e.g. TPA access to infrastructure) would be applicable to NS2. This was the reason behind the NS2 complaints related to its supposed unfavourable position under the proposed amendments in comparison to the Norwegian pipelines.

For the same reason, Equinor advised the Commission to differentiate upstream from transmission pipelines consistently (Interview 5). By definition found in Article 2 of the Directive 2009/73/EC, the Norwegian pipelines were treated as upstream pipelines. Maintaining the difference between the two types of pipelines (upstream and transmission pipelines) was important because the proposed amendments were supposed to be applicable to transmission pipelines only, not upstream infrastructure. Equinor, therefore, supported the proposal under the condition that it preserves the difference between upstream and transmission pipelines (Interview 5). The confusion over the difference between the two types of pipelines was caused by the Commission's statement that pipelines that could be affected by the amendments were those transporting gas from Russia, Algeria, Norway, Morocco, Tunisia, and Libya (European Commission, 2017e; IOGP, 2018, p. 1). However, Equinor received the assurances that the Commission's intention was not to introduce any changes related to the definitions of different sorts of pipelines; hence pipelines from Norway would not be affected by the proposed amendments (Interview 5). Equinor's position was fully backed by the International Association of Oil and Gas Producers (IOGP, 2018). IOGP's Committee responsible for EU energy regulation (EU Committee) was chaired by an Equinor representative<sup>81</sup>. The Vice-Chair of the same Committee was the Vice President of EU Affairs at ExxonMobil. IOGP's representatives met the Commission's officials on several occasion to discuss this issue (IOGP, 2018).

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<sup>81</sup> See the IOGP's website: <https://www.iogp.org/our-committees/eu/>. [Accessed on 07/07/2019].

#### 4.3.4. Lobbying success of non-EU interest groups

Equinor and Naftogaz's preferences were embedded in the Commission's final position. The proposal was the least favourable for Gazprom.

The Commission's position was clear from the beginning: Third Energy Package applies to offshore parts of Nord Stream 2. After receiving the responses from both the Commission's and the Council's legal service stating that the Third Package actually was not applicable to offshore sections of pipelines coming from third countries, the Commission asked for a mandate to negotiate an agreement on NS2 on the behalf of the EU. After another negative response, the Commission announced that it would propose amendments to the Third Gas Directive. Only two months later, the proposal was tabled.

The Commission did not organise public consultations *ex-ante*, a practice rarely seen in Brussels. An impact assessment was not carried out either. The Commission explained that the content of the proposed amendments "is limited to providing clarification in an area where applicable EU law (or the lack thereof) and applied practice diverge" (European Commission, 2017a, p. 4). Hence, the need for an *ex-ante* assessment was not seen as necessary. Companies, nevertheless, disagreed.

The empirical analysis indicates that strong prior positions on issues under consideration make it harder for lobbyists to alter officials' preferences during preparations of legislative proposals. Interest groups opposing the proposed changes were left without the opportunity to issue position papers on the amendments. Also, they did not have a sufficient time to lobby given that the proposal was made only two months after the Commission announced its intention to propose amendments.

During the debate on the amendments, Gazprom was facing antitrust investigation for alleged abuse of the dominant position in Central and Eastern Europe (European Commission, 2015f). Besides, its reputation was undermined due to the Russian-Ukrainian crisis started in 2014. As a result, many EU officials, including some Commission's officials, were asking for the reduction of Russian gas supplies to Europe. Nord Stream 2 was seen as the project which threatens the EU energy objectives: the security of supply, competitiveness, and diversification of energy supplies (European Commission, 2017b). Hence, the chances of Gazprom's lobbying success were not promising.

Naftogaz's position was completely different. Unlike Russia, Ukraine was seen as "a reliable gas partner" to the EU (Šeřčovič, 2016). Naftogaz's position on NS2 was strongly supported by the Commission. Even more, the objective to maintain transit routes for Russian gas via Ukraine was one of the reasons underpinning the Commission's proposal.

In its explanation the Commission stated that the proposed amendments would affect not only the pipelines from Russia but also those coming from other third countries such as Norway (European Commission, 2017e). This caused Equinor's concern. Nevertheless, soon after that the Commission reassured Equinor that the Norwegian pipelines will be affected by the amendments since those would not change the definition of upstream pipelines. The Commission did not alter its initial preferences because of the Equinor's lobbying engagement. However, it probably felt that it could stay with the main course because the company backed the proposal (Interview 5).

#### **4.4. Conclusion**

Two Commission's proposals analysed as part of this case study suggest that Commission's initial positions on policy issues affect groups' prospects of lobbying successfully. Specifically, when the Commission has early preferences for certain legislative measures, interest groups' attempts to alter its positions is less likely (the amendments to the Third Energy Package). Conversely, when the Commission does not have strong initial preferences over discussed measures, interest groups have better prospect to lobby successfully (measures aimed at providing non-discriminatory TPA to gas infrastructure).

The first part of the case study (the provisions on TPA) provides support for the assumption that the absence of Commission's initial views (on price formation, long-term contracts, access to storage) eases lobbyists' job. It also demonstrated the plausibility of the theoretical assumption that the Commission pursues its basic interests (Klüver, 2013b, p. 32), as well as the long-standing policy objectives *vis-à-vis* other actors (Pollack, 2003, p. 322). By refraining from proposing changes related to gas price formation, long-term contracts, and access to storage, the Commission sought to escape the anticipated discontent of member states. On the other hand, by



establishing a single European grid and the European Agency for Energy Cooperation, the Commission was acting as a competence-maximiser seeking “more Europe” (Pollack, 2003, p. 322, 39).

The second part of the case study - the amendments to the Third Energy Package - provides empirical evidence on how Commission’s strong initial views reduce the likelihood of lobbying success. The amendments have been tabled at short notice, without prior public consultations and an impact assessment. Interest groups opposing the proposed changes were thus left without the opportunity to lobby and to issue position papers *ex-ante*.

Empirical findings also suggest that the insiders, Equinor and Naftogaz, have been in a better position to make an impact than the outsiders (Gazprom). The case study also indicates that those non-EU interest groups whose countries of origin are strategically important for the achievement of the EU objectives (Ukraine and Norway) are more likely to be granted with the status of an insider – and consequently - to lobby successfully. The case, however, does not find support for the assumption that insiders (Equinor, Exxon, Naftogaz) have better access to the Commission than outsiders (Gazprom) when it comes to bilateral meetings with the Commission. On the other side, Exxon and, especially, Equinor were better integrated and connected with the most influential associations in the EU than Gazprom. Membership in these associations (e.g. IOGP) had provided two companies with an opportunity to have additional channels for influence within the Commission’s advisory and expert groups.

## **Chapter 5: Indirect Land-Use Change Related to Biofuels Production**

This chapter examines non-EU interest groups' (lack of) lobbying success during the preparation of the Commission's proposal on indirect land-use change (ILUC) related to biofuels production. The proposal on ILUC was adopted in 2012, with the aim to initiate the transition from less sustainable biofuels to biofuels that can achieve considerable GHG savings, when the ILUC effect is taken into account (European Commission, 2012c, p. 2).

The proposal on ILUC is a case in which the Commission faced a new and a highly technical issue, without previous knowledge or expertise on the issue under consideration. The policy measures that were adopted had not been part of the Commission's policy priorities. Also, the Commission did not have strong early preferences related to ILUC. But the Commissioner for Climate Action at that time, Connie Hedegaard, had been "very cautious on biofuels" (in EurActiv, 02 February 2012) even before taking office. The case examines to what extent three foreign groups - Malaysian Palm Oil Council (MPOC), Exxon, and Brazilian Sugarcane Industry Association (UNICA) – were successful in their lobbying efforts. Those three interest groups are suitable for analysis because of their mutual variations when it comes to the status of insiders/outsideers.

### **5.1. Background**

Biofuels are fuels made from biomass: biodegradable parts of agricultural products and residues (e.g. vegetal and animal substances), forestry, and industrial waste (Article 2 of the Renewable Energy Directive 2018/2001<sup>82</sup>). The most common types are bioethanol, produced from biomass such as wheat and sugarcane, and biodiesel, produced from vegetable oils (e.g. palm oil or soybean) (Bourguignon, 2015, p. 2). Although they have been in use since the late nineteenth century, biofuel production increased significantly during the second half of the twentieth century, first in Brazil and, thereafter, in the US (Bourguignon, 2015, p. 2).

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<sup>82</sup> European Parliament and the Council (2018).

These conventional (“the first generation”) biofuels produced on a commercial basis are derived from crops which can be also used as food (Bourguignon, 2015, p. 1). Advanced biofuels - “the second and third generation” biofuels - are derived from materials that cannot be used as food: waste or crops grown specifically for biofuels production (e.g. algae) (Bourguignon, 2015, p. 1). In comparison to their predecessors (conventional biofuels), advanced biofuels still have not been developed on a sufficiently large scale for commercial purposes.

For a long period of time, conventional biofuels were seen as an important energy source contributing to the EU energy mix. As early as 1997, the EU set a non-binding target of a 12% share of renewable energy (biofuels included) in overall energy consumption by 2010 (European Commission, 2006f, p. 4). In addition, in 2003, the EU passed a directive setting a target of a 5.75% share of biofuels in petrol and diesel consumption by the end of 2010 (European Commission, 2008a, p. 3).

When the first José Manuel Barroso Commission<sup>83</sup> took a position in 2004, one of the Commission’s priorities in the energy domain was a further promotion of renewables (biofuels included) across Europe (European Commission, 2005g). As a result, the Commission drafted a Renewable Energy Road Map, suggesting the establishment of *legally binding* targets for the renewables (European Commission, 2006f, p. 3). Following the European Council’s acceptance, the Renewable Energy Directive (RED)<sup>84</sup> was adopted in 2009. The directive set two targets to be met by 2020: (1) a 20% share of energy to come from renewables<sup>85</sup>, in the overall EU energy mix; and (2) in the transport sector, a 10% share of the energy spent to come from renewables (Article 3). In addition, the Fuels Quality Directive (Directive 2009/30/EC<sup>86</sup>), adopted in 2009, set a 6% target reduction in GHG emission of transport fuels to be reached by 2020 (Article 7a of the Directive 2009/30/EC).

The promotion of biofuels and other renewables was seen as a significant contribution to climate change mitigation through the reduction of CO<sub>2</sub> emissions and

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<sup>83</sup> José Manuel Barroso was the president of the European Commission in the two mandates: the first from 2004 to 2009, and the second from 2010 to 2014.

<sup>84</sup> Directive 2009/28/EC (European Parliament and the Council, 2009b).

<sup>85</sup> Renewable energy means “renewable non-fossil energy sources: wind, solar, geothermal, wave, tidal, hydropower, biomass, landfill gas, sewage treatment plant gas and biogases” (European Commission, 2008a, p. 21).

<sup>86</sup> European Parliament and the Council (2009c).

the decarbonisation of transport sector (European Commission, 2006g, p. 3). Equally important, an increased use of renewables was expected to reduce the dependence on conventional energy (e.g. oil and gas), making the EU less vulnerable to external producers of fossil fuels (European Commission, 2006g, p. 3). Finally, it was argued that the development of biofuel production would create additional jobs in rural areas in both developed and developing countries (European Commission, 2006g, p. 3-4).

Overall, from the late 1990s to 2010, biofuels production was encouraged through different measures: targets for the share of renewables in the EU energy mix, subsidies, and duty exemptions<sup>87</sup>. These measures were supposed to incentivise industrial actors to make investments in renewable energy sources (European Commission, 2008a, p. 3).

### ***5.1. Indirect land use change (ILUC)***

While it may represent a better solution for reducing greenhouse gas (GHG) emissions when compared to conventional fuels (e.g. oil and gas), biofuels production may have negative environmental effects as well. If for example, a forest is converted to cultivate materials for biofuels production, the stored carbon will be released (European Commission, 2008a, p. 17). Thus, the resulting negative GHG impact can counterweight the positive GHG impact of biofuels (European Commission, 2008a, p. 17). This is so-called direct land use (DLU) effect. For that reason, the Renewable Energy Directive (RED) imposed sustainability criteria for biofuels production (Article 17 of the Directive 2009/28/EC<sup>88</sup>). To be considered sustainable, the biofuels needed to reach at least 35% of GHG savings when compared with fossil fuels (Article 17). The required target for savings was supposed to increase to 50% in 2017 and to 60% in 2018 (Article 17). Additionally, RED banned biofuels cultivation in specific “no-go” areas, such as wetlands or forests (European Commission, 2010b, p. 3).

In spite of the above sustainability requirements for biofuels production, the EU support policy for biofuels faced extensive criticism (Bourguignon, 2015, p. 3). The

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<sup>87</sup> Some studies estimated that EU biofuel subsidies amounted to between 5.5 and 8.4 billion euros per year (in Bourguignon, 2015, p. 3).

<sup>88</sup> European Parliament and the Council (2009b).

main objection, raised primarily by NGOs, was that neither RED nor FQD took into account the so-called indirect land-use change (ILUC) effect (Bourguignon, 2015, p. 3; Interview 7).

ILUC occurs when land “that would have otherwise been used for food production” gets used for the production of biofuels, and the existing food production “geographically moves” to new cropland which has been converted from grasslands or forests (Croezen et al., 2010, p. 11). Thus, the additional biofuel demand leads *indirectly* to change of a land use - the conversion of grasslands and forests into cropland, not for biofuel production but for food production that has been displaced as a result of increasing biofuel production (European Commission, 2010b, p. 3).

Already in 2008, environmental NGOs started arguing that the EU biofuels policy - the RED-set targets and subsidies – were resulting in worldwide deforestation, which significantly increased CO<sub>2</sub> emissions (Bourguignon, 2015, p. 3).<sup>89</sup> Besides having a negative effect on the greenhouse gas savings, it was argued that the biofuel production negatively affected food prices. In a 2014 report, the UN special rapporteur, Olivier De Schutter, warned that the growing demand for biofuels resulted in “higher food prices” and encouraged “land grabs on a large scale” (De Schutter, 2014, p. 10), which has opened the so-called “food vs fuels” debate (Bourguignon, 2015, p. 4). Put simply, the argument was that raising the demand for biofuels brings about both environmental and social changes: deforestation, land grabs, and increases in food prices.

Neither the Renewable Energy Directive (RED) nor the 2009 Fuel Quality Directive (FQD) contained any obligation for biofuels producers regarding ILUC. However, RED included an obligation for the Commission to review ILUC, to deliver a report on ILUC by the end of 2010 and, if appropriate, to propose further actions in this respect (European Commission, 2010b, p. 3). The issue generated intense debate and long negotiations which lasted more than six years – from the end of 2009 to the end of 2015.

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<sup>89</sup> See, for example, NGOs letter to the Council presidency in 2013 (Transport and Environment, 2013).

## **5.2. Early positions**

The debate on ILUC was initiated in Europe in 2009 during the mandate of the first Barroso Commission. In 2010, the second Barroso Commission was appointed. The following section briefly presents the early positions of the first Barroso Commission. Thereafter, the chapter turns to the second Barroso Commission, who eventually drafted a proposal on ILUC.

### **5.1. Early positions (the first Barroso Commission)**

As mentioned earlier, the Renewable Energy Directive (RED) adopted in 2009 did not contain any obligation for biofuels producers concerning ILUC. However, RED included an obligation for the Commission to deliver a report on ILUC by the end of 2010 and, if appropriate, to propose further actions (European Commission, 2010b, p. 3).

To prepare the report that was supposed to be submitted to the European Parliament and Council by the end of 2010, the DG Environment held public consultations on ILUC. The Commission proposed several ILUC-related options to be considered by interested stakeholders. They ranged from “do nothing” to imposing “additional sustainability requirements” for biofuels from crops (the first generation biofuels) or to include ILUC-related emission in GHG calculations for biofuels (European Commission, 2009a, p. 1-2). An “international agreement on protecting carbon-rich habitats” was also considered as a potential solution (European Commission, 2009a, p. 1). The paper, however, emphasized that is made “without prejudice to the Commission’s final position” (European Commission, 2009a, p. 1). This was a clear indication that the Commissioner for Environment in the first Barroso Commission did not take any strong view on ILUC in 2009.

The biofuel industry and farmers taking part in the consultations supported either “no action” or dealing with ILUC through an international agreement (European Commission, 2010b, p. 13). In contrast, NGOs favoured the inclusion of ILUC related emissions within the existing GHG emission calculation for biofuels (European Commission, 2010b, p. 13). Member states have been divided (European Commission, 2010b, p. 13).

Public and private representatives from foreign countries also engaged in the consultations. Norway (Royal Ministry of the Environment, 2009) and Exxon (ExxonMobil, 2009) argued in favour of regulation on ILUC. Brazil (Brazil, 2009a), Brazilian Sugarcane Industry Association (UNICA, 2009), Malaysian Palm Oil Board (2009), Indonesian Palm Oil Commission (2009), and Argentina (Argentina, 2009), conversely, questioned the scientific knowledge about ILUC, arguing that further legislation would be premature. The latter four countries have been well-known biofuels producers – Brazil’s bioethanol has been mostly produced from sugarcane, Argentina’s biodiesel is soybean-based, and Malaysia’s and Indonesia’s palm biodiesel - oil-based.

To provide more science-based analysis on ILUC, the Commission commissioned several in-house studies: (1) two studies which were carried out by the Commission’s Joint Research Centre (JRC); and (2) an in-house literature review on ILUC which was conducted by DG Energy (European Commission, 2010b, p. 6). The Commission also drew from a study conducted by the International Food Policy Research Institute (IFPRI), as well as from analytical work of leading international experts (European Commission, 2010b, p. 6). Thus, though consulting interest groups, the Commission was also using in-house and international expert knowledge.

The problem with the analytical work on ILUC, however, was that there was no straightforward way of measuring it (European Commission, 2010b, p. 6). If, for example, a biofuel producer buys land previously used for food production, the food production might be geographically relocated anywhere in the world, a phenomenon that is not possible to observe directly (European Commission, 2010b, p. 6). Therefore, the only way to estimate the amount of the ILUC caused by the growing biofuels production was by modelling (European Commission, 2010b, p. 6). However, the problem was that the results varied considerably across different models used to estimate ILUC related to biofuels (European Commission, 2010b, p. 9).

Still, a common conclusion among these studies, acknowledged by the Commission, was that ILUC reduces GHG emission savings from biofuels (European Commission, 2010b, p. 14). When ILUC is taken into account certain biofuels may contribute as much to the GHG emissions as fossil fuels, which should be replaced by their supposed better alternatives – biofuels (ICEDD et al., 2013, p. 12). The research

on ILUC shown differences in GHG emissions among different types of biofuels. Some biofuels (e.g. palm oil or soy bean biodiesel) have higher estimated GHG emissions related to ILUC than other biofuels (e.g. bioethanol from sugar cane) (European Commission, 2012a, p. 41-42). Yet, while it was clear that some biofuels are more sustainable than others, “there was a high degree of uncertainty” regarding the magnitude of ILUC related emission for each type of biofuels (ICEDD, 2013, p. 13). In other words, for the same crop, the different models produced differing values of the GHG emissions caused by ILUC, stemming from the different assumptions used in the models (European Commission, 2010b, p. 9). These variations across models related to the amount of estimated GHG illustrated how challenging and provisional a modelling of ILUC might be (European Commission, 2010b, p. 9). At the same time, these differences across models, would be used as the key arguments by the biofuel industry when advocating against legislation on ILUC.

## **5.2. Early positions (the second Barroso Commission)**

In 2010, the second Barroso Commission was appointed<sup>90</sup>. Günther Oettinger, a former Minister-President of Baden-Württemberg in Germany, became the new Energy Commissioner. The Commission also created a new post - climate action, which previously had been a part of the environment portfolio. Connie Hedegaard, a former Danish Minister for the Environment, was appointed as the first Climate Commissioner. The Energy Commissioner, Günther Oettinger, was charged with ILUC-related matters, whereas Connie Hedegaard was designated to be the joint leading person on the issue.

Neither Günther Oettinger (Oettinger, 2009) nor Connie Hedegaard (Hedegaard, 2010) mentioned biofuels or ILUC during the hearings before the European Parliament. Nevertheless, Günther Oettinger promised to deliver a report on biofuels and land-use change, given that the report was required by the RED (Oettinger, 2009).

Five months after taking office, in response to rising NGOs’ criticism related to the environmental and social consequences of biofuel production, the newly elected

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<sup>90</sup> The second Barroso Commission (2010-2014). Available at: [http://ec.europa.eu/archives/commission\\_2010-2014/members/index\\_en.htm](http://ec.europa.eu/archives/commission_2010-2014/members/index_en.htm). [Accessed on 07/07/2019]



Commission set up a voluntary certification scheme (European Commission, 2010d). The certification scheme was established to verify the compliance of biofuel production with the EU's sustainability standards by independent auditors (European Commission, 2010d). While recognising the EU need to ensure that biofuels are produced in a sustainable manner, Günther Oettinger, added that “in the years to come, biofuels” will be “the main alternative to petrol and diesel used in transport” (in European Commission, 2010e).

Environmentalists, however, were not pleased since the proposed certification scheme did not take into account ILUC (Rankin, 2010). While acknowledging that ILUC “needs to be analysed carefully”, Günther Oettinger insisted that biofuel offered “a bigger opportunity than dangers” (in Rankin, 2010). These statements give the impression that the Commissioner for Energy wanted to find a right balance between two objectives of the EU energy policy: security of supply (diversification of energy sources away from fossil fuels usually produced in outside the EU) and sustainability.

Connie Hedegaard, the Climate Commissioner, had gained more experience in the fields of environment and energy policy than her colleague from the Energy Department. Before coming to the Commission, she had served in Denmark as Minister for Environment (2004-2007), and thereafter as Minister for Climate and Energy (2007-2009). She had been engaged in the debate on biofuels in Denmark even before she was appointed Climate Commissioner.<sup>91</sup> Commissioner Hedegaard was more cautious about biofuels than Günther Oettinger. In one interview, she stated:

“Personally, I’ve always been very cautious on biofuels (...) It’s great to see the potential in new technologies, but we should take very much care in Europe that we are now not establishing a new big industry that we then – after some time – say, wow, that was not so good” (in EurActiv, 02 February 2012).

Even though Günther Oettinger promised to deliver the report on ILUC by the end of 2010 since this was the Commission's legal obligation under the RED, it seems that he was resolute in continuing to provide support for biofuels as an alternative to fossil fuels. Connie Hedegaard, however, was more cautious.

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<sup>91</sup> See for instance, BioPress (2007).

### **5.3. Interest groups' positions**

In July 2010, another round of public consultations on ILUC was organised. Stakeholders were again asked to consider several possible policy options: (1) taking no action; (2) encouraging the consumption of some types of biofuel; (3) discouraging the consumption of some types of biofuel; or (4) taking other action not mentioned under 1-3 (European Commission, 2010c, p. 3).

The Commission was not explicit about which type of biofuels should be encouraged or discouraged but, instead, asked for the stakeholders' opinions. Nonetheless, it was generally considered that ILUC was a pressing concern for the conventional first-generation or crop-based biofuels - bioethanol and biodiesel - rather than for the advanced second-generation biofuels. As mentioned earlier, conventional biofuels are produced on agricultural land from materials that could be used as food as well. According to the analysis conducted by the Commission, some of these biofuels, such as biodiesel produced from vegetable oils (e.g. palm oil), were seen as more harmful for the environment than others, such as bioethanol. On the other hand, the advanced second-generation biofuels, produced from materials that cannot be used as food (e.g. waste), featured as a more sustainable alternative to the conventional biofuels (biodiesel and bioethanol) as their production did not lead towards the conversion of forests and grassland into agricultural land.

This time, the number of stakeholders' responses was twice as high (145 responses) in comparison to the consultations held in 2009 (71 response) (European Commission, 2010b, p. 13). Nevertheless, the responses did not substantially differ. The biofuels producers and the farmers' associations claimed that the studies conducted by the Commission were not adequate for determining the ILUC effect (European Commission, 2010b, p. 13). The argument was that the ambiguities regarding the measurement of ILUC led to the differing results and, consequently, the conclusion was that no further action was necessary until more reliable data on ILUC could be obtained. By contrast, most NGOs and a few non-biofuel industry's representatives argued in favour of the inclusion of ILUC emissions within the existing GHG emission calculation (European Commission, 2010b, p. 13). They held that the studies had proven that ILUC had a significant effect on GHG emissions and, hence, further action by the Commission was needed. The member states were divided: whereas Denmark

and the UK preferred the EU legislation on ILUC, Spain and Austria opposed further legislation (see appendix V).

The biggest EU industry associations of biofuels producers took the untied position that legislation on ILUC is not needed. Besides, the association representing ethanol industry, ePURE, complained that biofuel industry has been “demonised” by some media and stakeholders (ePURE, 2010, p. 5). European Biodiesel Board (EBB), representing the major biodiesel producers, warned that given the uncertainty related to estimation of ILUC, “any distinction of biofuels ILUC on the basis of feedstock and/or geographical origin” would “raise issues of legal certainty and WTO compatibility” (European Biodiesel Board, 2010, p. 4). Copa-Cogeca, an association that have been representing EU farmers, expressed the view that most of the problems related to ILUC have been originating from non-EU countries, such as Brazil and Southeast Asia, and added that “European farmers cannot be made liable for production methods in other countries which damage the environment” (Copa-Cogeca, 2010, p. 1).

Many foreign companies took part in the public consultations as well. Most of them, apart from ExxonMobil, argued against legislation on ILUC.

The Brazilian Sugarcane Industry Association (UNICA), an association that represents the Brazilian bioethanol industry<sup>92</sup>, argued that ILUC was not related exclusively to biofuels, but to agricultural production in general, as well as other deforestation drivers such as illegal logging and the like (UNICA, 2010a, p. 2). After discussing the scientific studies on ILUC, UNICA suggested that it was still premature to evaluate the degree of ILUC regardless of the scientific studies on ILUC whose relevance it acknowledge. Furthermore, like some of its counterparts, UNICA warned that any policy based on “highly debatable” scientific conclusions could be challenged at the WTO (UNICA, 2010a, p. 11). It also warned that any measures that would discriminate based on the biofuels type, or geographical origin, would probably be in violation of the international trade rules (UNICA, 2010a, p. 14). UNICA also pointed to the measures taken in Brazil to tackle environmental concerns related to land usage. Another important point was that the potential EU legislation on ILUC could have negative effects on the economies of biofuel producing countries. It was therefore

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<sup>92</sup> See the UNICA’s website: <http://english.unica.com.br/unica/>. [Accessed on 07/07/2019].

suggested that an international agreement would be the best way to deal with the question of biofuel sustainability (UNICA, 2010a, p. 16).

The same arguments were employed by the Malaysian Palm Oil Council (MPOC), an organisation that brings together the palm oil industry of Malaysia<sup>93</sup>. MPOC argued that the EU studies did not constitute a reliable basis for further legislation on ILUC since the different models analysed by the Commission had arrived at differing estimates of its magnitude (MPOC, 2010, p. 5). In a similar manner to UNICA, MPOC argued that palm oil production creates jobs and boosts the rural economy in Malaysia (MPOB, 2009, p. 5). It was also added that the developing countries have had their 'fair share' in deforestation long time ago, and that, accordingly, the same should not be denied to the developing countries whose rural economies depend on agricultural production (including palm oil) (MPOB, 2009, p. 5). EU therefore should monitor the ILUC, whilst at the same time strive to ensure that there was "no discrimination on any biofuel source and all of them must be given equal access into EU market" (MPOC, 2010, p. 6).

Other foreign stakeholders, mostly from Argentina - RENOVA (Argentina), the Argentine Biofuels Chamber (CARBIO), PBE (Argentina), the Argentinean Soybean Chain Association, Vicentin (Argentina), as well as the Brazilian Association of Vegetable Oil Industries (ABIOVE) - also took the same position: there was no need for any further action at the EU level.

In contrast to the biofuel producers coming from Malaysia, Brazil, and Argentina, ExxonMobil was among the rare non-biofuels companies that engaged in this debate. Its Dutch and UK counterparts, Shell and BP, also took part in the discussions. But, unlike Shell and BP, who basically supported the biofuels producers' view that the EU should not put forward legislation on ILUC, Exxon argued that the EU studies did prove a significant ILUC effect and, hence, ILUC should be included in the calculations of biofuel greenhouse gas emissions (ExxonMobil, 2010, p. 1). Exxon also proposed that the EU reconsiders the targets set by RED and to introduce ILUC factors for different types of biofuels, following the example of the US Environmental Protection Agency and the California Air Resources Board (ExxonMobil, 2010, p. 4).

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<sup>93</sup> See the MPOC's website: <http://www.mpoc.eu/2011/11/corporate-profile/>. [Accessed on 07/07/2019]

Finally, the company advocated further EU regulation to provide support for the development of advanced biofuels.

UNICA, MPOC, and the stakeholders from Argentina are associations representing the biofuel industry. Their key goal was to prevent legislation that would impose additional sustainability criteria on biofuels aimed at discouraging the use of certain categories of biofuels (e.g. biodiesel). Exxon's interest, conversely, was to spur debate as it intended to make investments in advanced biofuels. In 2009, the company teamed up with Synthetic Genomics, a biotech company, to jointly research and develop advanced biofuels made from algae (Synthetic Genomics, 2017). The company believed that its work with algae "offers some of the greatest promise for next-generation biofuels, which is why Exxon has committed hundreds of millions of dollars to algae research" (ExxonMobil, 2018). In addition to this, Exxon had been funding research programs on other advanced biofuels such as cellulosic biomass, for example.

Advanced biofuels, as mentioned earlier, are more sustainable than conventional biofuels since they do not need agricultural land to be produced. However, the problem with the advanced biofuels is that large-scale production has not been sufficiently developed due to high production costs (when compared to conventional biofuels), as mentioned earlier. Hence, some companies, including Exxon, lobbied in favour of legislation that would provide better support for the research and development of these types of biofuels.

At the same time, Shell and BP argued against further legislation on ILUC since the two companies had made huge investments in the Brazilian market for ethanol. British Petroleum (BP) was among the first fossil fuel companies to make investments in bioethanol, in 2008 (UNICA, 2009b). The move was welcomed by UNICA. Following this, Shell created, in 2010, a \$12 billion joint venture with the Brazilian Cosan company to produce ethanol (UNICA, 2010b).

#### **5.4. The Commission's preliminary position paper**

In 2010, the Commission published the report analysing ILUC related to biofuel production. The first conclusion in the report was that "renewable energy, including biofuels, is an essential element of the EU's energy and climate strategy", suggesting

that the stable investment climate for biofuels producers created by RED should be preserved (European Commission, 2010b, p. 14). This conclusion was in line with the position of the domestic and foreign biofuel industries<sup>94</sup>. Secondly, the Commission acknowledged the numerous uncertainties related to estimating ILUC, adding that further work should be conducted to address these deficiencies (European Commission, 2010b, p. 14). This was also in line with the biofuels producers' positions expressed during the consultations. However, the Commission also stressed that the studies had shown that ILUC has an impact on GHG emissions of biofuels and, if any regulation in this regard was required, it "should be addressed under a precautionary approach" (European Commission, 2010b, p. 14).

For further steps, the Commission promised to carry out an impact assessment that would assess the following options: (1) no action; (2) increase the minimum GHG savings threshold for biofuels; (3) impose additional sustainability standards for biofuels; and (4) a quantification of ILUC-related GHG emissions of each type of biofuel (European Commission, 2010b, p. 14). The fourth option was favoured by Exxon.

Clearly, at this point, the Commission was still not certain whether a legislative proposal on ILUC would be drafted or not. All the options, from "take no action" to the introduction of stringent measures that would limit use of certain types of biofuels, were still on the table. The second Barroso Commission had inherited the discussion on ILUC from the previous College of Commissioners. Under pressure from the NGOs, an obligation for the Commission to issue a report on ILUC by the end of 2010 was inserted into RED. Hence, the report delivered in 2010 was not a product of the Commission's clear vision on how to deal with ILUC related to biofuel production, but rather it was its obligation under RED. In addition to this, the issue was highly complex given the difficulties related to estimating the effects of ILUC. Finally, as will be seen later, it seems that the positions of the two Commissioners – for Energy and Environment – diverged on how to tackle the issue. These were the main reasons why the Commission did not have a strong early position on ILUC. The lack of the

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<sup>94</sup> For example, commenting on the report UNICA expressed satisfaction with the fact that the Commission has decided to take "a cautious approach" to ILUC and that it is acknowledged that biofuels have an important role in EU energy policy (in EurActiv, 12 January 2011).

Commission's initial position would open a window of opportunity for stakeholders to try to shape the debate in accordance with their interests.

### **5.5. Non-EU interest groups' lobbying activities**

Non-EU biofuel industry representatives tried to shape the debate on ILUC from 2009. Their efforts were directed at being engaged in the consultations organised by the Commission in 2009 and 2010, as already mentioned. Both MPOC and UNICA were invited by the Commission to take part in discussion on ILUC (Interview, 7), but they used other lobbying strategies as well.

Since 2009, the Malaysian Palm Oil Council (MPOC) has claimed that the palm oil industry from Malaysia has been under continuous attack from some European NGOs, such as Greenpeace and Friends of the Earth (MPOC, 2009a). MPOC has argued that these NGOs are trying to persuade the EU decision-makers to limit the import of palm oil on the grounds that its production damages the environment (MPOC, 2009b). It also felt disadvantaged in comparison to NGOs advocating against palm oil-based biofuels, since many of them were funded by the Commission (EurActiv, 28 April 2010). To counter this view, the chairman of MPOC and IOI Corp<sup>95</sup>, Datuk Lee Yeow Chor announced in 2009 that they will increase their efforts to brand Malaysian palm oil through increased investments into research on palm oil, as well as through greater engagement with stakeholders, primarily NGOs and the media (MPOC, 2009c).

As a result, MPOC launched two advertisements in the UK with the aim of promoting palm oil as a sustainable energy source. The commercials were, however, banned by the UK Advertising Standards Authority due to the provision of misleading information (The Guardian, 09 September 2009). MPOC also hired Fleishman-Hillard, Brussels-based PR company, who advised the association to find a "narrative to tell how palm oil sustainability processes have improved" given that palm oil "has only a few friends in the EU" (Fleishman-Hillard, 2012). In addition, MPOC was advised to pursue lobbying across all levels – from national to the EU level (Fleishman-Hillard, 2012). MPOC's PR campaign, was not well received by European

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<sup>95</sup> IOI Corp is one of the leading global palm oil companies from Malaysia. See the IOI's website: [www.ioigroup.com](http://www.ioigroup.com). [Accessed on 07/07/2019].

NGOs. As a representative of Friends of the Earth said: “No amount of PR will alter the facts about palm oil” (The Guardian, 20 May 2011).

According to the MPOC website, the Malaysian palm industry held meetings with EU officials, offering explanations surrounding the palm oil production (MPOC, 2009d). However, it seems that the organisation’s arguments were not well received in Brussels.

“They [EU] are going into ILUC without proper studies (...) We provide our data but they don’t. My researchers have gone to Brussels but they [the EU] never disclose their data. They have the final say”, said Mohd Basri, CEO of Malaysian Palm Oil Board (MPOC, 2009d).

MPOC also engaged in communication with stakeholders from Germany, the Netherlands, and Belgium (MPOC, 2009e).

According to data obtained from the EU Transparency Register, biofuel legislation was among the issues monitored by Exxon during the negotiation on ILUC. Besides taking part in public consultations, the company also engaged in debate on ILUC *via* the European Commission Joint Research Centre (JRC), the Commission’s “science and knowledge service”<sup>96</sup>. Namely, Exxon was among the members of Concawe, an association created by oil companies to conduct research on ecological issues that might be important for the oil industrial sector<sup>97</sup>. In 2000, Concawe, together with the European Council for Automotive R&D (EUCAR) and the Commission’s Joint Research Centre (JRC), created the ‘JEC Consortium’ to carry out scientific studies about road transport, fuel consumption, and other areas including biofuels (Concawe, 2014, p. 8). Reports delivered by JEC Consortium (e.g. Lonza, et al., 2011) were cited, together with other studies, in the Commission’s impact assessment on ILUC (European Commission, 2012a, p. 21- 22).

As part of its advocacy efforts, Exxon used the services of PR firms such as Fleishman-Hillard and Burson-Marsteller. Exxon also launched TV advertisements featuring statements on algae as a sustainable source of biofuel. The advert was, however, banned by the UK Advertising Standards Authority, due to alleged

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<sup>96</sup> See the JRC’s website: [https://ec.europa.eu/info/departments/joint-research-centre\\_en](https://ec.europa.eu/info/departments/joint-research-centre_en). [Accessed on 07/07/2019].

<sup>97</sup> See the Concawe’s website: <https://www.concawe.eu/about-us/>. [Accessed on 07/07/2019].



misleading information (EurActiv, 24 March 2011). Exxon complained by citing the Joint Research Centre' studies to prove its point.

The Brazilian Sugarcane Industry Association (UNICA) used the services of the two PR firms as well: Dignonnet&Kutas Consulting and Fleishman-Hillard<sup>98</sup>. In addition, Apex-Brasil, the Brazilian Trade Promotion and Investment Agency<sup>99</sup>, helped UNICA on various occasions to promote their interests in Europe. Besides the services of consultancy firms, between 2009 and 2010, UNICA took part in many European conferences attended by EU officials as well<sup>100</sup>. UNICA was also among the sponsors of Green Week 2010, the conference on the EU environment policy, organised by the DG Environment.<sup>101</sup> At these events, UNICA representatives made the case that Brazilian sugarcane ethanol contributed to the sustainability of the EU transport sector, and to overall EU energy security. The UNICA PR campaign in Europe also included the publication of an English version of "Noticia UNICA", an electronic newsletter about Brazilian sugarcane, which they started to disseminate across Europe and elsewhere with the aim of promoting the industry abroad.<sup>102</sup>

The major purpose of all these campaigns was to portray the biofuel industry as a sustainable alternative to fossil fuels and as an energy source that contributed to the security of supply in the EU. Foreign industry representatives tended to present biofuel production as a "success story" that could be replicated in the EU, as well as across other parts of the world. UNICA thus argued that bioethanol production helped Brazil

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<sup>98</sup> Data obtained from the Transparency Register.

<sup>99</sup> The Transparency Register. See: <http://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=91665214476-01>. [Accessed on 07/07/2019].

<sup>100</sup> For example, the Fuels of the Future conference (Berlin 2009), Biofuels Conference (Budapest 2009), Green Week organised by DG Environment (Brussels 2009), European Fuels Conference (Paris 2010), Second European Bioethanol Fuel Conference (Brussels 2010). The data obtained from the UNICA website: <http://english.unica.com.br/>. [Accessed on 07/07/2019].

<sup>101</sup> European Parliament. See: <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2010-4321&format=XML&language=EN>. [Accessed on 07/07/2019].

<sup>102</sup> UNICA. See: <http://english.unica.com.br/media-center/10386912920310621254/unica-to-launch-english-newsletter-on-11-february/>. [Accessed on 07/07/2019].

to deal with the problem of energy dependency on fossil fuels, a practice that, according to UNICA, should be followed by the EU as well<sup>103</sup>.

Non-EU countries were also invited to take part in the stakeholder meeting on ILUC organised by the Commission in September 2010.<sup>104</sup> UNICA representatives also met with public officials from many member states, among them the Danish Minister for the Environment (in 2009), the Dutch Minister for Foreign Relations (2010), a State Secretary at the German Ministry of Transport (2010), Prince Philippe of Belgium (2010), the Swedish Ambassador in Brussels (2012), and several others.<sup>105</sup>

UNICA, MPOC, as well as Exxon, also used the European Parliament as a lobbying channel. For example, in April 2010, the Senior Vice President of ExxonMobil requested a meeting with the European Parliament President, Jerzy Karol Buzek, to discuss the future of the company's research into algae biofuels and related developments.<sup>106</sup> In January 2011, Conservative MEP Roger Helmer paid a visit to Malaysia, as a guest of MPOC. He wrote on his blog, following his return:

“The MPOC is very concerned about the EU’s environmental score-card for bio-fuels, which purports to measure both the emissions savings, and the impact of changes in land use associated with each biofuel. The MPOC clearly feels that the criteria applied, while theoretically objective, in fact reflect prejudices based on the propaganda of green NGOs (which, as we recall, are mostly funded by the EU itself — which means funded by you, the tax-payer). The NGOs constantly say that use of palm oil for bio-fuels forces up food prices, that palm oil development drives deforestation and contributes to CO2 emissions, and that palm oil cultivation threatens endangered habitats and in particular the orang-utan. These points, it seems, are greatly overstated or just plain wrong (...). But the symbiotic relationship between green NGOs and the European Commission means that the NGOs carry greater weight than diplomatic or commercial interests — and more weight than a fair, unbiased analysis would justify. As a result, palm oil bio-fuel

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<sup>103</sup> See a website established by UNICA, Sugarcane.org: <https://sugarcane.org/energy-diversity/>. [Accessed on 07/07/2019].

<sup>104</sup> Available at: <https://www.clientearth.org/reports/ce-v-ec-reply-annexes-2-march-2011.pdf>. [Accessed on 07/07/2019].

<sup>105</sup> Data obtained from the UNICA’s website: <http://www.unica.com.br>. [Accessed on 07/07/2019].

<sup>106</sup> European Parliament. See: [http://www.europarl.europa.eu/RegData/courrier\\_officiel/arrivee/2010/EP-PE\\_LTA\(2010\)004432\\_EN.pdf](http://www.europarl.europa.eu/RegData/courrier_officiel/arrivee/2010/EP-PE_LTA(2010)004432_EN.pdf). [Accessed on 07/07/2019].

suffers severe discrimination in the EU as against other food crop bio-fuels” (Helmer, 2011).

While Roger Helmer and a few other MEPs who paid visit to Malaysia on later dates<sup>107</sup> showed sympathy for MPOC’s position, they faced criticism at home for paying the visits. For instance, in reaction to Roger Helmer’s visit to Malaysia, Greenpeace’s campaigner Sarah Shoraka said:

“No doubt the voters of East Midlands will wonder why their MEP Roger Helmer felt it was in their interests to accept an invitation to fly out to Malaysia to advise the palm oil industry on how to lobby Europe for lower environmental standards” (in the Guardian, 02 February 2011).

Thus even when MPOC managed to find some friends in the EU, these would face criticism in Brussels<sup>108</sup>.

UNICA also met MEPs on various occasions: (1) in October 2009, during the debate on the future of biofuels in the European Parliament, sponsored by Shell;<sup>109</sup> (2) in July 2010, during the debate on ILUC in the European Parliament;<sup>110</sup> and (3) in October 2011, during the reception at the European Parliament organised by UNICA and Apex-Brasil (the event was supported by BP, Novozymes, Scania, and Shell, and hosted by MEP Britta Thomsen, a member of the Social Democrats). Some MEPs, such as Britta Thomsen, provided support for the Brazilian sugarcane industry<sup>111</sup>. In addition, the Brazilian “success story” in dealing with the problem of energy dependency on fossil fuels was seen by some decision-makers as the story that should be replicated in the EU. Overall, it seems that MPOC’s and UNICA’s lobbying efforts were more effective when it comes to some MEPs, than the Commission.

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<sup>107</sup> The mission to Singapore and Malaysia organised for the MEPs by the European Energy Forum in May 2013 (European Energy Forum, 2013).

<sup>108</sup> For more see the Corporate Europe Observatory (2013) and The Guardian (02 February 2011).

<sup>109</sup> UNICA. See: <http://english.unica.com.br/news/7064751920331155362/unica-por-cento3A-adoption-of-clean-alternative-fuels-in-europe-can-no-longer-be-delayed/>. [Accessed on 07/07/2019].

<sup>110</sup> UNICA. See: <http://english.unica.com.br/news/4112404592034872045/global-perspective-on-iluc-only-way-to-ensure-effective-eu-policy/>. [Accessed on 07/07/2019].

<sup>111</sup> UNICA. See: <http://english.unica.com.br/news/4112404592035297016/european-parliamentarian-plans-campaign-in-support-of-brazilian-ethanol-in-europe/>. [Accessed on 07/07/2019].

## **5.6. Impact assessment and interest groups' reactions**

In 2012, the Commission published the impact assessment of previously discussed policy options, as well as a fifth option that was not mentioned explicitly during the consultations, but which received the support of NGOs and a few industrial stakeholders (one of them being Exxon) (European Commission, 2012a, p. 36).

The first option (“take no action”) was favoured by the biofuel industry, including UNICA and the Malaysian Palm Oil Council and farmers. The second option implied raising the minimum GHG savings threshold set for biofuels by RED (according to Article 17 of RED, biofuels need to achieve GHG savings of at least 35% when compared with fossil fuels). This option was neither supported by the industry nor by the NGOs engaged in the consultations (European Commission, 2012a, p. 32-33). The third option consisted of introducing additional sustainability standards for some types of biofuels (European Commission, 2012a, p. 33-34). This option was supported by many NGOs. The fourth option implied the incorporation of crop-specific GHG emissions (European Commission, 2012a, p. 34). This option was similar to the second option apart from one important difference. The second option implied raising the minimum GHG savings for biofuels in general, without taking into account the differences among the biofuels. The fourth option suggested that the GHG saving threshold should be raised relative to the estimated ILUC emission for each type of biofuel; the so called crop-specific ILUC factor (European Commission, 2012a, p. 35). For example, if a GHG emission that stemmed from ILUC was higher for palm oil than for sugarcane, the palm oil-based biofuels would be required to yield higher GHG savings than the sugarcane-based biofuels. Most NGOs and most academics and scientists backed this option during the consultations (European Commission, 2012a, p. 36). This option was also favoured by Exxon.

This fifth option suggested imposing a limit on the amount of conventional biofuel being produced, which would be counted towards the target set by RED (10% in the transport sector) (European Commission, 2012a, p. 36). Since ILUC related mostly to conventional biofuels, it was proposed that, in order to limit their production, their maximum contribution towards the 10% target should be set at 5% (European Commission, 2012a, p. 61).

The general conclusion of the impact assessment was that the best solution for dealing with ILUC was to combine the fifth option with the second: (a) to set a 5% cap for the contribution of conventional biofuels towards the 10% target and to raise the minimum GHG savings threshold set by RED, plus (b) to incorporate the ILUC-caused GHG emissions into the existing GHG emission methodology for biofuels (European Commission, 2012a, p. 69). Additionally, it was proposed that the EU should provide support for advanced biofuels.

Thus the impact assessment conclusion mostly reflected the NGOs' preferences whilst, at the same time, acknowledging many negative effects of the proposed options highlighted by the biofuel industry. The impact assessment also recognised the potential problem of the compatibility between the fourth option and those WTO rules "related to its reliance on modelling for the determination" of ILUC-related GHG emissions (European Commission, 2012a, p. 56). As already mentioned, the alleged incompatibility of the regulation on ILUC with WTO rules was raised as an issue on several occasions by non-EU business representatives, such as MPOC and UNICA. Yet, it seemed that the impact assessment report did not perceive this as a "credible threat", arguing that the US applied similar regulations which had not been challenged up to that point by the WTO (European Commission, 2012a, p. 56). The report also highlighted that the fourth option would considerably limit imports of biodiesel into the EU, however, it was added, that this could be compensated by trade in advanced biofuels and bioethanol (European Commission, 2012a, p. 56). This reflected Exxon's position on the issue.

In May 2012, the Commission had a meeting to discuss proposals on ILUC based on the above impact assessment report (European Commission, 2012b). The minutes of the meeting indicate that the Commission was not united on what measures should be taken. The Commission's president, Jose Manuel Barroso, stressed that ILUC was "a technically highly complex and politically highly sensitive issue" which should be addressed with caution (European Commission, 2012b, p. 11). Hence, he called for a balanced approach on the issue given the consequences of a future proposal on the EU industry, agricultural production, and trade between the EU and non-EU countries (European Commission, 2012b, p. 11).

Energy Commissioner, Günther Oettinger, pointed out the need to stimulate the development of advanced biofuels and to reduce negative consequences of ILUC related to conventional biofuel production (European Commission, 2012b, p. 12). However, the Commissioner emphasised that it was important to take into account both “the economic and environmental consequences” of a future proposal, the needs of biofuel producers and farmers, the global energy market, and the fact that it was impossible to exclude biofuel imports from third countries (European Commission, 2012b, p. 12). Connie Hedegaard, European Commissioner for Climate Action, pointed out that certain biofuels “were better than others” concerning ILUC, and that the EU should support investments in advanced biofuels (European Commission, 2012b, p. 13). President Barroso concluded that, given the different opinions expressed during the discussion, the final decision should be postponed (European Commission, 2012b, p. 14).

According to the minutes of the Commission meeting, media reports (EurActiv, 03 May 2012), and analyses of the negotiations on ILUC (Lydgate, 2013; Poláková et al., 2012), the energy and climate directorate were divided over which options should be introduced by the forthcoming regulations. The key dispute was over whether the crop-specific ILUC factor (an increase of the GHG savings threshold relative to the estimated ILUC emissions for each type of biofuel) would be included in the future proposal or not. DG Climate wanted to have the GHG saving threshold raised relative to the estimated ILUC emission for each type of biofuel, whereas the energy directorate did not want to include this option in the forthcoming proposal.

The issue with the crop-specific ILUC factor was that it would affect mostly EU biodiesel producers. The EU had been consuming more biodiesel than bioethanol – approximately 75% of biodiesel and around 21% of bioethanol (Ecofys, 2012, p. iii). More than 80% of biofuels consumed in the EU had been domestically produced, mostly from soybean and rapeseed (Ecofys, 2014, vi). Since biodiesel production yields higher GHG emissions related to ILUC than bioethanol does, the EU biodiesel industry would be negatively affected if the crop-specific ILUC factor was to be included.

In September 2012, a leaked draft proposal revealed a compromise solution: crop-specific ILUC emissions were to be included in the Fuel Quality Directive (FQD), but

not in the Renewable Energy Directive (RED) (EurActiv, 17 September 2012; Dunmore, 2012). The leaked draft also proposed quadruple-counting for advanced biofuels (Dunmore, 2012). The industry branded the draft proposal as “ill-conceived”<sup>112</sup> and “shocking”<sup>113</sup>. After the draft was leaked (mid-September 2012), members of the Commission were “receiving three mails by the hour on this subject” (EurActiv, 07 May 2013). Documents obtained by AskTheEU.org confirmed that after the draft was leaked, the industry launched intensive lobbying in an attempt to water down the forthcoming proposal.<sup>114</sup>

In a joint letter aimed to address the leaked draft, EU associations of biofuels producers and farmers (e.g. ePURE, European Biodiesel Board, Copa-Cogeca, Cocal) called the leaked draft “a masterpiece of irresponsible policy making” (Cocal, 2012). They complained that crop-specific ILUC factor would cause “the immediate death” of European biodiesel industry (Cocal, 2012). They also added that the leaked proposal did not address the real problem which is management of land use in non-EU countries. Hence, EU biodiesel producers believed that the Commission should not deal with ILUC related to biofuels in Europe, but instead in countries outside the EU. Similarly, it was argued that ILUC did not concern biofuels production as such, but instead inappropriate management of land use in non-EU countries.

## **5.7. The Commission’s proposal**

In October 2012, after an intense debate within and outside the Commission, a proposal concerning ILUC was finally published (European Commission, 2012c). The proposal contained all the measures contained in the leaked draft except for one – the inclusion of crop-specific ILUC emissions in the Fuel Quality Directive (FQD). Instead, the Commission proposed only reporting duties related to ILUC, namely that biofuel producers and member states should report ILUC-related GHG emissions

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<sup>112</sup> See for example, reaction of the UK biofuel producers. Available at: <http://www.scopa.org.uk/resources/documents/ILUC-UK-Industry-response.pdf>. [Accessed on 07/07/2019].

<sup>113</sup> See for instance, reaction of the most powerful business associations of biofuels producers and farmers, European Biodiesel Board, ePure, Copa-Cogeca, Fediol, and Cocal (Cocal, 2012).

<sup>114</sup> AskTheEU.org. Available at: [https://www.asktheeu.org/en/request/exchanges\\_between\\_geoghegan\\_quin#incoming-8592](https://www.asktheeu.org/en/request/exchanges_between_geoghegan_quin#incoming-8592). [Accessed on 07/07/2019].

(European Commission, 2012c, p. 2), which differed from the initial idea of mandatory accounting for crop-specific GHG emissions, which was left out of the proposal. The proposal also contained the following elements: (1) the introduction of a 5% limit on the amount of biofuels which could be counted towards the target set by RED for energy used in transport; (2) an increase in the minimum GHG savings threshold for biofuels from 35% to 60% (compared to fossil fuels); (3) the promotion of advanced biofuels (made from wastes and algae) by way of multiplying their contribution towards the 10% target (European Commission, 2012c, p. 3).

Even though the binding ILUC factor was not included in the final proposal, the proposal was seen by the industry representatives as a “U-turn” in the EU biofuel policy (Coceral, 2012). This was especially so since, in addition to what was proposed, the Commission suggested that biofuels that did not lead to considerable GHG savings (when emissions from ILUC were included) and those that were produced from food-based crops should not continue to receive subsidies after 2020 (European Commission, 2012c, p. 3). Energy Commissioner Connie Hedegaard stressed that the Commission “had a clear preference” for the advanced biofuels, and the key message from the proposal needed to be that advanced biofuels should be the only type of biofuels to receive support after 2020 (in ICEDD et al., 2013, p. 16).

Concerning non-EU producers, after the Commission published the proposal, UNICA stated that the 5% cap on conventional biofuels ignored the differences between ILUC emissions caused by different crop-based biofuels (UNICA, 2013, p. 1). The proposal, according to UNICA, did not acknowledge the sustainability of certain types of biofuels, such as sugarcane ethanol produced in Brazil. UNICA also pointed out that the 5% cap has been “potentially trade-restrictive to non-EU produced biofuels” and hence “vulnerable to breaching WTO rules” (UNICA, 2013, p. 1-2). While supporting the Commission’s intention to encourage the development of advanced biofuels, UNICA suggested a 2% target for advanced biofuels by 2020 (UNICA, 2013, p. 2).

MPOC was not satisfied with the proposal either. Even though the proposal did not include crop-specific ILUC emissions, through national reporting, MPOC claimed that the proposal encourages consumers to use biofuels with supposedly smaller ILUC emissions (MPOC, 2013). Similarly, to UNICA, MPOC stated that the Commission’s



proposal has not been compatible with the WTO rules (MPOC, 2013). Exxon, did not comment the proposal publicly.

### 5.8. Lobbying success of non-EU interest groups

The table below shows, the Commission’s proposal was more in line with the Exxon’s position than the one lobbying for by UNICA and MPOC. As explained, the message behind the Commission’s proposal was that advanced biofuels should be the only type of biofuels that will be receiving public support after 2020 (ICEDD, 2013, p. 16). This position matched the Exxon’s preferences. While at the beginning of the debate on ILUC, in 2009, UNICA argued against discrimination among biofuels, it was not satisfied eventually with the 5% cap on conventional biofuels, because this cap overlooked the differences between ILUC emissions caused by different types of biofuels (UNICA, 2012, p. 1). Bioethanol made of sugarcane is among the biofuels that achieve the highest GHG savings, when compared to fossil fuels. Hence, a cap that limits consumption of all biofuels, instead of only those that are mostly harmful, was not well received by UNICA. In the end, by imposing reporting duties related to ILUC, and by increasing from 35% to 60% the overall GHG savings for biofuels, the proposal - as seen by MPOC - aimed to discourage the consumption of palm oil-based biofuels. Hence, it was not welcomed by MPOC either.

**Table 10.** Comparison of the estimated degree of success of the analysed non-EU groups.

<b>Energy Commissioner</b>	<b>Climate Commissioner</b>	<b>MPOC</b>	<b>UNICA</b>	<b>Exxon</b>
The 5% cap for crop-based biofuels	The 5% cap for crop-based biofuels	x	x	✓
Increase in overall GHG savings from 35% to 60%	Increase in overall GHG savings from 35% to 60%	x	x	N/A
Promotion of advanced biofuels	Promotion of advanced biofuels	N/A	✓	✓
Opposed crop-specific ILUC factor	Support crop-specific ILUC factor	x	Oppose (in the beginning) Support (later)	✓
Compromise: Member states to report ILUC emissions		x	N/A	N/A

X – oppose; ✓ - support; N/A – no position.

### *5.8.1. Commission's preferences on the discussed issues*

The debate about ILUC in the EU was sparked mostly by NGOs. To tackle the NGOs' criticism, the Renewable Energy Directive (RED) prescribed the obligation for the Commission to review ILUC and to produce by the end of 2010 a report on this issue. Hence, the proposal was not a result of the Commission's preferences; instead it was a result of its obligation under RED.

The negotiations on ILUC regulation were a highly complex process. Many proposals on how to deal with indirect land-use change related to biofuels production were raised both inside and outside of the EU institutions. In general, the positions of the different actors could be divided into two groups: (1) those aiming to impose strict regulations on biofuel production related to ILUC, and make a turn in EU biofuels policy from conventional to advanced and more sustainable biofuels; and (2) those aiming to protect the conventional biofuels industry and preserve the EU policy of support for these biofuels (e.g. subsidies). Climate Commissioner, Liberal MEPs and Greens, some member states (e.g. the Netherlands, Denmark, and the UK), the involved NGOs, and those who had invested in advanced biofuels (including Exxon) fell into the first group. The opposing block comprised of the biofuels producers and several member states (e.g. France, Spain, Poland). The proposal that was adopted could be described as both a half empty and a half full glass.

The Commission struggled to reach an early common position due to two reasons: firstly, because it was hard to measure the magnitude of ILUC related to biofuel production (issue complexity); secondly, because the two Commissioners had different perspectives on how to deal with this issue.

The differences between the two Commissioners could be partly explained by their portfolios. Commenting on regulations concerning ILUC, one Commission official stated:

“Biofuels policy was based on climate, on energy security and on rural development – three legs. And the thing was that whenever you – this is going back a long time now – but whenever you said “oh, but this biofuel doesn't do x”, [people could] say “oh, but it does y and z” (in Palmer, 2014, p. 343).

Unlike the Energy Commissioner, whose job was to take into account not only the environmental aspects of legislation, but other important issues too (e.g. energy

security), for Connie Hedegaard, the major task was to deliver the legislation that would reduce CO<sub>2</sub> emissions. While, for Connie Hedegaard, the question of ILUC boiled down to the question of GHG emissions and related food price increases, the Energy Commissioner argued that the EU policy towards biofuels should take into account not only their sustainability but also other important aspects: the economic consequences, trade with non-EU countries, and the security of supply.

Besides this, as already mentioned, before coming to the Commission, Connie Hedegaard served in Denmark as Minister for the Environment and Minister for Climate and Energy. She had been engaged in a debate on biofuels in Denmark even before she was appointed as the Climate Commissioner. In one interview, she stated: “Personally, I’ve always been very cautious on biofuels” (in EurActiv, 02 February 2012). Therefore, it was a reasonable assumption that her personal experience in the fields of environment and energy policy made it harder for lobbyists to alter her preferences. It must also be remembered that she was the first Climate Commissioner as, before her appointment, climate action had been a part of the environment portfolio. This also may be one of the reasons why Connie Hedegaard preferred more stringent regulation on ILUC.

The absence of Commission’s early position on ILUC, uncertainties related to measurement of ILUC, together with different positions within the Commission, created an opportunity for the biofuel industry to water down the initial leaked proposal (to exclude crop-specific ILUC factor).

However, in the end, the proposal was not changed because the stakeholders provided new information or important scientific data about ILUC. As seen earlier, the Commission was using its own in-house expertise, as well as information provided by international experts, which came in parallel to the interest groups’ expertise (Interview 1). The proposal actually represented a compromise between the sustainability objectives and the economic interest of biofuel producers. This conclusion could be confirmed by the statement made by Connie Hedegaard that the final proposal “is not perfect” and that it represents only “a first step” in dealing with ILUC (in Keating, 2012).

### ***5.8.2. Commission's position on the interest groups***

Both UNICA and MPOC were important actors in the debate on ILUC because of two reasons. Firstly, because the EU rules on ILUC affect not only producers in the EU, but also those in non-EU countries. Secondly, the question of EU trade with external countries and possible violation of WTO rules was a significant part of the debate. Hence, since the beginning, the Commission invited MPOC and UNICA to take part in the discussion on ILUC related to biofuels (Interview 7). Nevertheless, according to all other characteristics, the two foreign actors were closer to the groups of outsiders. Firstly, unlike Exxon, UNICA and MPOC did open offices in Brussels in 2008, the time when the debate on conventional biofuels' sustainability started in the EU. Secondly, during the preparation of the proposal on ILUC, UNICA's and MPOC' relations with the Commission were strained - they were threatening that the Commission's proposal on ILUC could be challenged at the World Trade Organisation (WTO). Thirdly, their market shares in the EU were not crucial for the overall EU energy mix (around 2% of biodiesel consumption and 2.8% of bioethanol consumption). Fourthly, MPOC struggled to recover its poor reputation in the EU. The palm oil industry from Malaysia was criticised by some European NGOs, and MPOC's impression was that the case made by the Malaysian palm oil producers was not well received in the EU. Even when, on several occasions MPOC has managed to win 'friends' in Brussels, such for instance MEP Roger Helmer, those friends would suffer criticism.

On the other side, Exxon was a well-established actor in Brussel, better connected and integrated with the most influential industry associations in the EU better than UNICA and MPOC. Exxon has been a member of Concawe/FuelsEurope, IOGP, CEFIC, AmCham EU, BusinessEurope and other influential associations. Through Concawe, the company was in a position to influence the research on ILUC produced by the Commission Joint Research Centre (JRC). As mentioned, Concawe issued, together with the JRC, a study on ILUC and biofuels, which was used by the Commission in its impact assessment report. Exxon was among rare companies that was advocating for advanced biofuels. Its lobbying success provides support to the idea that those interest groups that do account for the preferences of the Commission (in this case, the need to increase the sustainability of biofuels), tend to be more successful.

Last, but not least, the Commission's decision not to include crop-specific ILUC emissions demonstrates why having a foreign origin might sometimes be a drawback for lobbying in the EU. Although UNICA's and MPOC's respective market shares in the overall bioethanol and biodiesel consumption in the EU were not large, projections emerged that both - biodiesel and bioethanol imports - from Malaysia and Brazil will increase until 2020 (European Commission, 2012a, p. 20-21). Additionally, it was estimated that the EU ethanol will lose its competitiveness *vis-à-vis* the Brazilian ethanol (Al-Riffai, Dimaranan, and Laborde, 2010, p. 44). As mentioned, the EU was consuming more biodiesel than bioethanol – approximately 75% of biodiesel and around 21% of bioethanol (Ecofys, 2012, p. iii). More than 80% of the biodiesel consumed in the EU was domestically produced (Ecofys, 2014). As a result, albeit it was confirmed that production of biodiesel causes more GHG emissions than bioethanol production, and albeit Brazil had the potential to increase bioethanol imports to the EU, the Commission eventually made the proposal which allowed EU biodiesel producers and farmers to escape the worst case scenario, at the expense of bioethanol producers, UNICA included. While all the studies had confirmed the superiority of bioethanol over biodiesel, crop-specific GHG emissions were eventually left out of the proposal. It seems that this was mainly owing to the extensive lobbying of EU biodiesel producers and farmers. Thus, even though UNICA's position was in line with the scientific findings, the Commission eventually made a compromising solution between the sustainability objectives (based on scientific knowledge) and the interest of domestic biodiesel producers and farmers. It would be highly unlikely for the Commission to make such compromise in order to protect investments of foreign companies.

## **5.9. Conclusion**

In the case study analysed in this chapter, the Commission's initial positions on policy issues affected the lobbying success of the involved interest groups. It has been shown that, specifically, when the Commission does not have strong initial preferences over the discussed measures, interest groups will be enjoying better prospects to shift the debate into a preferred direction. Biodiesel industry and farmers have managed to prevent “the worst case scenario”, that is the provision on crop-specific ILUC factor. Yet, the case also indicates that when a Commissioner in charge of a legislative

proposal (Connie Hedegaard) has strong early preferences, due to her/his previous experience or the nature of the portfolio which she covers, interest groups tend to be less successful in lobbying to impact the Commissioner's initial preferences.

The findings obtained in this chapter also suggest that having a foreign origin, when lobbying in the EU, could be a drawback. A foreign group may be less successful if its interests do not coincide with the interests of domestic (EU) groups, in which case the Commission will likely choose to protect the interests of the domestic groups. On a final note, the analysed case suggests that those groups that factor in their lobbying preferences of the Commission (Exxon), tend to be more successful. The case, however, does not find support for the assumption that insiders (Exxon) have better access to the Commission than outsiders (MPOC and UNICA) when it comes to bilateral meetings with the Commission. On the other hand, unlike MPOC and UNICA, Exxon was better integrated and connected with the most influential associations in the EU and through them it had access to the Commission's inner cycle of the policy-making. A case in point is Exxon's membership in Concawe, an industry association, which, together with the Commission's Joint Research Centre had produced studies used by the Commission during the debate on ILUC.

## Chapter 6: Energy Security Package

This chapter examines to what extent non-EU interest groups managed to achieve their lobbying objectives during the preparation of the Commission's proposal on the Energy Security Package. The proposal was adopted in 2017. The Energy Security Package introduced a number of policy measures aimed at strengthening EU energy security. The most important provisions that have been discussed during the preparation of this legislative package were: the improvement of regional cooperation among member states, the creation of an obligatory solidarity mechanism, ex-ante assessment of intergovernmental agreements' compatibility with EU law, and the diversification of energy supplies (European Commission, 2015a).

The Energy Security Package has been one of the cornerstones of the so-called European Energy Union. As such it has been the top policy priority of the Jean-Claude Juncker Commission since the beginning of its mandate. The Commission had strong early preferences on most of the discussed issues even before starting the mandate. Four companies - Gazprom, Naftogaz, Equinor, and Exxon - are examined; those companies vary among themselves on the insider/outsider distinction.

### 6.1. Background

The issue of energy security had not been seen as a pressing concern during the 1990s, but by the middle of the 2000s it returned to the top of the international political agenda (Young, 2009, p. 1). The era of cheap and plentiful energy supply, which had lasted for almost two decades, ended in 2000 as a result of the sharp fluctuations in energy prices, the political instability in the producing countries (e.g. Iraq), climate change, and the rising energy demand in Asia (e.g. China) (Dannreuther, 2010, p. 114). As the Financial Times observed: "Energy security, a dead issue in the 1990s, has emerged as a pressing concern of governments and business" in the 2000s (in Young 2009, p. 1). Europe was no exception in this regard. The European Union was already among the world's largest energy importers; in 2000 it imported about 50% of its energy needs (European Commission, 2000, p. 2). Import dependence continued to grow after

the EU enlargement in 2004, when ten new member states were admitted, most of them dependent on a single energy supplier (Russia).

In the old system dominated by national champions, energy security was seen as an issue of national security guaranteed by each of the member states (Talus, 2011a, p. 34-36). Liberalisation and market integration changed this old paradigm by recognising that an internal energy market should be followed by a common energy security (Talus, 2011a, p. 34-36; European Commission, 2002b, p. 5). As a result, together with competitiveness and sustainability, the security of supply became one of the three main objectives of the EU energy policy (Talus, 2011a, p. 35).

The security of supply means that energy is available to all customers at an affordable price (European Commission, 2008b, p. 3). However, despite the modest definition, energy security is “a multi-dimensional concept” which encompasses “a large number of fears” (Talus, 2011a, p. 69). EU law defines energy security as the security of energy supply (long-term security) and technical safety (short-term security) (Article 2 of the Directive 2009/73/EC<sup>115</sup>). Long-term security concerns investments in energy infrastructure, relations with external producers and suppliers, diversification of energy sources, and the management of energy demand (through an energy efficiency policy) (European Commission, 2008b, p. 3). Short-term security focuses on short-term energy supply disruptions (European Commission, 2008b, p. 3-4).

In 2004, the first Directive 2004/67/EC on the security of supply (the SoS Directive) was adopted (Council, 2004). The Directive prescribed an obligation for member states to specify responsibilities of market players related to the energy security and to ensure the protection of household customers in the event of energy supply disruptions (Article 3 and Article 4 of the Directive 2004/67/EC). Member states were obliged to provide reports concerning the security of supplies (Article 5), while the Commission was empowered with monitoring rights concerning the issue (Article 6). Finally, a group - the Gas Coordination Group - was established to facilitate coordination between member states (Article 7).

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<sup>115</sup> European Parliament and the Council (2009a).



In 2009, the Commission proposed a new regulation to repeal the 2004 Directive (Regulation 994/2010<sup>116</sup>). Unlike the previous, the new legislation was adopted as a regulation, with the purpose of shifting more power away from member states to the EU (Talus, 2013, p. 103). The responsibility for the security of supply was defined as “a shared responsibility” between companies, member states (through their national regulators), and the Commission (Article 3 of the Regulation 994/2010). Gas companies operating in the EU market were primarily responsible for the security of gas supplies (European Commission, 2014b, p. 2). However, in the case of a market failure, member states were obliged to implement non-market measures designed to deliver gas to protected customers (European Commission, 2014b, p. 2).

The core elements of the Regulation No 994/2010 were: (1) the supply standard; (2) protected customers; (3) infrastructure standards – the N-1 rule and the reverse (bi-directional) flows at interconnection points; (4) Risk Assessment, a Preventive Action Plan and an Emergency Plan; (5) information exchange; and (6) coordination in cases of a crisis (European Commission, 2014b, p. 2). These provisions will be discussed in more detail in the next section.

In addition to the SoS Regulation, an information exchange mechanism for intergovernmental agreements (IGAs) was established in 2012 (Decision 994/2012<sup>117</sup>). The Decision prescribed an obligation for member states to submit all international energy agreements upon their ratification (*ex-post*) to the Commission for the “assessment of their compatibility” with EU law (Article 3).

## **6.2. Early positions**

The Russian-Ukrainian conflict that escalated in February 2014 had once again triggered a debate on EU energy security. On 21 March 2014, the European Council addressed the growing tensions between Ukraine and Russia. The Council backed the efforts aiming to decrease the EU import dependence, urging the Commission to propose an appropriate plan (European Council, 2014, p. 10). It was suggested that the European Union should diversify its energy supplies, increase energy efficiency, and

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<sup>116</sup> European Parliament and the Council (2010).

<sup>117</sup> European Parliament and the Council (2012).

develop necessary infrastructure (European Council, 2014, p. 10). Also, it was recommended that further actions are necessary to facilitate gas exports from the US and to advance the transparency of international energy agreements (IGAs) (European Council, 2014, p. 10). Thus in reaction to the conflict between Russia and Ukraine, heads of EU member states urged the Commission to come up with a plan on how to diversify the EU energy supplies (away from Russia).

To prepare a plan, as requested by the Council, the Commission launched a so-called “stress test exercise” to explore the possible effects of an interruption of energy supplies from Russia to the EU countries and members of the Energy Community<sup>118</sup> (European Commission, 2014e, p. 2). The test indicated that the three regions that would be most severely affected in the case of an energy crisis are the South East region, the Baltic region, and the Energy Community states (European Commission, 2014e, p. 2). The Commission then promised to continue to work on the development of appropriate and effective solutions to the problems identified by the test exercise.

In parallel, in April 2014, Donald Tusk, Poland’s then-Prime Minister, took one step further by calling for the creation of a European Energy Union (Tusk, 2014). In reaction to the “excessive dependence on Russian energy”, Donald Tusk proposed the establishment of “a single European body” that would buy Russian gas for all Europeans (The Financial Times, 21 April 2014; Tusk, 2014). His proposal also highlighted the importance of the infrastructure development, solidarity among EU states, use of domestically produced energy, and imports of shale gas from the US and LNG from Australia as effective measures in dealing with the dependence on Russian gas (Tusk, 2014).

In May 2014, the Commission adopted “European Energy Security Strategy” (European Commission, 2014d). The strategy identified areas where further actions related to energy security should be taken. Particular attention was paid to the solidarity mechanism among the member states, energy efficiency, the common external energy policy, the growth of domestic energy production, and the diversification of energy supply (European Commission, 2014d, p. 3). Regarding the diversification of gas supplies, the Commission emphasised that liquefied natural gas

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<sup>118</sup> The Energy Community contracting parties are Ukraine, Moldova, Georgia, Serbia, Bosnia and Hercegovina, Montenegro, North Macedonia, and Albania. See: <https://www.energy-community.org/aboutus/whoweare.html>. [Accessed on 07/07/2019].

(LNG) would represent a major source of diversification in future (European Commission, 2014d, p. 15). As for joint purchases of gas, the key element of Tusk's proposal, the Commission took a cautious approach by asserting that it will provide an assessment of a "voluntary demand aggregation mechanisms" (European Commission, 2014d, p. 19). Based on all these documents - the European Council recommendations, the stress test, and the strategy - the Commission formed preferences for certain policy measures that were seen as necessary for maintaining the EU security of supply. These measures will be further specified and developed by the new College of Commissioners that took office at the end of 2014.

In November 2014, the new Commission, under Jean-Claude Juncker's presidency, was elected. In his opening statement in the European Parliament plenary, Jean-Claude Juncker, mentioned, for the first time, that the EU energy policy should be reorganised into a new European Energy Union (Juncker, 2014). Even though the term "energy union" had been coined by Donald Tusk a few months earlier (Tusk, 2014), Juncker's speech in the Parliament made it clear that the creation of an Energy Union would be one of the priorities of the newly-appointed Commission. In December 2014, Donald Tusk was appointed as the President of the European Council. Thus, the two presidents – one of the Commission and another of the European Council – set the creation of an Energy Union as one of the priorities of EU policy-making. This intention was confirmed by the creation of the portfolio of the Commission's Vice-President for Energy Union in October 2014.

In his appearance before the European Parliament in October 2014, Maroš Šefčovič, Slovak candidate for Vice-President for the Energy Union, asserted that "the time for a European Energy Union has clearly come" (Šefčovič, 2014). Energy security was of particular importance for Maroš Šefčovič, due to his national background – namely, as a Central European country, Slovakia, his home country, depended on a single external supplier and was raising concerns over its energy security. In his statement in the Parliament, Šefčovič said:

"I will never forget the winter of 2009, when Slovakia was literally plunged into darkness. For over two weeks the economy was at a standstill, factories closed and energy was provided only for households and hospitals. You know very well that Slovakia was not the only country in such a situation. I am convinced that, without European solidarity and almost immediate European assistance, the

consequences would have been horrible. Therefore, it is our solemn duty to make sure that our citizens do not face such a situation again” (Šefčovič, 2014).

The winter of 2009, as Maroš Šefčovič referred to, was the one when the second Russian-Ukrainian gas<sup>119</sup> dispute took place, leading to interruptions of Russian gas supplies to certain EU states. Miguel Arias Cañete, the Spanish nominee for the Climate Action and Energy Commissioner, confirmed that energy security must be the utmost policy priority (Cañete, 2014). Therefore, all high-ranking EU officials made a commitment to creating a European Energy Union, with energy security as one of its keystones.

This commitment was confirmed in the Framework Strategy for the Energy Union adopted in February 2015. The strategy considered diversification of energy “sources, suppliers and routes” as a crucial tool for improving the security of supply (European Commission, 2015a, p. 4). LNG was seen as particularly significant in this respect. It was also emphasised that the European Union would further develop its partnerships with Norway, the United States, Canada, and Ukraine (European Commission, 2015a, p. 7). As for Russia, it was stated that “when the conditions are right, the EU will consider reframing the energy relationship with Russia” based on market competition, sustainability, and security (European Commission, 2015a, p. 7).

Furthermore, the Commission stressed the lack of cooperation between member states as an urgent issue calling for further actions in this respect. Its vision was to intensify the member states’ cooperation especially at the regional level and to create an obligatory solidarity mechanism to be enforced during a crisis (European Commission, 2015a, p. 10; Interview 6). The strategy also made it clear that an *ex-ante* assessment of international agreements’ compatibility with EU market rules is needed (European Commission, 2015a, p. 7). Similarly, ensuring transparency of commercial energy contracts was seen as an important step forward (European Commission, 2015a, p. 7; Interview 6). At the same time, the Commission was cautious about the Polish idea, raised by Donald Tusk, to create a single European body that would buy Russian gas (a collective purchasing mechanism). It promised to assess the possibility of proposing voluntary, instead of obligatory (proposed by Tusk), mechanisms for

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<sup>119</sup> The first Russian-Ukrainian gas dispute was the one that happened in January 2006 when Gazprom cut off gas deliveries to Ukraine.

collective gas purchasing in the case of an energy crisis (European Commission, 2015a, p. 6).

In sum, the establishment of a European Energy Union has been among the policy priorities of the Jean-Claude Juncker's Commission. The creation of the new portfolio of the Commission Vice-President for Energy Union in 2014 provided an additional signal that the energy domain would be the top policy priority. Security of energy supply was put in the middle of the future Energy Union, often being cited as the main rationale for its creation. The most important segments of the early positioning of the Commission were: the improvement of regional cooperation, the creation of an obligatory solidarity mechanism, *ex-ante* assessment of compatibility of international agreements with EU market rules, and diversification of energy supplies. On the other hand, the Commission did not necessarily share Donald Tusk's vision to establish a single European body that would buy Russian gas (a collective purchasing mechanism). Instead, it was decided to test this idea by asking stakeholders to provide their opinion on the issue (Interview 6).

### **6.3. Interest groups' positions**

#### ***6.3.1. SoS Regulation***

In April 2015, the Commission organised public consultations aimed at identifying the policy areas where the improvements to the SoS Regulation could be made (European Commission, 2015c, p. 2). The Commission received around 100 responses. What follows are the most important policy measure discussed during the consultations.

*N-1 standard.* The N-1 infrastructure standard was set by the Regulation 994/2010 to ensure that in the event of a disruption of the largest infrastructure (i.e. the largest pipeline and/or storage facility), the capacity of the remaining infrastructure (e.g. other pipelines) – calculated by the N-1 formula<sup>120</sup> – can satisfy gas demand in the considered area (Article 6). This rule, basically obliged member states to secure gas supply from an alternative infrastructure, if the essential infrastructure fails. Since, according to the Commission, the N-1 standard did not produce the intended outcome,

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<sup>120</sup> As defined in Annex I of the Regulation 994/2010 (European Parliament and the Council, 2010)

the Commission asked stakeholders would it be more appropriate to take “a regional approach to N-1” (European Commission, 2015c, p. 3).

While a large group of interest groups pointed that either regional or European approach to N-1 standard would be beneficial, many member states and operators of transmission systems opposed any binding commitment in this respect, arguing, instead, in favour of voluntary regional assessment<sup>121</sup> (European Commission, 2015b, p. 2; appendix VI). Similarly, it seems that Equinor (Equinor, 2015a) and Exxon (ExxonMobil, 2015a) opposed the obligatory regional approach to the N-1 standard, since, as noted by the companies, the Regulation 994/2010 already allowed for a regional approach to the N-1 rule, where appropriate. Gazprom did not participate in public consultations, but WINGAS, a subsidiary of Gazprom, took the same position as its Norwegian and American counterparts (WINGAS, 2015).

*Reverse (bi-directional) flows.* The SoS Regulation obliged gas companies to enable bi-directional (reverse) capacity flows on cross-border interconnections (Article 6 of the Regulation 994/2010). The purpose of this instrument was to allow for the redirection of energy supplies in the case of a supply disturbance from the regular direction (European Commission, 2015c, p. 4). The Regulation 994/2010 allowed for exemptions from this rule in two cases: in the case reverse capacity would not essentially improve the energy security and in the case that the investment costs in reverse flows would offset the benefits for energy security (Article 7). Since the Commission’s report had confirmed that some major interconnections between member states still lack reverse capability (due to exemptions), it asked stakeholders whether the rules on exemptions from the bi-directional flows obligation should be strengthened (European Commission, 2015c, p. 4). Stakeholders were divided on the issue. Some of them took the view that exemption procedure prescribed by the SoS Regulation should be maintained (European Commission, 2015b, p. 3). Others argued that exemptions should be granted only in a limited number of cases. Central European

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<sup>121</sup> For instance, the UK government, Spain, and the European Federation of Energy Traders supported an additional regional assessment, but only on a voluntary basis or only in specific circumstances.

countries<sup>122</sup> and Energy Community contracting parties<sup>123</sup> were among the strongest supporters of a more stringent rule on exemption from the reverse flows obligation.

Naftogaz, the Ukrainian gas company, also backed this proposal. When the Russian-Ukrainian crisis escalated and Naftogaz suspended gas import from Russia, the company started buying gas from EU member states (e.g. Slovakia and Hungary) through bi-directional (reverse) flows on cross-border interconnections (Naftogaz, 2015b). While gas was still flowing from Russia (gas that Gazprom had already sold to European companies), by using bi-directional flows, the EU companies were able to re-sell that gas to Naftogaz (Buckley, 2018). Hence, Naftogaz saw reverse flows as the fastest way to decrease Ukraine's dependence on Russian gas and as a necessary step in the process of an integration of the Ukrainian and EU energy markets (Naftogaz, 2015a; Naftogaz, 2015b).

In contrast, Equinor, Exxon, and WINGAS (Gazprom), together with some EU industry representatives (e.g. GFD Suez (France) and E.ON (Germany)), argued that the exemption procedure prescribed by the SoS Regulation should be maintained. For Equinor it was important to prevent the establishment of reverse flows on every point, not only because of investment costs but also because that would create a competitive disadvantage to gas in comparison to other energy sources (Interview 5). Exxon took the view that the existing SoS Regulation does not provide any sort of limitation for cost-benefit analysis on a case-by-case basis and that, therefore, it should remain (ExxonMobil, 2015a).

*The “supply standard” for protected customers.* The supply standard was set up to ensure uninterrupted gas supplies to protected customers in the case of a crisis (e.g. extreme cold) (Article 8 of the Regulation 994/2010). The Regulation, however, did not prescribe how the supply standard should be fulfilled; instead, the choice was left to member states (European Commission, 2015c, p. 6). Measures to implement the standard, thus, varied from “invisible hand” of market (e.g. the UK) to penalties and strategic stocks (France) (European Commission, 2015c, p. 7). Since a variety of

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<sup>122</sup> See for instance, a position paper submitted by the Central Europe Energy Partners (CEEP), an association representing industrial energy users in Central Europe (CEEP, 2015).

<sup>123</sup> The Energy Community contracting parties are Ukraine, Moldova, Georgia, Serbia, Bosnia and Herzegovina, Montenegro, North Macedonia, and Albania. See: <https://www.energy-community.org/aboutus/whoweare.html>.

different measures has been applied across member states, the Commission asked stakeholders whether the supply standard should become “more prescriptive” in terms of implementation (European Commission, 2015c, p. 8). The vast majority of stakeholders, including Equinor, Exxon, and WINGAS (Gazprom), backed the implementation on the supply standard which is “flexible” rather than “prescriptive”, thus rejecting “one size fits all” approach (European Commission, 2015b, p. 3).

In addition, the Commission asked stakeholders to consider several policy measures which member states could use to protect customers in case of a crisis, such as common (regional or European) energy stocks or the joint purchasing of gas (proposed by Donald Tusk) (European Commission, 2015c, p. 12). A majority of participants, including Equinor, Exxon, and WINGAS (Gazprom), took the view that such measures should be implemented only voluntarily. Energy Community Secretariat together with some Central and Eastern countries (e.g. Poland), on the other hand, provided support for such measures.

*Preventive, Risk Assessment, and Emergency Plans (plans).* Regulation 994/2010 obliged each member state to prepare three separate documents: Risk assessment, Preventive plan (to identify preventive measures), and Emergency plan (to identify measures necessary to mitigate the negative impact of an energy crisis) (Articles 4, 5 and 9). Since the plans provided by member states had been heterogeneous which made cooperation between the states difficult, the Commission considered different measures in order to harmonise the member states’ plans (European Commission, 2015c, p. 5). Commission’s view was that joint plans on regional level should be strongly encouraged (European Commission, 2014b, p. 13). While the majority of stakeholders provided support for future regional cooperation, they were divided over the question whether regional plans should be voluntary or mandatory (European Commission, 2015b, p. 8). The Western European states opposed the idea of creating fixed regions that would cooperate on energy security issues; Eastern European countries mostly argued in favour of regional cooperation (Interview 6). Equinor, ExxonMobil, and WINGAS (Gazprom) did not back the regional plans, unlike the Energy Community Secretariat (Energy Community Secretariat, 2015) and Naftogaz (Naftogaz, 2015a).



*Transparency of commercial agreements.* Regulation 994/2010 obliged member states and companies to provide to national regulators and the Commission certain information about their long-term contracts with external suppliers (in aggregate form) (Article 13). During the consultation the Commission proposed an increase in the scope of information that shall be provided to the Commission prior to and during an emergency situation (European Commission, 2015c, p. 19). The majority of stakeholders, including Equinor and Exxon, argued against the proposal. Exxon took the view that the transparency obligations which already exist under the SoS Regulation should not be changed (ExxonMobil, 2015, p. 15). Equinor's position was fully in line with the Exxon's. The company warned against excessive reporting duties as the existing information requirements were already imposing major administrative burden on the gas players (Equinor, 2015a). Still, if an increase in the transparency of commercial agreements was inevitable, Equinor suggested that it prefers that companies share contractual information with the national regulators rather than with the Commission (Interview 5). Naftogaz supported the position that the transparency of commercial agreements should be advanced (in Badida, 2015). WINGAS did not comment on the issue.

*Protected customers.* Regulation 994/2010 obliged companies to ensure uninterrupted energy supplies to protected customers during a crisis (Article 8). States had discretion to define "protected customers" within their territory, but, as a minimum, the Regulation 994/2010 prescribed that all household customers must be included (Article 2). In addition, member states could include other consumers such as small enterprises (Article 2). Since consumers identified as protected customers differed among member states, the Commission asked stakeholders whether a harmonized definition of protected costumers across Europe would be more appropriate (European Commission, 2015c, p. 15). Majority of stakeholders agreed to harmonisation (European Commission, 2015b, p. 7), including WINGAS (Gazprom). Equinor, and Exxon, and the Energy Community Secretariat took the position that there was no need for harmonization because, it was suggested, the current definition provides the sufficient level of protection.

*Solidarity mechanism.* During the consultation, the Commission also asked stakeholders if they saw merits in introducing the solidarity mechanism ether in the form of a multilateral agreement over measures aiming to protect consumers or in the

form of “a prohibition for member states to close their borders (...) in case protected customers on the other side of the border are still at risk” (European Commission, 2015c, p. 16). A number of stakeholders, including Exxon and Equinor, opposed additional solidarity mechanism, because, as argued by the companies, the SoS Regulation already had prohibited restrictions on gas flow within the EU (ExxonMobil, 2015a; Equinor, 2015a). Hence, it was believed that further changes were not needed. Energy Community, on the other hand, argued in favour of the second option. WINGAS took the position that, to deal with a potential regional crisis, the member states should have a clear guideline on “how to deal with cross-border flows” (WINGAS, 2015).

Overall, Central and Eastern European member states, together with the Energy Community contracting parties, provided the strongest support for the proposed measures. As for the foreign companies, Equinor, Exxon, and Gazprom mostly opposed the changes put forward by the Commission. In contracts, Naftogaz’s position was in line with the Commission’s preferences. This is not surprising since most of the provisions that were discussed during public consultations had concerned primarily countries that were heavily dependent on Russian gas – the Central and Eastern European countries, including Ukraine.

### **6.3.2. Decision on intergovernmental agreements (IGAs)**

Another important dimension of the debate on the energy security concerned an “information exchange mechanism” for intergovernmental agreements (IGAs) laid down in 2012 when the Decision 994/2012 was adopted (European Parliament and the Council, 2012). The Decision prescribed an obligation for member states to submit all existing IGAs upon their ratification (*ex-post*) to the Commission for the assessment of compatibility of these IGAs with EU law (Article 3 of the Decision 994/2012).

However, following its experience in the implementation of the information exchange mechanism, the Commission came up with the conclusion that the value of *ex-post* compatibility verification has been limited (European Commission, 2015e, p. 1). Amending already finalised IGAs is extremely difficult if not impossible. Hence, the Commission initiated a revision process for Decision 994/2012, asking for the right to assess IGAs’ compatibility with EU law *ex-ante* (European Commission, 2015e, p.

3). In addition, the Commission asked interest groups to provide opinions about the possibility to introduce “mandatory assistance” from the Commission when member states negotiate IGAs with third countries (European Commission, 2015e, p. 4).

The Commission received around 20 responses from stakeholders<sup>124</sup>. Almost all the industry representatives that took part in the consultation, except for PGNiG (Polish oil and gas company) and Enagas (Spanish energy company), argued against mandatory *ex-ante* assessments and mandatory assistance from the Commission. Lithuania and Poland argued in favour of both mandatory *ex-ante* assessments and mandatory assistance from the Commission. Austria’s National Regulatory Authority and Estonia supported mandatory *ex-ante* assessments but opposed mandatory assistance from the Commission. Other states that took part in the consultation - France, the Czech Republic, Germany, Hungary, Malta, and Cyprus - opposed the two proposed measures. Many Gazprom’s representatives believed that the proposed provisions were not in line with the company’s interests (Interview 2). Equinor’s position was that the Commission already had the opportunity to check IGAs and to intervene in cases where IGAs are non-compliant with EU law (Interview 5). Therefore, a new law on “information exchange mechanism” was not seen as a necessary step forward.

### ***6.3.3 Strategy on LNG and gas storage***

Finally, in July 2015, the Commission held the public consultation on an EU strategy for liquefied natural gas (LNG) (European Commission, 2015g). Approximately 150 responses were received. As already mentioned, the Energy Security Strategy adopted in 2014 sought LNG as a main source of diversification in future (European Commission, 2014d, p. 15). The strategy emphasised that new LNG supplies from the US, Australia, Canada, and Qatar would be promising in that respect (European Commission, 2014d, p. 15). However, the problem identified by the Commission was that certain regions within the EU have limited access to LNG (e.g. Central-Eastern Europe) (European Commission, 2015g, p. 3). Hence, the Commission asked

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<sup>124</sup> Available at: [https://ec.europa.eu/energy/consultations/consultation-review-intergovernmental-agreements-decision\\_en](https://ec.europa.eu/energy/consultations/consultation-review-intergovernmental-agreements-decision_en). [Accessed on 01/07/2019].

stakeholders for their views on challenges and opportunities they saw for LNG in Europe as a whole and in different regions in the EU.

The Commission's intention to use LNG as a source of diversification was welcomed by Equinor, Exxon, and Naftogaz. Equinor agreed with the Commission that LNG played a role in the diversification of the energy supply, but also noted that LNG was "a means of transportation for natural gas and it is not a separate product in itself" (Equinor, 2015b, p. 2). The company opposed any further legislation in regards to LNG. Instead, it took the view that since certain parts of Europe (e.g. Central-Eastern Europe) have limited access to LNG, the Commission should try to solve this problem there instead of to impose a "one size fits all" approach (Interview 5).

ExxonMobil has been involved in LNG industry through the ownership in LNG regasification capacity at the South Hook Terminal in the UK and the Adriatic LNG Terminal in Italy (ExxonMobil, 2015b, p. 1). The company repeated the position of its Norwegian counterpart that LNG is a method of gas transportation, but added that "LNG's logistical flexibility" might contribute the EU security of supplies (ExxonMobil, 2015b, p. 3). Arguing that free trade represents the most efficient way of ensuring LNG supplies to Europe, Exxon suggested that the EU engages with the US to accelerate the export of LNG to Europe (ExxonMobil, 2015b, p. 5). Similar to Equinor, Exxon opposed the regional approach to LNG supplies.

Naftogaz, on the other hand, welcomed the regional markets integration (Naftogaz, 2015, p. 1). The company saw LNG as a potential solution to Ukrainian dependence on Russian gas transported through pipelines. Gazprom, on the other hand, did not see a considerable potential of LNG in the years to come (Miller, 2015). Besides, the main strategical goal of the considered strategy on LNG was to diversify energy sources away from Russian gas. Hence, Gazprom has not been among the supporters of an LNG strategy.

Finally, Trafigura, a trading company registered in Singapore, was very active during the preparation of the LNG strategy. The company welcomed the Commission's intention to support LNG imports in vulnerable European regions, those heavily dependent on a single supplier (Russia), and suggested the use of specialised vessels, Floating Storage and Regasification Units (FSRUs), as an alternative to the construction of regasification terminals on land (Trafigura, 2015, p.

4). South Hook Gas, a LNG import company owned by Qatar Petroleum (67%), Exxon (24%), and Total (8%) also backed the Commission's intention to facilitate LNG import to Europe (South Hook Gas, 2015).

#### **6.4. Non-EU interest groups' lobbying activities**

In addition to the above mentioned public consultations, the Commission repeatedly solicited input from stakeholders throughout the multilateral and bilateral meetings. To this end, the Commission had eight meetings with the Gas Coordination Group and two meetings with the Madrid Forum to discuss energy security. As mentioned earlier, the Gas Coordination Group was created in 2004 to advise the Commission and to enable the coordination among EU states in the event of a gas supply crisis<sup>125</sup>. As a reminder, the Madrid Forum (Gas Regulatory Forum) was set up as an advisory forum to discuss issues related to the gas market<sup>126</sup>. The participants of both groups include member states' representatives, the Commission, the gas industry and consumers. The industry representatives that took part in the consultations related to the energy security within the Gas Coordination Group and Madrid Forum were mostly the biggest business associations in the EU energy sector such as: Eurogas, the International Association of Oil and Gas Producers (IOGP), the European Federation of Energy Traders (EFET), Gas Infrastructure Europe (GIE), and the European Network of Transmission System Operators for Gas (ENTSOG). Through membership in these associations, foreign companies under consideration gained access to the Gas Coordination Group and the Madrid Forum meetings (table 11).

Unlike Gazprom and Naftogaz, Exxon and Equinor have had representatives on the governing boards of some of these associations, which has given them more leverage over decisions made by these groups. Thus for example, the IOGP's position paper on the revision of the SoS Regulation was almost identical to Exxon's position paper. Similarly, Equinor did not send a position paper on the Decision on IGAs because the company worked with business associations such as Eurogas and IOGP, whose

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<sup>125</sup> See the Gas Coordination Group: <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=1096&NewSearch=1&NewSearch=1>. [Accessed on 07/07/2019].

<sup>126</sup> See the Madrid Forum: [https://ec.europa.eu/info/events/32nd-madrid-forum-2019-jun-05\\_en](https://ec.europa.eu/info/events/32nd-madrid-forum-2019-jun-05_en). [Accessed on 07/07/2019].

position papers reflected Equinor’s preferences (Interview 5). Naftogaz and Ukrainian public officials were invited to take part in the meetings organized by the Gas Coordination Group<sup>127</sup> because of the Russian-Ukrainian crisis. Energy Community, (Ukraine is one of the contracting parties) has been a member of the Gas Coordination Group. Naftogaz has been relying on the support of the Energy Community during the discussions on EU energy security (Naftogaz, 2015a). Gazprom, on the other hand, had tried to get an invitation to the Madrid Forum on several occasions. The company, however, had not been successful (Interview 2). In addition, as part of the strategy for the European Energy Union, the Commission established an advisory group – Energy Infrastructure Forum – for the discussion about EU energy policy.<sup>128</sup> Exxon was one of the participants. Equinor has been represented through Norwegian Ministry of Petroleum and Energy.

**Table 11.** Interest groups’ membership in EU associations in 2014.

<b>Association</b>	<b>Description</b>	<b>Membership</b>	<b>Board</b>
<b>Eurogas</b>	Represents European gas sellers and distributors.	Equinor Gazprom Naftogaz	Equinor
<b>International Association of Oil and Gas Producers (IOGP)</b>	Represents global energy producers.	Equinor Exxon	Equinor Exxon
<b>European Energy Forum (EEF)</b>	Association which gathers MEPs and industry representatives to discuss EU energy-related legislation.	Equinor Exxon Naftogaz	
<b>European Federation of Energy Traders (EFET)</b>	Represents energy traders.	Equinor Gazprom Naftogaz Exxon	
<b>Gas Infrastructure Europe (GIE)</b>	Represents the gas infrastructure industry.	Equinor Gazprom Adriatic LNG	Adriatic LNG (Exxon)

Source: Websites of the associations.

Overall, Equinor was a member of 5, Exxon of 4, and Gazprom and Naftogaz of 3 associations. Unlike Gazprom and Naftogaz, Exxon and Equinor have had

<sup>127</sup> See for instance, Naftogaz (2014).

<sup>128</sup> See the Energy Infrastructure Forum: <http://www.energy-infrastructure-forum.com/index.html>. [Accessed on 07/07/2019].

representatives on the governing boards in some of these associations. Besides, Naftogaz and Ukrainian public officials participated in meetings organised by the Gas Coordination groups. Exxon and Equinor had their representatives in the Energy Infrastructure Forum. Gazprom, on the other hand, was unsuccessful in getting an invitation to the Madrid Forum.

Besides taking part in expert and advisory groups through membership in the industry associations, the foreign companies met the Commission officials on various occasions. Table 12 below provides an overview of the foreign companies' bilateral meetings with Miguel Arias Cañete, Maroš Šefčovič, and members of their cabinets in the period between December 2014 and February 2016, when the Commission's proposal was adopted. The third column includes only meetings when the Energy Union and/or energy security was mentioned as the topic of a meeting; plus, meetings when a specific subject of a meeting have not been stated. The forth column includes all meetings held during the observed period (December 2014 - February 2016).

**Table 12.** Non-EU stakeholders' meetings with Miguel Arias Cañete, Maroš Šefčovič, and members of their cabinets (December 2014 - February 2016).

<b>Company/Association</b>	<b>Country</b>	<b>Number of meetings (Energy Union; energy security; no subject)</b>	<b>Overall number of meetings</b>
<b>Equinor</b>	Norway	14	25
<b>Naftogaz</b>	Ukraine	5	5
<b>Trafigura</b>	Singapore	4	6
<b>Exxon</b>	The US	4	12
<b>Gazprom</b>	Russia	3	3

Source: Transparency Register.

The table above clearly indicates that overall Equinor and Exxon had better access to the Commission than the other observed companies. As for meetings covering energy union and/or security topics, Equinor and Naftogaz had better access than the other observed companies (Gazprom, Trafigura, and Exxon).

Besides having meetings with the Commissioners and the members of their cabinets, the companies also had meetings with other Commission's officials. Already, at the beginning of 2015, the EU took the position that "particular attention

will be paid to upgrading the Strategic Partnership on energy with Ukraine”, to address the significance of Ukraine as a transit country (European Commission, 2015a, p. 7). In 2013, around 50% of Russian gas to the EU was passing through Ukrainian territory (The Guardian, 07 March 2014). Many of the issues that were discussed during the preparation of the legislation on energy security were triggered by the Russian-Ukrainian conflicts in 2014 and the gas dispute in 2009. Hence, Naftogaz cooperated regularly with the Commission (Interview 6). They also cooperated through the Energy Community - Ukraine is one of the contracting parties, together with Moldova, Georgia, and the Western Balkans countries.

Similarly, in 2015, the EU announced that it would deepen its partnership with Norway and the United States on energy-related issues (European Commission, 2015a, p. 7). The US primarily wanted to expand the business for US LNG (Interview 6). As mentioned, in its position paper, Exxon suggested the EU to take steps to accelerate the exporting of US LNG to Europe. Equinor also enjoyed good cooperation with the Commission on issues that were seen as the most relevant for the company (Interview 5).

Gazprom’s position was different. Following the start of the Ukrainian crisis, Gazprom’s communication with the EU decision-makers was strained, especially during 2014 and 2015 (Interview 2). Although the Commission was open to everyone’s views on the proposed changes (Interview 6), Gazprom’s poor reputation among some officials in Europe hampered its lobbying activities (Interview 2). To add to this, in 2015, the Commission sent a “statement of objections” to the company, for alleged abuse of the company’s dominant position in Europe (European Commission, 2015f). In addition, many EU officials saw Gazprom’s Nord Stream 2 pipeline project as a threat to the EU energy security, in sense that the project could jeopardize the EU intention to diversify its energy supplies (European Commission, 2017b). Given all these events - the Russian-Ukrainian conflict, the antitrust investigation, and the Nord Stream 2 project - a sense was created that “talking to Russians is dangerous” (Interview 2).

Therefore, although Gazprom did not welcome the Commission’s proposal, it was hard for the company to make a good case against it. Instead of lobbying openly against the Energy Security Package, the company’s strategy was to persuade



decision-makers that Gazprom was a reliable supplier and that there was no need for the EU to worry about energy security.

“(…) Even though Gazprom would prefer not to have it [the Energy Security Package], they would not go as far as arguing openly against it because they would not have good arguments. They would rather say, ‘we are a very good supplier, we are reliable, we have a lot of cheap gas, so buy it from us’” (Interview 6).

## **6.5. The Commission’s proposal**

In February 2016, the Commission presented the Energy Security Package containing the following proposals: (1) Revision of the SoS Regulation; (2) Revision of the Decision on IGAs; and (3) a non-legislative EU strategy for LNG and gas storage (European Commission, 2016b).

### ***6.5.1. SoS Regulation***

In February 2016, the Commission adopted the Proposal for the new SoS Regulation (European Commission, 2016c). As mentioned, from the beginning, the Commission’s vision was to improve the intensity of regional cooperation, to create an obligatory solidarity mechanism to be enforced during crisis situations, and to introduce additional transparency measures concerning gas supply contracts (Interview 6). The proposed changes reflected the Commission’s prior position. Firstly, the Commission introduced an obligation for member states to prepare regional, instead of national, preventive, emergency, and risk assessment plans (European Commission, 2016c, p. 9). The proposal defined several regions within the EU that were supposed to prepare the regional plans. Secondly, the Commission introduced the obligatory solidarity mechanism: non-protected customers could not continue receiving energy supplies in a member state as long as the needs of the protected customers for energy supply in a neighbour state have not been satisfied (European Commission, 2016c, p. 12). The main idea behind the solidarity mechanism was to ensure that protected customers, wherever they were in Europe, were given priority during a crisis (Wilson, 2017, p. 3).

Thirdly, the proposal contained a “limited increase” in the scope of information to be shared with the Commission (European Commission, 2016c, p. 10). In addition, national regulators were empowered with the right to ask companies for additional contractual information, in the case of a crises (European Commission, 2016c, p. 10). The transparency of contracts also included an obligation for companies to notify the Commission, and their national authorities, about any long-term supply contracts which accounted for more than 40 % of gas consumption in a member state (European Commission, 2016c, p. 11).

In addition, the N-1 standard was modified: N-1 calculation had to be complemented with “a national hydraulic calculation and EU-wide simulations” (European Commission, 2016c, p. 10). Rules on exemption from the reverse flows obligation were strengthened - all decisions on exemptions would have to be jointly approved by states at each side of an interconnection point, after consulting other eligible states, the Commission, and the Agency for the Cooperation of Energy Regulators (European Commission, 2016c, p. 10). As for the supply standard, no change was introduced. Similarly, the definition of protected customers was maintained – a harmonised definition at the EU level was not introduced.

### ***6.5.2. Decision on IGAs***

As a part of the Energy Security Package, in February 2016, the Commission also proposed a revision of the Decision on IGAs (European Commission, 2016d). The proposal introduced a mandatory *ex-ante* compatibility assessment of IGAs by the Commission (European Commission, 2016d, p. 7). Member states, on their part, were obliged to inform the Commission of their intentions to enter into negotiations with non-EU countries, to share drafts of their IGAs with the Commission and to refrain from concluding these IGAs until the Commission provides the assessment of their compatibility with EU law (European Commission, 2016d, p. 7-8). The Commission, however, did not propose its mandatory assistance in the negotiation of IGAs.

### ***6.5.3. EU strategy for liquefied natural gas (LNG) and gas storage***

The strategy for LNG, was a third document adopted in February 2016 (European Commission, 2016e). The main feature of this strategy was to explore how LNG can be deployed in order “to make the EU gas system more diverse and flexible” and thus improve its security (European Commission, 2016e, p. 2). Hence, it was confirmed that LNG might be a significant source of gas diversification in the EU: a position preferred by Naftogaz.

Furthermore, the strategy encouraged regions dependent on gas transported through pipelines (e.g. Eastern Europe and the Baltic states) to accelerate the development of the needed LNG infrastructure (European Commission, 2016e, p. 2). The establishment of floating storage and regasification units (FSRUs) was seen as a possible solution here (European Commission, 2016e, p. 4), as preferred by Trafigura, the trading company from Singapore.

In addition to having LNG infrastructure, the Commission stressed, liquid gas markets were also necessary to attract LNG suppliers from third countries (European Commission, 2016e, p. 7). This point was made by many gas companies during the public consultations, including Exxon and Equinor. Finally, the strategy emphasised cooperation on LNG with third countries, especially Australia, Algeria, the US, and Canada (European Commission, 2016e, p. 11).

## **6.6. Lobbying success of non-EU interest groups**

As the table below shows, almost none of the Gazprom’s or the Exxon’s preferences were reflected in the Commission’s proposal. Although opposing most of the proposed changes, Equinor was more open to negotiation on certain aspects of the future regulations (Interview 5). The company, thus, managed to be a moderating voice on reverse flows, the transparency of contractual information, and the supply standard (Interview 5). In respect of reverse flows, it was important to escape gold-plating, i.e. the introduction of reverse flows on every interconnection point. Furthermore, increased transparency was seen as a huge administrative burden on companies; however, if contractual information had to be shared, Equinor preferred to share this information with a national authority, rather than with the Commission. Finally, in

terms of what measures introduced to meet the supply standard should be applied in crisis situations (market or non-market), Equinor argued that such measures should be market-based for as long as possible, and that the supply standard should not be changed. Naftogaz’s preferences were mostly in line with the Commission’s proposals.

**Table 13.** Comparison of estimated degree of success of the analysed non-EU groups.

The Commission’s proposals	Gazprom	Equinor	Exxon	Naftogaz
Reinforced rules on the N-1 infrastructure standard.	x	x	x	N/A
Reinforced rules on exemption from the reverse flows obligation.	x	x	x	✓
Regional preventive, emergency, and risk assessment plans (mandatory).	x	x	x	✓
Increased transparency of commercial contracts with non-EU actors.	N/A	x	x	✓
National authorities empowered with the right to ask for additional information.	N/A	✓	x	N/A
Joint purchasing mechanism (on a voluntary basis only).	✓	✓	✓	N/A
No change to the supply standard.	✓	✓	✓	N/A
No change to the definition of protected customers.	x	✓	✓	N/A
A new solidarity principle.	✓x	✓x	✓x	✓
Ex-ante assessment of IGAs.	x	x	N/A	N/A
LNG Strategy	x	✓	✓	✓

✓ - support; x – oppose; ✓x – partly support; N/A – no position.

### **6.6.1. Commission’s preferences on the discussed issues**

As mentioned earlier, Jean-Claude Juncker and Donald Tusk had an idea to create an energy union even before they were elected to the position of President of the European Commission and the European Council, respectively. This intention was confirmed by the creation of the portfolio of the Commission’s Vice-President for Energy Union in October 2014. The first pillar of the Energy Union was the security of supply (Interview 6).

From the outset, the Commission had a strong vision to improve regional cooperation within the EU, to create an obligatory solidarity mechanism to, and to improve the transparency of both intergovernmental agreements and commercial agreements regarding gas supplies (Interview 6). In addition, the Commission saw LNG as a major source of gas diversification, a Commission's policy priority (European Commission, 2015a). These priorities were defined in the Energy Union Strategy that was adopted in February 2015, before the Commission held consultations with stakeholders.

The Commission's preferences for these provision had been based on the its report assessing implementation of the 2010 SoS Regulation in 2014, the stress test conducted the same year (European Commission, 2016c, p. 4-5), and the Commission's "significant experience" in the implementation of *ex-post* compatibility assessment of IGAs (European Commission, 2016d, p. 2). Therefore, by monitoring the implementation of existing legislation, collecting data through the stress test, and by gaining experience with the assessment of IGAs, the Commission has developed a kind of "institutional expertise" on energy security which has shaped its preferences, regardless of interest groups' input. During the preparation of the Energy Security Package, considerable and important feedback was provided by stakeholders (Interview 6). For instance, interest groups suggested some specific provisions to be added to the solidarity mechanism, such as a fair and prompt compensation for maintaining the energy security (Interview 6). Nevertheless, while managing to alter certain details of the proposal, the Commission did not substantially moderate its early preferences.

Even though the majority of stakeholders argued against increased transparency of gas contracts, both commercial and intergovernmental, the Commission decided to propose measures to improve information sharing on gas agreements. Similarly, while many industry and member states representatives opposed the idea of mandatory regional cooperation on energy security issues, the Commission introduced an obligation for member states to prepare regional, instead of national, preventive, emergency, and risk assessment plans (i.e. mandatory regional cooperation).

In general, the analysis indicates that the strong prior position of the Commission on better regional cooperation, the obligatory solidarity mechanism, and transparency

limited the possibility for stakeholders to modify their positions on these issues. The policy measures, that were not favoured by the Commission since the beginning (for example, a joint purchasing mechanism proposed by Donald Tusk), on the other hand, eventually did not appear in the Commission's final proposal.

In doing so, the Commission aligned with some like-minded Eastern European countries and with the Energy Community contracting parties. Most of the provisions of the Energy Security Package aimed to address concerns related to energy security in the above countries, which were dependent on Russian gas. The Energy Community contracting parties, of which Ukraine is a member, had regular communication with the Commission (Interview 6). Also, they were a member of the Gas Coordination Group. The Commission extended the application of the SoS Regulation to the Energy Community (EC) contracting parties (including Ukraine) (European Commission, 2016c, p. 12).

#### ***6.6.2. Commission's position on the interest groups***

In the analysed cases, Gazprom represented an outsider, whereas Equinor, Exxon, and Naftogaz made good examples of an insider. Firstly, as mentioned, Gazprom's (Russia's) actions triggered the debate on the security of supply in the first place due to the escalation of the Russian-Ukrainian conflict in 2014. In addition, antitrust investigations against Gazprom, together with a fear that the Nord Stream 2 project could put at the risk EU's intentions to diversify its energy supplies, challenged the company's reputation of being a reliable supplier. In such a situation, it was hard for Gazprom to lobby against the proposed measures and provide useful information.

“(...) and of course a monopolist has an interest to maintain the dependency, so, in principle, they dislike diversification because then they [monopolists] have to accept that a lower price is paid. No serious argument was made by Gazprom to say, in such a blunt manner ‘we want to keep our monopoly in order to exploit you’, they would not say that (...) They did not go as far as arguing that. What they brought forward was that Russia is a reliable supplier in principle... and in principle, we would even agree with that. But what we have observed, and what they cannot deny, is that they had issues with Ukraine (...)” (Interview 6).

Besides, almost all EU documents related to energy security that were mentioned earlier cited dependence on Russian gas as an issue demanding a united European response, either with respect to the possible risk of a disruptions in supplies to the EU or in diversifying energy sources and reducing import dependence on Russian gas. Problems associated with its country of origin that were recognized by decision-makers in Brussels did not prove to be helpful for Gazprom’s lobbying efforts. The company was seen as part of the problem, rather than part of a solution.

In contrast, all documents adopted by the Commission since 2014 stressed the significance of the EU’s partnerships with Norway, the United States, and Ukraine. Even more, already at the beginning of 2015, the EU took the position that “particular attention will be paid to upgrading the Strategic Partnership on energy with Ukraine”, to address the significance of Ukraine as a transit country (European Commission, 2015a, p. 7). LNG coming from the US was also seen as an important energy source contributing to EU energy security (European Commission, 2015a). The US was also seen as an important energy partner because “the EU and the USA share a common approach on the need to promote open, transparent, competitive, and sustainable global energy markets”<sup>129</sup>. For similar reasons, and as a member of the European Economic Area (EEA), Norway has been considered “a key energy partner for the EU.”<sup>130</sup> The fact that the EU accelerated cooperation with Naftogaz’s, Equinor’s and Exxon’s countries of origin strengthened these companies’ positions when lobbying for their interests within the EU.

Furthermore, despite its opposition to most of the proposed measures, Equinor, together with some other stakeholders, acted as a moderating voice for certain aspects of the adopted legislation (Interview 5). The company was very open to search for a best solution to problems related to energy security. Equinor’s position was well received because of its reputation as “a good student in the classroom” who from the beginning had been supporting EU energy market integration (Interview 5).

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<sup>129</sup> Available at the European Commission’s website: <https://ec.europa.eu/energy/en/topics/international-cooperation/eu-cooperation-other-countries/united-states-america>. [Accessed on 07/07/2019].

<sup>130</sup> Available at the European Commission’s website: <https://ec.europa.eu/energy/en/topics/international-cooperation/eu-cooperation-other-countries/norway>. [Accessed on 07/07/2019].

Naftogaz had a different path to acquiring the status of an insider compared to its counterparts such as Equinor. While Equinor had enjoyed a long-term relationship with the Commission, Naftogaz's relations began to develop intensively only after the emergency of the Russian-Ukrainian conflict, after which Naftogaz opened an office in Brussels, in 2015. The Russian-Ukrainian conflict put Naftogaz at the centre of the EU decision-making on energy security. Owing to the Ukraine's significance for transportation of Russian gas, Naftogaz was strategically important for the EU energy objectives.

Overall, due to its reputation of being "a good student in the classroom" and the EU-Norway special relations, Equinor, together with some other stakeholders, did manage to moderate some of the Commission's preferences. Naftogaz's insider status was based on different grounds – the company derived its status from the significance of its country of origin and its relations with Gazprom related to energy security of the EU. Gazprom, on the other hand, was not able to make a good case against any proposed measures due to the Ukrainian crisis. Instead, the company was "bubbling" in trying to persuade the policy-makers that Russia was a reliable energy supplier. Still, even insiders, such as Equinor, did not manage to alter to a considerable extent some of the Commission's prior positions. Nevertheless, as shown earlier, Naftogaz, Equinor, and Exxon, enjoyed better access to the Commission than Gazprom in terms of both, bilateral meetings and meetings organised through the Commission's consultancy groups.

## **6.7. Conclusion**

The case study indicates that the Commission's initial preferences influence interest groups' prospects of lobbying successfully. Specifically, when the Commission has strong initial preferences, it is hard for non-EU interest groups to alter its position. Throughout the observed period, the Commission was driven by its policy priority - to improve the security of supply - and has consequently favoured those measures that were seen as necessary for the achievement of this predefined priority: fostering better regional cooperation, introducing obligatory solidarity, and enabling better information sharing on contracts. Interest groups did not manage to change substantially these Commission's initial views.



The case also finds support for the assumption that, in order shift a debate towards its preferable position, the Commission might resort to organising a network of allies. The Commission has regular and well-established contacts with the Eastern European countries and the Energy Community contracting parties, which constituted a strong block backing a Commission's intention to adopt measures that it prefers.

The findings also indicate that the insiders - Equinor, Naftogaz, and Exxon – tend to be more successful than the outsiders, namely - Gazprom. At the outset of the debate on the European energy security, the Commission already established - with Norway, the US, and Ukraine - its objective to improve cooperation on energy issues. It was explicitly stated that the EU should increase LNG volumes imported from the US. Another set priority was the integration of the Ukrainian energy market with the EU energy market. On the other hand, Gazprom's lobbying efforts were aggravated by its poor reputation among EU officials. Additionally, due to the Ukrainian crisis, Gazprom could not make a strong case against any proposed measure. It was, instead, "bubbling" making efforts to persuade the policy-makers that Russia has been a reliable energy supplier. The case provides support the assumption that insiders have better access to the Commission than outsiders. Naftogaz, Equinor, and Exxon, had better access to the Commission than Gazprom in terms of both, bilateral meetings and meetings organised through the Commission's consultancy groups.

## **Chapter 7: Comparative Analysis**

This chapter proceeds to a comparative analysis of findings obtained in the four case studies conducted above. The first section compares the Commission's early preferences across the analysed cases and whether the extent to which the involved interest groups achieved their lobbying goals was a function of these preferences. Then a cross-case comparison is undertaken, with a focus on how the Commission's views on those lobbyists, and their status in Brussels, correlate with their (lack of) lobbying success in the observed cases. The main conclusion is that, when the Commission did not have strong initial preferences on the issues under consideration, the insiders were more successful than the outsiders. However, when the Commission had strong early preferences, both – the insiders and outsiders – could not significantly change the resultant policy proposal in line with their lobbying goals.

### **7.1. The Commission's early preferences on the considered issues**

The empirical findings obtained through the analysis of the four case studies suggest that in some cases the Commission has strong early preferences concerning both the policy outcomes and measures that lead to those outcomes. These initial Commission's preferences may be grounded in institutional expertise, predefined policy priorities, and previous experience, knowledge, or portfolio of individual Commissioners.

The fourth case study – on energy security - and the amendments to the Third Energy Package (analysed as part of the second case study), indicate that when it is led by its policy priorities, the Commission will favour measures that are seen as necessary for the achievement of those priorities. In these cases, the Commission's ambition to improve energy security (the fourth case study) and to extend the applicability of the Third Energy Package to import pipelines (the second case study) was expressed even before the Commission led by Jean-Claude Juncker was elected. The fourth case study also suggests that the Commission's preferences might be based on its institutional expertise, regardless of expertise provided by interest groups.

Commissioners in charge of a proposal, also might have initial preferences based on their previous knowledge, beliefs, personal or their countries' experience. Thus Neelie Kroes, Commissioner for Competition had the strong preferences for ownership unbundling because of her country's positive experience (the first case study). Connie Hedegaard was cautious about biofuels because of her previous experience on climate policies in Denmark, her home country (the third case study). Maroš Šefčovič, Commission Vice-President, prioritised energy security and his national background – Slovakian – played a big role here. Being in Central Europe, his home country depended on a single external supplier which led it to raise concerns over its energy security (the fourth case study).

The Commissioners' portfolio was also important in this respect. Unlike the Energy Commissioner seeking to find a balance between the different aims of the EU energy policy – competitiveness, sustainability, and security – the Commissioners in charge of environmental issues and climate action have more narrowly defined duties – they are primarily responsible for the environmental aspects of a proposal. While for Connie Hedegaard, major task was to deliver the legislation that will reduce CO2 emissions, for Energy Commissioner, Günther Oettinger, the EU policy on biofuels had to take into account not sustainability of biofuels only, but also other important aspects of their production – economic consequences, trade with non-EU countries, and security of supply (the third case study). Similarly, the main task of the Commissioner for Competition, Neelie Kroes was to deliver the legislation that will facilitate the development of market competition (the first and the second case study). Her colleague, Energy Commissioner Andris Piebalgs, has been trying to find a solution that would take into account not only competitiveness but other objectives of the EU energy policy as well. Besides, as stated by one of the interviewees:

“For Competition Commissioner you need to be very straightforward. Because if you try to compromise, then you are not being seen as good enough. So you can see for Competition Commissioners, all of them being extremely firm” (Interview 3).

As the table below shows, policy-makers' prior preferences affected interest groups' prospects to lobby successfully - when they had strong initial views on policies under consideration, interest groups' attempts to alter their positions were less likely (the Gazprom clause, the amendments to the Third Energy Package, certain provisions

related to energy security). *Vice versa*, when the Commission’s initial positions had not been strong (TPA) or clearly defined (ILUC) interest groups have been more successful.

**Table 14.** Cross-case comparison of Commission’s early preferences and interest groups’ lobbying success.

I Case	II Case	III Case	IV Case
<p>No strong early position on ownership unbundling.</p> <p>Strong preferences for reciprocity towards external suppliers (Gazprom’s clause).</p>	<p><u>(a) Third Energy Package (2009)</u></p> <p>No strong position on long-term contracts, exemptions from TPA to new infrastructure, access to storage, and price formation.</p> <p>Strong preferences for the establishment of the single European grid, harmonisation of powers and independence of national regulators, as well as cooperation among them.</p> <p><u>(b) Amendments (2017)</u></p> <p>Strong preferences for the amendments - the Third Energy Package is applicable to offshore parts of import pipelines.</p>	<p>No strong position on how to deal with the issue of indirect land use change (ILUC).</p>	<p>No strong early position on joint purchasing mechanism.</p> <p>Strong preferences for regional cooperation, the solidarity mechanism, transparency, and the diversification of energy supplies.</p>
<p>Neelie Kroes supported full ownership unbundling.</p>		<p>Since the beginning of her mandate, Connie Hedegaard was cautious on conventional biofuels</p>	
<p>Interest groups that opposed ownership unbundling were less successful than those that favoured ownership unbundling.</p> <p>Interest groups that had opposed Gazprom’s clause were unsuccessful and <i>vice versa</i>.</p>	<p><u>(a) Third Energy Package (2009)</u></p> <p>Interest groups that had opposed legislation on long-term contracts, exemptions from TPA to new infrastructure, access to storage, and price formation were successful and <i>vice versa</i>.</p> <p>Interest groups that had opposed legislation on the single European grid, harmonisation of powers and independence of national regulators, as well as cooperation among them were unsuccessful and <i>vice versa</i>.</p> <p><u>(b) Amendments (2017)</u></p> <p>Interest groups that had opposed the amendments were unsuccessful and <i>vice versa</i>.</p>	<p>Interest groups that opposed legislation on ILUC were less successful than those that favoured legislation on ILUC.</p>	<p>Interest groups that opposed legislation on joint purchasing mechanism were successful and <i>vice versa</i>.</p> <p>Interest groups that had opposed regional cooperation, creation of an obligatory solidarity mechanism, better ex ante assessment of both intergovernmental as well as commercial agreements’ compatibility with the EU market rules, and the diversification of energy supplies were unsuccessful and <i>vice versa</i>.</p>

What was the relationship between the Commission's initial preferences and the lobbying accomplishment of the involved interest groups? The first and the second case study suggest that the Commission might use competition law to advance its preferences. As early as her hearing before the European Parliament, Neelie Kroes announced that she would use all available tools to push for a more proactive application of competition law in the energy sector. The sectoral screening was one tool used in that respect. Unannounced inspections of gas companies and anti-trust investigations represented another significant tool in that respect. The fact that the Commission had strong cases against these and other large companies, helped the Commission to demonstrate that ownership unbundling is a necessary step forward, and to make a consensus with stakeholders opposing ownership unbundling more likely.

Similarly, before proposing the amendments to the Third Energy Package (the second case study), the Commission had tried to defend its interpretation of the Third Energy Package - the Energy Package is applicable to offshore parts of import pipelines – by seeking advice of its legal service. After receiving the negative response, the Commission asked for a mandate to negotiate the agreement on the Nord Stream 2 on the behalf of the EU. Only two months after the Council's rejection of this request, the Commission tabled the amendments, without public consultations or an impact assessment being conducted. The interest groups opposing the proposed changes were thus left without an opportunity to issue position papers on the amendments and also without a reasonable timeframe for lobbying.

Furthermore, on certain occasions the Commission may organise a network of allies to shift a debate in a direction preferred by the Commission. Thus, during the negotiations on ownership unbundling DG COMP has established regular contacts with energy-consuming industries thus creating a strong block backing the Commission's intention to introduce ownership unbundling. In this way, DG COMP extended its role in the internal energy market, in an unprecedented way (Eikeland 2011a, p. 253; Riley, 2006). Similarly, during the preparation of the Energy Security Package (the fourth case study), the Commission allied with the Eastern European countries as well as the Energy Community parties advocating in favour of measures preferred by the Commission.

Finally, empirical analysis confirms that information exchange is not a unidirectional process (Bouwen, 2002, p. 368). Interest groups try to defend their interests before the Commission, but the Commission also tends to defend its preferences before interest groups. As an interviewee stated: “Interest groups are, at least for very challenging proposals, crucial. You cannot afford for anybody to be extremely hostile.” (Interview 3). By sharing its views and by discussing its position with interest groups, the Commission aimed to avoid or at least relax member states’ resistance throughout interest groups (the first case study).

In sum, empirical findings indicate that when the Commission’s initial preferences are strong, its officials may use various tools to shape a debate in line with their preferences. The Commission thus can use anti-trust proceedings and formal investigations to put pressure on interest groups opposing its views (the first and the second case study). The Commission also can organise networks of allies to create a block that would support its positions (the first and the fourth case study). Sometimes, the Commission would even skip ex-ante public consultations with stakeholders (the second case study). Finally, the Commission can use communication with interest groups to present its position *vis-à-vis* interest groups with an aim to weaken their disapproval and *via* them member states’ opposition (the first case study).

## **7.2. The Commission’s position on the considered non-EU interest groups**

We have seen that sometimes the Commission might have early preferences on an issue under consideration. However, even when the Commission does not hold strong views on policy measures, there will be no guarantee that an involved interest group will succeed in its lobbying – instead, the groups’ success will depend on its status. The thesis’s findings, thus, indicate that insiders tend to be more successful than outsiders. Table 15 summarises the extent of lobbying success of the observed interest groups, in the light of their status (insider-outsider).

**Table 15.** Cross-case comparison of the interest groups’ status and their lobbying success.

<b>Interest groups</b>	<b>Status</b>	<b>Lobbying success</b>
Gazprom	Outsider	I case study - achieved none of its objectives II case study: (a) achieved some of its objectives (b) achieved none of its objectives IV case study - achieved none of its objectives
Equinor	Insider	I case study - achieved most of its objectives II case study: (a) achieved some of its objectives (b) achieved most of its objectives IV case study - achieved some of its objectives
Exxon	Insider	I case study – achieved some of its objectives II case study: (a) achieved most of its objectives III case study - achieved most of its objectives IV case study - achieved almost none of its objectives
MPOC	Outsider	III case study - achieved almost none of its objectives
UNICA	Outsider	III case study - achieved almost none of its objectives
Naftogaz	Insider	II case study: (b) achieved almost all of its objectives IV case study - achieved all of its objectives

Some of the foreign actors analysed such as Exxon and Equinor, have managed to establish themselves as Brussels’ insiders. They have offices in Belgium’s capital from the early 2000s. They have managed to gain membership in most of EU business associations in the energy domain, and through these associations access to the most of the EU consultative forums. Equinor and Exxon even held major positions, through board seats, in some of these associations (e.g. Eurogas, GIE, and IOGP). They have been engaging in a broad set of issues discussed in the EU such as energy, external relations, taxation and competitiveness<sup>131</sup>. Finally, Equinor and Exxon had enormous financial resources and structural power - almost 20% of the EU gas consumption in 2012 (13% in 2005) was supplied by Equinor, and Exxon satisfied 10% of the EU gas demand in 2012 (7% in 2005).

The analysed cases also indicate that Equinor and Exxon were trying to create “give-and-take relationships” with the Commission, a condition seen as a necessary to get the status of an insider (Coen, 2010, p. 297). For instance, the process of gas market

<sup>131</sup> Data obtained from the Transparency Register.

liberalisation in the EU, including the discussions on unbundling, influenced Equinor's position about the future of the gas industry and what role Equinor could play within the newly created regulatory environment in Europe (Interview 5). As a result, the company decided to adjust its business strategy to changes preferred by the Commission and not to take a harsh position on ownership unbundling (the first case study). For similar reasons, Exxon has softened its position on the issue as well. Equinor has also agreed to support the Commission amendments after receiving reassurance from the Commission that the definition of upstream pipelines will not be changed by the proposed amendments (the second case study). Similarly, Exxon, together with some other companies, has provided a solution for the Commission in searching for a better alternative to conventional biofuels, by investing resources into development of advanced biofuels (the third case study).

Naftogaz's path towards a position of an insider was different in comparison to its counterparts (Equinor and Exxon). While Equinor and Exxon established the long-term relationships with the Commission, Naftogaz's relations with the Commission began to develop extensively only after the Russian-Ukrainian conflict had escalated in 2014. It was this conflict that put Naftogaz on the map as an important company for the EU policy-makers. Naftogaz opened an office in Brussels only in 2015. It did not develop a broad agenda like its Norwegian and American counterparts. However, Naftogaz has been strategically important for the accomplishment of the EU energy objectives owing to Ukraine's importance as a transit country for Russian gas. This is another argument put forward by the thesis - foreign actors whose countries of origin are strategically important for the achievement of the EU energy objectives are more likely to receive the status of an insider.

Gazprom, UNICA, and MPOC, on the other side, are closer to the group of Brussels' outsiders. Among the analysed companies Gazprom has the biggest market share in the EU since almost 20% of the EU gas demand in 2012 (24% in 2005) had been provided by the company. Given its structural power one would expect Gazprom to enjoy the status of an insider. Indeed, owing to its economic power, Gazprom was able to secure a seat at a table discussing the future development of the EU gas market on various occasions. However, all other criteria making an insider have not been met. Firstly, Gazprom did not have an office in Brussels until 2013. The company was not sufficiently integrated with the EU industry associations and it did not have a broad



portfolio of engagement until recently. Gazprom has been less consensus-oriented when compared to its counterparts (Equinor and Exxon). It was focused on pursuing its own interests (against further liberalisation of the European gas market) without considering sufficiently the Commission's preferences. Instead of developing a trust-based relationship, Gazprom has been suspicious about the Commission's intentions towards Russia. Besides, Gazprom's public statements took a threatening tone on several occasions. Groups with the insider status will often restrain from deploying confrontational, outsider-like strategies, in order to escape jeopardising own relationship with the policy-makers (Grant, 2001, p. 343). On their side, some of the EU officials did not completely trust the company neither. Gazprom's reputation among Brussels' decision-makers was undermined already after the first gas dispute between Russia and Ukraine in 2006. The second gas dispute in 2009, followed by the Ukrainian crisis in 2014 has seriously challenged the company's reputation of a reliable energy supplier. Since then the Commission has been seeking alternative energy sources to reduce the EU's dependence on Russian gas. Under such circumstances it was hard for Gazprom to lobby successfully. This was especially after 2014, when the company struggled with access to policy-makers in Brussels.

Similarly, UNICA and MPOC opened offices in Brussels in 2008 with an aim to monitor EU legislation concerning only a limited number of issues; they opened offices when the debate on conventional biofuel sustainability in the EU started. The two associations have not been integrated with EU industrial associations. Like Gazprom, UNICA and especially MPOC have struggled to overcome their bad reputation in the EU. MEPs who paid a visit to Malaysia, were facing criticism at home. Besides, during the preparation of proposal on ILUC (the third case study), UNICA's and MPOC's relations with the Commission have been strained since the two had threatened that the Commission's proposal on ILUC might be challenged at the World Trade Organisation (WTO) due to supposed discriminatory measures against external producers of biofuels. Under such circumstances it was hard for UNICA and MPOC to lobby successfully.

How did the interest groups' status affect their lobbying success?

The literature on insiders/outside assumes that insiders have better access to policy-makers than outsiders. The thesis only partly finds support for this theoretical

assumption. Analysed cases indicate that insiders such as Equinor, Exxon, had better access to the Commission's advisory groups through membership in EU associations representing energy industry. Exxon and, especially, Equinor were better integrated and connected with the most influential associations in the EU than Gazprom. UNICA and MPOC, to the authors' best knowledge, have not been affiliated with European associations. Besides, Exxon and Equinor have representatives on the governing boards of some of these associations, which has given them more leverage over decisions made by these groups.

Secondly, the number of high-level meetings with interest groups between 2014 and 2016 (the fourth case study) shows that in comparison to Equinor, the number of Gazprom's meetings with Commission's high ranking officials has been considerably lower – three meetings in comparison to Equinor's 14 meetings, and similar to the number of Exxon's (4), and Naftogaz's (5) meetings. Thirdly, after 2014 Gazprom struggled to gain access to a Commission's advisory groups - the Madrid Forum. Similarly, as MPOC's example shows, sometimes policy-makers may face criticism for meeting stakeholders with a bad reputation. Gazprom had similar problem when Gplus, a Brussel-based PR company, have obtained a bad reputation for representing Gazprom's interests.

Thus, the number of groups' high-level meetings between 2014 and 2016 and access to the Commission via European associations confirms the theoretical assumption that insiders (Equinor, Exxon, Naftogaz) have better access to the Commission than outsiders (Gazprom, UNICA, and MPOC).

On the other hand, however, outsiders did manage to secure access to the Commission too. Even more in 2006, when the debate on ownership unbundling started (the first case study), the Commission invited Gazprom to take part in the discussion on future development of the EU gas market. Nonetheless, back then the company was still considered as a reliable energy supplier. After 2014, when Gazprom's reputation in Brussels had been seriously undermined, the company struggled to gain access to the Commission (the second and the fourth case study). UNICA and MPOC have managed to secure access to the Commission as well. However, as explained earlier, due to Malaysian palm oil producers' poor reputation in Brussels, some EU policy-makers has been facing criticism in Europe for meeting

MPOC representatives. One of the consequences of an interest group's poor reputation may be that policy-makers could refrain from meeting stakeholders with a bad reputation due to criticism they may face at home.

In addition, all analysed stakeholders (insiders and outsiders) had regular contacts with EU member states' representatives. Besides, they all used services of Brussels-based PR companies to advance their interest in the EU. Finally, some of the foreign actors, especially UNICA and MPOC, employed a number of outside lobbying tactics – organising public events (UNICA), placing advertisements in EU media (MPOC), publishing electronic newsletter (UNICA), and hosting EU journalists (MPOC). This is not surprising given they struggle with poor public image in Brussels.

Therefore, when it comes to access to policy-makers, the analysed cases suggest that insiders had better access to the Commission than outsiders in sense that they may have more bilateral meetings with EU officials after 2014 and better access to Commission's advisory groups through EU associations. On the other hand, however, the Commission has been open for outsiders as well. Only Gazprom after 2014 struggled with access to the Commission.

The empirical analysis also indicates that the outsiders managed to gain a seat at the table because of their structural power (e.g. Gazprom), because a policy initiative directly affects their interests (e.g. of MPOC and UNICA), or because the policy-makers wanted to mitigate their opposition (e.g. Gazprom). The latest case was discussed in the previous section (7.2.). Occasionally, the Commission strategically engages in dialogue with opposing interest groups in order to weaken their opposition, and thus the opposition of member states. The two former conditions match the thesis' expectations regarding the sorts of goods that foreign interest groups can offer in order to gain access to the policy-making process.

The analysed cases suggest that the Commission was interested in hearing positions of those foreign groups whose businesses were expected to be affected by the forthcoming EU legislation. Thus, the Commission engaged in communication with Gazprom and, similarly, both UNICA and MPOC were seen as important actors in the debate on ILUC because the EU rules on ILUC were expected to affect the biofuel producers in non-EU countries; additionally, the question of EU trade with external countries and possible violation of the WTO rules was an important driver of the

debate on ILUC. The cases also show that “economic power” “buys” access to the policy-making process. As observed, some companies and associations, such as Gazprom, Exxon, and Equinor, gained a seat at the discussion table thanks to their economic power.

Similarly to domestic (EU) groups, the analysed foreign groups were supplying the Commission with other “access goods” too, such as technical expertise, i.e. knowledge about the EU market. They often presented the Commission with the so-called “cause–effect-logic” (Chalmers, 2013, p. 51) which pointed to the potential consequences of a policy initiative. For instance, Equinor argued against an increase in the transparency of supply contracts because such legislation would create additional reporting burden for the gas players (the fourth case). To provide arguments in support of its position, UNICA discussed scientific studies on ILUC (the third case study). Foreign groups cited examples of their own countries, thus providing expertise on foreign markets. For example, in its position paper, UNICA referred to the measures on tackling environmental concerns in relation to land usage in Brazil. Exxon proposed to the EU to establish ILUC factors for different types of biofuels, following the example of the US Environmental Protection Agency (third case study). Besides, the observed interest groups also provided “legal information” (Chalmers, 2013, p. 46) such as UNICA’s and MPOC’s warning notes that the Commission’s proposal on ILUC might violate the WTO rules. Also provided were information about the potential discriminatory nature of policy initiatives (Mahoney, 2008, p. 82). For instance, Nord Stream AG complained that the proposed amendments were discriminatory of the Russian pipelines bringing undue advantage to the Norwegian pipelines (the second case study). This suggests that foreign interest groups can provide various types of information, though common to most of them is the so-called “cause–effect-logic” which if focused on proposals’ potential consequences, as suggested by Chalmers (2013, p. 51).

Another argument put forward by the thesis, as explained earlier, is that foreign interest groups coming from countries that are strategically important for the achievement of the EU policy objectives are more likely to receive the status of an insider. An insider, therefore, may be important because the Commission wants to improve or maintain close relations with its country of origin. AmCham, Exxon, Equinor, and Naftogaz were insiders in this respect. The Commission’s intention to improve energy cooperation with Norway, the US, and Ukraine and to increase energy

imports from Norway and the US, has been expressed on various occasions and in many documents (strategies, green papers etc.). Thus, for instance, the Commission's green paper adopted in 2006 (European Commission, 2006b), emphasised the importance of the EU energy relations with Norway and the US (the first and the second case study). Similarly, a strategy adopted in 2015, stressed the significance of the EU partnerships with Norway, the United States, and Ukraine (European Commission, 2015a) (the fourth case study). On the other hand, the Commission's objective to decrease dependence on Russian gas has been stated many times. At the same time, the Commission did not give particular importance to Brazil and Malaysia when its energy policy is concerned. As a result, it was easier for companies coming from Norway, the US, and Ukraine (Equinor, Exxon, and Naftogaz) to advance their interests in the EU than for actors coming from Russia, Brazil, and Malaysia (Gazprom, UNICA, MPOC).

An insider's importance is also reflected in the fact that she comes from a country where the Commission's values, especially those on market liberalisation, are shared. Given that Norway, the US, and Ukraine share the Commission's values with regard to energy market liberalisation, Equinor, Exxon, and Naftogaz have been considered as valuable partners backing the Commission's policy objectives inside the EU and abroad. Indeed, part of the reason why the US, Norway and Ukraine were considered as significant energy partners was their general alignment with the EU values. The fact that the Commission wanted to accelerate cooperation with Naftogaz's, Equinor's and Exxon's countries of origin has strengthened these companies' position *vis-à-vis* EU policy-makers. On the other hand, Gazprom's resistance to comply with certain policy objectives promoted by the Commission (e.g. liberalisation of the gas market) had triggered some of the policy initiatives drafted by the Commission – the amendments to the Third Energy Package (the second case study) and the Gazprom clause (the first case study) – that run counter to Gazprom's interests.

Finally, the thesis hypothesised that a foreign group may be less successful if its interests run counter to the interests of domestic (EU) groups, in which case the Commission may choose to protect the interests of the domestic groups. In other words, if there is a clash between domestic and foreign interest groups, the Commission may decide to follow the preferences of domestic, rather than foreign groups. The analysis of the third case finds support for this claim. Although it was

confirmed that production of biodiesel causes more GHG emissions than bioethanol production, the Commission eventually came up with a proposal which allowed EU biodiesel producers to escape the worst case scenario, at the expense of bioethanol producers, UNICA included. While all scientific studies had confirmed the superiority of bioethanol over biodiesel, crop-specific GHG emissions were eventually left out of the proposal. This was mainly owing to the extensive lobbying of EU biodiesel producers and farmers. Thus, even though UNICA's position was in line with the scientific findings, the Commission eventually made a compromising solution between the sustainability objectives (based on scientific facts) and the interest of domestic biodiesel producers and farmers. It would be highly unlikely for the Commission to make such compromise in order to protect investments of foreign companies that are not strategically important for the EU.

Two final points are in order here. First, the thesis does not contradict the assumption that "information is power". Numbers, figures, and arguments that the analysed interest groups provided were all welcomed by the Commission. The information presented by companies and industrial associations played a significant role when the first Barroso Commission decided to conduct the sectoral screening for barriers to energy market competition and to launch an inquiry into the EU gas and electricity market. The inquiry informed the Commission of the extent of gas market malfunctioning, helping it to draft the proposals on ownership unbundling and the third-party access to gas infrastructure (the first and the second case studies). As Neelie Kroes explained, the Commission's findings "would simply not have been possible without the input and cooperation of people involved with the industry" (Kroes, 2006). Still, the information provided by interest groups mattered because it was provided by almost all of the industrial actors. The Commission sent out approximately 3000 questionnaires to stakeholders, since back in 2005 little reliable quantitative data was available on how the EU energy market functions (European Commission, 2007a, p. 19). Stakeholders' input was, thus, relevant not because of a study/position paper provided by a stakeholder or a group of stakeholders, but because almost *all the actors* interested in the development of the European energy market participated in the inquiry. Additionally, the sectoral inquiry was an investigation carried out by the Commission in which industrial actors were obliged to take part.

Lobbying, on the other hand, is based on the resolve of interest groups to shape policies by choosing which, if any, information they want to share with the policy-makers.

Furthermore, in addition to the expert knowledge provided by the analysed interest groups, the Commission had its own in-house experts who carried out the needed analyses including those featuring highly technical issues. For instance, during the preparation of the report on indirect land use change (the third case study), the Commission issued several in-house studies on ILUC, which were used in addition to the information provided by the interest groups. Similarly, prior to the adoption of the proposal for amendments to the Third Energy Package (the second case study), the Commission asked its legal service to provide an opinion on whether the Third Package applies to offshore parts of import pipelines or not. Finally, during the preparation of the European Security Package (the fourth case study), the Commission requested member states to carry out a stress test exercise that informed the Commission of a number of problems related to EU energy security (European Commission, 2014a, p. 2-3). In addition, the Commission's proposal related to intergovernmental agreement (IGAs) was based on the "significant experience" that the Commission has previously gained (European Commission, 2016d, p. 2).

Therefore, the empirical findings provide evidence for the widely accepted theoretical assumption that interest groups do influence Commission's proposals through their expertise and related information. What the thesis additionally emphasises is that interest groups' lobbying does not represent the only source of information needed by the Commission. Instead, as the case studies show, the Commission may collect information through further investigations, by requesting member states to provide information, or by commissioning its own in-house experts to analyse the topic of interest.

The second caveat is that, even though the Commission may have strong early preferences, this does not mean that it will not be open to altering those preferences if faced with convincing arguments by an opposing interest group. For instance, whereas the Commission had preferred ownership unbundling, Energy Commissioner, Andris Piebalgs, has acknowledged the argument made by companies which opposed this legislative measure, namely that ownership unbundling may be interpreted as some sort of expropriation (the first case study). This was one of the reasons why the

Commission eventually decided to propose the independent system operator (ISO) model, in addition to ownership unbundling. Similarly, during the preparation of the Energy Security Package, interest groups suggested some specific provisions to be added to the solidarity mechanism, such as a fair and prompt compensation for maintaining energy security (Interview 6). The point was well received by the Commission. As stated by an interviewee:

“(…) I think the task is to always keep an open mind, not to basically say: ‘we said that, therefore, we stick to it, and we are always right’ – that would be the wrong approach and we usually do not do that. It is more important to get the right result in the end in terms of legislation. If along the way stakeholders bring to the table convincing and strong arguments why the initial approach was not the right one, then we have the duty to change. And actually during the consultations phase it’s still open anyway because the aim of the consultations is to test” (Interview 6).

Therefore, the thesis does not suggest that the Commission is oblivious to interest groups’ arguments that run counter to its initial preferences. Instead, the point made here is that while in general being open for information provided by interest groups, the Commission’s starting position is not always the same – sometimes its early preferences are not strong, whereas in other cases they are. And when the Commission forms early preferences for certain legislative measures – based on its own knowledge, expertise, and/or beliefs - interest groups’ attempts to alter its positions are less likely.



## Conclusion

The purpose of this thesis was to examine foreign interest groups' success in the energy policy domain. Specifically, the thesis has analysed whether, how, and why European Commission's initial preferences over policies under consideration and over involved non-EU interest groups affect the groups' prospects to lobby successfully.

The main motivation behind the research topic was that despite their growing number in Brussels, non-EU interest groups – particularly determinants of their lobbying success – have remained under-researched. Of all interest groups registered in the EU Transparency Register, at least 9% have a foreign origin. In addition, three foreign countries - the US, Switzerland and Norway - have more registered interest groups in Brussels, respectively, than ten EU states individually - Bulgaria, Slovenia, Slovakia, Croatia, Cyprus, Malta, Estonia, Latvia, Lithuania, and Luxembourg. However, despite their growing presence in the EU, foreign groups have not received sufficient attention in the literature on interest groups. The purpose of the thesis, therefore, has been to contribute to filling this gap.

As one of the world's largest markets, the EU single market has been attractive to foreign companies, many of which have sought to extend their businesses into the European Union. Thanks to its market size and the status of a global power, the EU has been able to shape norms and rules not only within but also beyond its borders. As a result, actors from outside the EU have had high incentives to try to influence EU policies, given their possible effects on foreign interests not only inside, but outside the EU as well.

Following the resource dependency and exchange theory developed by Bouwen (2002) and building on the findings offered by prior studies on non-EU interest groups in Brussels (e.g. Cowles, 1996; Eliassen and Peneva, 2011), the expectation has been formed that the Commission will be the most likely lobbying target for foreign business groups, due to their capacity to provide expertise and technical knowledge. The thesis, therefore, has explored this assumption by analysing foreign lobbyists' success during the preparation stage – led by the European Commission – on energy-related policy proposals.

The thesis has put forward the argument that the lobbying success of foreign interest groups depends on the initial views of the Commission on issues under consideration and involved interest groups. It has been hypothesised that the Commission's early preferences on issues under consideration decrease the likelihood of lobbying success of those groups opposing the Commission. Conversely, when the Commission does not have strong initial preferences on the measures that are being discussed, the involved interest groups have better prospects to lobby successfully.

The absence of Commission's strong views on policies, however, does not guarantee that an interest group will be successful in its lobbying effort. Instead, it was hypothesised that a group's lobbying success also depends on its status among policy-makers. Exploring the conceptual insider/outsider distinction among lobbyists, developed in prior lobbying literature (Broscheid and Coen, 2003; 2007; Coen, 2010; Grant, 1995; 2004), the thesis has suggested that insiders tend to be more successful than outsiders. As a contribution to this literature, the thesis has introduced an additional criterion attached to the traditional insider/outsider distinction which concerns specifically foreign interest groups – the importance of their particular non-EU origin for the achievement of the Commission's policy objectives.

Employing process-tracing and cross-case comparison, the thesis has explored four cases of Commission proposals covering the key aspects of EU energy policy: competitiveness, sustainability, and security. The case studies covered around 20 different policy issues (measures), which have provided a constellation featuring variations on Commission's early preferences over considered issues and involved interest groups. The analysis included the lobbying success of several interest groups within those cases.

The thesis analysis of the four case studies provides evidence in support of the claim that Commission's early preferences on issues under consideration reduce the likelihood of a lobbying success of groups that oppose the Commission. In contrast, when the Commission does not have strong initial preferences related to the measures that are being discussed, the interest groups' prospects to successfully lobby are better. The thesis has also found support for the assumption that insiders tend to be more successful in lobbying than outsiders. This yields the conclusion that insiders are more likely to be successful in their lobbying when the Commission does not have strong

early preferences on issues under consideration. However, when the Commission's early preferences are strong, then both – insiders and outsiders tend to be less successful.

The thesis' findings add to the literature on non-EU interest groups. Prior research on foreign interest groups in the EU has been scarce, with only a few studies so far examining lobbying activities of foreign interest groups in the EU. Among those, the prevalent focus has been on analysis of interest groups coming from a single country, without comparative cross-country insights. Secondly, only Cowles' (1996) and Coen' (1999) findings are on determinants of the lobbying success of non-EU interest groups. The other have mainly explored lobbying strategies employed by foreign groups, rather than determinants of lobbying success. This thesis has added to the empirical basis with its analysis of groups from several foreign countries, which was conducted with a uniform theoretical framework applied across all those groups. This has enabled more systematic findings to be acquired about non-EU interest groups and their lobbying prospects. Secondly, unlike most of the existing studies that examined non-EU groups' strategies, the thesis has offered empirical findings of factors behind their lobby success.

Finally, the extant studies have yielded conflicting findings on non-EU groups' access to policy-makers and their consequent lobbying success. While one camp has argued that a lack of "national patronage" makes it harder for foreign groups to access to EU institutions, thus hampering their lobbying success, another camp has held that non-EU companies can still be as successful as their EU counterparts. Addressing this debate, the thesis has found that the lack of EU membership by itself is not necessarily a lobbying weakness; instead, foreign interest groups' access to the policy-makers, and hence consequently their lobbying success, depends on the combination of Commission's positions over policies under consideration and over the involved lobbyists.

Further, another thesis' contribution lies in that its findings could be used in the literature on lobbying regardless of an interest group's country of origin. It complements the literature on informational lobbying by arguing that, in some cases, decision-makers have strong preferences over both - the outcomes and means required to achieve them, thus making interests groups' attempts to alter their positions less

likely. The thesis also contributes the literature around the insider/outsider status of lobbyists by drawing attention that for non-EU interest groups there are additional criteria for the insider/outsider distinction to be taken into account.

The thesis' findings also inform the broader scholarship on corporate lobbying in the EU (e.g. Bouwen, 2002; 2004; Bernhagen and Mitchell, 2009; Coen, 2009; 2010; Taminiau and Wilts, 2006; Vannoni, 2012; Woll, 2009), as well as the literature examining business groups' lobbying success relative to the *status quo* (Dür, Bernhagen, and Marshall, 2015). Additionally, the thesis has been shown that large firms as a group do not necessarily share similar prospects for lobbying success (Hamada, 2007b, p. 10; Coen, 2010); those prospects can, namely, vary greatly across a set of large companies depending on the examined factors. Finally, the thesis might bring valuable insights for considerations of legitimacy of foreign interest groups' engagement with EU institutions (Korkea-Aho, 2016), cautioning against the conclusion that powerful companies will necessarily be able to shape EU decisions.

The thesis' conclusions pertain to a single policy domain, namely that of energy, which is often described as a "highly politicised" sector (Talus, 2013, p. 4). EU is the world's largest energy importer which is why the degree of public attention that often follows the debates on EU energy legislation is high. These characteristics make the energy policy distinctive from other policy domains. To enhance the external validity of its findings, the thesis examined cases covering different aspects of the energy policy, namely competitiveness, environment, and security, and policy measures featuring various levels of salience. Still, as with any study that examines lobbying in a single policy sector, the problem of limited external validity will never be fully dispelled. In those policy domains that are less politicised and hence more technical by nature, it is possible that the Commission will not have strong early preferences. Also, in the policy sectors where the commodities are non-strategic, or where the EU had not been dependent on the imported goods, non-EU groups' countries of origin could be a factor that plays a less important role.

Future studies on foreign interest groups' lobbying in Brussels could take the thesis' approach forward by testing its empirical findings across other policy domains. While the conclusions drawn here are derived from analysis of the energy domain, their external validity could be advanced if similar conclusions could be reached in other

policy domains that are also relevant for non-EU companies and associations, for instance financial market, digital economy, transportations, and others.

The thesis' findings should be best generalised to the cluster of resource-rich foreign business groups. The sample of case studies did not include small foreign companies and citizen groups. If other types of foreign interest groups were analysed, it is possible that another logic of mobilisation, lobbying strategies, access to the Commission, and lobbying success would have been identified. However, it is reasonable to assume that the majority of foreign groups trying to shape EU laws are precisely resource-rich groups. Usually only large non-EU companies have the needed resources to extend their business operations into the EU. Besides, lobbying in Brussels is a costly activity which many domestic (EU) – let alone foreign – companies, associations, and NGOs, cannot afford. It is possible that in other domains too the majority of foreign business groups is made up of resource-rich groups. Future studies could explore this assumption and test whether the lobbying logic observed in this thesis is generalisable to those groups featuring less resources.

Another avenue for future research could be to test whether the success of foreign groups' lobbying depends on the supply side factors such as information processing by foreign interest groups (Chalmers, 2011, p. 472). How do lobbying tactics (e.g. Chalmers, 2013) and framing (e.g. De Bruycker, 2016) affect non-EU groups' lobbying prospects? Similarly, further research on the mechanisms explaining how the Commission shapes interest groups' activities in Brussels (for example through funding) (Mahoney, 2004, p. 442), could be also examined in regards to non-EU groups.

Lastly, to advance further the logic of lobbying success of non-EU actors, future studies could explore how other EU institutions – the European Parliament and the Council, interact with these groups. Policy formulation is an important stage for lobbying, but it is not the only stage in which interest groups can exert influence. Efforts of interest groups usually extend to the decision-making process in the European Parliament and the Council as well. Research on non-EU interest groups certainly needs to go beyond the European Commission.

Thus, there is a number of aspects related to foreign interest groups' lobbying in Brussels that future research can elucidate. One further angle is particularly interesting

to explore, namely that of foreign vs domestic (EU) groups: What would be the outcome of foreign groups' lobbying when their interests clash with the interests of domestic (EU) groups? Although the thesis' findings suggest that the lack of EU membership is not necessarily a lobbying disadvantage, the empirical analysis has indicated that if non-EU and EU interest groups find themselves at the opposite sides of a debate, the EU officials will more likely follow the preferences of the domestic groups. This is particularly the case when outsiders among foreigners are trying to counter EU interest groups. The findings obtained in this thesis suggest that there is a division between those long-standing non-EU participants in the law-making process in Brussels, who have managed to Europeanise and build close relationships with policy-makers, and those foreigners who engage with EU law-making only occasionally and usually with a narrowly defined agenda. If the latter face the opposition by EU interest groups, the chances are that they will 'lose'. Yet, more systemic studies are needed for firmer conclusions, which would then help us expand our understanding of the power of non-EU interest groups in Brussels.

## Appendices

### Appendix I

Non-EU interest groups with offices outside the EU member states

(Transparency Register)

Argentina	9	Iraq	1	Pakistan	1
Armenia	2	India	8	Qatar	1
Australia	9	Iceland	7	Russia	12
Azerbaijan	1	Isle Of Man	2	Reunion	1
Benin	2	Indonesia	3	Serbia	9
Brazil	10	Japan	25	Syria	2
Bosnia-Herzegovina	5	Jordan	1	Saint Marino	3
Bermuda	2	Republic of Korea	6	Singapore	6
Belize	1	Kenya	4	South Africa	6
Bolivia	1	Kyrgyzstan	1	Senegal	3
Barbados	1	Kazakhstan	1	Sri Lanka	4
Bahamas	1	Kiribati	1	Switzerland	251
Belarus	1	Liechtenstein	6	Tunisia	1
Cameroon	3	Lebanon	1	Trinidad And Tobago	1
Cambodia	3	Laos	1	Togo	1
Canada	34	Mexico	5	Thailand	4
Cote D'ivoire	3	Malaysia	13	Taiwan	2
Costa Rica	1	Moldova	6	Tanzania	2
Democratic Republic Of Congo	1	Martinique	1	Turkey	22
Colombia	2	Monaco	1	Uganda	3
Chile	2	Morocco	3	United Arab Emirates	7
China	9	Montenegro	1	Uruguay	2
Dominican Republic	2	Myanmar	1	Ukraine	18
Dominique	1	North Macedonia	7	US	394
Ethiopia	2	Nigeria	5	Vietnam	1
Fiji	1	Netherlands Antilles	1	Venezuela	1
Guatemala	2	New Zealand	5		
Ghana	2	Nepal	1		
Georgia	2	Norway	85		
Hong Kong	4	Philippines	4		
Israel	7	Palestinian Occupied Territory	2		
<b>TOTAL</b>	<b>1.093</b>				

\*The search criterion was an interest group's country of registration. The dataset includes only interest groups with registered offices outside the EU.

Source: Adapted from the Transparency Register. Lastly accessed on 01/07/2019.

Interest groups with offices in a EU member state  
(Transparency Register)

Austria	<b>258</b>	Italy	<b>799</b>
Belgium*	<b>2.197</b>	Latvia	<b>39</b>
Bulgaria	<b>72</b>	Lithuania	<b>52</b>
Croatia	<b>58</b>	Luxembourg	<b>80</b>
Cyprus	<b>28</b>	Malta	<b>33</b>
Czech Republic	<b>112</b>	Netherlands	<b>679</b>
Denmark	<b>197</b>	Poland	<b>212</b>
Estonia	<b>47</b>	Portugal	<b>187</b>
Finland	<b>245</b>	Romania	<b>108</b>
France	<b>1.118</b>	Slovakia	<b>63</b>
Germany	<b>1.513</b>	Slovenia	<b>69</b>
Greece	<b>143</b>	Spain	<b>740</b>
Hungary	<b>93</b>	Sweden	<b>268</b>
Ireland	<b>191</b>	United Kingdom	<b>1.103</b>
<b>TOTAL</b>	<b>10.704</b>		

\* Many interest groups with offices in Belgium are originally from another country – EU or non-EU (Joint Transparency Register Secretariat, 2018, p. 18).

Source: Adapted from the EU Transparency Register. Lastly accessed on 01/07/2019.



## **Appendix II**

### List of Interviews

Interview 1: Former European Commission's official, 2019, Brussels

Interview 2: Foreign interest group, 2019, Brussels

Interview 3: Former European Commission's official, 2019, Brussels

Interview 4: Foreign interest group, 2019, Brussels

Interview 5: Foreign interest group, 2019, Brussels

Interview 6: European Commission's official, 2019, Brussels

Interview 7: European Commission's official, 2019, Skype call

Interview 8: European Commission's official, 2019, Brussels

## Guiding questions for interviews with EU officials

### Commission's initial position before consulting stakeholders

1. Why did the Commission decide to open a debate on the given policy issue?
  - 1.a. Was the proposal part of the broader Commission's agenda (e.g. policy priorities) established in the beginning of the Commission's mandate, or stakeholders outside the Commission raised the issue thus triggering the early debate?
  - 1.b. How important was the issue for the achievement of the general Commission's policy priorities?
2. Did the Commission had clearly defined preferences for the considered policy before consulting other interested parties?
3. Did the Commission had clearly defined preferences for the measures that were seen at the time as necessary to achieve the desired outcome?
4. Did the Commission speak with a single voice on the issue? Was the Commission united or internal divisions existed?
5. Did you have previous experience in the specific area (e.g. education and/or working experience in the field)?

### Consultations with stakeholders

6. How would you estimate the level of activity of interest groups? Were they 'not so active', active, or highly active?
7. What interest groups were the most active?
8. How did interest groups seek to influence the Commission's proposal? Through public consultations, meetings, advisory groups, conferences, public campaigns, or some other means?
9. What were the arguments most frequently invoked by those interest groups?
10. How did you use to weigh arguments put forward by various interest groups?
11. Were non-EU interest groups active in the case in question?
  - 11.a. Which non-EU interest groups were the most active?
  - 11.b. Did you meet foreign groups' representatives to discuss the policy initiative in question? If so, why?
  - 11.c. How often did you meet foreign groups' representatives to discuss the policy initiative in question?
  - 11.c. How were foreign interest groups trying to shape the debate?
  - 11.d. What sorts of arguments they used to offer?

Commission's position after consulting stakeholders

12. Were the information provided by interest groups (both EU and non-EU) relevant when considering whether to table the final policy proposal?
13. Did the information provided by interest groups (both EU and non-EU) bring something new to the debate (e.g. a new argument, perspective, or new data/figures, etc.)?
14. Did the information provided by interest groups (both EU and non-EU) change the early position (preferences) that the Commission had before the consultations with stakeholders started? If so, to what extent and why?
15. Did it matter which interest group provides information, in the sense of its reputation, nationality (lack of EU citizenship), expertise, and resources?
16. In general, do you think that foreign interest groups are disadvantaged in comparison to domestic (EU) interest groups in Brussels? If so, why?

## Guiding questions for interviews with interest groups

### Positions of interest groups

1. To what extent was the issue in question important for your company/association?
2. What was the position of your company/association in the given case?
3. Did the position of your company/association differ from the position of other stakeholders, both EU and non-EU?
4. Did the position of your company/association differ from the Commission's position in the given case?

### Lobbying activities

5. Was your company/association trying to make an impact in the considered case?
6. How did your company/association try to influence the policy proposal (through bilateral meetings, participation in public consultations, participation in the Commission's advisory groups, influence through European associations, influence through PR companies, public campaigns, or through another means)?
7. Which lobbying strategies your company/association taught were the most effective in the considered case?
8. How often, in the considered case, your company/association communicated with Commission's officials?
  - 8.a. How frequent, in general, is your company's/association's communication with Commission' officials?
9. Did your company/association, in the considered case, face any difficulties in lobbying because it represents non-EU interests?

### Lobbying success

10. Did the Commission's proposal reflect the preferences of your company/association? If so, to what extent?
11. How would you estimate the level of your lobbying success in the considered case?
12. Did your company/association manage to alter the Commission's position in the considered case?
  - 12.a. Why was your company/association (not) able to change the Commission's position?
  - 12.b. Does (the lack of) lobbying success of your company/association have to do with your foreign origin?
13. What makes a lobbyist successful? Its reputation, nationality (lack of EU citizenship), expertise, resources, or something else?

14. In general, do you think that in Brussels foreign interest groups are disadvantaged in comparison to domestic (EU) interest groups? If so, why?

14.a. What is your experience in this respect?

### Appendix III

#### Interest groups' positions on ownership unbundling (2007)

<b>Ownership unbundling is needed</b>	<b>Ownership unbundling should be considered</b>	<b>Overview based on the complete implementation of legal unbundling before considering further measures (ownership unbundling)</b>	<b>Oppose</b>
BG Group, Centrica,	National Grid (the UK); Chemical Industries Association (the UK); VIK (Germany); IFIEC-Europe.	ENA (the UK); DIHK (Germany); Suez (France); IOGP.	ScottishPower (Scotland); VKU (Germany); Wintershall/WINGAS (Germany); E.ON (Germany); Gaz de France (France); BGW; Royal Dutch Shell (Netherlands); EnergieNed (the Netherlands); Vattenfall (Sweden); RWE npower (Germany).
House of Lords (the UK), the Netherlands	the UK; the Netherlands; Denmark.		Germany; France; Austria; Greece; Bulgaria; Slovakia; Latvia; Luxemburg; Hungary; Czech Republic.
	Equinor	AmCham	Gazprom; Exxon

Source: Manually coded positions from the interest groups' position papers submitted during the public consultations in 2006; interest groups' websites; European Commission (2006c).

#### Interest groups' positions on reciprocity (2007)

<b>Support</b>	<b>Oppose</b>	<b>No clear position</b>
Finish Energy Industries; BG Group (the UK); Centrica (the UK); Chemical Industries Association (the UK); Royal Dutch Shell plc; EnergieNed (the Netherlands); Polish Chamber of Chemical Industry; Vattenfall (Sweden); DIHK (Association of German Chambers of Industry and Commerce); Suez (France).		Association of Electricity Producers in the UK; ScottishPower; Wintershall/ WINGAS; E.ON AG; Gaz de France; IOGP.
The UK; the Netherlands; Poland; Benelux; France.		Hungary; Sweden.
Equinor; Exxon; AmCham.	Gazprom	

Source: Manually coded positions from the interest groups' position papers submitted during the public consultations in 2006; interviews; interest groups' websites; European Commission (2006c).

## Appendix IV

### Interest groups' positions on the establishment of a European Energy Regulator (2007)

Support	Oppose	No clear position
Chemical Industries Association (CIA UK); Vattenfall; APPA; Gaz de France; Suez; CEDEC; CEFIC; EFET; EUROGIF; GEODE; German Wind Energy Association.	Finish Energy Industries; BG Group; Centrica; National Grid; Association of Electricity Producers in the UK; Energy Networks Association (ENA); EnergieNed; DIHK; RWE power; E.ON; CEEP; COTREL/CAPIEL; European Transmission System Operators (ETSO); EURELECTRIC; EUROCHAMBRES; Eurogas; GIE; IFIEC Europe; ScottishPower; VDEW/VDN; VIK; VKU; BDI.	Polish Chamber of Chemical Industry; Austrian-Power-Grid (APG); UFE; UNICE; ZVEI.
Hungary; Highlands and Islands Enterprise (HIE).	The UK; Slovenia; Sweden; Germany; Estonia; Czech Republic; France; The Netherlands; Poland. Equinor	CEER  Exxon; AmCham; OGP.
Ukraine	EEA; EFTA.	

Source: Manually coded positions from the interest groups' position papers submitted during the public consultations in 2006; interest groups' websites; European Commission (2006c).

### Interest groups' positions on the European Grid Code (2007)

Support	Oppose	Seek further clarification	No clear position
CEDEC; CEFIC; Chemical Industries Association (the UK); COGEN; COTREL/CAPIEL; EFET; Vattenfall; German chemical industry; VIK.	VKU; Verbund-Austrian-Power-Grid AG; BG Group; CEEP; Scottishpower; GIE.	APPA; Centrica; National Grid; AEP (Association of Electricity Producers in the UK); Energy Network Association (ENA UK); APPA; EURELECTRIC.	Shell; Gaz de France; EUROCHAMBR ES; Eurogas.
France; CEER; Highlands and Islands Enterprise (HIE); Slovenia. Equinor; Exxon.	Estonia; the UK.		Czech Republic; Hungary.
Norway; Ukraine.			EEA; EFTA.

Source: Manually coded positions from the interest groups' position papers submitted during the public consultations in 2006; interest groups' websites; European Commission (2006c).

### Interest groups' positions on the European Centre for Energy Network (2007)

<b>Support</b>	<b>Oppose</b>	<b>No clear position</b>
CEFIC; Chemical Industries Association (CIA UK); EFET; Suez; Chemical Industries Association (CIA UK); VIK; Suez.	VKU; Verbund-Austrian-Power-Grid AG; BG Group; E.ON; Finish Energy Industries; BG Group; Centrica; AEP; Energy Networks Association (ENA UK); ScottishPower; VKU; RWE power; GIE.	National Grid; Highlands and Islands Enterprise (HIE); APPA; EURELECTRIC.
France; Hungary.	The UK; Netherlands; Poland; Estonia; Exxon.	CEER Equinor EEA; EFTA.

Source: Manually coded positions from the interest groups' position papers submitted during the public consultations in 2006; interest groups' websites; European Commission (2006c).



## Appendix V

### Interest groups' positions on ILUC (2010)

Options *	Support/ YES	Oppose/NO
(1) Does analytical work provides a good basis for determining how significant ILUC resulting from biofuel production is?	Foreign: ExxonMobil	<p>EU: ACCIONA BIOCOMBUSTIBLES (Spain); BP; NFU (UK); Novozymes (Denmark); REA (UK); Shell; Svebio (Swedish); Svensk Energi - Swedenergy AB; Vireol Ltd (UK); VNBI; VERNOF; SCOPA (UK); P.N.Pettas (Greece); Oxem SpA (Italy); Lantmännen Energi; INEOS (France); APPA (Spain); Huileries de France; GF Energy (Greece); German Biofuels Sector; Expur (Romania); Elin Biofuels (Greece); Eco Fox Srl (Italy); Diester Industrie (France); British Sugar; Swedish Wood-fuel Association; Neste Oil (Sweden); EBB; ePURE.</p> <p>Non-EU: ABIOVE (Brazilian Association of Vegetable Oil Industries); CARBIO (Argentine Biofuels Chamber); Malaysian Palm Oil Council; PBE (biodiesel producer company from Argentina); UNICA (Brazilian Sugarcane Industry Association); Argentinean Soybean Chain Association; Vicentin (Argentina); USB (United Soybean Board - U.S. volunteer soybean farmer -leaders appointed by the U.S. Secretary of Agriculture); RENOVA (Argentina).</p> <p>EU states: Spain.</p> <p>Foreign states: Argentina; Brazil; Indonesian Palm Oil Council.</p>
(2) EU action is needed to address ILUC?	<p>EU: Novozymes (Denmark)</p> <p>Non-EU: ExxonMobil.</p> <p>EU states: Danish Energy Agency Netherlands; the UK.</p> <p>Foreign states: Switzerland; Norway.</p>	<p>EU: ACCIONA. BIOCOMBUSTIBLES (Spain); BP; NFU (UK); Svebio (Swedish); Vireol Ltd (UK); VNBI - Dutch association of biodiesel producers; SCOPA (UK); P.N.Pettas (Greece); Oxem SpA (Italy); INEOS (France); APPA (Spain); Huileries de France ; GF Energy (Greece); Expur (Romania); Elin Biofuels (Greece); Eco Fox Srl (Italy); Diester Industrie (France); British Sugar; Swedish Wood-fuel Association; Neste Oil (Sweden); EBB; ePURE.</p> <p>Non-EU: ABIOVE (Brazilian Association of Vegetable Oil Industries); CARBIO (Argentine Biofuels Chamber); Malaysian Palm Oil Council; PBE (Argentina); UNICA; Argentinean Soybean Chain Association; Vicentin (Argentina); RENOVA (Argentina).</p> <p>EU states: Austria; Spain.</p> <p>Foreign states: Argentina; Brazil; Indonesian Palm Oil Council.</p>
A. No action.	EU: ACCIONA BIOCOMBUSTIBLES (Spain); Shell; Svebio	

	(Swedish); Svensk Energi - Swedenergy AB; P.N.Pettas (Greece); Oxem SpA (Italy); INEOS (France); APPA (Spain); Huileries de France; GF Energy (Greece); German Biofuels Sector; Elin Biofuels (Greece); Eco Fox Srl (Italy); Diester Industrie (France); British Sugar; EBB. Non-EU: ABIOVE (Brazil); CARBIO (Argentine Biofuels Chamber); Malaysian Palm Oil Council; PBE (biodiesel producer company from Argentina); Argentinean Soybean Chain Association; Vicentin (Argentina); RENOVA (Argentina). EU states: Austria; Spain. Foreign states: Argentina; Brazil; Indonesian Palm Oil Council.	
B. Encourage some types of biofuel.	EU: Novozymes (Denmark); Agri Energy (UK); Living Fuels (UK).	EU: Shell; SCOPA (the UK); APPA (Spain); Huileries de France. Non-EU: ABIOVE (Brazil); CARBIO (Argentine Biofuels Chamber); PBE (Argentina); Argentinean Soybean Chain Association; Vicentin (Argentina); RENOVA (Argentina), EBB. Foreign states: Argentina; Indonesian Palm Oil Council.
C. Discourage some types of biofuel	Foreign states: Switzerland; Norway.	EU: Shell; SCOPA (UK); APPA (Spain); Huileries de France; Neste Oil (Sweden); EBB. Non-EU: ABIOVE (Brazilian Association of Vegetable Oil Industries); CARBIO (Argentine Biofuels Chamber); PBE (biodiesel producer company from Argentina); Argentinean Soybean Chain Association; Vicentin (Argentina); RENOVA (Argentina). Foreign states: Argentina; Indonesian Palm Oil Council.

\* European Commission (2010c).

Source: Manually coded positions from the interest groups' position papers submitted during the public consultations in 2010; interest groups' websites; European Commission (2010b).

## Appendix VI

### Interest groups' position on N-1 rule (2015)

<b>Regional N-1 (obligatory)</b>	<b>Regional N-1 in addition to the national calculation</b>	<b>Regional N-1 (voluntarily)</b>	<b>National N-1</b>
Austrian Gas Grid Management; Verbund; NET4GAS; DIHK; E.ON; RWE; IBERDROLA; GDF SUEZ; GRTgaz; Total; UPRIGAZ; MFGT; MOL Group; ENEL; Snam; GasTerra; Grupa Azoty ; Hermes Energy Group S.A; EDP; Vattenfall; Finnish National Emergency Supply Agency; Italy; Lithuania; Poland; Slovenian Regulatory Authority.Central Europe Energy Partner; CEER; GIE; IFIEC Europe;	Czech Chamber of Commerce; Enagas; Czech Government; Portugal; Eurogas; ENTSOG.	Eustream Slovakia; Energy UK; Spain; UK; EFET.	Austrian Federal Economic Chamber; Austrian Association of Gas and District Heating Companies; Gas Connect Austria; CEZ Group; BDEW; DVGW; NB Gas; INES; SWM; Reganosa; EDF; Edison; BBL Company; Gasunie; PGNiG; Austria; Hungary; Competent Authorities of Belgium, Denmark, Germany and the Netherlands; Eurelectric; Equinor; Wingas

Source: Manually coded positions from the interest groups' position papers submitted during the public consultations in 2015; interviews; interest groups' websites; European Commission (2015b).

### Interest groups' position on Reverse Flows (2015)

<b>Bi-directional flows should be offered at all interconnections</b>	<b>Existing procedures for exemptions from bi-directional capacity obligation should be maintained</b>
Energy Community; CEZ Group; Czech Chamber of Commerce; DIHK; Energias de Portugal; Central Europe Energy Partners (CEEP); Czech Republic; CNMC (Spanish Competition Regulator); UK; Naftogaz.	Austrian Federal Economic Chamber (AFCO); EDF (France); GDF SUEZ (France); BDEW; E.ON; BBL Company; EFET; WINGAS; Exxon; Equinor.

Source: Manually coded positions from the interest groups' position papers submitted the during public consultations in 2015; interviews; interest groups' websites; European Commission (2015b).

Interest groups' positions on Risk Assessment and Preventive and Emergency Plans  
(2015)

<b>Plans should be regional</b>	<b>Plans should be national (regional plans should be only voluntary)</b>
Energy Community; Czech Chamber of Commerce; Direct Energie; E.ON; Creos Luxembourg; EDP; Central Europe Energy Partners; Austria; Czech Republic; CNMC; UK.	Enagas; Energy UK; Wingas; Austrian Federal Economic Chamber; Austrian Gas Grid Management; EDF; BDEW; BBL Company; Centrica; EFET; Competent Authorities of Belgium, Denmark, Germany and the Netherlands; Italy.

Source: Manually coded positions from the interest groups' position papers submitted during the public consultations in 2015; interest groups' websites; European Commission (2015b).

Interest groups' positions on definition of protected customers (2015)

<b>Definition of protected customers should be harmonised</b>	<b>Definition of protected customers should not be harmonised</b>
Austrian Federal Economic Chamber; DIHK; DVGW; Enagas; EFET; Central Europe Energy Partners; Austria; Competent Authorities of Belgium, Denmark, Germany and the Netherlands; Italy; CNMC (Spanish competition regulator); UK; WINGAS.	Czech Chamber of Commerce; Edison; AGFW; Czech Republic; Energy Community.

Source: Manually coded positions from the interest groups' position papers submitted during the public consultations in 2015; interest groups' websites; European Commission (2015b).

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