European Union Energy Policy in the 21st Century: A Process of Riskification

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ABSTRACT

In the 1990s, the European Union (EU) took the first important steps towards a common energy policy. Aided by the extraordinarily favourable environment of the end of the Cold War, it developed an energy policy around a model heavily inspired by the fundamental principles of European integration laid down in the Treaty of Rome in 1957, centred on the use of regulatory tools to build and maintain competitive markets.

At the turn of the century, the market optimism that had enabled European integration to re-engage with its roots after the relative obscurity of the European Communities in the energy domain in the previous decades, quickly waned. It gradually became clear that the EU's most important energy partner, Russia, was not willing to play by EU rules. As successive gas supply disruptions in the second half of the 2000s shocked Europe, energy security rose to the top of the European political agenda. As such, the energy domain also regained significant amounts of scholarly attention. How did the energy policy of the EU react to an increasingly adverse environment; did it stick to its market-oriented approach, or did it adjust and adapt in function of the changing international environment?

To answer this question, scholars have primarily relied on traditional concepts in European integration studies (e.g. the regulatory state) and dichotomous theoretical frameworks (e.g. liberalism vs. realism). As a consequence, existing research has often been unable to formulate more precise answers, which fully express the complexities of the developments in the European energy dimension. By offering an original conceptualisation of the contemporary evolution of European energy policy based on a blended theoretical approach and an interdisciplinary methodology, this research aims to remediate this gap in the academic literature.

Drawing on insights from International Political Economy (IPE) and securitisation theory and methods from political science and the legal discipline, it will argue that the current mode of energy governance can be understood as a result of a successful process of riskification. Specifically, it will demonstrate that the European Commission has consistently framed European import dependence as a risk to security of supply since the early 2000s, in order to legitimise the establishment of supranational precautions aimed towards mitigating that alleged risk. These “riskifying moves” have been accepted by the relevant audience, the member states, resulting in the adoption of a variety of precautionary measures to safeguard EU security of supply. This intersubjective understanding of import dependence in terms of risk and the associated recalibration of EU internal and external energy policy in turn radically altered the dynamic of the EU’s relations with Russia and Gazprom.

This research aims to improve the theoretical understanding of the contemporary evolution of European energy governance, which better captures its current intricacies. It also has significant practical relevance. In light of the dramatic geopolitical turmoil caused by the Russian invasion of Ukraine in February 2022, it can serve as a valuable comparative tool to assess the discursive and policy developments in the European energy dimension.

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LIST OF ACRONYMS

AA	Association Agreement
ACER	Agency for the Cooperation of Energy Regulators
bcm	billion cubic metres
CEF-E	Connecting Europe Facility for Energy
CEPA	Comprehensive and Enhanced Partnership Agreement
CESEC	Central and South Eastern Europe Energy Connectivity
CINEA	European Climate, Infrastructure and Environment Executive Agency
CJEU	Court of Justice of the European Union
CNPC	China National Petroleum Corporation
EBRD	European Bank for Reconstruction and Development
ECJ	European Court of Justice
ECT	Energy Charter Treaty
EEA	European Economic Area
EEC	European Economic Community
EEPR	European Energy Programme for Recovery
EFSI	European Fund for Strategic Investment
EFTA	European Free Trade Association
EIB	European Investment Bank
ENP	European Neighbourhood Policy
ENTSOG	European Network of Transmission System Operators for Gas
ENTSO-E	European Network of Transmission System Operators for Electricity
EU	European Union
EURATOM	European Atomic Energy Community
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
HLG	High Level Group
HR/VP	High Representative of the Union for Foreign Affairs and Security Policy
IEA	International Energy Agency
IEM	Internal Energy Market
IGA	Intergovernmental Agreement
INEA	Innovation & Network Executive Agency

INOGATE	Interstate Oil and Gas Transportation to Europe
IR	International Relations
ISDS	Investor-State Dispute Settlement
ISO	Independent System Operator
ITO	Independent Transmission System Operator
JCPOA	Joint Comprehensive Plan of Action
LNG	Liquefied Natural Gas
MoU	Memorandum of Understanding
NATO	North Atlantic Treaty Organisation
NRA	National Regulatory Authority
OECD	Organisation for Economic Co-operation and Development
OPAL	Ostsee Pipeline Anbindungsleitung
OPEC	Organisation of the Petroleum Exporting Countries
PCA	Partnership and Cooperation Agreement
PCI	Project of Common Interest
PECI	Project of Energy Community Interest
PEEREA	Protocol on Energy Efficiency and Related Environmental Aspects
PMI	Project of Mutual Interest
SCP	South Caucasus Pipeline
SGC	Southern Gas Corridor
TAP	Trans-Adriatic Pipeline
TANAP	Trans-Anatolian Pipeline
TEN-E	Trans-European Networks for Energy
TCP	Trans-Caspian Pipeline
TFEU	Treaty on the Functioning of the European Union
WTO	World Trade Organisation

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CHAPTER 1: Introduction

1 Research background

Once more, for better or worse, energy finds itself right at the heart of European integration. The Russian invasion of Ukraine in February 2022 has shaken the EU to its very core and, due to the centrality of energy in both our lives and the dynamic of EU-Russia relations, nowhere is that felt more than in the energy sector. Cutting the umbilical cord with Russian oil and gas will prove a tremendous test for European solidarity, the outcome of which is still very much in the balance.

Energy, it can be said, is the alpha and omega of European integration. When in 1950 Robert Schuman, Minister of Foreign Affairs of France, presented his plan to foster regional integration and preserve peace on the European continent, it was no coincidence that this involved, besides the creation of a common market for steel, pooling the coal production of France, Germany and any other European country willing to join. Coal delivered most of Europe's energy needs and was considered crucial for economic development. Therefore, Schuman believed that placing the European coal industries under a supranational authority and creating a single market for this commodity would make war between France and Germany "not merely unthinkable, but materially impossible" (Schuman, 1950).

As is well known, the Schuman Declaration led to the establishment of the Treaty establishing the European Coal and Steel Community (ECSC) in 1951. Six European countries (Belgium, France, Italy, Luxemburg, the Netherlands and West Germany) agreed to delegate competences to a supranational institution, the High Authority, which was charged with the creation of a common market for coal and steel.

The ECSC would serve as the model for the other European Communities, the European Atomic Energy Community (EURATOM) and the European Economic Community (EEC), both established in 1957. While EURATOM aimed at the coordination of Europe's nuclear energy industry, the EEC pursued the economic integration of its member states in a general sense.

Despite energy's central position in kickstarting the European integration process in the 1950s – two of the three initial treaties specifically concerned the energy sector – supranational energy policy would not amount to much in the ensuing decades. Neither the ECSC or EURATOM proved very effective or relevant as oil and gas became the dominant energy sources within the Community and member states were reluctant to delegate competences in the energy domain to the EEC (Matláry, 1997, p. 18; McGowan, 2008, p. 93). At a time when energy was considered paramount to sovereignty, member states were unable to set purely national interests aside and the European Commission's attempts to launch a common energy policy within the EEC, for instance in the wake of the 1973 oil crisis, tended to exacerbate rather than resolve their differences (McGowan, 2008, p. 93). Member states pursued national energy policies, and in the rare case they opted for international cooperation, they did so bilaterally or within an intergovernmental framework like the International Energy Agency (IEA) (Prontera, 2019a, p. 1).

The energy domain presented a "paradox of integration" (Belyi, 2008); as central as it was in shaping European integration in the 1950s, so absent was it in that same respect in the 1960s and 1970s. Energy would again resurface on the European agenda in the 1980s, by cause of a broader ideological shift in the member states towards economic liberalism in combination with favourable energy market conditions, away from the tight markets and oil crises of the 1970s (McGowan, 2008, p. 94). At its core a

project of market integration, the Community turned out to be particularly fit to translate the dominant policy consensus of the time into concrete action. It made its initial proposals for an Internal Energy Market (IEM) in the eponymous 1988 Green Paper, which would lead to the first directives for the liberalisation of the member states' electricity and gas markets in respectively 1996 and 1998. This marked the start of a truly substantive internal energy policy at the supranational level.

With the implosion of the Soviet Union and the end of the Cold War, the Community was immediately presented with a window of opportunity for external action as well. Where the internal energy policy firmly aimed towards developing the necessary rules to build an integrated energy market at home, the external energy policy endeavoured to export those rules abroad (see e.g. Goldthau & Sitter, 2014; Van de Graaf, 2017). The Community played a central role in establishing the Energy Charter Treaty (ECT), signed in 1994, which sought to create a wider Eurasian energy market by laying down common rules for trade and investment in energy products among its parties.

Yet, at the turn of the century, the market optimism that had dominated the 1990s and so decisively affected the development of energy policy at the supranational level, started to fade (Goldthau & Sitter, 2014, p. 1453). Oil prices soared and a revival of resource nationalism ensued. The "early post-Soviet openness" of Russia, the EU's biggest energy partner, to a liberalisation of its energy sector quickly dissipated (Dannreuther, 2015, p. 475). The EU's "traditional" market-oriented energy policy came under increasing pressure.

In the second half of the 2000s, EU energy policy received multiple shocks, as subsequent Russo-Ukrainian gas price disputes in 2006 and 2009 caused large-scale disruptions to the European energy supply. These

events confirmed that Europe's most important energy supplier was not interested in playing by EU rules and put security of supply at the top of the European agenda. This led to some important innovations. The Lisbon Treaty finally provided the EU with a formal legal basis to conduct an energy policy, which had previously relied on general internal market and other competences tangentially related to the energy dimension delegated to the supranational level by the treaties (Van de Graaf, 2017, p. 171).

As energy rose to prominence on the European political agenda, so did it capture the interest of scholars. These scrutinised how the EU had responded to the changed international context of the 2000s (e.g. Belkin, 2008; Correljé & van der Linde, 2006; McGowan, 2008; Westphal, 2006; Youngs, 2009): did it stick to its market-based policies in an increasingly adverse environment, or did it instead adapt its approach? The main limitation of these works was their rigid conceptual framework, presuming two possible "storylines" for the EU to pursue: "Markets and Institutions" (a "market" approach) and "Regions and Empires" (a "geopolitical" approach) (Correljé & van der Linde, 2006). These accounts failed to accurately describe and conceptualise the evolution of EU energy policy, which was, "at best, […] portrayed as oscillating between 'geopolitics and the market' or between statist and liberal modes of energy policy" (Prontera, 2019a, p. 2).

More theoretical accounts ensued from the early 2010s onwards, employing lenses such as International Political Economy (IPE) (e.g. Andersen et al., 2016; Andersen et al., 2017a; Belyi, 2015; Godzimirski, 2019; Goldthau & Sitter, 2014; Goldthau & Sitter, 2015a, Goldthau & Sitter, 2015b; Kuzemko et al., 2012), securitisation theory (e.g. Judge & Maltby, 2017; Szulecki, 2018) or the principal-agent model (Batzella, 2018). However, as Kustova (2017) and Prontera (2019a) have argued, these works were oftentimes still grounded in the conception of the EU as

fundamentally a “market” actor, and as a consequence failed to unpack the intricacies of the hybrid mode of energy governance at the supranational level. Current efforts have been aimed at overcoming the shortcomings of these two previous waves of research, by attempting to conceptualise EU energy policy beyond the traditional dichotomies (e.g. Batzella, 2022; Prontera, 2019a), in order to enable more precise and encompassing accounts of the EU’s role in the energy sphere in the 21st century.

This dissertation fits within this latest strand of research. As it became clear from reviewing both primary sources (e.g. European Commission, 2000; European Commission, 2014a; European Commission, 2015a) and secondary sources (e.g. Boersma & Goldthau, 2017; Casier, 2011) that European energy policy had become increasingly concerned with “security” in one way or another, securitisation theory appeared a promising point of departure. Yet, by applying this framework to the developments at hand, it was also obvious that European energy policy had not simply securitised – had not simply moved from a market-oriented to a geopolitical approach. The concept of riskification provided a solution to account for the hybridity of the particular security logic that had been introduced in European energy policy, and a general structure for considering its contemporary evolution that took into account discursive, policy and relational (i.e., concerning relations of the EU with third countries) developments.

However, more was needed to contextualise them, and to accurately address the evolution in terms of policy tools used, their mode of application, the general purpose of EU intervention and the changing role of the European Commission. Thus, the dissertation incorporated insights and concepts from IPE in the analysis to remedy this inadequacy.

As such, this research developed in abductive fashion (a form of “inference to the best explanation” (Walton, 2005, p. xiii) that was first formulated by

the American philosopher Charles S. Peirce), where concrete observations were used to select the theories appearing most suitable to address them. It aims to offer an original conceptualisation of the EU's response to the changing international environment of the 21st century, to build on the previous efforts in this regard and to contribute to the contemporary debate on EU actorness – what type of power is the EU? – in the energy sphere. The next section will introduce the theoretical framework of this dissertation.

2 Theoretical framework

This dissertation employs a blended theoretical approach, derived from the Copenhagen School of security studies and IPE.[1] Indeed, both of these theories have been popular in the contemporary analysis of EU energy policy (e.g. Andersen et al., 2017a; Belyi, 2015; Godzimirski, 2019; Goldthau & Sitter, 2014; Goldthau & Sitter, 2015a; Goldthau & Sitter, 2015b; Judge & Maltby, 2017; Kuzemko et al., 2012; Natorski & Herranz-Surrallés, 2008; Prontera, 2019a; Szulecki, 2018). This dissertation is however unique in its synthesis of securitisation theory and IPE. This enables it to build on and combine the insights of the previous research and to explore the synergies between these two theoretical angles, and allows for a conceptualisation of the hybrid mode of governance emerging at EU level that better captures and explains its current intricacies. This section will briefly introduce these concepts and typologies, to provide the reader with an understanding of how these are operationalised in the remainder of the dissertation, and how they fit together.

[1] The terms Copenhagen School (of security studies) and securitisation theory are used interchangeably throughout the dissertation.

2.1 The Copenhagen School of security studies: The basics

The Copenhagen School of security studies stems from the constructivist tradition of International Relations (IR). In its very essence, it argues that what is understood by "security" in a given time and place, is the product of social construction; security issues, issues of existential importance, are not "out there", but are instead created by, framed as such by certain actors in order to legitimise the establishment of emergency measures (Buzan et al., 1998). Specifically, issues develop into security issues through a successful process of "securitisation", the central concept in the Copenhagen School's approach, referring to "the discursive process through which an intersubjective understanding is constructed within a political community to treat something as an existential threat to a valued referent object" (Buzan & Wæver, 2003, p. 491). As such, securitisation is "a more extreme version of politicisation" (Buzan et al., 1998, p. 23). Where politicisation is about making an issue part of the public debate, securitisation is about presenting an issue as an existential threat "requiring emergency measures and justifying actions outside the normal bounds of political procedure" (ibid. p. 24).

A successful securitisation process consists of three key components/stages (ibid. p. 26). In a first stage, a securitising actor frames an issue as an existential threat to a referent object – that which is threatened and has "a legitimate claim to survival" (ibid. p. 36). This is done to legitimise the establishment of certain extraordinary measures to protect/defend the referent object from the alleged threat to a particular audience, the target of the "securitising move".

If the targeted audience rejects the securitising move, it will remain just that – a move. If the targeted audience accepts the securitising move – accepts the framing of an issue as an existential threat to a referent object requiring

the establishment of extraordinary measures – the securitising move is successful and the securitisation process enters a second stage: the adoption of the proposed extraordinary measures to deal with the alleged threat (ibid. p. 25). The third component of a successful securitisation process then consists of the effects of the intersubjective understanding of an issue as an existential threat between securitising actor and audience and the consequent adoption of extraordinary measures on interunit relations (ibid. p. 26) – the relations between the powers within the same regional security complex ("a set of units whose major processes of securitisation, desecuritisation, or both are so interlinked that their security problems cannot reasonably be analysed or resolved apart from one another" (Buzan & Wæver, 2003, p. 491)).

Securitisation can be studied directly via an examination of discourse and political constellations (Buzan et al., 1998, p. 25). Does an argument correspond to the specific rhetorical structure/grammar of the ideal type of a securitising move? Did other actors internalise this grammar and did this lead to the adoption of certain extraordinary measures that these actors would otherwise not have accepted? How did this affect interunit relations? By seeking an answer to these questions, the Copenhagen School "aims to gain an increasingly precise understanding of who securitises, on what issues (threats), for whom (referent objects), why, with what results, and, not least, under what conditions (i.e., what explains when securitisation is successful)" (ibid. p. 32).

2.2 Adaptations

The concepts and ideas outlined above form the core of the Copenhagen School's approach to security as set out in the seminal 1998 book by Buzan et al. "Security: A New Framework for Analysis". Since then, several scholars have brought theoretical innovations that enhanced and expanded the scope of the original framework (Balzacq, 2010b; Ciută,

2010; Corry, 2012; Fischhendler, 2015; Fischhendler & Katz, 2013; Heinrich & Szulecki, 2018). Similar to the approach adopted by Judge & Maltby in their 2017 paper, this dissertation has taken into consideration both so-called "philosophical" and "sociological" critiques of the Copenhagen School. In this way, it attempts to tackle two of its main weaknesses, i.e. the essentialist and "excessively textual" understanding of security (Judge & Maltby, 2017, pp. 182-183).

2.2.1 Philosophical adaptation: The concept of riskification

One of the main criticisms of the framework set out in Buzan et al. (1998) has been the overly narrow operationalisation of security in terms of "survival", "existential threat" and "extraordinary measures", causing it to have only limited applicability for empirical studies (Judge & Maltby, 2017, p. 182; Heinrich & Szulecki, 2018, p. 40). The concept of riskification has been proposed and used as a way to expand the empirical scope of securitisation theory, and has also been employed in this dissertation.

This concept was first advanced by Corry (2012, p. 256), as "a kind of second-order security politics that focuses on the conditions of possibility for harm", a grammar of security in between politicisation and securitisation. Where politicisation is about framing issues as governable and making them part of the public debate and securitisation is conversely about framing issues as existential threats to legitimise "actions outside the normal bounds of political procedure" (Buzan et al., 1998, p. 24), riskification is about framing issues as risks or "constitutive causes of harm" to certain referent objects, which make harmful events possible or more likely (Corry, 2012, p. 246). This is not to break away from existing rules and to justify extraordinary measures, but instead to legitimise a long-term plan of action characterised by precautionary measures to increase the governance and resilience of the referent object in question (ibid. p. 249). Whereas securitisation is much more short-termist, about

secrecy/withdrawing an issue from democratic oversight, about direct causes of harm requiring urgent attention “because if the problem is not handled now it will be too late, and we will not exist to remedy our failure” (Buzan et al., 1998, p. 26), riskification is about *including* rather than detaching an issue from public debate, about framing issues as long-term problems and indirect causes of harm requiring “transparency, precautionary measures and increased cooperation” (Corry, 2012, p. 248) and “extensive governance programmes of the valued referent object itself” (ibid. p . 257).

As an analytical tool, riskification enables the Copenhagen School to deal with discursive strategies revolving around non-existential rather than existential threats (Heinrich & Szulecki, 2018, p. 46). As Judge & Maltby (2017, p. 183) note, this is of particular relevance to the field of energy security studies, as many of the security claims in the energy sector seem to deal in risks rather than threats (in the context of the EU, see e.g. Stoddard, 2012). It also allows for the study of more gradual *processes* of security construction over time, whereas securitisation is much rather suited and has mostly been used for the analysis of exceptional *moments* of security discourse and action (see McDonald, 2008, pp. 575-577). By expanding the theory’s scope in these two ways, the concept of riskification helps to make up for the weak empirical applicability of the original framework of securitisation advanced by Buzan et al. (1998).

It does not, however, solve all the Copenhagen School’s problems. Just as the classic logic of securitisation, Corry’s notion of riskification spells out a specific causal sequence between discourse and the production of certain political effects: riskifying move – acceptance thereof by the relevant audience – creation of a platform where the adoption of precautionary measures becomes possible (see Judge et al., 2018, p. 167). As scholars from the so-called sociological wing of securitisation theory have rightly

argued, this causal determinism and lack of consideration of contextual factors quickly becomes untenable in empirical settings (e.g. Balzacq, 2010a). To answer to this criticism, this dissertation has chosen to include IPE in the analysis, as will be further explained below.

Corry's logic of riskification has also been criticised for adopting the same essentialist approach vis-à-vis risk as found in classic securitisation theory vis-à-vis security threats, "by positing 'risk' as a unified and rule-bound logic that neglects questions of how risks, like security threats, are constructed within particular cultures over time and are themselves subjected to contestation and adaptation in concrete empirical circumstances" (Judge & Maltby, 2017, p. 183).

Despite these weaknesses, the concept is a valuable addition to the Copenhagen School's analytical toolbox. It has proven particularly useful for scrutinising processes of security construction across different contexts, as exemplified by the comparative analyses of gas security debates in Poland and the UK by Judge & Maltby (2017) and of German and Polish debates on Nord Stream 2, shale gas, nuclear energy and renewables in the edited volume by Szulecki (2018). Namely, riskification helps to comprehend not only whether or not, but also as what type of security concern an issue is understood (Judge & Maltby, 2017, p. 180).

As this dissertation will demonstrate, it can be equally useful for the examination of single cases of security construction where classic securitisation theory proves inept. Whereas securitisation offers little insight into the EU's gradual shift from an almost purely market-oriented to a more hybrid, security-based paradigm in the energy sector (that is, until the Russian invasion of Ukraine in 2022), the following chapters will show how the lens of riskification is particularly well-suited for understanding the in-between security logic that has emerged in EU energy policy in the 21st

century. It will do this by employing the typology of Corry (2012), based around the three central "grammars of security" of securitisation, riskification and politicisation (see Table 1).

Table 1. Grammars of security

Language game	Securitisation (security politics)	Riskification (risk politics)	Politicisation (normal politics)
Grammar	Construction of scenario of direct harm (an existential threat) to a valued referent object.	Construction of conditions of possibility of harm (a risk) to a governance-object.	Construction of object as governable (making it distinct, malleable, measurable).
Political imperative	Plan of action for defence against threat, that is external to referent object.	Plan of action to increase governance and resilient of referent object.	Plan of action to maximise utility in trade-offs with other goods.
Performative effects	Legitimation of exceptional measures (secrecy, no-holds barred action, no trade-offs with security) aiming for survival.	Legitimation of precautionary measures, i.e. inclusion of a safety margin.	Legitimation of trade-offs in relation to other goods.

Note. Reprinted from "Grammars of security", by Corry (2012), *Millennium: Journal of International Studies, 40* (2), p. 249.

2.2.2 Sociological adaptation: The inclusion of IPE

Apart from its essentialist operationalisation of security, another major criticism of the framework set out in Buzan et al. (1998) has been its methodological approach, focusing too much on linguistics without sufficiently considering contextual factors (Judge & Maltby, 2017, p. 183; Heinrich & Szulecki, 2018, pp. 42-44). Scholars have therefore argued for a more "sociological" theory of securitisation, which emphasises the gradual, procedural character of securitisation processes, and which duly

accounts for the broader context in which these processes take place (see e.g. Balzacq, 2010b; Balzacq, 2015; Guzzini, 2011; Stritzel, 2007).

This sociological critique has been incorporated in the dissertation in two ways. First of all, securitisation and riskification have been operationalised as creeping processes, cultivated by a continuous stream of securitising/riskifying moves. Secondly, this dissertation has used IPE to embed the securitisation analysis within the political-economic context, i.e. "the conditions under which energy is produced, traded, and used, and how those activities are regulated" (Judge et al., 2018, p. 165), which "play a role in shaping the form, dissemination and success or failure of securitisation" (ibid.).

Naturally, IPE provides a highly suitable analytical lens to consider these political-economic factors. This subdiscipline of IR emerged in the early 1970s, as scholars challenged the security and state-centred approaches dominating the field and attempted to account for two events that demonstrated the crucial role of economic factors in global politics, the end of the Bretton Woods system in 1971 and the oil shock of 1973 (Van de Graaf et al., 2016, p. 10). IPE is, in essence, "the study of the interplay of economics and politics in the world arena" (Frieden & Lake, 2000, p. 1). It offers "a powerful framework for analysis upon which scholars of energy politics can build" (Van de Graaf et al., 2016, p. 5). It can help to understand the interaction between political structures and energy markets and reveal "the fundamental dynamics at play behind particular energy technologies or policies" (Van de Graaf et al., 2016, p. 11). As such, this dissertation has employed IPE to enable a more sociological approach to (and thus a deeper understanding of) the particular security logic introduced in the energy discourse and policy of the EU in the 21st century. Moreover, IPE has been used to accurately address the various forms of EU intervention in the energy markets. For this, it could rely on the

extensive IPE-inspired literature on EU energy policy, where various scholars analysed the mode(s) of supranational energy governance by looking at (the evolving nature of) the interactions between the EU and the Eurasian energy markets and utilising IPE's conceptual toolbox to characterise those interactions (e.g. Andersen et al., 2017a; Belyi, 2015; Godzimirski, 2019; Goldthau & Sitter, 2014; Goldthau & Sitter, 2015a, Goldthau & Sitter, 2015b; Kuzemko et al., 2012; Prontera, 2019a).

Especially popular has been the concept of the regulatory state, which refers to a mode of governance based around preventing/correcting market failures via regulation, rather than around redistribution or macroeconomic stabilisation via e.g. taxation or direct public ownership (Moran, 2002, p. 402; Lodge, 2008, p. 280). The idea of the EU as a "regulatory state" traces back to the work of Majone in the mid-1990s, who argued that regulatory governance is embedded in the EU's institutional DNA, as a market integration project with limited options for intervention other than through regulation (Majone, 1994; Majone, 1997). It has remained one of the dominant lenses to interpret the EU's role in the energy sector in both the internal and external dimension (e.g. Goldthau & Sitter, 2014; Goldthau & Sitter, 2015a; Goldthau & Sitter, 2015b).

Recently, there have also been more innovative IPE-inspired accounts and conceptualisations of EU actorness in the energy sphere, such as by Prontera (2019a) and Andersen et al. (2017a). Prontera (2019a) analyses EU governance of the gas sector through the lens of the "catalytic state". This concept was first introduced by Lind (1992). He argued that a new kind of state was emerging in the context of the early 1990s, which pursued its goals not through relying on its own resources, but rather through building coalitions with other public, private and hybrid actors "while retaining its distinct identity and its own goals" (Lind, 1992, p. 3). In other words, according to Lind (1992), states started functioning as

catalysts, using their own resources primarily as a means to unlock the resources of other actors. Prontera (2019a) builds on and further develops Lind's notion and applies it to the supranational governance of the gas sector, to argue that the EU has shifted from being a regulatory to being a catalytic "state". The EU no longer functions as a regulator, but rather as an enabler, facilitator, forging coalitions and promoting and supporting the efforts of other actors, acting as a catalyst or "a stimulus in bringing about or hastening a result" (Prontera, 2019a, p. 165).

On the other hand, Andersen et al. (2017a) conceptualise the supranational mode of energy governance emerging after the 2014 Ukraine crisis as "liberal mercantilist", based on the "deliberate use of market power for political ends in the shape of augmenting energy security" (Andersen et al., 2017a, p. 241). Whereas the approach is liberal "in the sense that it builds on the EU's market-focused approach, and primarily relies on regulatory tools" (ibid.), it is mercantilist "in the sense that this approach is targeted at Russia and promotes regulation for the purpose of augmenting the EU's own power at Russia's expense" (ibid.). In other words, it is liberal in terms of policy tools used, but mercantilist in its pursued objective.

This dissertation has relied on these various conceptualisations – the EU as a regulatory state, as a catalytic state and as a liberal mercantilist – to develop its own typology to classify the EU's past and current forms of intervention in the energy sphere (see Table 2). Liberal mercantilist has been relabelled as "geo-economic", but the essence of the concept remains the same.

Table 2. IPE typology

EU actorness	Regulatory Power	Catalytic Power	Geo-economic Power	Geopolitical Power
Type of tools	Regulation, competition policy	Regulatory, political and financial support	Regulation, competition policy	Hard economic power (e.g. sanctions)
Mode of application	Neutral	Targeted/selective	Targeted/selective	Targeted/selective
Purpose	Creation of a level playing field for market actors	Catalytic/Promotion, facilitation and acceleration of efforts of other actors	Strategic/Strengthening of EU's strategic position vis-à-vis third countries	Strategic/Strengthening of EU's strategic position vis-à-vis third countries
Commission role	Regulator & enforcer of regulation, promoter of rule export	Facilitator	Strategic actor	Strategic actor
Compatible with market meta frame?	Yes	Yes	Yes	No

Note. Adapted from "Framing and reframing EU energy security: Regulatory vs. Catalytic state" by Prontera (2019a), Beyond the EU Regulatory State: Energy Security and the Eurasian Gas Market, p. 82 and "The EU as a power in the international political economy of energy (focus on the gas sector)" by Prontera (2019a), Beyond the EU Regulatory State: Energy Security and the Eurasian Gas Market, p. 174.

3 Research approach

This dissertation has conceptualised the contemporary evolution of EU energy policy as the result of a successful process of riskification that was instigated by the European Commission. In analogy with a successful securitisation process, successful riskification can be considered as a process consisting of the following three steps:

(1) riskifying moves, framing an issue as a risk to a referent object to legitimise the establishment of precautionary measures to increase the resilience and governance of that referent object,

(2) the acceptance of those moves by the relevant audience, leading to an intersubjective understanding of the issue at hand as a risk to the referent object, and to the adoption of the precautionary measures proposed by the riskifying actor,

(3) the effects of that intersubjective understanding and the accompanying precautionary measures on the relations between the powers within the applicable regional security complex.

The analysis in this dissertation is structured around these three steps, which are each studied on the basis of the theoretical framework set out in the previous section.

Concretely, the dissertation first argues that the Commission has undertaken riskifying moves in its energy discourse from the early 2000s onwards. It will demonstrate how the EU's executive consistently framed European import dependence as a risk to security of supply (the referent object) in order to legitimise a variety of regulatory (i.e. derived from the regulatory state-model) as well as catalytic (i.e. derived from the catalytic state-model) precautions. This shift in discourse will be attributed to the changing global political economy of energy in the 21st century but also to facilitating conditions specifically relating to the European (energy) context (e.g. deterioration of EU-Russia relations, EU enlargement waves of 2004 and 2007).

Secondly, the dissertation contends that these riskifying moves have been accepted by the "relevant audience", the member states, thus creating an intersubjective understanding of import dependence as a risk to security of supply and leading to the adoption of the proposed precautions. It will do

this by scrutinising the evolution of EU energy policy in both the internal and external dimension, and by pointing to the amalgam of regulatory, catalytic and geo-economic measures for security of supply established at EU level after 2009.

Thirdly, the dissertation asserts that this intersubjective understanding of import dependence as a risk to security of supply has had a pervasive impact on the energy relations between the EU and third countries in its neighbourhood. It will study a specific case of energy relations, i.e. EU-Russia gas relations, and illustrate how the dynamic of these relations drastically changed as a consequence of the acceptance of the riskifying moves by the member states.

After considering these three steps, the dissertation will evaluate the process of riskification observed in EU energy policy by analysing two of its key features in-depth, i.e. the departure from the regulatory state-model and the reinterpretation of the security of supply-objective.

The conceptualisation of the Commission as the instigator and the member states as the collective audience in the riskification process reveals the Commission-heavy focus of this research. The formal powers bestowed upon it by the treaties – legislative initiative, executive power, enforcement of EU law – and the informal powers derived therefrom (e.g. strategic timing of decisions) render the Commission a key player in setting the European agenda, steering policy debates, shaping legislative outcomes, and ensuring the effective implementation of agreed measures in those areas where the EU is competent, including energy (Bocquillon & Maltby, 2020, p. 43). The Commission also has a long history of relying on these formal and informal powers in attempts to effect a communitarisation of energy policy at EU level, tracing back to the 1960s (Maltby, 2013). Owing to this historical track record and its centrality in European policy-making

more generally, focusing principally on the role of the Commission in the process of security construction in EU energy policy thus appears a logical choice.

Unavoidably, this comes at the expense of a more thorough examination of other influential actors in the European energy sector: individual member states, the Council, the European Council, the European Parliament and the Court of Justice of the European Union (CJEU). Conceptualising member states as the receivers of the Commission's riskifying moves naturally presents a reductive view of their actual role. Like the Commission, they can advance their own security claims, which can directly oppose those at the European level both in terms of the type of security concern that is being propagated (risk/threat) and the proposed solutions (e.g. national/supranational). As the Commission will inevitably consider national preferences in devising its discursive strategy, member states shape security construction in EU context in other, more indirect ways as well.

This narrow operationalisation of the role of other actors extends beyond the member states. It also applies to the European Parliament, especially in view of the prominence this institution gained in the EU legislative process after the Lisbon Treaty's entry into force. With the multi-decade time span this thesis aims to cover, giving equal consideration to each of these actors was not feasible. As suggested also in the conclusion, exploring the role of (big) member states or the European Parliament as simultaneous recipients and shapers of the riskification process at hand is however a promising avenue for future research.

4 Methodology

This dissertation consists of desk-based research. The specific sources and methods employed vary depending on the step considered in the riskification process.

To study the **first step** of the riskification process, the dissertation conducts a discourse analysis of policy documents released by the Commission between 1988 and 2018 (see Table 3 for an overview).[2] Relevant documents in the applicable time period were identified by using the search function on EUR-Lex[3] and consulting the Archive of European Integration[4] and a variety of secondary sources (e.g. Haghighi, 2007; McGowan, 2008; Prontera, 2019a). Selected texts were subsequently analysed in terms of their general structure and coded based on the following categories:

(1) the import of energy/import dependence and its relation to security of supply,

(2) security of supply as an objective of energy policy and the means to achieve it,

(3) general energy strategy and concrete measures for EU security of supply.

A qualitative analysis of the coded data (wording, metaphors, rhetoric, jargon, phrases, arguments, statements and proposals pertaining to the three categories) then used the typologies from securitisation theory and

[2] All but one of these documents were readily accessible on EUR-Lex and/or the Archive of European Integration. For the 2001 Communication "European Energy Infrastructure", I relied on Prontera (2019a).

[3] EUR-Lex is the official database of EU law and related documents. Available at: https://eur-lex.europa.eu/homepage.html.

[4] The Archive of European Integration is a free-to-use online repository and archive for official EU documents and other research materials on the topic of European integration. This website was sometimes used as an alternative to EUR-Lex as it offers versions of some older policy documents that are searchable whereas those available on EUR-Lex are not (the latter making it much more cumbersome to navigate the document). Available at: http://aei.pitt.edu/.

IPE (see respectively Table 1 and Table 2) to detect patterns across texts and uncover the different policy paradigms underlying Commission discourse in the selected time frame. The findings were corroborated by reviewing them in the context of pertinent literature (Boersma & Goldthau, 2017; Herranz-Surrallés, 2016; Maltby, 2013; McGowan, 2008; Natorski & Herranz-Surrallés, 2008; Prontera, 2019a) and are contextualised in the dissertation via IPE.

The main limitation of this discourse analysis is that it solely focuses on the Commission. The inclusion of texts from other actors such as the Council and the European Parliament could have enriched the analysis by providing additional insight into the broader discursive context and factors playing into the discursive shifts of the Commission. It could for instance have clarified whether the riskifying moves of the Commission originated internally or were rather reflections of discursive moves initiated by member states (or a combination of both, e.g. a politicisation of import dependence accompanied by unilateral measures at the national level triggering a stronger discursive "counterattack" by the Commission to legitimise and ensure a common European approach). For reasons already explained above, texts from other actors were not included.

A second limitation is that the analysis solely relies on policy documents. Interviews with Commission officials would have been able to further validate the findings and/or provide insights into aspects not covered in policy documents. However, the time range under study rendered interviews impractical. Especially carrying these out in a manner consistent across the multiple decades which the discourse analysis spans would have been a challenging endeavour. While identifying and selecting interviewees for the 2010s would have been relatively easy, this would get significantly more complicated for the late 1980s.

For the **second step** of the riskification process, the dissertation traces internal and external developments in supranational energy governance based on EU policy documents, EU legislation (directives, regulations, decisions), international treaties concluded between the EU and third countries (e.g. Energy Charter Treaty, European Economic Area) and relevant academic literature.

The empirical analysis first examines the nascent energy policy of the EU in the 1990s. This provides a baseline against which later developments can be measured. The focus then turns towards the internal and external developments after 2000. These are analysed to evaluate whether the various precautionary measures advanced by the Commission have been translated into European policy and law. Where possible/appropriate, the dissertation opts for a doctrinal approach to further explore the congruence of the observed developments with the proposals of the Commission.

The findings of this empirical analysis are subsequently compiled to come to a general assessment of the riskification of the EU's mode of energy governance in the internal and external dimension. This, in turn, serves as a proxy to determine the (degree of) acceptance/rejection of the Commission's riskifying moves by the member states.

For the **third step** of the riskification process, the dissertation conducts a case study of the EU's gas relations with Russia. The case study is based on a comparative-historical analysis of five general periods:

(1) late 1960s until 1991, with a rapidly expanding gas trade between the Soviet Union and the member states of the Community in the context of the OPEC revolution and successive oil crises,

(2) 1991 to 1999, marked by the establishment of a market-regulatory mode of governance at EU level in conjunction with the ascendance of a neoliberal order in global energy politics,

(3) 2000 to 2009, characterised by the persistence of the EU's market-regulatory mode of governance despite the Commission's riskifying moves, in combination with the rise of a state-capitalist world order,

(4) 2009 to February 2022, with the success of the riskifying moves of the Commission and the emergence of a riskified mode of governance and supranational precautions for security of supply, including the geo-economic use of IEM legislation vis-à-vis Russian-sponsored pipeline projects,

(5) after February 2022, with the apparent securitisation of EU energy discourse and policy in the aftermath of the Russian invasion of Ukraine and the accompanying disruptions to the European gas supply.

The first period stretches from the first gas contracts concluded between the Community and the Soviet Union in the 1960s until the implosion of the Soviet Union and the end of the Cold War in 1991. As this period is crucial to understand why Western European member states such as Germany and Italy were so reluctant to adopt a common approach towards Russia during the 2000s and 2010s, it is considered on its own and discussed in a separate section.[5] The following three periods are derived from the different phases identified in Chapters 3 and 4. Each of these shifting interactions between the EU's mode of governance and the global energy order[6] created a distinct dynamic in EU-Russia gas relations, which will be studied through secondary sources, policy documents and the doctrinal analysis of EU case law, legislation and other legal sources. The fifth period concerns the developments in EU-Russia energy relations following the Russian invasion of Ukraine in February 2022, to which the theoretical framework of the dissertation will be tentatively applied. As the research was already in an advanced stage as the war in Ukraine transpired, a more

[5] In previous chapters, no separate section is dedicated to this period.
[6] For more on the "neoliberal" and "state-capitalist" energy order, see Dannreuther (2015).

comprehensive application of the framework to these developments was no longer possible.

Finally, two case studies each showcase the risks and implications of a key feature of the EU's riskified mode of energy governance. To illustrate the legal risk associated with the selective application of EU policy tools, the first case study discusses the legal challenges arising from the Commission's strategic employment of IEM legislation vis-à-vis the Nord Stream 2 pipeline project. First, document analysis is used to study legal contestation by internal actors. Specifically, leaked documents[7] from the Bundesnetzagentur (the German regulatory authority) and the legal services of the Commission and the Council are critically examined and interpreted to show how these actors contested the Commission's approach precisely because of its selective nature. Then, the case study conducts a doctrinal and normative analysis of Nord Stream 2 AG's (still pending) proceedings before the General Court and under the ECT in relation to the alleged discriminatory treatment of the project by the EU.

To demonstrate the various risks involving the precautionary conceptualisation of security of supply, the second case study evaluates the Southern Gas Corridor (SGC) in terms of key policy objectives of the EU. First, it scrutinises the contribution made by the SGC to supposedly its main goal, the diversification of the European gas supply. It then considers the impact of the SGC on other core objectives of the EU, i.e. climate neutrality and the promotion of democratic principles, good governance and human rights.

As this methodological outline reveals, there is a distinct interdisciplinary element to this dissertation. In the investigation of the second and third

[7] A hyperlink is provided to each of the three documents in question under their respective entries in the bibliography (see Bundesnetzagentur, 2017; Council of the European Union Legal Service, 2017; European Commission Legal Service, 2016).

step of the riskification process, the empirical analysis is complemented with doctrinal legal inquiry. This deepens the analysis of the measures under discussion in several ways. For example, it demonstrates the extent to which certain measures present a transfer of competence from the national to the supranational level (cf. analysis of the EU's regulatory framework for security of gas supply), the extent to which they are indicative of a precautionary logic (cf. analysis of EU bilateral arrangements in Eastern neighbourhood), the extent to which they constrain Gazprom's operations on the internal market (cf. discussion of Gazprom antitrust case), or whether or not they are inspired by strategic motives (cf. analysis of Gazprom clause). This, in turn, allows us to better comprehend the extent of audience acceptance of the riskifying moves and the effects thereof on EU-Russia gas relations. In the evaluation of the riskification process the doctrinal method also occupies a prominent place, as evidenced by the case study on the Nord Stream 2 saga. Here, it enhances our understanding of the negative consequences and potential implications brought by the riskification of EU energy governance.

5 Originality

The originality of this dissertation comprises multiple components. First, while it is not unique in employing the concept of riskification in the analysis of EU energy policy and classifying the Commission as a riskifying actor (see Judge & Maltby, 2017), it is unique in its comprehensive application thereof, conceptualising contemporary discursive, policy and relational developments as parts of an interwoven three-step riskification process. In this way, it showcases the potential of this concept to understand the particular security logic that has emerged in European energy governance over the last two decades.

Secondly, by combining IPE and securitisation theory, it offers an original, "blended" conceptualisation of the hybrid mode of governance that has

emerged at the supranational level, which goes beyond traditional dichotomies such as markets/geopolitics or realism/liberalism and “beyond the regulatory state” (Prontera, 2019a). Previous research has often failed to capture the intricacies of the contemporary evolution of supranational energy policy because of the over-reliance on these frameworks and the implicit (or explicit) assumption that the EU is in essence a “liberal” actor that uses regulation to create markets. By relying on concepts such as riskification and the catalytic state and by using these in conjunction, this dissertation is able to more accurately pinpoint the current mode of EU energy governance and to present a more inclusive analysis thereof, thus overcoming some of the limitations of the previous waves of research.

Thirdly, it unpacks the roots of the emerging hybrid mode of governance at EU level, by conceiving it as the outcome of a successful process of riskification instigated and enabled by specific political-economic and other factors. While it does not offer a causal theory of contemporary developments in EU energy policy, it can serve as a framework for further exploring the “network of causality” (see Balzacq, 2010a), the main drivers and causes of these developments.

Finally, it presents an innovative methodological approach by complementing the securitisation analysis with the doctrinal inquiry into legal instruments. This significantly enhances the empirical analysis of the process of security construction and helps to support the central argument that the evolution of supranational energy governance can be understood as the result of successful riskification.

6 Structure of the study

Chapter 2 deals with the first step of the riskification process, the riskifying moves, by studying the evolution of the Commission’s discourse between 1988 and 2018. The chapter is divided into four sections. The first section

discusses the ascendance of the neoliberal order in global energy from the early 1980s onwards and analyses the main policy documents released by the Commission in the late 1980s and the 1990s, starting from the 1988 Green Paper "The Internal Energy Market". It labels the policy paradigm of the Commission in this period as "market-regulatory", based around a neoliberal conceptualisation of security of supply as an automatic outcome of competitive and integrated energy markets. It argues that this market-regulatory paradigm attempted to reconcile the policy objective of security of supply with market principles, in order to legitimise the proposals for an IEM. The second section describes the rise of the state-capitalist order in global energy governance in the beginning of the 21st century and scrutinises the documents published in the 2000s before the first Russo-Ukrainian gas crisis in 2006. The third section considers the Commission's discourse between 2006 and 2014. The fourth section examines the documents released after the 2014 Ukraine crisis, i.e. the 2014 European Energy Security Strategy, the 2015 Energy Union Strategy, and subsequent documents. It concludes that, from the year 2000 onwards, a riskified paradigm emerged, where the Commission construed Europe's dependence on energy imports as a risk to security of supply. The chapter contends that these riskifying moves aimed to legitimise a recalibration of the supranational mode of energy governance on the basis of a precautionary conceptualisation of security of supply as a result of market competition in combination with additional safeguard measures at EU level.

Chapter 3 studies the acceptance of the riskifying moves by considering the development of EU energy policy in the internal dimension. The chapter contains three sections. The first section analyses the EU's internal energy policy during the 1990s, discussing the First Energy Package, the first series of guidelines on Trans-European Networks for Energy (TEN-E) (hereinafter: TEN-E guidelines) and the 1998 amendment of the Directive on oil stocks. The second section studies the internal

developments from 2000 to 2009: the Second Energy Package, the enforcement of EU competition law in the European electricity and gas sector, the 2004 Directive on security of gas supply and the 2003 and 2006 revisions of the original TEN-E guidelines. Finally, the third section discusses the internal energy policy after 2009: the Third Energy Package, the 2010 and 2017 amendments of the Directive on security of gas supply, the EU's post-2009 infrastructure policy and the Commission's successive attempts to halt the Nord Stream 2-project. Chapter 3 identifies the second gas crisis in 2009 as a turning point in internal energy governance, as various measures were established that were no longer in line with the market-regulatory paradigm and its neoliberal conceptualisation of security of supply. This, it will be argued, points to the success of the Commission's discursive strategy of riskification in conjunction with the facilitating conditions of the late 2000s in creating a intersubjective understanding among member states of import dependence as a risk requiring supranational precautions.

Chapter 4 assesses the acceptance of the riskifying moves by considering the evolution of EU energy policy in external respects. It is divided into three sections. The first section observes the EU's external energy policy in the 1990s. It discusses the Energy Charter Process, the EEA and other, minor external initiatives established in the immediate aftermath of the Cold War. The second section looks at the regional and bilateral rule export arrangements developed by the EU from 2000 to 2009 (e.g. the Energy Community, the Baku Initiative, the European Neighbourhood Policy). The third section analyses the external energy policy after 2009. It focuses on the supranational energy diplomacy as part of the SGC initiative and the employment of rule export initiatives to foster EU diversification. It also considers the EU's failure to establish a joint purchasing mechanism for natural gas. In parallel to Chapter 3, Chapter 4 identifies the 2009 gas crisis as a turning point in external energy

governance, as the EU now started pursuing diversification in a more direct fashion as well, rather than solely via rule export. The chapter concludes that this further underlines the acceptance of the riskifying moves of the Commission by the member states.

Chapter 5 considers the third step of the riskification process, the effect of the acceptance of the riskifying moves on interunit relations, by analysing the evolving dynamic of the gas trade between the EU and Russia. It contains five sections. The first section examines the “pre-history” of EU-Russia gas relations, i.e. the Cold War origins of the European dependence on Russian gas. The second section studies EU-Russia gas relations in the immediate aftermath of the Cold War, discussing the Energy Charter Process, the EU-Russia Partnership and Cooperation Agreement (PCA) and Russia’s refusal to ratify the ECT. The third section investigates the dynamic in the 2000s, looking at the EU-Russia Energy Dialogue, Russia’s rejection of the EU model under the presidency of Vladimir Putin, Gazprom’s exploitation of the ongoing liberalisation process to bolster its dominance on the internal gas market, and the Commission’s antitrust investigations into the supply contracts between Gazprom and European customers. The fourth section analyses the various measures taken by the EU to obstruct Gazprom’s operations on the internal gas market after 2009, focusing on the Gazprom clause of the Third Energy Package, the Gazprom antitrust case, the cancellation of South Stream and the OPAL exemption saga, as well as considers Russia’s reaction to these measures. The fifth section briefly discusses the developments after the Russian invasion of Ukraine in February 2022. Chapter 5 contends that the acceptance of the riskifying moves by the member states and the intersubjective understanding of Russian gas as a risk to security of supply significantly impacted the post-2009 dynamic of EU-Russia gas relations.

Chapter 6 reflects on the risks of riskification by evaluating two of the most salient features of the riskification process described in previous chapters. The first section points to the legal risk of adopting selective measures by discussing the legal challenges arising from the Commission's geo-economic application of EU regulation vis-à-vis Nord Stream 2. The second section highlights the different risks associated with the precautionary conceptualisation of security of supply by analysing the flaws of the (implementation of the) SGC.

Chapter 7 presents the conclusions. It provides a summary of the research findings, discusses the theoretical, methodological and policy implications, and suggests avenues for future research.

CHAPTER 2: The riskifying moves of the European Commission

Introduction

This chapter will consider the first step of the riskification process, the Commission's riskifying moves vis-à-vis Europe's dependency on third countries in the energy sphere. It will do this by applying the theoretical framework set out in Chapter 1 to the Commission's main policy documents pertaining to the energy dimension between 1988 and 2018 (see Table 3). Specifically, it will use securitisation theory to characterise the evolving nature of the framing of energy imports, the general discursive strategy pursued by the Commission as well as the underlying logic of the policy paradigm which is propagated. IPE will be used to contextualise the discursive developments at hand but also to distinguish between the different types of measures advanced by the Commission.

The chapter will argue that from the early 2000s onwards, the Commission has consistently construed import dependence as a risk to security of supply, i.e. as an issue increasing the EU's vulnerability to harmful events such as supply disruptions. It did so to legitimise supranational measures in the areas of security of supply and infrastructure development as necessary precautions to ensure that the ongoing liberalisation process in the European energy sector would effectively deliver secure supplies.

The first section will discuss the "pre-riskified" discourse of the Commission (i.e. Commission discourse before the 2000s), to provide a point of reference for the remainder of the chapter and to better illustrate the ensuing discursive evolution. Following sections will focus on the Commission's riskifying moves. These will demonstrate how the

Commission framed Europe's reliance on external suppliers as constituting a risk to security of supply in order to justify a recalibration of supranational energy policy in internal and external respects.

Table 3. Policy documents of the European Commission

Type/ Year	Green Paper/White Paper	Communication
1988	The Internal Energy Market	
1991		A European Energy Charter
1995	For a European Union Energy Policy	
	An Energy Policy for the European Union	
2000	Towards a European Strategy for the Security of Energy Supply	
2001		European Energy Infrastructure
2002		The Internal Market in Energy: Coordinated Measures on the Security of Energy Supply
2003		The Development of Energy Policy for the Enlarged European Union, its Neighbours and Partner Countries
2006	A European Strategy for Sustainable, Competitive and Secure Energy	
2007		An Energy Policy for Europe
2008	Towards a Secure, Sustainable and Competitive European Energy Network	Second Strategic Energy Review: An EU Energy Security and Solidarity Action Plan
2010		Energy 2020: A Strategy for Competitive, Sustainable and Secure Energy
		Energy Infrastructure Priorities for 2020 and Beyond – A Blueprint for an Integrated European Energy Network
2014		European Energy Security Strategy
2015		Energy Union Package: A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy
2016		An EU Strategy for Liquefied Natural Gas and Gas Storage
2017		Strengthening Europe's Energy Networks

1 Commission discourse before the 2000s: Market integration as the defining factor

1.1 The rise of the neoliberal order in global energy governance and the 1988 Green Paper "The Internal Energy Market"

As briefly discussed in the introduction, the Commission's attempts to launch a common energy policy within the EEC in the 1970s, for instance in the aftermath of the 1973 oil shock, proved less than fruitful. Discussions at Community level exacerbated rather than resolved the disagreement among member states, and the energy domain remained firmly in national hands (McGowan, 2008, p. 93). Imported oil had replaced domestically produced coal as the dominant energy source in Western Europe, and in a context of supply crises, high prices and an all-powerful Organisation of the Petroleum Exporting Countries (OPEC), member states viewed energy as a matter of national competence and preferred to retain a high degree of control over their energy policies and sectors (ibid.). In other words, oil market conditions inspired a mode of energy governance that was government-led and focused on achieving security of supply – ensuring sufficient energy to satisfy domestic consumption – which left little room for a supranational organisation founded upon the fundamental idea of integration through the creation of common markets and an implied reduction of state intervention. The failure of the Commission's attempts was therefore not entirely surprising. On the contrary, it would have been more surprising if its attempts did in fact succeed (ibid. p. 94).

In the 1980s, a confluence of factors and events would give a decisive swing to the "state-market pendulum" in global energy governance, which would ultimately bring European integration back to its roots: the energy

sector.[8] In response to the failure of Keynesian economics to battle the stagflation (economic stagnation in combination with high inflation) of the 1970s, a new recipe for economic governance emerged, based around the three central tenets of deregulation, privatisation and liberalisation (the so-called "Washington Consensus") (Dannreuther, 2015, pp. 473-474). This broader ideological transformation shifted member states' perception of the desirability of government intervention, which in turn reinvigorated the European integration process after the "eurosclerosis" of the previous decade (McGowan, 2008, p. 94). Indeed, as McGowan & Wallace (1996, p. 565) stated, the treaties establishing the European Communities could "be read as mapping out a particular economic blueprint, one which, it turned out, fitted the political and economic climate of the 1980s rather better than it had the 1950s".

In 1985, acting upon this momentum, the Commission relaunched the common market project and released the Cockfield Report on "Completing the Internal Market", which proposed 300 measures to be taken to finalise the Single Market (European Commission, 1985). This would lead up to the Single European Act (signed in 1986 and entering into force in 1987), which reformed the decision-making procedures of the Community and committed the member states to a deadline for the completion of the Single Market by 31 December 1992.

Energy did not yet feature in the Cockfield Report but would ultimately become part of the rejuvenated debate on European integration as well, through a combination of the neoliberal consensus described in the previous paragraph and structural changes on the international oil market, which weakened OPEC's ability to set world oil prices (Dannreuther, 2015,

[8] The state-market pendulum is a popular metaphor in IPE to denote the historical evolution of modes of energy governance in consumer countries, which has been "characterised by a periodic oscillation between two poles: a more interventionist and a more market-oriented perspective" (Prontera, 2019a, p. 77).

p. 472; McGowan, 2008, p. 94). The oil-exporting countries of OPEC had been successful in inducing the disintegration of the “neo-colonial mode of energy governance” in the 1960s and 1970s, asserting control over their natural resources and pushing the Western oil majors (the biggest European and American oil companies that had dominated the global industry throughout the 20th century) on the defensive (Dannreuther, 2015, p. 472). However, they were unable to duplicate the vertically integrated structure of these companies – they controlled production, but none of the other processes along the value chain (ibid.).

In search of diversification from Middle Eastern oil, oil consuming countries consequently supported their oil companies to explore and develop fields outside OPEC countries. The resulting non-OPEC production from these fields gradually lowered OPEC’s market share, as a consequence of which the OPEC countries, in particular Saudi Arabia, had to decrease their output in order to preserve their price fixing ability (ibid.). In 1985, Saudi Arabia, no longer willing to comply with the output restrictions in the face of a continuous decline of its market share, flooded the global markets leading to a dramatic drop in oil prices. This marked the end of OPEC’s overwhelming dominance of the 1970s and the rise of a neoliberal order in global energy governance, ushering in a period of ubiquitous, cheap oil (ibid. pp. 472-473).

Encouraged by the success of the Cockfield report and these favourable energy market conditions – the tight markets and oil crises of the previous decade seemingly a distant memory – the Commission made proposals for the creation of an IEM in its eponymous 1988 Green Paper (McGowan, 2008, p. 94). This document strongly reflected the earlier described *zeitgeist*. Although it affirmed the strategic nature of energy as “self-evident” (European Commission, 1988, p. 7) and called for “an appropriate combination of the play of market forces [...] and the political measures

guaranteeing or providing for Community supplies" (ibid. p. 8), the Green Paper was heavily centred around the liberalisation of member states' energy markets.

The main issues identified were "the various existing or potential obstacles to a single energy market" (ibid. p. 3), such as the technical or fiscal barriers to intra-Community energy trade. The electricity and gas sectors of the member states were found to be the most problematic in this respect. Since both electricity and gas were reliant on networks for their transmission and distribution, these industries were characterised by natural monopolies and their practices therefore diverged significantly from those of competitive markets (Eikeland, 2004, p. 4; Van de Graaf, 2017, p. 171). The oil sector, on the other hand, was "already to a large extent subject to competition" (European Commission, 1988, p. 40). In the coal and nuclear sector, national subsidies were seen as the biggest issue (ibid.; Eikeland, 2004, p. 4).

The Commission proposed a couple of concrete measures to create an IEM within the Community. For the nuclear, coal and downstream oil sectors, it suggested the implementation of general internal market provisions – regulatory harmonisation, the removal of fiscal barriers and the opening up of public procurement markets – and the application of Community treaty law (European Commission, 1988; Eikeland, 2004, p. 4). The electricity and gas sectors necessitated a different, more thorough approach; here, specific directives would be needed to achieve the liberalisation of the sectors in question (the subsequent Energy Packages of the 1990s and the 2000s, see Chapter 3) (European Commission, 1988; Eikeland, 2004, p. 4).

The IEM was proposed as "a means of cementing the economic integration of the Community and, [...] in the shorter term, a means of making it more

competitive in a world which is increasingly open to demanding competition" (European Commission, 1988, p. 5). An integrated energy market would also bring down energy costs and would be "a significant additional factor as regards the security of supply for all Member States" (ibid. p. 6). The IEM was thus framed as a means to not only boost the competitiveness, but also the security of the European energy supply.

As such, the 1988 Green Paper marked the introduction of the market-regulatory paradigm in the Commission's discourse. In this paradigm, insecurity of supply arose from a lack of competition, barriers to trade and/or excessive state intervention. Liberalisation, rulemaking and market building were propagated as the essential policy solutions, regulation and competition policy as the correct tools. The Commission would naturally play a central role in this process of liberalisation and integration, functioning as a regulator indiscriminately enforcing the legal frameworks in place (see Prontera, 2019a, p. 82). The market-regulatory paradigm was thus firmly inspired by the regulatory state-model, based around the neutral use of regulatory tools in order to create a level playing field for market actors, and by a "neoliberal" approach to security of supply, which was essentially considered/framed as an automatic outcome/by-product of competitive energy markets. The broader neoliberal turn in global energy governance therefore not only instigated the Commission's proposals in the energy sphere, but it also shaped these to a significant extent.

Especially important for this chapter, however, is the Green Paper's framing of energy imports. Unsurprisingly considering its subject, the document had an almost exclusively internal focus. The Commission said that there was "an international side to energy" (European Commission, 1988, p. 8) and that the Community depended "on outside suppliers for nearly one-half of its energy supplies" (ibid.), but this reliance was simply stated as a fact, not as an issue deserving to be governed or actively

managed (thus not politicised). The Green Paper even argued that, regarding the Community's trade in energy products with third countries, it was "in the interests of all concerned to strengthen these links rather than to loosen them" (ibid.). It asserted: "Where energy and other goods and services are concerned, the Community is in favour of free trade by the very nature of the Community and the objectives which it pursues" (ibid.). Although the Commission affirmed the strategic nature of energy in the same document, these statements on import dependence were more in line with the idea of energy as a commodity. However, the most important takeaway is the fact that the Community's dependence on energy imports was not framed as a problem/issue in any way, but rather as a natural occurrence, an unavoidable but unproblematic reality, part of the *condition européenne*.

In the years following the Green Paper, the IEM remained central in the Commission's discourse. In line with the neoliberal conceptualisation of security of supply, the Commission continued to highlight the "positive effect [of market integration] on the structure of the Community's electricity and gas industry, allowing for new entrants, more diversity of fuels and technologies and an increase in the trade of energy products between Member States and thus a higher level of security of supply" (European Commission, 1992, p. 3). Increasingly, the IEM was framed as part of the broader Single Market initiative (Prontera, 2019a, p. 84). The Commission argued that "a more efficient European energy sector will lead to a more efficient allocation of resources which will have beneficial effects on economic growth and on employment in general" (European Commission, 1992, p. 3).

Where the 1988 Green Paper still emphasised the special, strategic character of the energy industry, now the IEM initiative was considered as "part of a more general move towards liberalisation of traditionally

regulated sectors, such as transportation, communications and financial services" (ibid.). This was again highly reflective of the broader neoliberal order in global energy governance, where energy was perceived as a good not fundamentally different from any other good. This stood in stark contrast with the prevailing views of the 1970s, where energy, or at least oil, was considered to be a strategic good, central to national sovereignty and security (McGowan, 2008, p. 93). It is obvious how these divergent ideas on energy's socio-economic role correlated with the global energy shifts and patterns of governance of the 1970s and the 1980s. Whereas the tight markets and state-centric modes of governance of the 1970s were accompanied by securitised perceptions of energy, the era of cheap oil and the market-oriented modes of governance of the 1980s and 1990s came along with desecuritised views of energy – energy as a commodity like any other (Kuzemko, 2014, p. 61; McGowan, 2008, p. 93).

1.2 The 1991 Communication "A European Energy Charter"

Where the particular context of the 1980s opened up possibilities for Community energy policy developments in internal respects, the start of the 1990s provided for similar opportunities in external respects. The end of the Cold War was accompanied by tremendous optimism for international cooperation in Europe, and the energy sector was one of the prime and most obvious areas where such cooperation could occur (Konoplyanik & Wälde, 2006, p. 524). On the one hand, the post-Soviet states sat on vast amounts of natural gas and oil reserves, but they lacked the proper infrastructure and capital to fully exploit this natural wealth. Western Europe, on the other hand, lacked the former but had the financial resources at its disposal to unlock and unleash the Former Soviet Union's energy resources (ibid.). Where changed energy market conditions and an ideological shift had produced an impetus to internal energy policy

development, the end of the Cold War provided an excellent environment to export that internal model abroad (Goldthau & Sitter, 2014).

The European Council granted a mandate to the Commission to develop a vision for post-Cold War energy cooperation on the European continent. This led to the 1991 Communication “A European Energy Charter”, in which the Commission proposed a multilateral framework for rules-based, market-led governance of energy trade, investment and transit. It endeavoured “the construction of a large European energy market” (European Commission, 1991, p. 9) based on the “removal of the technical, legal, administrative or tariff barriers to trade” (ibid. p. 5), the principles of non-discrimination and transparency, the right of transit, common rules on investments, the approximation of quality standards and “a rigorous competition policy” (ibid. p. 3). This would “liberalise trade, extend consumer choice, increase the competitiveness of enterprises and ensure security of supply” (ibid.). Or elsewhere: “[A European Energy Charter] would provide the European Community with a new framework allowing an expansion of trade which, in turn, would add to the stability of its entire energy supply” (ibid.). Essentially, the Commission proposed to expand the IEM beyond the border of the Community itself – to “externalise” its internal model.

The paradigm of market-regulatory governance therefore started dominating the Commission’s discourse on external energy policy as well. The “removal of technical or administrative barriers to trade” (ibid. p. 5) were among the primary issues to be addressed, through the development of a common regulatory framework which aimed towards the creation of well-functioning energy markets. This would liberalise trade, which would in turn contribute to the security of the Community’s energy supply. Like the 1988 Green Paper, security of supply was framed as a by-product of market integration, and the policy solutions and tools proposed were

heavily inspired by the regulatory state-model. Hence, the Commission's discourse on the external dimension was thoroughly embedded within the broader neoliberal order of global energy governance as well. It was permeated by the idea that the establishment of a wider Eurasian energy market would lead to affordable energy supplies, and would fundamentally solve the problem of security of supply, just as the creation of a global, liquid oil market had led to an abundance of cheap oil and had "solved" security of oil supply (Dannreuther, 2015, p. 474).

While this market optimism may seem rather naive from a contemporary point of view, it is quite if not wholly understandable when considering the context of the early 1990s. Indeed, the oil market developments of the late 1980s had already proven the empirical validity of the "neoliberal experiment". Naturally, the implosion of the Soviet Union then further reinforced the belief in the "Holy Trinity" of liberalisation, deregulation and privatisation, seemingly offering quite conclusive evidence of the superiority of the Western model over its biggest contender in the 20th century, communism. It is not surprising that this resulted in the market optimism to the extent seen throughout the 1990s, certainly not with regard to the energy sector (considering the sectoral developments at hand – the decline of OPEC market power).

In line with the 1988 Green Paper, the 1991 Communication framed the Community's dependence on energy imports in exclusively positive terms. It talked *inter alia* about a "complementary relationship in Europe between the owners of the resources, the holders of the advanced technologies and knowhow, and the consumer markets" and emphasised the "interdependence in the energy field in Europe" (European Commission, 1991, pp. 2-3). Effectively, the Commission thus refrained from even politicising this issue. Import dependence was not constructed as a "governable" object, as something that required a plan of action of any kind

– it simply was (see Table 1; Corry, 2012). This fitted within the Commission's broader discursive strategy of reconciling the security of supply-objective with the principles of market-oriented governance (McGowan, 2008, p. 94).

1.3 The 1995 Green Paper "For a European Union Energy Policy" and 1995 White Paper "An Energy Policy for the European Union"

In the 1995 Green Paper "For a European Union Energy Policy" and the White Paper "An Energy Policy for the European Union" later that same year, the market-regulatory paradigm still prevailed.[9] The creation of the IEM continued to be propagated as the essential policy solution. The Green Paper for instance stated how "the free operation of the market" had to be "the principal instrument of any [energy] policy" (European Commission, 1995a, p. 32). The White Paper stated: "Market integration is the central, determining factor in the Community's energy policy" (European Commission, 1995b, p. 3). It also framed supranational energy policy within the broader Single Market initiative: "Energy policy must form part of the general aims of the Community's economic policy based on market integration, deregulation, limiting public intervention to what is strictly necessary in order to safeguard the public interest and welfare, sustainable development, consumer protection and economic and social cohesion" (ibid. p. 2).

The documents underlined the importance of market integration in achieving a secure European energy supply. The Green Paper for example stipulated: "[...] the integration of the Community energy market is in itself an instrument of security of supply" (European Commission, 1995a, p. 22).

[9] Commission Green Papers are aimed towards stimulating general discussion on particular topics at EU level. White Papers are documents containing concrete proposals for supranational action in a specific area. They may follow up on an earlier Green Paper but this is not always the case.

Market creation remained key for security of oil supply, since “an appropriate climate for private investment in oil production capacity, refinery performance and flexibility, and transportation infrastructure” would enhance security of supply inside the Community (ibid. p. 24). Also for the security of supply of natural gas: “The Commission believes that security of supply will be ensured through an open market functioning under competitive conditions at all stages from production to transportation, in accordance with the Treaty” (ibid. p. 25). Market integration was also seen as an instrument to achieve the desired diversification of the EU’s energy supply: “The opening up of the internal market will play an important role in fuel diversification since it will lead to a multiplicity of actors” (European Commission, 1995b, p. 24).

Nevertheless, with regard to energy imports, a slightly different sound emerged from these documents. In contrast to previous communications, they started voicing concerns over the Community’s increasing dependence on third-country energy imports (cf. 1988 Green Paper, 1991 Communication). The 1995 Green Paper for instance stated: “The analysis of energy forecasts justifies concern with regard to the increasing import dependence of the Community” (European Commission, 1995a, p. 35). The White Paper, in turn, said that the “growing energy dependency of the Community” was “a point of concern given the political risks in some important supplier countries and growing world energy consumption” (European Commission, 1995b, p. 21). This increasing reliance deserved/needed to be managed: “This trend should lead to a set of guidelines for action, the conclusion of which would be to give the Community the possibility of addressing these needs” (European Commission, 1995a, p. 35).[10]

[10] In the White Paper, a whole section was devoted to “Managing External Dependency” (European Commission, 1995b, p. 21).

The Commission thus started framing energy imports from third countries more in terms of dependence (the 1991 Communication spoke rather of “interdependence” or a “complementary relationship” with external suppliers (European Commission, 1991, pp. 2-3)), and as something which deserved Community management, where previous documents ignored the Community’s reliance on energy imports or at least framed this issue in much more positive terms. In effect, the Commission now tried to politicise the import dependence of the Community/make the import dependence of the Community an object of (supranational) political debate (cf. Buzan et al., 1998, p. 23).

It did so to legitimise new supranational measures specifically and directly aimed towards achieving security of supply. While the Commission argued that security of supply concerns did “not currently justify new crisis measures”, it said that there was “scope for strengthening security of supply measures by effective internal policy corrections to market rules, by encouraging fuel diversification, by enlarging choices with the promotion of energy efficiency, renewables and by putting in place a careful surveillance of the energy situation” (European Commission, 1995b, pp. 21-22). *Prima facie*, in these 1995 documents, the Commission therefore undertook politicising moves of the Community’s import dependence to reframe security of supply as an issue that required a supranational approach, instead of as a natural outcome of competitive and integrated energy markets. Arguably, however, this happened in such a hesitant manner that it is hard to genuinely argue that the Commission started to diverge from the market-regulatory paradigm in a significant way. This will become clear when comparing to the Commission’s discourse observed in for instance the 2000 Green Paper “Towards a European Strategy for the Security of Energy Supply” (see *infra*). Also, the Commission’s discourse put much more emphasis on the paramount importance of market integration in achieving security of supply than it did on the need for new supranational

measures specifically directed towards security of supply; the neoliberal approach towards security of supply unequivocally remained dominant.

In summary, from the late 1980s onwards, the market-regulatory paradigm reigned supreme in the Commission's discourse. This paradigm was informed by a neoliberal concept of security of supply, which was not framed as an independent policy objective, but rather as something that would be automatically achieved through the integration of energy markets in the wider Eurasian region and the "maximum use of market forces" (European Commission, 1991, p. 4). Its policy solutions and tools were derived from the regulatory state-model: market liberalisation was hailed as the essential policy solution, regulation as the most appropriate tool. It was a clear reflection of a simultaneously emerging global pattern of neoliberal energy governance that revolved around the three central principles of deregulation, privatisation and liberalisation, and was equally centred on the primacy of market functioning.

The issue of import dependence hardly featured prominently in the Commission's discourse. The 1988 Green Paper and the 1991 Communication "A European Energy Charter" framed the Community's reliance on energy imports in overwhelmingly positive terms. The 1995 Green Paper and 1995 White Paper took another angle, and instead started voicing concerns over the growing import dependence of the Community. Nevertheless, this still happened in relatively benign terms. The Commission mainly aimed its efforts towards reconciling market integration with the objective of security of supply, in order to convince still reluctant member states to commit themselves to the integration of their electricity and gas markets (McGowan, 2008, p. 94). In this sense, continuous politicising/riskifying/securitising moves of the Community's import dependence vis-à-vis security of supply would hardly have been a productive or sensible discursive strategy, as these would have

undermined the Commission's proposals for the establishment of the IEM. The next section will illustrate how the Commission drastically reoriented its discourse regarding energy imports at the turn of the century, in an attempt to legitimise smaller but also more fundamental recalibrations of European energy governance in internal and external respects.

2 The early 2000s: A riskification of energy imports and policy solutions

2.1 The "new energy landscape of the 21st century": The return of the state[11]

In the early 2000s, a series of shifts in the global energy landscape would again cause a resolute swing of the state-market pendulum, re-introducing more state-centred patterns of governance signalling the end of the neoliberal order of the 1980s and 1990s (Dannreuther, 2015; Van de Graaf et al., 2016). This would in turn lead to a marked reorientation of the Commission's discourse.

The age of cheap oil would come to an abrupt end in 2000, as oil prices suddenly multiplied in comparison to the previous year. The globalisation of the oil market failed to deliver on its promise of an ever-lasting era of abundant and affordably priced supplies after all (Dannreuther, 2015, p. 475). The price hike was rooted in rapid increases of worldwide demand, driven by the continuous growth of energy consumption in the industrialised world and the swift growth of energy consumption in the oil-hungry emerging economies, in particular in India and China (McGowan, 2008, p. 93; Van de Graaf et al., 2016). It would empower oil-and-gas producing states and instigate a new wave of resource nationalism, leading to a "reassertion of state control" in the energy sectors of countries such as Russia and Venezuela (Dannreuther, 2015, pp. 475). The post-Cold War

[11] European Commission, 2006, p. 4.

window of opportunity thus started to close and the propagated “End of History” (Fukuyama, 1992) – the alleged irreversible victory of the ideals of political and economic liberalism of the West – increasingly appeared empirically refuted: a new “state-capitalist order” was instead emerging in global energy governance (Dannreuther, 2015; Van de Graaf et al., 2016). This context again heightened fears over security of supply – which had thus not been solved by unleashing market forces in unabated fashion and on a global scale – reminiscent of the 1970s.

However, as Prontera (2019a) rightly observes, it is important to distinguish the events and the resulting patterns of governance of the 1970s from those of the 2000s. The tight oil markets of the 2000s did not simply usher in a return of the state in the same way as before, but rather in a way that was significantly conditioned by the “policy legacies” and the path dependence of/created by the preceding neoliberal era (Prontera, 2019a, p. 77). In other words, while seemingly signalling a return to the 1970s, the 2000s did not signify a move from the state to the market and then back, but a move to more state-oriented patterns of governance, nevertheless intrinsically moulded by the pro-market varieties of the 1980s and 1990s.

This observation is paramount to understand the intricacies of the Commission’s discourse discussed in the remaining sections of this chapter and of the mode of EU governance discussed in the next chapters. These were inextricably linked to and fundamentally shaped by the discourse and substantial EU internal and external policy developments of the previous period.

2.2 The 2000 Green Paper "Towards a European Strategy for the Security of Energy Supply" and subsequent documents

The policy documents released by the Commission in the early 2000s should be read against the background of global energy shifts and broader patterns of governance described above. The 2000 Green Paper "Towards a European Strategy for the Security of Energy Supply" is a first case in point. As is already obvious from the title, it presented an explicit turn in the Commission's discourse, with its strong focus on the "energy supply security" of the EU and the European "external dependence for energy", departing from the previous neoliberal concept of security of supply (European Commission, 2000, p. 2). The document clearly aimed at communicating a much greater sense of *gravitas* than its predecessors. Where security of supply and the import dependence of the Community were still barely mentioned/framed in almost exclusively positive terms in the 1988 Green Paper, now these (alleged) issues took centre stage in the Commission's discourse.

As a starting point the Green Paper used "the dramatic rise in oil prices which could undermine the recovery of the European economy" (ibid.), which "served as a grim reminder of the crucial role of energy" (ibid. p. 9). A clear pessimistic undertone surfaced in the Commission's discourse that was absent in previous documents. Seemingly, there was also a departure from the perception of energy as a "normal" commodity, prevalent during the 1980s and 1990s (Kuzemko, 2014, p. 61; McGowan, 2008, p. 93), as the Commission now stressed "the crucial role of energy" in the economy (European Commission, 2000, p. 9).

The rapid increases in oil prices, so the Commission argued, revealed one of "the European Union's structural weaknesses regarding energy supply": its "growing dependence on energy" (European Commission, 2000, p. 2).

The European Union was “extremely dependent on its external supplies” (ibid. p. 9) and was described as a “Gulliver in chains” (ibid. p. 19). European consumers were “held hostage by oil” (ibid. p. 13). This framing significantly diverged from for instance the 1995 White Paper, which talked about the import dependence of the Community simply as “a point of concern”, much more prudent language (European Commission, 1995b, p. 21). Now, the EU’s reliance on external energy supplies was framed in exclusively negative terms. By pointing to the growing nature of the “problem”, the Commission also attempted to create a sense of urgency: “If no measures are taken, in the next 20 to 30 years 70% of the Union’s energy requirements, as opposed to the current 50%, will be covered by imported products” (European Commission, 2000, p. 2). Interestingly, the Commission also paid special attention to the high (and increasing) dependence on Russia, but there it argued that “the continuity of supplies from the former Soviet Union, and then Russia, over the last 25 years is testimony to an exemplary stability” (ibid. p. 44).

With the 2000 Green Paper, the Commission’s discourse thus took a notable turn in its framing of energy imports. It is obvious that the Commission moved beyond the depoliticised views of the 1988 Green Paper and the 1991 Communication, and beyond the politicisation of energy imports witnessed in the 1995 Green Paper and White Paper. Nevertheless, when applying Corry’s typology, it also becomes clear that the Commission’s grammar is hardly compatible with the ideal type of securitisation. Indeed, the frequent, extensive use of the term “security”, does not necessarily imply a securitising move (Buzan et al., 1998, p. 27). Rather, the question is whether a logic of existential threat/survival can be observed in the discourse at hand – a logic of “if the problem is not handled now it will be too late, and we will not exist to remedy our failure” (ibid. p. 26), an extreme sense of exigency.

While the 2000 Green Paper certainly sought to convey a pressing concern, there was however no such short-termist, "'no holds barred' logic of exceptionality" (Corry, 2012, p. 248). The Commission did not formulate the issue of import dependence in existential terms, but rather construed it as a long-term problem for EU security of supply (the referent object), as one of "the European Union's structural weaknesses regarding energy supply" (European Commission, 2000, p. 2). It framed the EU's dependence on energy imports not as a direct, but instead as an indirect cause of harm. For instance, the Green Paper talked about the "various challenges created by the current situation of energy supply": the physical risks (permanent physical disruption and temporary disruption), the economic risks ("'disruptions' [...] caused by erratic fluctuations in the price of energy products on the European and world markets") and the social risks (social disruption, social conflict, strikes) (European Commission, 2000, pp. 76-77). Import dependence was therefore not harmful in and of itself, it was rather something that made other harmful events possible/more likely, for instance temporary disruptions of the energy supply to the EU caused by "a strike, a geopolitical crisis or a natural disaster", "disastrous both for consumers and for the economy in general" (ibid. p. 76). A higher dependence on imports made such events more likely, lower dependence conversely reduced the possibility for such events. Applying Corry's typology, the Commission thus construed energy imports as a risk, as "a constitutive cause of harm" (Corry, 2012, p. 255) – it attempted to "riskify" the import dependence of the EU (Maltby & Judge, 2017, p. 20).

Subsequent Commission documents in the early 2000s continued this strategy. The 2002 Communication "The Internal Market in Energy: Coordinated Measures on the Security of Energy Supply" for instance stipulated: "The Green Paper showed up [*sic*] the structural weaknesses in external energy supplies in the European Union and its vulnerabilities in geopolitical, economic and social terms. The European economy is based

mainly on fossil fuels which represents four-fifths of energy consumption, and two-thirds of this is imported. This vulnerability will become more pronounced in the future with energy imports which could rise to 70% of total requirements in thirty years time [*sic*], or even up to 90% for oil if nothing is done to reverse this trend" (European Commission, 2002, p. 4). The 2003 Communication entitled "The Development of Energy Policy for the Enlarged European Union, its Neighbours and Partner Countries" similarly highlighted the "risky" nature of the EU's reliance on energy imports: "With respect to gas, this gives rise to major challenges regarding security of supply. This expected increase [in gas imports] will have to come from new gas developments, located geographically further away from the European Union, and often extracted in increasingly difficult conditions. [...] With respect to oil, the principal issue to be addressed concerns security of supply, and in particular maritime safety" (European Commission, 2003a, p. 6).

Just as the 2000 Green Paper, these documents framed energy imports as risks to security of supply, as the cause of "vulnerabilities in geopolitical, economic and social terms" (European Commission, 2002, p. 4), which "allow harm to occur" (Corry, 2012, p. 247). This required long-term Community management "to take account of the risks inherent in such dependence when they reach worrying levels" (ibid. p. 7) – rhetoric clearly accordant with the riskification-ideal type.

Prima facie, this abrupt discursive shift of the Commission appears puzzling. Indeed, the Community's import dependence remained practically the same between 1995 and the early 2000s (standing at roughly 50 percent of total consumption), as did the prospects in this regard (both the 1995 and 2000 Green Paper projected a future import dependence of 70 percent (European Commission, 1995a, p. 13; European Commission, 2000, p. 2)). Nevertheless, in the documents of the early 2000s, this suddenly became a much bigger problem. To understand

and correctly interpret this evolution, one has to consider the contextual factors shaping these divergent discourses; the Commission's 1995 framing of import dependence was informed by a global pattern of neoliberal governance, its early 2000s counterpart conversely by a radically different state-capitalist pattern of governance.

The revival of resource nationalism and the elevated price levels of the 2000s were undeniably conducive for the Commission's alarmist, riskifying tone, making it a much more viable approach than before in terms of its acceptance by the member states. Arguably, in the context of the post-Cold War optimism of the 1990s, on top of being counterproductive for the Commission's efforts to legitimise and establish an IEM, the same strategy would not have been credible. With the establishment of the First Energy Package in the late 1990s, however, the Commission had become a more believable/legitimate actor in the energy sphere. This fostered its ability to "speak security" (Buzan et al., 1988, p. 27), its ability to undertake riskifying/securitising moves regarding energy issues. This was an important facilitating condition for the Commission's new discursive strategy of riskification.

As discussed in the introductory chapter, the archetypical riskifying move has a clear goal; an issue is riskified with regard to a certain referent object in order to legitimise a plan of action to reinforce the governance and resilience of that referent object (Corry, 2012, p. 249). I argue that the Commission's riskifying moves were inspired by such a desire; the import dependence of the EU was riskified in order to put security of supply on the agenda of European integration, as well as to legitimise a new plan of action to increase the resilience of the EU's energy system, based around precautionary policies/measures specifically directed towards security of supply.

This grammar was very obviously present in the 2000 Green Paper, where the Commission argued that the structural weakness of dependence and the fact that this dependence would "reach more and more worrying levels" (European Commission, 2000, p. 19) justified the development of a "*long-term strategy for energy supply security*" (ibid. p. 2, italics added) at EU level, geared towards "ensuring, for the well-being of its citizens and the proper functioning of the economy, the uninterrupted physical availability of energy products on the market, at a price which is affordable for all consumers (private and industrial), while respecting environmental concerns and looking towards sustainable development" (ibid.), "not [...] to maximise our autonomy in energy or to minimise our dependence, but *to reduce the risks connected to the latter*" (ibid. p. 9, italics added).

Therefore, not only the Commission's framing of energy imports, but also the proposed action corresponded to Corry's ideal type of riskification. Much more than aiming towards the activation of a state of emergency and exceptional measures as in the case of securitisation, the Commission intended the establishment of a supranational programme "aimed at reducing vulnerability and boosting governance-capacity of the valued referent object itself" (Corry, 2012, p. 248), typical for riskification. Indeed, the goal of the discursive moves of the Commission was not to break free from existing rules, to detach the issue of import dependence from public debate or democratic oversight, but exactly the opposite – to instead make the issue part of European public policy, not exclude it therefrom, to increase European cooperation and governance regarding security of supply.

Thus, whereas in the late 1980s and throughout the 1990s the Commission attempted to reconcile security of supply with market integration to justify the establishment of the IEM, the Commission now instead attempted to riskify Europe's import dependence to justify a supranational strategy for security of supply. Where previous documents

framed security of supply as a natural by-product of well-functioning markets (the neoliberal conceptualisation of security of supply), now market integration would only contribute to security of supply if the necessary supranational "precautions" were in place to mitigate the risk posed by the import dependence of the EU (the precautionary conceptualisation of security of supply). Insecurity of supply was no longer construed as something that was caused by excessive government intervention/a lack of competition/barriers to trade, but instead as a *market failure*, caused by insufficient supranational safeguards to ensure that market players took security of supply-concerns into account.

The documents of the early 2000s exemplified this precautionary approach. The Commission's 2001 Communication "European Energy Infrastructure" for instance argued that organising security of supply "cannot be left to the industry alone", as "security measures can be costly and it is perfectly feasible that certain operators could neglect these measures to reduce costs if no agreed minimum standards apply" (European Commission, 2001, p. 26, as cited in Prontera, 2019a, p. 86). It then proposed the establishment of a regulatory framework for security of supply at EU level, which would set common standards/measures in this domain (ibid. p. 29, as cited in Prontera, 2019a, p. 86). In relation to gas, in the face of the continuing liberalisation of European markets and the growing import dependence of the EU, the aforementioned 2002 Communication similarly stated that the organisation of security of gas supply "cannot be left entirely to the industry which is itself dependent on its external suppliers from an extremely limited number of supplier countries" (European Commission, 2002, p. 5). This required "a new legislative framework [...] to ensure that all market players take basic measures to ensure that this objective is achieved" (ibid. p. 11). Evidently, the role of the EU and the Commission was to provide that framework, "to ensure the proper functioning of the internal market and give market players a clear framework within which they can interpret and manage

change, while guaranteeing an adequate level of security of gas supplies" (ibid. p. 12).

The 2002 Communication also proposed other safeguard measures for the IEM, such as a new Community-wide system for the management of oil reserves and a potential extension of the oil stocks mechanism to the natural gas reserves of the member states. Many of the proposals of the 2000 Green Paper were in a similar vein. As part of the aforementioned "long-term strategy for energy supply security", the Commission *inter alia* called for a reinforcement of the Community's strategic oil stocks mechanism, an extension of the stocks mechanism to natural gas, as well as new regulatory measures on energy conservation in buildings.

While these documents predominantly riskified energy imports to propose precautionary measures inspired by the regulatory state-model as those summed up in the previous paragraph, they attempted to legitimise more radical deviations from the existing mode of supranational energy governance as well (not based on the use of regulatory tools in order to create a level playing field).[12] The 2000 Green Paper for instance emphasised how the construction of new pipelines would enable the import of oil and gas from the Caspian basin (i.e. "the oil and gas reserves located in Southern Russia, the Caucasus, Central Asia and Iran" (European Commission, 2000, p. 26)) and the southern Mediterranean, and considered direct support for infrastructure that would diversify the EU's energy supply: "In the light of their intention to join the Union, Europe should consider what support it could give to Turkey, Bulgaria and

[12] This contrasts with the politicising moves of the 1995 Green Paper and White Paper, which were solely directed towards legitimising measures (although prudently) within the confines of the regulatory state.

Romania, to develop transit facilities for Caspian basin gas and oil" (ibid.).[13]

The 2001 Communication suggested "re-focusing Community financial support towards priority projects" and increasing the supranational involvement in financing these works (European Commission, 2001, p. 26, as cited in Prontera, 2019a, p. 86). Finally, the Commission's aforementioned 2003 Communication "The Development of Energy Policy for the Enlarged European Union, its Neighbours and Partner Countries" (which focused on the external dimension of EU energy policy) was the most explicit and detailed in this regard. One of the self-declared goals of this document was to re-examine the Commission's role in gas infrastructure and to propose "additional [supranational] measures" (European Commission, 2003a, p. 6), for instance EU financial aid to support the implementation of gas infrastructure projects. Such support was "important not only for the financial contribution in question, [...] but also because of the fact that the support underlines the Community's political backing to the project in question which makes it more easy for private financial support to be secured" (ibid. p. 25). The Community's financial support had to play "the role of catalyst and facilitator through these programmes, not investor" (ibid.).

Where the Commission's calls for the establishment of common regulatory frameworks for European security of supply, or for instance for a new oil stock directive, were still based on the use of regulatory tools and aimed towards the creation of a level playing field for market actors, these more proactive measures were based on the selective use of more interventionist tools such as financial support and contradicted the market-regulatory paradigm in a more obvious way (see Prontera, 2019a). The Commission's own framing of these measures is illustrative in this regard.

[13] The case of electricity networks was different. There, the Green Paper stated that new infrastructure had to be promoted, but that this was "not a financial problem" (European Commission, 2000, p. 70).

The 2003 Communication for instance stated that EU financial support to infrastructure projects had to underline "the Community's political backing to the project in question" (ibid. p. 25). In the market-regulatory paradigm dominant in the Commission's discourse in the late 1980s and the 1990s, political intervention was construed as one of the issues/barriers impeding the establishment of a secure European energy supply, not as part of the solution.

The Commission's riskifying moves thus generally attempted to frame the existing mode of EU energy governance as insufficient for achieving European security of supply, in order to promote the establishment of certain supranational measures/policies such as security of supply-safeguards for the IEM as necessary precautions to adequately deal with the risk posed by the increasing import dependence of the EU. To be sure, the creation of integrated and competitive energy markets was still propagated as a policy solution for ensuring reliable supplies.[14] The 2000 Green Paper for instance stated: "The integration of energy markets contributes to security of supply, provided that these markets are truly integrated" (European Commission, 2000, p. 71). And elsewhere: "The development of the single market should help to curb the influence of exporting countries, as liberalisation and increased trading encourage competition between exporting countries, particularly where natural gas is concerned" (ibid. p. 28). However, the important distinction is that it was no longer propagated as *the* policy solution for EU security of supply – the growing import dependence of the EU necessitated the establishment of supranational precautions, or the market would not be able to deliver security of supply. This was a notable deviation from the Commission's pre-2000 discursive strategy.

[14] Its value was for instance also stressed with regard to infrastructure: "In the longer term, continuing liberalisation on a continental scale – taking account of fair conditions – will also help to increase interconnections between non-EU countries" (European Commission, 2000, p. 70).

2.3 The 2006 Green Paper "A European Strategy for Sustainable, Competitive and Secure Energy"

After the 2005 Hampton Court summit, where member states called for a common European approach towards security of supply in the light of deteriorating Russian-Ukrainian relations, rising oil and gas prices and price volatility and growing import dependence – further underlining the emergence of the state-capitalist order in global energy governance and seemingly illustrative of the success of the Commission's earlier riskifying moves in legitimising a precautionary approach towards security of supply at the supranational level – the Commission released another Green Paper in 2006, "A European Strategy for Sustainable, Competitive and Secure Energy". The Commission acknowledged "the new energy landscape of the 21st century" (European Commission, 2006, p. 4) and the idea of energy as a public good made a firm comeback in its discourse: "Access to energy is fundamental to the daily lives of every European" (ibid.). The discursive strategy of riskification continued. The Green Paper repeatedly talked about "the potential risks of import dependency" (ibid. p. 9), "major supply disruptions" (ibid. p. 8), "emergency external supply events" (ibid. p. 16) – framing EU import dependence as a condition of possibility for harm allowing other harmful events such as supply disruptions to take place rather than as a direct cause of harm, rhetoric typical for risk-security (Corry, 2012). It also spoke of "tackling the EU's rising dependence on imported energy" (European Commission, 2006, p. 18), quite obviously illustrating the construction of the European reliance on energy imports as a problem requiring supranational attention.

Prima facie, when examining the Commission's proposed action however, the market-regulatory paradigm and its neoliberal conceptualisation of security of supply still appeared dominant, both in the internal and the external dimension. The Commission for instance stipulated that "the consolidation of the energy sector should be market driven if Europe is to

respond successfully to the many challenges it faces and to invest properly for the future" (ibid. p. 3). The fact that Europe had "not yet developed fully competitive internal energy markets" remained a central issue and "only when such markets exist will EU citizens enjoy all the benefits of security of supply and lower prices" (ibid.).

The first priority area (out of six) was the completion of the internal European electricity and gas markets. This "would bring down prices, improve security of supply and boost competitiveness" (ibid. p. 5). The Commission argued: "Sustainable, competitive and secure energy will not be achieved without open and competitive energy markets, based on competition between companies looking to become European-wide competitors rather than dominant national players" (ibid.).

In the external dimension, the same sound emerged. The creation of a "common regulatory space" would "create a predictable and transparent market to stimulate investment and growth, as well as security of supply, for the EU and its neighbours" (ibid. p. 16). Existing and new initiatives had to bring the EU's neighbours "progressively closer to the EU's internal market" (ibid.).

Nevertheless, the same "cracks" in the market-regulatory paradigm witnessed in previous Commission documents also featured in the 2006 Green Paper. The same call for security of supply-precautions built into the IEM was noticeable, further demonstrating the Commission's reframing of liberalisation alone as insufficient for achieving security of supply. The second priority area of the Green Paper focused specifically on how an IEM could guarantee security of supply. The Commission stated: "Liberalised and competitive markets help security of supply by sending the right investment signals to industry participants. But for this competition to work effectively, the market needs to be transparent and predictable" (ibid.

p. 8). The Commission went further on to say that “security against political risks including interruption of supply is critical to predictability” (ibid.). In other words, markets had to be “predictable”, and in order to be predictable, supranational precautions had to be taken with regard to security of supply.[15]

Concretely, to create such “predictability”, the Commission proposed *inter alia* a European Energy Supply Observatory “to monitor the demand and supply patterns on EU energy markets, identifying likely shortfalls in infrastructure and supply” and a “rethinking [of] the EU’s approach to emergency oil and gas stocks and preventing disruptions” (ibid.). These statements and proposals were typical of the precautionary logic introduced in the Commission’s discourse with the 2000 Green Paper. Market integration would only contribute to security of supply if the necessary supranational precautions were in place to adequately mitigate the possibilities for harm associated with the EU’s import dependence, such as for instance the risk of politically motivated supply disruptions by important external energy partners of the EU. Insecurity of supply was therefore no longer framed as caused by insufficient market integration and competition (cf. the market-regulatory paradigm), but as a market failure, caused by a lack of safeguard measures for security of supply at the supranational level.

Equally in line with previous documents, was the Commission’s call for a “clear policy on securing and diversifying energy supplies”, an external strategy for diversification of the European energy supply (ibid. p. 15). Such a policy was “especially appropriate for gas” (ibid.). The Commission advanced the idea of a Strategic Energy Review which “could propose

[15] Indeed, in the market-regulatory paradigm dominant in the late 1980s and throughout the 1990s, this call for predictability (in essence safeguards for security of supply) was largely absent; the creation of integrated and competitive markets in and of itself would make the European energy supply secure.

clearly identified priorities for the upgrading and construction of new infrastructure necessary for the security of EU energy supplies" and "could acknowledge the concrete political, financial and regulatory measures needed to actively support the undertaking of such projects by business" (ibid.). The Commission again repeated its plea for political, financial as well as regulatory support for infrastructure important for the diversification and security of the energy supply. The Commission thus continued to instrumentalise the context of the 2000s to not only propose the establishment of regulatory precautions for the IEM, but also to legitimise precautionary measures constituting more radical deviations from the market-regulatory paradigm, based on the selective use of EU policy tools. This indicated the Commission's gradual move beyond not only the market-regulatory paradigm, but also "beyond the regulatory state" (Prontera, 2019a), as it propagated policies based around the targeted application of EU political, regulatory and financial support, rather than around the neutral application of regulation with a view to create a level playing field for market actors.

3 The gas crises of 2006 and 2009: A wake-up call, further riskification and the turn towards catalytic precautions

3.1 The first Russo-Ukrainian gas crisis and the 2007 Communication "An Energy Policy for Europe"

2006 would be a pivotal year in European energy. It took off with a particularly worrying start. Russian-Ukrainian gas price disputes led to the suspension of the Russian gas supply to Ukraine on the 1st of January (Stern, 2006, p. 7). At that time, Ukraine played a central role in the Russian gas export to Europe. In 2004 for instance, of all the Russian gas that was exported to Europe, more than 80 percent was transited via Ukraine (Stern, 2006, p. 2). The cut-off therefore had an immediate impact

on member states' gas supplies. By January 2nd, Russian gas exports to Hungary had reportedly fallen by 40 percent, exports to Austria, Romania and Slovakia by one third, to France between 25 and 30 percent and to Poland by 14 percent. Italy in turn disclosed shortfalls of up to a quarter of its normal deliveries between the 1st and 3rd of January. By January 4th, Russian deliveries to Europe were said to be back to normal (Stern, 2006, pp. 8-9).

Although the EU was not directly targeted, it nevertheless felt the consequences of the disruptions. It was the first in a series of events that would negatively affect the European perception of Russian gas and would serve as a wake-up call. It would instigate further riskifying moves of the EU's import dependence by the Commission (Judge & Maltby, 2017, p. 187), as well as an intensification of the riskification of its policy paradigm, characterised by a strong emphasis on the necessity of precautionary measures to ensure security of supply. While the 2000 Green Paper still called "the continuity of supplies from the former Soviet Union, then Russia over the last 25 years […] testimony to an exemplary stability" (European Commission, 2000, p. 44), this had now become objectively untrue. Naturally, this caused a recalibration of the Commission's discourse, as is visible in the 2007 Communication "An Energy Policy for Europe", written and issued after the dispute.

This Communication attempted to reinforce the riskification of energy imports: "Europe is becoming increasingly dependent on imported hydrocarbons. With 'business as usual' the EU's energy import dependence will jump from 50% of total EU energy consumption today to 65% in 2030. [...] This carries political and economic risks. The pressure on global energy resources is intense. [...] The risk of supply failure is growing" (European Commission, 2007a, pp. 3-4). A risk grammar was visibly present in the Commission's discourse. The increasing import

dependence posed a risk to the EU's security of supply, increasing the possibility of "supply failure"/harmful disruptions to its energy supply. Indeed, the reliance on energy imports was not harmful in and of itself (cf. securitisation), it rather made the EU vulnerable, by allowing for other harmful events to happen (cf. riskification).

The Commission's continuation of this strategy of riskification cannot come as a surprise. The events of the mid-2000s only increased the viability of this approach. First of all, the 2006 gas crisis very obviously demonstrated the alleged risk posed by the European dependence on external energy supplies, functioning as an excellent facilitating condition for the Commission's riskifying moves. It would have been rather peculiar for the Commission *not* to seize this opportunity for further riskification of the EU's import reliance. Secondly, it is also important to consider the enlargement waves of 2004 and 2007. These added member states to the EU that were overwhelmingly reliant on outside sources for their energy supply – especially so on Russian gas. Moreover, these new member states were not only extremely dependent on Russian gas, they were also characterised by a "historically derived suspicion of Russian foreign and energy policy" (Maltby, 2013, p. 436), as former parts of the Eastern Bloc/Soviet Union. With these enlargements, the Commission's riskifying moves thus found a much more amenable audience than before, especially in light of the 2006 gas crisis. This further augmented the viability of the Commission's discursive strategy.

The 2007 Communication proposed several measures to deal with the risk of import dependence. It called for the establishment of "effective mechanisms [...] to ensure solidarity between Member States in the event of an energy crisis" (European Commission, 2007a, p. 10). Specifically, it proposed *inter alia* to reinforce existing "solidarity mechanisms" such as

the Gas Coordination Group,[16] as well as the establishment of a new strategic gas stocks mechanism (ibid. p. 11). The document also emphasised the importance of bolstering "diversity with regard to source, supplier, transport route and transport method" (ibid. p. 10). It suggested the establishment of "pan-European political support" to "the most significant missing infrastructure" (ibid. p. 9), "the use of financial instruments" "to enhance the EU's energy security" and "appointing European coordinators to represent EU interests in key international projects" (ibid. p. 19) (e.g. the Nabucco gas pipeline, see Chapter 4).

As in previous documents, the riskification of energy imports thus had to legitimise regulatory precautions, but also more interventionist supranational measures, outside the scope of the regulatory state-model. Noticeably, proposals for the latter became more prominent over time. Earlier 2000 documents predominantly employed the riskification of energy imports to put security of supply on the European agenda and to legitimise the establishment of supranational regulatory frameworks for security of oil/gas supply. Conversely, later documents utilised the riskification rather to put the issue of inadequate infrastructure on the supranational agenda, and to legitimise the establishment of a comprehensive EU policy for network development. This policy was not inspired by the regulatory state-model, but rather by the catalytic state-model, based on a facilitatory role for the Commission and on the selective use of policy tools for "catalytic" purposes, i.e. to encourage and support market actors, with a view to facilitate the implementation of strategic energy projects important for security of supply (see Prontera, 2019a for more on the "catalytic state" in EU context). Where the 2000 Green Paper still barely mentioned the need for EU support towards infrastructure implementation, the documents of

[16] The Gas Coordination Group had been established by Directive 2004/67/EC concerning measures to safeguard security of natural gas supply, and served as a forum for the exchange of information and the coordination of measures relating to security of gas supply between the member states.

the mid- and late-2000s – such as the 2007 Communication at hand – would become much more vocal in this respect. Just as before, the IEM was still promoted as one of the essential policy solutions for European security of supply. The 2007 Communication for instance highlighted “the major advantages in terms of security of supply” of “an effectively functioning and competitive Internal Energy Market” (European Commission, 2007a, p. 6). However, as time progressed, this policy solution stood less and less central in the Commission’s discourse.

It was not entirely surprising that the 2006 gas crisis triggered a more interventionist policy paradigm in the Commission’s discourse, considering Russia’s central position in the European energy supply. Undeniably, Russia was (and still is) what Buzan et al. (1998) call a “functional actor” in the European energy sector, “an actor who significantly influences decisions in the field of security”, “without being the referent object or the actor calling for security on behalf of the referent object” (Buzan et al., 1998, p. 36). This is what made the 2006 supply disruption in such a landmark event, reinforcing notions of the bankruptcy of the neoliberal approach towards security of supply and of the need for more interventionist measures outside the scope of the regulatory state. It became increasingly evident that Russia did not subscribe to the EU’s market-oriented, rules-based mode of governance, and that this necessitated a more fundamental recalibration of the EU’s own model.

However, it is also clear from both the Commission’s framing of the import dependence and its proposed course of action that the 2006 gas crisis did not take its discursive strategy beyond riskification and towards securitisation (which one might perhaps have reasonably expected). In the 2007 Communication, the import reliance of the EU was still construed as an indirect cause of harm rather than as a direct cause of harm, as a problem requiring long-term supranational management rather than as an

acute and existential threat (see *supra*). Equally, the measures proposed by the Commission were precautionary/long-term – about boosting the resilience of the referent object itself, about including a safety margin – rather than "exceptional"/short-term in nature – about no-holds-barred action to defend against the alleged threat, external to the referent object (see Table 1). The policy paradigm of the Commission became more interventionist, but was still fundamentally aimed towards increasing security of supply itself, not towards "tackling external sources of danger" (e.g. military intervention in producer states, in order to safeguard the continuity of the energy supply) (Corry, 2012, p. 248). The catalytic measures, the proposals for supranational regulatory, financial and political support towards infrastructure implementation that now became more prominent in the Commission's discourse, still approached insecurity of supply as a market failure, as a problem of inadequate precautions to mitigate the risk posed by the import dependence of the EU. The precautionary logic thus remained intact.

To understand why, it is important to consider the institutional limitations of the Commission as a supranational entity. If the Commission would have recalibrated its discursive strategy towards a securitisation of import dependence, and if that discursive strategy would in fact have been successful – would establish an intersubjective understanding of import dependence as an existential threat to security of supply – it is doubtful that this would result in emergency action being taken at EU level. Arguably, member states would not allow the Commission to take action in a domain they consider to be existential to their own survival, they would instead resort to national approaches as for instance witnessed during the oil crises of the 1970s. As such, risk-based discourses are better suited to the Commission's inherent qualities, as they aim towards the legitimation of measures that are more likely to be delegated to the supranational level by the member states.

3.2 The 2008 Second Strategic Energy Review and 2008 Green Paper "Towards a Secure, Sustainable and Competitive European Energy Network"

Subsequent documents confirmed the trend towards catalytic precautions for security of supply in the Commission's discourse. The promotion of "infrastructure essential to the EU's energy needs" was one of the five central pillars of the EU Energy Security and Solidarity Action Plan proposed by the 2008 Second Strategic Energy Review (European Commission, 2008a, p. 4). The document outlined six initiatives which had to be "accepted as Community priorities" (ibid.), *inter alia* the SGC (see Chapter 4) and the Baltic Interconnection Plan (which would "identify the key missing infrastructures necessary for the effective interconnection of the Baltic region with the rest of the EU, establishing a secure and diverse energy supply for the region" (ibid.)). The Commission would "use its existing instruments to pursue rapid progress on all these priority actions" (ibid. p. 6) and emphasised the importance of financial and political support to accelerate the implementation of these projects. It proposed an "EU Energy Security and Infrastructure Instrument" to replace the existing TEN-E programme,[17] because that programme was established at a time when the EU "faced energy challenges of a completely different dimension compared to today" (ibid.), and because its budget for "catalysing the development of major projects of Community interest" was (allegedly) inadequate (ibid.).

The 2008 Green Paper "Towards a Secure, Sustainable and Competitive European Energy Network", referring to "recent events in Georgia" (i.e. the Russo-Georgian War of 2008) which showed that it was "a critical time for energy security and that the EU needs to intensify its efforts with regard to

[17] The TEN-E framework was the EU's regulatory framework for infrastructure development, first established in 1996 (Decision 1254/96/EC) and subsequently revised in both 2003 (Decision 1229/2003/EC) and 2006 (Decision 1364/2006/EC).

the security of energy supply" (European Commission, 2008b, p. 3), also advocated a more interventionist approach for the EU and the Commission in European infrastructure development. The Commission stipulated: "[...] in view of challenges to security of supply and the scale of investments which Europe's energy networks need, the EU needs to reinforce its policy on energy network development. It should for example be able to intervene or mediate where public and private parties are unable to move forward on key projects with a European impact" (ibid.). It argued for "a new focus for EU energy network policy" and for the EU to have "a more pro-active role in promoting strategic projects" "to strengthen solidarity and security of supply in a truly European energy network" (ibid. p. 4).

This call for more direct intervention and "facilitation" manifested itself throughout the 2008 Green Paper. The Commission for instance suggested the development of "a long-term political framework for commitments by the private companies involved in the investments, and for possible guarantees by European banks such as EIB and EBRD" for "international energy networks projects serving EU security of energy supply" (ibid. p. 9). Although the Commission said that "final decisions about import pipelines are a commercial matter to be taken together with the countries concerned", the Commission at the same time specified that "for some projects, it might be appropriate to provide a political reassurance to third countries that the EU is prepared to enter into a long term [*sic*] energy relationship" (ibid.).

The Commission also talked about making the TEN-E programme "more effective as an instrument to facilitate important EU projects which serve security of supply, competition, environmental or solidarity goals" (ibid. p. 11). Up until then, TEN-E funding had mostly been used for pre-investment feasibility studies (thus not to support implementation phases of projects) for a variety of projects, which had been selected by member states at the

national level without a great deal of coordination among them (Prontera, 2019a, p. 107). Now, the TEN-E programme had to be put “at the service of security and solidarity” and the EU had to play “an active facilitating and mediatory role” in TEN-E planning (ibid.). The Commission stated that TEN-E “was not designed to deal with today’s energy challenges” and was “not properly aligned with the new energy policy for Europe” and called its budget “seriously inadequate” (ibid. p. 13). With “the new energy policy for Europe”, the Commission alluded to the more interventionist, security of supply-centred policy it continuously proposed where “guaranteeing EU security of energy supply, through assistance for key infrastructure projects within and outside the EU” (ibid.) had become one of the main policy objectives next to the liberalisation of the energy markets of the member states (and was no longer framed as an automatic outcome/by-product of the development and completion of that market, as in the late 1980s and the 1990s).

The significance of these proposals should not be understated. The Commission was attempting to thoroughly re-envisage the EU’s fundamental role in the energy sphere based on a riskification of energy imports. In order to ensure security of supply in the face of growing import dependency, which exposed the EU to evermore destructive interruptions of its energy supply – the 2008 Green Paper for instance stipulated how the enlargements had made the EU “more vulnerable to supply disruption” (ibid. p. 3) – the EU had to go beyond regulation and the enforcement of regulation, and had to intervene directly where market actors were “not prepared to take the ‘first mover’ risk” (ibid. p. 6). Increasingly, the Commission conceived the role of the EU as a hybrid actor in the energy sphere, functioning as both a regulator and selective facilitator (a “catalyst”, promoting and supporting market actors rather than merely shaping the environment in which they operate (Prontera, 2019a, p. 65)). This indicated the gradual erosion of the regulatory state-lens in the Commission’s

discourse, as its proposals for precautionary measures increasingly derived from the catalytic state-model.

Nevertheless, despite this interventionist shift within the emerging riskified policy paradigm, it is important to note that the overarching IEM "master frame" or "meta frame", as Prontera (2019a) calls it, persisted. The Commission departed from the regulatory state, but its policy paradigm was still compatible with the EU's broader move towards the IEM (Prontera, 2019a, p. 93). Insecurity of supply continued to be approached as a market failure, and market creation ultimately remained the baseline solution. The precautionary measures for security of supply proposed by the Commission, those derived from the regulatory as well as from the catalytic state, had to supplement, not replace the EU's market-building efforts. Indeed, as the 2008 Green Paper stipulated, they had to be deployed "where the market does not deliver" (European Commission, 2008b, p. 6). Thus, "the market" still served as the foundation, the point of departure for policy action.

Seemingly the only exception to this was the Commission's proposal for a so-called "block purchasing mechanism" for natural gas from the Caspian region in the Second Strategic Energy Review (European Commission, 2008a, p. 17). This mechanism would pool EU purchasing power by bringing together European gas companies, in order to negotiate a deal with Central Asian producer states for a pipeline project to bring Caspian gas into the EU while bypassing transit via Russia and Ukraine (Goldthau & Sitter, 2015b, p. 87). In this case, the Commission effectively proposed to deliberately distort market functioning by aggregating European gas demand – hardly compatible with the IEM master frame. However, the objective was not in fact to leverage EU purchasing power to obtain a better deal and lower gas prices, but rather to secure sufficiently large volumes of gas to convince Central Asian producers to commit their

supplies to the pipeline project (ibid.; Prontera, 2019a, p. 129). The market failure-philosophy thus persisted here as well.

The robustness of the IEM master frame exemplifies the point made earlier about the importance of path dependence and policy legacy in studying swings in the state-market pendulum, and for correctly interpreting and understanding the contemporary evolution of the Commission's discourse and the EU's substantial internal and external energy policy. The Commission recalibrated its policy paradigm in the context of an emerging state-capitalist order in global energy governance and reignited concerns over security of supply, but this recalibration was fundamentally shaped and informed by the market-regulatory paradigm and patterns of governance of the preceding neoliberal era. As such, the Commission propagated an increasingly interventionist approach, but it did so in a way that was congruent with the EU's move towards the IEM, with the market-oriented meta frame established during the 1980s and 1990s (Prontera, 2019a, p. 81).

3.3 The second Russo-Ukrainian gas crisis, the Energy 2020 Strategy and the 2010 Communication "A Blueprint for an Integrated European Energy Network"

Meanwhile, important shifts in the global energy landscape were underway. A combination of steep oil prices and technological advances (i.e. hydraulic fracturing and horizontal drilling) transformed vast amounts of previously unprofitable US oil and gas reserves (so-called shale oil and shale gas) into commercially viable assets, leading to a production boom in the American energy industry (Van de Graaf et al., 2016). In the 2010s, this in turn led to a drop in oil prices and a renewed sense of global abundance of energy resources, significantly alleviating the security of supply-concerns of the 2000s. However, there was one important

exception to this rejuvenated optimism: the Eurasian gas markets (Prontera, 2019a, p. 81). And, arguably, with good reason.

In 2009, a second Russian-Ukrainian gas crisis led to new supply disruptions, but these now lasted much longer in comparison to 2006 and the damage done to the European economy was consequently much more severe. In the same year, Russia also stopped its provisional application of the ECT. Up until then, although Russia never ratified the ECT, Russia had been, in accordance with the treaty, provisionally applying the ECT.[18] However, on 18 October 2009, Russia officially ended the provisional application of the treaty. This was another blow to EU-Russia relations and was a further indication that the EU's most important energy partner was not interested in playing by EU rules.

The events of 2009 only reinforced the Commission's tendency to propose more proactive precautionary measures to deal with the alleged risk posed by the EU's import dependence, i.e. supranational solutions derived from the catalytic state-model. This was not surprising, as these events further highlighted the incompatibility of the EU's market-oriented, rules-based approach with the emerging state-capitalist order in energy governance. The reactive policy solutions derived from the regulatory state had not proven adequate to deal with politically motivated supply disruptions. They had not been able to make the EU's gas infrastructure sufficiently resilient to external supply shocks. Indeed, the disruptive effects of the 2009 crisis were not caused because there was an actual shortage of available gas on European markets – there were ample supplies in Western Europe during the disruption – but because the infrastructure was not capable of

[18] As a signatory of the ECT, Russia had to provisionally apply the treaty in accordance with Art. 45(1) ECT: "Each signatory agrees to apply this Treaty provisionally pending its entry into force for such signatory in accordance with Article 44, to the extent that such provisional application is not inconsistent with its constitution, laws or regulations."

transporting the gas from the places that had it to the places where it needed to be (Crisan & Kuhn, 2017, p. 169; Prontera, 2019a, p. 108).

This, of course, presented quite a convincing rationale for the Commission to advocate new catalytic precautions to facilitate the implementation of strategic energy infrastructure. In its Energy 2020 Strategy published in 2010, in a clear reference to the 2009 gas crisis, the Commission stated that “the obligation of solidarity among Member States will be null and void without a sufficient internal infrastructure and interconnectors across external borders and maritime areas” (European Commission, 2010a, p. 10). As such, it emphasised the need for EU financial support towards infrastructure projects, because even though these had “to be financed mainly from tariffs paid by the users” (ibid.), it could not be assumed “that all the necessary investments will be delivered by the market alone” (ibid.). Apart from financial measures, the Commission also underlined the importance of enhancing supranational regulatory support to infrastructure projects, as complex national administrative procedures were “a major bottleneck” in European network development (ibid.). It proposed a new permitting scheme for so-called projects of European interest, i.e. projects considered vital for “security of supply, solidarity or renewables integration purposes” (ibid.), to improve the existing system for instance by establishing a designated agency in every member state responsible for coordinating all permit procedures at the national level (ibid. p. 12).

In its Communication “Energy Infrastructure Priorities for 2020 and Beyond – A Blueprint for an Integrated European Energy Network”, the Commission equally identified project financing and “long and uncertain permitting procedures” (European Commission, 2010b, p. 8) as two of the main obstacles to be addressed in order to upgrade the EU’s “outdated and poorly interconnected energy infrastructure” and achieve European security of supply (ibid. p. 4). As such, it called for the creation of a “stable

framework for financing" (ibid. p. 15), "to maximise the impact of European financial intervention by playing a catalytic role in mobilising, pooling and leveraging public and private financial resources for infrastructures of European interest" and resolve the investment gap in the energy sector (ibid. p. 16). To enable faster permitting, it proposed the harmonisation of national regulatory frameworks "to streamline, better coordinate and improve the current process" in order to ensure the timely implementation of projects of European interest, "without which the EU would fail to meet its energy and climate objectives" (ibid. p. 14). In parallel to the Energy 2020 Strategy, the Commission suggested the establishment of a "one-stop shop" per project of European interest (which would serve as a "single interface between project developers and the competent authorities involved at national, regional and/or local level" (ibid. p. 14)), a strict time limit for national permitting procedures, and "the development of guidelines to increase the transparency and predictability of the process for all parties involved" (ibid. pp. 14-15). With regard to the external dimension, the Commission underlined the importance of supranational diplomatic involvement in the realisation of international energy projects, "to promote diversification and provide for the public good of security of supply by bringing Member States and companies together in order to reach a critical mass" (ibid. p. 32). The Commission had to work together with member states, "with the joint objective of rapidly securing firm commitments for the supply of gas and the construction of gas transportation infrastructures" (ibid.).

These documents again showcased the Commission's utilisation of the deteriorating relations with Russia to reframe its own role and that of the EU in the energy sphere, and to legitimise the emergence of a more hybrid, proactive mode of energy governance, where the selective use of EU policy tools was considered a legitimate policy option.

4 The 2014 Ukraine crisis: The nail in the coffin of the market-regulatory paradigm

4.1 The Ukraine crisis and the European Energy Security Strategy

The tensions between the EU and Russia reached new (temporary) heights with the Ukraine crisis in 2014. After Ukrainian President Yanukovych declined to sign an Association Agreement with the EU, pro-European protests broke out throughout Ukraine. These led to the ousting of Yanukovych, which in turn led to unrest in Ukraine's eastern and southern regions, from where he had drawn most of his support. Russia subsequently invaded these regions and annexed Crimea, leading to a conflict which remained more or less frozen until the large-scale Russian invasion of Ukraine in February 2022.

After the gas crises of 2006 and 2009, the 2014 Ukraine crisis was a new and heavy blow to the European perception of Russia as a reliable (energy) partner. At the March 2014 summit, the European Council tasked the Commission to conduct an "in-depth study of EU energy security and to present […] a comprehensive plan for the reduction of EU energy dependence" (European Council, 2014, p. 10), which resulted in the publication of the European Energy Security Strategy later that year. The further deterioration of EU-Russia relations went hand in hand with the culmination of the riskification of the Commission's discourse. All of the aforementioned elements of change and riskification in the Commission's discourse observed from the year 2000 onwards – overall presence of "risk logic", the riskification of energy imports, the utilisation of that riskification to legitimise the establishment of regulatory as well as more interventionist measures by construing these as necessary precautions for EU security of supply – manifested themselves in even stronger fashion in the European Energy Security Strategy.

First, the Commission re-emphasised how import dependence made the EU “vulnerable to external energy shocks” (European Commission, 2014, p. 2). As with previous documents, the European reliance on external energy suppliers was therefore presented as a risk, “a constitutive cause of harm” (Corry, 2012, p. 255), which exposed the EU to harmful events such as supply disruptions. The Commission now also became more explicit in terms of which energy imports specifically constituted a risk to the security of supply of the EU: “The most pressing energy security of supply issue is the strong dependence from a single external supplier. This is particularly true for gas, but also applies to electricity. Six Member States depend from [*sic*] Russia as single external supplier for their entire gas imports and three of them use natural gas for more than a quarter of their total energy needs” (European Commission, 2014, p. 2).

This, according to the Commission, justified “a hard-headed strategy for energy security which promotes resilience to these shocks and disruptions to energy supplies in the short term and reduced dependency on particular fuels, energy suppliers and routes in the long-term” (ibid.). The constant reiteration of the idea that security of supply needed a “hard-headed strategy” indicated that the Commission’s had moved away from the market-regulatory paradigm, where market integration/market-building was essentially seen as the strategy for security of supply, and had moved towards (promoting) a riskified energy strategy, where security of supply had to be pursued not solely through market integration, but also through supplementary precautionary policies. It also typified the risk grammar present in the Commission’s discourse, closely aligning with the riskification-ideal type of Corry (2012), where issues are framed as risks to legitimise “programmes for permanent changes aimed at reducing vulnerability and boosting governance-capacity of the valued referent object itself” (Corry, 2012, p. 248).

The Commission proposed an amalgam of measures that had to form part of this hard-headed strategy for security of supply. Just as before, two main categories of precautions could be distinguished. The first category concerned regulatory measures for security of supply, reactive in nature and specifically aimed towards “preventing and mitigating gas supply disruption risks” (European Commission, 2014, p. 5). As part of the “immediate actions to increase the EU’s capacity to overcome a major disruption during the winter 2014/2015” (ibid. p. 4), the Commission for instance proposed to intensify cooperation within the Gas Coordination Group, to closely monitor natural gas flows in the internal market and to coordinate at “EU and/or regional level national risk assessments and contingency plans” (ibid.). The Commission also called for updates to the national and joint risk assessments and Preventive Action and Emergency Plans developed pursuant to Regulation 994/2010 (see Chapter 3), and suggested the “launch of energy security stress tests in the light of the supply disruptions risks in the upcoming winter”, and to “develop back-up mechanisms if necessary” (ibid.) (such as an expansion of EU gas stocks, the development of bidirectional flows for pipeline infrastructure, …).

The proposals under the second section, entitled “Strengthening emergency/solidarity mechanisms including coordination of risk assessments and contingency plans; and protecting strategic infrastructure” (ibid.), belonged to the same category of reactive, regulatory precautions. The Commission stated that the EU had “an overriding priority: to ensure that the best possible preparation and planning improve resilience to sudden disruptions in energy supplies, that strategic infrastructures are protected and that the most vulnerable Member States are collectively supported” (ibid.). In this regard, the Commission said it would “review existing mechanisms to safeguard security of energy supply and propose their reinforcement, where necessary, together with measures for the protection of strategic energy infrastructures” and would “propose to Member States and industry new contingency coordination mechanisms

and plans to deliver energy to countries in times of need, based on risk assessments" (ibid. p. 6). With regard to the external dimension, "new security of supply instruments could be envisaged with key strategic partners" (ibid. p. 5).

The Commission's discourse was replete with risk-speech (rhetoric and jargon typical for riskification) and -logic. The proposals neatly aligned with the riskification-ideal type, as they aimed towards increasing the governance and/or the resilience of the referent object. The Commission's discourse was also full of risk-speech when it was talking about "risk assessments", "contingency plans", "energy security stress tests", "Preventive Action Plans" and "Emergency Plans". Riskification not only shaped the proposals of the Commission, but clearly its language as well.

Rather than provoking a discursive shift towards securitisation, the 2014 Ukraine crisis thus spurred firmer riskification. The Commission still construed import dependency as a problem requiring long-term supranational management, not as an acute, direct cause of harm requiring immediate emergency action at EU level, external to the referent object of security of supply (cf. securitisation).

The second category of proposals concerned more proactive, interventionist measures, outside the scope of the regulatory state-model. As before, some of these were derived from the catalytic state, based around the selective use of financial, political and regulatory support to accelerate the implementation of priority infrastructure projects, in the internal (cross-border interconnections between member states) as well as the external dimension (import infrastructure). The Commission for instance underlined the importance of supranational funding in implementing "key projects", as it estimated that "some €200 billion are required up to 2020 in this respect, but that the market can currently only deliver roughly half of this" (ibid. p. 9). However, financial support was not

enough to ensure the timely implementation of these projects, so the Commission also intended “to intensify its support for the critical projects by bringing together the project promoters [...] as well as the relevant Ministries to ensure strong political support” (ibid. p. 10). In the external dimension, the Commission stressed how “increased EU political-level engagement with prospective supplier countries would pave the way for commercial deals” (ibid. p. 18).

Besides these catalytic measures, the European Energy Security Strategy also indicated that “voluntary demand aggregation mechanisms” could be explored (ibid. p. 19), in reminiscence of the block purchasing mechanism for gas from the Caspian region envisaged in the Second Strategic Energy Review. In contrast to the proposal in the latter, however, this was no longer framed in terms of ensuring sufficient levels of security of demand to convince external suppliers, but rather as a way to “increase the bargaining power of European buyers” (ibid.). This time, pooling EU purchasing power was therefore no longer proposed as a tool to correct market failures (cf. Second Strategic Energy Review), but instead as a way to augment the EU’s bargaining position and leverage EU economic power vis-à-vis external energy suppliers (see Andersen et al., 2017b). Thus, the proposal could not be considered compatible with the market failure-philosophy anymore (Prontera, 2019a, p. 96).

Prima facie, this signals an important shift in the Commission’s policy paradigm, as previous documents had never transgressed the bounds of the IEM meta frame. Yet, it should be noted that the Commission had only reluctantly included this in the European Energy Security Strategy upon the request of (mainly Eastern European) member states (ibid.). The prudent language is illustrative in this regard, stating how “demand aggregation mechanisms […] *could be assessed*”, but “*would need to be carefully designed and executed* to ensure compatibility with EU legislation and

trade law" (European Commission, 2014, p. 19, italics added). In other words, the IEM master frame remained intact.

The market-regulatory paradigm, conversely, was long gone. Although the IEM was still said to be "a key factor in energy security" and was "the delivery mechanism to achieve it in a cost-effective way" (ibid. p. 8), this element had clearly become less and less prominent over time. The idea that the establishment of competitive conditions in the energy sector would automatically achieve European security of supply had been replaced by an overwhelming emphasis on both reactive and proactive supranational precautions to supplement market functioning and ensure reliable supplies – a riskified policy paradigm.

Table 4. Policy paradigms in the discourse of the European Commission: Market-regulatory paradigm vs. Riskified paradigm

	Market-regulatory paradigm (1988-1999)	**Riskified paradigm (2000-2018)**
Alleged causes of insecurity of supply	Lack of competition	Lack of competition Import dependence
Suggested solutions	The creation of competitive and integrated energy markets inside and outside the EU	The creation of competitive and integrated energy markets inside and outside the EU Supplementary precautionary measures for security of supply: - Harmonisation of national measures for security of gas and oil supply - A comprehensive policy of support towards strategic infrastructure projects (internally as well as externally)
Suggested tools	Regulation and competition policy External initiatives aimed towards rule export	Regulation and competition policy External initiatives aimed towards rule export Selective diplomatic, political, financial and regulatory support
Role for the European Commission	Regulator	Regulator Facilitator

Note. Adapted from “Framing and reframing energy security: Regulatory vs. catalytic state” by Prontera (2019a), Beyond the EU Regulatory State: Energy Security and the Eurasian Gas Market, p. 82.

4.2 The 2015 Energy Union Strategy and subsequent documents

Released in 2015, the Energy Union Strategy expanded on the European Energy Security Strategy and proposed the establishment of a so-called “Energy Union” (European Commission, 2015a). This strategy was based around “five mutually-reinforcing and closely interrelated dimensions designed to bring greater energy security, sustainability and competitiveness”, the first of which was “Energy security, solidarity and trust” (ibid. p. 4). In this first section, the Commission stated that “the political challenges over the last months have shown that diversification of energy sources, suppliers and routes is crucial for ensuring secure and resilient energy supplies to European citizens and companies” (ibid.). As the construction of new gas infrastructure was “both complex and expensive”, “resolute action at EU level” was required (ibid.). The Commission would therefore “reinforce its support [...] through the use of all available Community funding instruments” (ibid. pp. 4-5). The Commission also declared its intention to create “a dedicated Energy Infrastructure Forum to discuss progress on major infrastructure projects” (ibid. p. 19).

As in the European Energy Security Strategy, the Commission advocated “stronger cooperation in responding to a potential supply disruption” and “common crisis management”, proposing the adoption of “preventive and emergency plans at regional and EU level” (ibid. pp. 5-6). The Commission also reiterated the idea of a block purchasing mechanism for natural gas, but again emphasised that this would need to be “fully compliant with WTO rules and EU competition rules” (ibid. p. 6).

The Energy Union Strategy confirmed the trend witnessed in the European Energy Security Strategy towards (even deeper) riskification of the policy paradigm of the Commission, with the same calls for a more proactive,

facilitatory role for the Commission and the EU in infrastructure development and for reactive precautions to prevent and mitigate supply disruption risks, thus with the same emphasis on the importance of precautionary policies in attaining a secure European energy supply.

In follow-up documents, the Commission continued to highlight the importance of EU financial, regulatory and political support for infrastructure development and the importance of diplomatic engagement in the external sphere in the direct pursuit of security of supply. In its Communication “An EU Strategy for Liquefied Natural Gas and Gas Storage”, the Commission argued that Liquefied Natural Gas (LNG) was a “major opportunity for the EU, particularly when it comes to gas security and resilience” (European Commission, 2016a, p. 2). It stated that supranational funding could “help to make up for the weak commercial viability of [LNG] terminals that are particularly important for security of supply” (ibid. p. 4). Regulatory support through the 2013 TEN-E guidelines and political support through the High Level Groups (see Chapter 3) were seen as important tools for the implementation of key projects that would “end single-source dependency and give all Member States access to LNG” (ibid. p. 6). The Commission also had to pursue an LNG diplomacy with Australia and other current and potential suppliers, and priority had to be given to “high level energy dialogues with Algeria, the US and Canada” (ibid. p. 11).

The 2017 Communication “Strengthening Europe’s Energy Networks” also stressed the importance of EU financial support as “an important enabler for the mobilisation of private investment” (European Commission, 2017a, p. 3), and acknowledged “the key role of the High Level Groups” in accelerating network development (ibid. p. 4). The document again pointed to the Commission’s support “as a key enabler” in this regard (ibid.). However, for “more complex infrastructural challenges”, the Commission proposed “a more structural form of regional cooperation, including on

political level, to align all Member States' and stakeholders' focus on the implementation of key projects" (ibid.).

Conclusion

The chapter has illustrated the Commission's consistent pursuit of a discursive strategy of riskification from the early 2000s onwards.

In the context of an emerging state-capitalist order in global energy governance characterised by tighter energy markets, rising oil prices and surging resource nationalism, the Commission drastically recalibrated its policy discourse in the 2000 Green Paper "Towards a European Strategy for the Security of Energy Supply". Where the documents of the late 1980s and 1990s mainly aimed towards a reconciliation of the security of supply-objective with market-oriented governance, the Commission now framed energy as a strategic good and construed the increasing dependence on energy imports as a risk/an indirect cause of harm to the security of supply of the EU. It did so to reconceptualise security of supply not as an automatic outcome of competitive and integrated energy markets (the neoliberal conceptualisation of security of supply/market-regulatory paradigm), but instead as a market failure, requiring the establishment of precautionary measures at EU level to ensure that energy markets would effectively deliver security of supply in the face of Europe's growing reliance on third countries (the precautionary conceptualisation of security of supply/riskified paradigm).

At first, these riskifying moves were mainly employed to legitimise the establishment of regulatory measures aimed towards security of oil/gas supply. Although these deviated from the neoliberal conceptualisation of security of supply dominant in the late 1980s and the 1990s, these were still inspired by the regulatory state-model, i.e. based on the neutral application of regulatory tools in order to create a level playing field for

market actors. In later documents, however, the riskification of energy imports increasingly served a dual purpose. The Commission no longer solely endeavoured the establishment of new regulatory measures for security of supply, but also the legitimation of more interventionist precautions to facilitate the implementation of strategic infrastructure in both the internal and external dimension. These measures fell outside the scope of the regulatory state and were instead “catalytic” in nature, based on the selective use of policy tools to promote and support market actors, and/or forge coalitions between them (see Prontera, 2019a). The Commission framed regulation alone as insufficient for achieving security of supply and emphasised the need for more proactive supranational measures to adequately deal with the alleged risk posed by the EU’s increasing import dependence.

Consecutive gas crises significantly reinforced the existing trends towards the riskification of energy imports and of the policy paradigm of the Commission. The Commission actively used the deterioration of EU-Russia relations to riskify energy imports and to justify a more proactive role for itself in the pursuit of security of supply. The need for the EU to go beyond the traditional role of regulator was continuously emphasised, as was the importance of financial, regulatory and political support in the development of strategic energy projects.

The riskification of energy imports continued after the 2014 Ukraine crisis, but the Commission now also explicitly targeted Russian gas. The riskified paradigm reached its climax in the European Energy Security Strategy, which propagated a variety of reactive and proactive (i.e. regulatory and catalytic) measures as necessary precautions to reduce the EU’s vulnerability to external supply shocks. The Commission’s discourse was rife with risk-speech and heavily inspired by a precautionary logic. While the IEM remained the baseline solution, without the necessary

supranational safeguards in place it could not and would not deliver security of supply. The Energy Union Strategy confirmed the riskification of the Commission's policy paradigm and further underlined the departure from the regulatory state-model, but also the persistence of the IEM master frame.

Chapters 3 and 4 will examine to what extent the Commission's discourse has been successful in establishing an intersubjective understanding among the member states of import dependence as an issue requiring long-term precautionary governance at the supranational level, by considering the regulatory, legal and policy developments in the energy domain in respectively the internal and the external dimension. Have the riskifying moves of the Commission been able to reconceptualise and transform the pursuit of security of supply in substantive energy policy at EU level? Have member states accepted the Commission's calls for regulatory and catalytic precautions? If so, when and why? These are the central questions that the next two chapters seek to answer.

CHAPTER 3: The riskification of the internal energy policy of the EU

Introduction

Chapter 2 illustrated how the Commission persistently instrumentalised changing geopolitical conditions worldwide and in the European neighbourhood to undertake riskifying moves. These riskifying moves framed Europe's increasing import dependence as a risk to security of supply requiring the establishment of various kinds of precautions at EU level. In this way, the Commission construed market integration alone as insufficient for achieving reliable supplies and attempted to steer supranational energy governance away from the market-regulatory paradigm towards a riskified paradigm, based around a precautionary rather than a neoliberal conceptualisation of security of supply (insecurity of supply as a market failure rather than as a consequence of a lack of competition).

This chapter and the next chapter will consider the second step of the riskification process at hand, the acceptance of the riskifying moves of the Commission by their audience, the member states. Indeed, securitisation theory teaches us that securitising, riskifying or politicising moves are just that; moves, subject to either failure or success, depending *inter alia* on the position/social power of the securitising/riskifying/politicising actor and the presence/absence of facilitating conditions (Buzan et al., 1998, pp. 32-33). To evaluate whether the Commission's riskifying moves have succeeded – have established an intersubjective understanding of import dependency as a risk to security of supply necessitating a combination of proactive and reactive precautions at the supranational level – this chapter and the next chapter will study contemporary policy and regulatory developments in

respectively the internal and external dimension of European energy governance. The Copenhagen School-typology will be employed to typify the security of supply-logic inspiring and determining these developments, while the IPE typology will be utilised to distinguish between the different types of (precautionary) measures adopted by the EU in terms of policy tools used, their mode of application, purpose and role for the Commission.

Chapters 3 and 4 will argue that the discursive strategy of riskification has in fact been quite successful in installing the aforementioned intersubjective understanding, by pointing to the numerous precautionary measures developed in substantial internal and external energy policy, corresponding to the riskified paradigm of energy governance propagated by the Commission.

This chapter will consider the internal dimension. In the first two sections, it will explore and analyse a first phase of pre-riskified internal energy policy. In the final section, the post-2009 developments will be examined to demonstrate the emergence of a riskified mode of internal energy governance after the second gas crisis.

1 The 1990s: An (almost) exclusive focus on market integration

1.1 Initial liberalisation of national energy markets: The First Energy Package

As explained in the previous chapter, the Commission's proposals for an IEM in the 1988 Green Paper came at an extremely opportune time. In the 1980s, a general ideological preference for market functioning over government intervention in combination with structural changes on the international oil market had given rise to a neoliberal order in global energy politics, characterised by market-oriented patterns of governance and a

strong belief in liberalisation as an instrument for security of supply (Dannreuther, 2015, pp. 472-474). The early 1990s only further reinforced this neoliberal order, with the implosion of the Soviet Union and the apparent victory of the Western ideals of political and economic liberalism as well as historically low prices for oil (Van de Graaf, 2017, pp. 165-166). These circumstances presented the Commission with an extraordinary window of opportunity to advertise its market-regulatory paradigm, based around a neoliberal concept of security of supply as an automatic outcome of well-functioning markets and market creation through regulation, which was highly compatible with the broader order that had emerged in global energy governance (Andersen, 2000).

This explains the success of the Commission's proposals for the liberalisation of the electricity and gas sectors of the member states in the 1990s, despite their firm opposition in the Council (Andersen, 2000; Eikeland, 2004, p. 5). The gas and electricity industries were the obvious targets, since they, in contrast to the oil market which had become global and liquid in nature, were characterised by their regional and rigid structures (Eikeland, 2004, p. 4). This was not in the least caused by the fact that these were network industries with fixed infrastructures, which made them prone to natural monopolies where very high start-up costs (in this case the construction of a natural gas or electricity transmission network) prohibited new companies from entering the market (Van de Graaf, 2017, p. 171). This, in accordance with the market-regulatory paradigm promoted by the Commission, stood in the way of an affordable and secure European energy supply.

As such, after complex negotiations with the member states, the so-called First Energy Package was adopted with Directive 96/92/EC concerning common rules for the internal market in electricity in 1996 and Directive 98/30/EC concerning common rules for the internal market in natural gas in

1998 (European Parliament and Council of the European Union, 1996; European Parliament and Council of the European Union, 1998). These were massively diluted versions of the Commission's original proposals and were not nearly as thorough as the Commission had hoped, envisaging a gradual opening of the natural gas and electricity industries of the member states (Eikeland, 2004, p. 6). On the one hand, Directive 96/92/EC set out specific targets for member states' liberalisation of their electricity markets; (at least) 25.3 percent by 1997, 28 percent by 2000 and 32 percent by 2003. Directive 98/30/EC concerning gas markets, on the other hand, did not specify such targets and instead left it to the member states to determine at which pace to liberalise their markets (ibid.). The directives introduced account unbundling requirements, which obligated electricity and gas companies operating within EU jurisdiction to hold separate accounts for their transmission and production/supply activities. This was supposed to foster non-discriminatory access to networks for other market players, and thus reduce the distortion of competition caused by the vertical integration characterising Europe's electricity and gas industries. As Eikeland (2004, p. 6) states, the First Energy Package ultimately left considerable discretion to member states regarding the pace and shape of the reforms, and merely offered a framework for further liberalisation. Nevertheless, it was a hugely important milestone, and would serve as the basis for future EU involvement in the energy sphere in the ensuing decades.

The adoption of the First Energy Package was followed by the establishment of the European Electricity Regulatory Forum ("Florence Forum") in 1998 and the European Gas Regulatory Forum ("Madrid Forum") in 1999, set up on the initiative of the Commission. These fora consisted of national regulatory authorities, member states, the Commission, transmission system operators, suppliers and traders, consumers, network users and representatives from civil society. They

were designed to stimulate regulatory harmonisation across the member states and foster further integration of the European gas and electricity markets.

1.2 Supranational action in the areas of infrastructure and security of supply: The first TEN-E guidelines and a new amendment of the Directive on oil stocks

The first steps towards an internal market for electricity and gas were the main but not the sole substantive developments in EU internal energy policy in the 1990s. At the 1994 European Council in Essen, the topic of energy infrastructure also appeared on the supranational agenda, as the government leaders of the member states found agreement on five gas and five electricity projects to be completed by the end of the decade to improve Community security of supply (Crisan & Kuhn, 2017, p. 168; European Council, 1994). Two years later, in 1996, Decision 1254/96/EC established the first series of TEN-E guidelines, which aimed towards the creation of a favourable environment for European network development by establishing a general framework for the identification and implementation of “Projects of Common Interest” (PCIs) (European Parliament and Council of the European Union, 1996). However, as this framework was not backed up by a budget commensurate with infrastructural needs, it did not have much of an effect, inadequate infrastructure persisted and the role of the EU and the Commission in this area ultimately remained very limited throughout the 1990s (and ultimately the 2000s as well, see *infra*) (Crisan & Kuhn, 2017, p. 169; Prontera, 2019a, p. 106).

Besides the first series of TEN-E guidelines, there was also Directive 98/93/EC, amending Directive 68/414/EEC on oil stocks. Directive 68/414/EEC was adopted after the oil supply disruption caused by the

1967 Six-Day War and the accompanying blockage of the Suez Canal. This directive made it compulsory for member states to maintain a level of oil stocks equal to at least 65 days of average daily national consumption (Council of the European Communities, 1968, p. 586). Deductions of up to 15 percent to these stockholding obligations were allowed for member states who could satisfy (part of) their oil needs via domestic production (ibid.). Art. 7 of the directive rudimentarily defined that stocks had to be used when “difficulties [arose]” (ibid. p. 587), without defining what particular situations constituted such “difficulties”. In 1972, Directive 68/414/EEC was amended by Directive 72/425/EEC, which increased member states’ stockholding obligations from 65 to 90 days of consumption.

A second amendment to Directive 68/414/EEC thus followed with Directive 98/93/EC in 1998. This amendment was primarily aimed towards preventing interference of the stockholding obligations with the functioning of the internal market, and to ensure that these did not affect the full application of Community treaty law (Haghighi, 2007, p. 137). It also increased the maximum cap for deductions to stockholding obligations for member states with domestic oil industries to 25 percent (Council of the European Union, 1998). In other words, it loosened rather than tightened the supranational grip on security of oil supply and hardly presented a major overhaul to the existing framework.

Therefore, the nascent mode of internal energy governance at EU level in the immediate post-Cold War period could best be characterised as a market-regulatory mode of governance, firmly focused on market creation by means of regulation. The domains of security of supply and infrastructure development remained in the hands of the member states. This was of course not surprising. First of all, as conducive as the broader sphere of market optimism of the 1990s was for the Commission’s

proposals for an IEM, so unfavourable was this context for legitimising new supranational proposals for the harmonisation of the security of supply-policies of the member states, or for increased EU involvement in the implementation of infrastructure projects.

Moreover, as seen in the previous chapter, the Commission's discursive strategy in the late 1980s and the 1990s was explicitly directed towards framing security of supply as a natural by-product of competitive and integrated energy markets (McGowan, 2008, p. 94). In the policy paradigm propagated by the Commission, all that was supposedly needed internally to ensure EU security of supply, was the establishment of a well-functioning market for energy. Only the 1995 Green Paper "For a European Union Energy Policy" and 1995 White Paper "An Energy Policy for the European Union" made slight deviations from this neoliberal logic, arguing for new supranational measures for security of supply in light of the EU's growing import dependence, but these hesitant and prudent proposals were overshadowed by the Commission's continuing efforts to reconcile market integration with security of supply (and as such, disregarded by the member states (Haghighi, 2007, p. 159)). Thus, the lack of supranational developments in the areas of security of supply and energy infrastructure in this period was also simply caused by the fact that the Commission decided to focus its discursive attention elsewhere (which in turn was instigated by the traditional reluctance of member states to delegate competences to the EU in these domains) (Prontera, 2019a, pp. 83-84).

2 From 2000 to 2009: Persistence of the market-regulatory mode of internal governance

In the early 2000s, the post-Cold War optimism quickly dissipated. Increased demand drove oil prices rapidly upwards, which in turn prompted a global resurrection of resource nationalism in energy-producing countries and increased state intervention in energy markets – a swing to the state-market pendulum in global energy governance (Dannreuther, 2015, p. 475). This led to a perceptible recalibration of the Commission's discourse, which now framed the EU's dependence on energy imports as a risk to security of supply, a vulnerability exposing the EU to external supply disruptions. It did so to legitimise a new, riskified approach towards security of supply, based around precautionary measures to ensure that energy markets effectively delivered reliable supplies to European consumers in the face of growing import dependence. This diverged from the neoliberal conceptualisation of security of supply dominant in the late 1980s and 1990s, where insecurity of supply was construed as a result of insufficient competition rather than as a result of unchecked competition/market failure.

Throughout the 2000s, the Commission's recalibrated discursive strategy was not yet particularly successful in establishing a new "precautionary" approach to security of supply in the internal dimension. Until 2009, the EU's internal energy policy was still overwhelmingly focused on the creation of competitive and integrated internal markets for electricity and natural gas. There was hardly any substantive action in the domains of security of supply and network policy. Nevertheless, there were some developments corresponding to the proposals made by the Commission on the basis of its riskifying moves that should not be dismissed, as they would provide crucial stepping stones for future supranational involvement.

The internal energy policy of the EU in the period 2000-2009 will be discussed and analysed in greater detail below.

2.1 Further integration of national electricity and gas markets: The Second Energy Package and enforcement of EU competition law

After reports made clear that several member states were not carrying out the necessary reforms at the required pace, and that the enduring vertical integration of member states' energy sectors prevented the establishment of competitive conditions and hindered the development of an integrated market, the Commission pushed for an update to the existing legislative framework (Eikeland, 2011, p. 250). This led to the adoption of the Second Energy Package in 2003, which amended the first directives and imposed more stringent requirements on the member states to ensure the liberalisation of their electricity and gas sectors. It introduced legal unbundling obligations to ensure non-discriminatory third-party access to energy networks, and instructed member states to adopt regulated access tariffs for their natural gas and electricity transmission and distribution systems and to establish independent regulatory authorities to impose such tariffs. It also granted all consumers the right to switch their energy supplier by July 2007 (European Parliament and Council of the European Union, 2003a; European Parliament and Council of the European Union, 2003b).

Despite the legal unbundling obligations introduced by the Second Energy Package (requiring the establishment of separate legal entities for transport and supply activities (cf. account unbundling under the First Energy Package)), discriminatory practices remained ubiquitous. The former national monopolies of the member states continued to abuse their dominant market position to bar both competitors and consumers from gaining fair access to electricity and gas networks (Eikeland, 2011, p. 250).

Therefore, the Commission used the antitrust provisions under Art. 101 TFEU and Art. 102 TFEU to further combat these anti-competitive behaviours and pave the way for an integrated energy market. It targeted practices hampering the internal cross-border trade in the European electricity and downstream gas markets, such as market sharing agreements, the use of territorial restrictions and long contract durations in combination with other types of restrictive clauses. Proceedings were instituted against some of the EU's biggest energy companies, including Germany's RWE, Italy's ENI and France's EDF (European Commission, 2007b; European Commission, 2007c; European Commission, 2007d).

The Commission equally turned its eyes towards the upstream gas sector, targeting destination clauses and other restrictions in supply contracts between EU and non-EU companies. Such destination clauses forbade buyers (i.e. EU companies) from reselling natural gas and were used for market partitioning, preventing gas-to-gas competition and allowing for price discrimination on the internal gas market. By 2007, these clauses had been removed from major long-term contracts between Gazprom and Algeria's Sonatrach and their respective European customers (*inter alia* ENI, E.ON Ruhrgas and OMV) (Talus, 2011, pp. 281-282).

In 2005, the Commission also launched a separate, EU-wide inquiry into the state of competition in the European energy sector. The final report published in 2007 concluded that flawed access to energy networks continued to burden consumers with unreasonably high prices, and that the persistent vertical integration in the member states' electricity and gas markets prevented new investments in European energy infrastructure and encumbered competition, by blocking the utilisation of infrastructure by third parties (European Commission, 2007e; Eikeland, 2011, p. 251). This report would serve as the basis for the Third Energy Package adopted in 2009 (see *infra*).

The Second Energy Package and the Commission's enforcement of EU competition law in the electricity and natural gas markets were undoubtedly the most notable instances of internal EU action in the energy sphere in the period 2000-2009. In other words, the mode of internal energy governance in this period hardly diverged from the previous era, as it was still predominantly characterised by market creation through regulation. Nonetheless, there were some policy developments that corresponded to the Commission's proposals for precautionary measures, although it would surely be an overstatement to say that these amounted to a "riskification" of the mode of supranational energy governance in the internal dimension (i.e. the establishment of a precautionary approach towards security of supply characterised by regulatory safeguards for security of oil and gas supply and catalytic measures for infrastructure development). The policy developments in question will be discussed below.

2.2 A minimal degree of coordination regarding security of gas supply: Directive 2004/67/EC

Before the 2000s, the development of a common regulatory framework for security of supply had always been notoriously difficult – member states were generally reluctant to cede competences to the Commission/the EU in this domain. In the wake of the energy crises in the 1960s and 1970s, some measures were established in the area of security of oil supply, but these hardly constrained member states in their ability to pursue their own, national energy strategies (Matláry, 1997, p. 18; McGowan, 2008, pp. 93-94). Directive 68/414/EEC on oil stocks adopted in the aftermath of the Six-Day War and its successive amendments in 1972 and 1998 were already mentioned above.

This legislation was complemented by Decision 68/416/EEC, which pertained to Art. 6(2) of Directive 68/414/EEC. Under Directive 68/414/EEC Art. 6(2), member states were allowed to conclude bilateral agreements

with another member state to hold their stocks on that other member state's territory. Decision 68/416/EEC set out a procedure to be followed when member states failed to come to such agreements within a reasonable time or in case such agreements were not being complied with.

Other legislative acts concerning security of oil supply were agreed upon in the 1970s. In 1973, the Council adopted Directive 73/238/EC. This directive established the Oil Supply Group, which consisted of delegates from the member states and had to ensure the coordination of national measures in case of oil supply disruptions. It also obliged member states to react rapidly in times of crisis and to adopt "intervention plans", containing the emergency measures to be taken in the event of severe disruptions to oil supplies (Council of the European Communities, 1973, p. 2). Decision 77/186/EEC followed in 1977. This allowed member states to restrict the export of crude oil and petroleum products to other member states in the event of supply difficulties – effectively permitting member states to restrict the free movement of goods in the internal market in times of crisis (Council of the European Communities, 1977; Haghighi, 2007, p. 137). None of these measures provided the Commission with any actual decision-making powers; its role only consisted of the coordination of national policies (Matláry, 1997, p. 18). In the 1990s, the Commission focused its efforts towards developing the first directives for the liberalisation of European gas and electricity markets. Its desire to establish a regulatory framework for security of supply at EU level was temporarily side-lined (Prontera, 2019a, pp. 83-84).

In the early 2000s, the Commission's riskifying moves again attempted to bring (the organisation of) security of supply on the European agenda. To manage the alleged risk posed by the EU's growing import dependence, the Commission proposed a variety of regulatory precautions, reactive measures to ensure that market players took security of supply-concerns

into account, based on the neutral use of regulatory tools. The 2000 Green Paper argued for a reinforcement of the oil stocks mechanism and for a new supranational gas stocks mechanism. The 2001 and 2002 Communications proposed new legislation for security of gas supply to "give market players a clear framework within which they can interpret and manage change, while guaranteeing an adequate level of security of gas supplies" (European Commission, 2002, p. 12), as well as updates to the existing legislation on security of oil supply.

These were not entirely futile attempts. Only a few years after the Commission's first proposals, Directive 2004/67/EC concerning measures to safeguard security of natural gas supply was adopted. In the face of the rising dependence on imported gas and the continuing liberalisation of the European natural gas markets, the member states accepted the Commission's calls for a minimal coordination of their approaches to security of gas supply (Boersma, 2015, p. 62).

Directive 2004/67/EC established "a common framework within which Member States shall define general, transparent and non-discriminatory security of supply policies compatible with the requirements of a competitive internal gas market; clarify the general roles and responsibilities of the different market players and implement specific non-discriminatory procedures to safeguard security of gas supply" (Council of the European Union, 2004, p. 93). The two most important innovations brought by the directive were its mandatory reporting requirements and the establishment of the Gas Coordination Group (Boersma, 2015, p. 62). The reporting requirements obligated member states to inform the Commission regarding the impact on competition of the national measures established pursuant to their implementation of the directive, national storage levels, long-term supply contracts concluded by companies registered on their territories (including the remaining duration of these contracts but

excluding commercially sensitive information) and the regulatory frameworks established to incentivise investments in LNG and the exploration, production, storage and transport of gas. The Gas Coordination Group was a new body that had to facilitate the coordination of security of supply-measures among member states, composed of representatives of the member states, industry and “relevant consumers” under the chairmanship of the Commission (Council of the European Union, 2004, p. 95).

Rather than imposing on the member states a rigid EU policy for security of gas supply, Directive 2004/67/EC took a bottom-up approach, creating a framework for member states to develop their own national policies in this area while adhering to a number of common broadly defined standards. In other words, in parallel to the earlier discussed legislation on security of oil supply adopted in the previous decades, it installed the supranational coordination of national policies for security of gas supply, much more than it installed a supranational policy for security of gas supply *tout court*. Member states were left with large amounts of discretion and the overall degree of stringency provided by the directive was ultimately low. For instance, as stated above, its mandatory reporting requirement for long-term gas supply contracts did not apply to commercially sensitive information, so that the Commission would never get the full picture of natural gas supply in the EU (Boersma, 2015, p. 62). For these reasons, Directive 2004/67/EC has been called “rather informal” (ibid.) and “notoriously benign” (Noël, 2010, p. 4) by analysts.

Nonetheless, it was the first binding legislative act in a field as politically sensitive as security of gas supply, and an initial indication towards the success of the Commission’s discursive strategy of riskification in construing import dependence as a problem requiring supranational solutions or at the very least some level of supranational coordination to

ensure that markets effectively delivered security of supply. Although member states remained in charge of the actual precautions to be taken, the Commission would no longer be completely absent in this domain, monitoring and coordinating these different national measures. To use terminology from securitisation theory, even though it hardly represented a transfer of competence from the member state to the EU level, Directive 2004/67/EC thus increased the supranational governance of the referent object of the Commission's riskifying moves (i.e. EU security of supply).

The value of the gradual establishment of the internal gas market as a facilitating condition should not be underestimated in this regard. This enhanced the Commission's ability to frame security of gas supply as a European problem that required a supranational approach. Indeed, the Commission explicitly utilised the creation of the internal gas market to legitimise the establishment of a regulatory framework for security of gas supply. The 2002 Communication for instance pointed out a "paradox": "[...] at the very moment when the European Union is acquiring the most integrated internal energy market in the world, this success has not been accompanied by the necessary coordination of measures guaranteeing security of external supplies, whether oil or natural gas" (European Commission, 2002, p. 4). The development of the internal gas market through the First and Second Energy Package enabled the Commission to construe purely national approaches to security of gas supply as inadequate because they risked distorting the proper functioning of the market, and to propose the establishment of a common framework for member states to develop their national measures (*in casu* Directive 2004/67/EC).

While the Commission's riskifying moves of the early 2000s thus bore some fruit with regard to security of gas supply, they were less successful in legitimising new supranational action in the field of security of oil supply.

In 2002, the Commission made legislative proposals to replace the existing directives and decisions in this area (i.e. Directive 68/414/EEC, Directive 98/93/EC, Decision 68/416/EEC, Directive 73/238/EC, Decision 77/706/EEC). These would increase the member states' stockholding obligations from 90 to 120 days of annual domestic consumption, foresaw the compulsory establishment of a public stockholding agency in each member state, and would give the Commission the authority to command member states to release their national stocks in the face of worldwide disruptions to supply or price hikes (Euractiv, 2003). However, the Commission's proposals were not well received by either the Council or the European Parliament. The latter ultimately rejected the proposals, stating that security of oil supply was the prerogative of member states, forcing the Commission to withdraw them in 2004 (Euractiv, 2003; Luciani & Henry, 2011, p. 9). It should be noted that in 2006, Directive 2006/67/EC concerning oil stocks was adopted, but this directive merely summarised Directive 68/414/EEC, Directive 72/425/EEC and Directive 98/93/EC "in the interests of clarity and rationality" (Council of the European Union, 2006, p. 8), without introducing new provisions.

One of the reasons for the observed divergence in developments in the areas of security of gas and security of oil supply should surely be sought in the different legal/regulatory context in these respective areas. While the Commission's proposal for a regulatory framework for security of gas supply could be legitimised as part of the EU's liberalisation and integration of national gas markets initiated by the First and Second Energy Package, this was not true for its proposals to update the existing legislation for security of oil supply. Arguably, this provided the Commission's proposal regarding security of gas supply with a stronger and more convincing rationale vis-à-vis the member states than its proposals regarding security of oil supply.

2.3 Lacklustre upgrades to EU infrastructure policy: The 2003 and 2006 revisions of the TEN-E guidelines

As seen in the previous chapter, with regard to the internal dimension, the Commission's riskifying moves not only endeavoured the establishment of new regulatory frameworks for security of gas and oil supply, but also the development of an EU-level policy for infrastructure implementation. The Commission made repeated calls for financial, political and regulatory support to infrastructure projects important for security of supply. Such proposals became especially prominent in the Commission's discourse after the first gas crisis in 2006 but were also present in earlier Commission documents. The 2001 Communication "European Energy Infrastructure" for instance argued for increased supranational involvement in financing European network development, as did the 2006 Green Paper "A European Strategy for Sustainable, Competitive and Secure Energy". In contrast to the proposals for regulatory precautions, these concerned more proactive, "catalytic" measures, based around a selective application of EU policy tools and a facilitatory rather than a regulatory role for the Commission, aimed towards accelerating and promoting the efforts of other actors deemed in accordance with EU security of supply (Prontera, 2019a).

With two revisions of the original 1996 TEN-E guidelines (Decision 1254/96/EC) in respectively 2003 and 2006, there was no complete absence of policy developments in the domain of intra-European energy infrastructure in the period 2000-2009, but these hardly recalibrated the EU's role in the way envisaged by the Commission. The only novelty brought by Decision 1229/2003/EC was a new subcategory of PCIs considered "very important for the operation of the internal energy market or the security of energy supply" (European Parliament and Council of the European Union, 2003, p. 11), so-called "Priority projects", which had to be

granted prioritised access to EU financial aid under Regulation 2236/95 on funding for trans-European networks (ibid. p. 14).

Decision 1364/2006/EC was a bit more interesting with the establishment of a category of “Projects of European interest” and the introduction of “European coordinators”, which had to accelerate the implementation of Projects of European interest encountering difficulties or delays by promoting the project in question and by facilitating the cross-border dialogue among the stakeholders concerned (European Parliament and Council of the European Union, 2006, p. 6; Prontera, 2019a, p. 106). The possibility of designating a European coordinator potentially allowed the EU to play a more interventionist role in infrastructure development along the lines proposed by the Commission, which continuously advocated supranational political support towards energy infrastructure of strategic interest. However, the adoption of Decision 1364/2006/EC would not represent a significant turning point and EU infrastructure policy ultimately remained rather lacklustre until after the second gas crisis, mainly because the EU’s budget for infrastructure implementation was still very low and primarily intended for funding feasibility studies and not much else (Prontera, 2019a, p. 107). As stated clearly by Recital 4 of Decision 1364/2006/EC, “the construction and maintenance of energy infrastructure” had to be “subject to market principles”, EU financial aid had to remain “highly exceptional”, and such exceptions had to be “duly justified” (European Parliament and Council of the European Union, 2006, p. 1).

In other words, the market-regulatory mode of governance of the 1990s persisted throughout the 2000s. The precautionary conceptualisation of security of supply – security of supply as an outcome of competitive energy markets in combination with adequate supranational safeguards to mitigate the risk arising from EU import dependence – did not yet find translation in internal energy policy.

Even after the first gas crisis in 2006, there was hardly any divergence from the previously existing supranational approach (or rather lack thereof) towards security of supply and/or infrastructure development. This event did not break down member states' resistance to a transfer of competences to the EU in these domains. To the contrary, it in fact triggered national reflexes in many member states, reaffirming their beliefs in the importance of national competence in the energy domain and freedom of choice in deciding their own energy mix (Natorski & Herranz-Surrallés, 2008). Member states perhaps shared the Commission's understanding of import dependence as a risk to security of supply, but did not accept the Commission's proposed solutions (i.e. common measures for security of supply and energy infrastructure). As the following section will demonstrate, it was the second gas crisis in 2009 that would be the true turning point for the internal energy governance of the EU.

3 After the second gas crisis: Turn towards a riskified mode of energy governance

At the end of the 2000s, the American Shale Revolution would prelude a new era of abundance and relative security and optimism in global energy. However, this optimism did not extend to the European energy sector (Prontera, 2019a, p. 81). In 2009, the Russian withdrawal from the ECT and the second Russo-Ukrainian gas crisis reinforced notions of the unreliability of Russia as an energy supplier, and of the inadequacy of the European approach towards security of supply in the state-capitalist order emerging in global energy governance from the early 2000s onwards. Particularly the gas crisis would be a pivotal moment. In comparison to the 2006 disruption which only lasted three days, the 2009 disruption was much longer (the supply of Russian gas to Europe via Ukraine was completely cut off for thirteen days), and its effect on the European energy supply consequently much more severe (see Pirani et al., 2009).

This event would decisively affect the fate of the Commission's attempts to frame EU import dependence as a problem requiring supranational solutions (Maltby, 2013). After 2009, there was a marked reorientation of the EU's mode of internal energy governance in line with the riskified paradigm propagated by the Commission's policy documents. The liberalisation of the electricity and gas markets of the EU continued, but this process was now supplemented by a variety of both reactive and more proactive supranational measures to mitigate the risk posed by the EU's reliance on outside sources for its energy supply. As such, the market-regulatory mode of governance of the previous decades made way for a new, riskified mode of governance, based around a precautionary conceptualisation of security of supply. This will be demonstrated below.

3.1 Completing the internal market for electricity and gas: The Third Energy Package

As mentioned previously, in 2005, the Commission had launched an EU-wide inquiry into the state of competition in the European electricity and gas markets. This inquiry revealed that the vertically integrated energy companies operating on these markets were still major impediments to the establishment of competitive conditions, and that much more work was to be done in order to stop these companies from continuing their anti-competitive and restrictive practices on the IEM (European Commission, 2007e).

Another update of the legislation was therefore envisioned and eventually adopted in 2009 with the Third Energy Package. This package introduced new unbundling requirements for energy companies, as the legal unbundling imposed by the Second Energy Package had not appeared sufficient for tackling the structural problems associated with the vertical integration of the European electricity and gas industries. Member states could choose between three different models/regimes to implement for

ensuring the separation of transport and supply/production activities within their respective jurisdictions: ownership unbundling, the Independent System Operator (ISO)-model, and the Independent Transmission System Operator (ITO)-model (European Parliament and Council of the European Union, 2009a; European Parliament and Council of the European Union, 2009b).[19]

Under ownership unbundling, energy supply/production companies would be obliged to sell off their gas/electricity networks and would be precluded from holding majority stakes or otherwise exercising control over the activities of a transmission system operator. Under the ISO model, energy companies would still be allowed to own transmission networks, but the operation, maintenance and development of the network would have to be carried out by an independent company. Finally, under the ITO model, energy companies would be allowed to own and operate transmission networks through a subsidiary, but important decisions relating to the operation, maintenance and development of the network would have to be taken independent from the parent company (European Parliament and Council of the European Union, 2009a; European Parliament and Council of the European Union, 2009b).

Apart from new unbundling requirements, the Third Energy Package also included new provisions designed to strengthen the independence of national regulators, and established a new regulatory agency (Agency for the Cooperation of Energy Regulators or ACER) as well as new networks for European transmission system operators, one for gas and one for electricity (European Network for Transmission System Operators for Electricity or ENTSO-E and European Network for Transmission System

[19] Member states could only opt for the ISO and ITO model if their transmission system still belonged to a vertically integrated company on 3 September 2009 (European Parliament and Council of the European Union, 2009a, p. 68; European Parliament and Council of the European Union, 2009b, p. 106).

Operators for Gas or ENTSOG) (European Parliament and Council of the European Union, 2009c; European Parliament and Council of the European Union, 2009d; European Parliament and Council of the European Union, 2009e).

The Third Energy Package thus continued the work of the First and Second Energy Package towards the liberalisation of the European electricity and gas markets. Nevertheless, it was also an indication of the new supranational approach towards security of supply after the second gas crisis. The Third Energy Package introduced the so-called “Gazprom clause” (Article 11 of Directive 2009/73/EC). This provision enabled national regulators to withhold the certification of the acquisition/ownership of transmission networks located in the EU by third-country firms if this would risk endangering the security of supply of the member state concerned and/or that of the EU as a whole (European Parliament and Council of the European Union, 2009b, p. 107). As all non-EU companies are required to register with a national regulator and require their certification to operate on the IEM, this in effect constituted a tool for excluding certain companies from access to the IEM (Goldthau & Sitter, 2015a, p. 955). As such, the Gazprom clause opened the door for the selective and strategic employment of IEM legislation for reasons of security of supply. This signalled significant divergence from the market-regulatory mode of governance of the previous era, which was based around the neutral use of regulatory tools to establish and maintain competition in the European energy sector. The Gazprom clause will be analysed in greater detail in Chapter 5. The remaining sections will focus on the other post-2009 policy developments pointing to the riskification of the internal energy governance of the EU.

3.2 Preventing supply disruptions/mitigating their potential impact: Regulatory safeguards for security of supply

3.2.1 Regulation 994/2010

The second gas crisis clearly displayed member states' inability to deal with serious supply shocks on their own. This opened a policy window for the Commission to reinforce the EU's regulatory framework for security of supply, which it attempted to exploit (Maltby, 2013).

In the domain of security of oil supply, these attempts were less successful. A new directive concerning oil stocks was adopted in 2009, i.e. Directive 2009/119/EC, replacing Directive 2006/67/EC, Decision 68/416/EEC and Directive 73/238/EC. This instrument changed the existing framework in a couple of ways. The national stockholding obligation changed from an amount equal to 90 days of average daily consumption to 90 days' worth of average daily net imports/61 days' worth of average daily consumption (whichever of the two quantities was greater) (Council of the European Union, 2009, p. 13). One-third of the oil stocks now had to be maintained in the form of refined products, forcing member states to keep a varied amount of stocks in accordance with national consumption patterns (Euractiv, 2009). It provided the Commission with additional competences related to reviewing and monitoring member states' national stocks (Luciani & Henry, 2011, p. 10).

However, Directive 2009/119/EC did not go as far as the Commission had hoped. For instance, the establishment of "central stockholding entities" was only encouraged by the directive, but not made compulsory as had been proposed by the Commission. This was also true with regard to the new emergency procedures laid down in the directive. The Commission wanted the right to order member states to release their stocks in the event

of major oil supply disruptions, but this was not provided under Directive 2009/119/EC (Euractiv, 2009). If an international decision to release stocks affecting one or more member states has been taken (for instance by the IEA), the Commission could still only recommend member states to release their stocks, not compel them to do so (Luciani & Henry, 2011, p. 11). However, in the absence of such an international decision, the Commission could now authorise the release of emergency stocks of member states in the event of a major oil supply disruption (ibid.).

Ultimately, Directive 2009/119/EC did not recalibrate the existing framework for security of oil supply in a significant way. It perhaps granted the Commission some additional competences, but its fundamental role remained the same; the coordination of national measures (see Luciani & Henry, 2011).

In the domain of security of gas supply, more substantial developments ensued. In the immediate aftermath of the second gas crisis, the Commission proposed to replace Directive 2004/67/EC, arguing that the directive was "no longer sufficient in a context of growing import dependence and increased supply and transit risks in third countries as well as increasing gas flows and the development of the internal gas market within the Community" (European Commission, 2009a, p. 2). Since "another major gas supply disruption cannot be excluded and may even occur in the near future" (ibid.), the Commission continued, the EU had to prepare for future disruptions. A truly common approach was warranted, because "a lesson from the [2009] crisis is that for measures to be consistent and effective, they have to be prepared well in advance and to be coordinated at Community level" (ibid.). Just as in its policy documents, the Commission instrumentalised the gas crises to double down on its riskification of energy imports and to argue for a stronger supranational grip on security of gas supply.

This led to the adoption of Regulation 994/2010 (repealing Directive 2004/67/EC). In contrast to Directive 2004/67/EC, which merely aimed towards the creation of a framework for member states to work out their own security of supply-policy, Regulation 994/2010 took a top-down approach, and was instead designed to set more rigid standards at the supranational level itself, and to reduce member states' discretion in establishing national measures for security of supply (also reflected in the fact that this instrument was no longer adopted as a directive, but as a regulation) (Talus, 2013, pp. 102-103). Security of gas supply was now defined as a "shared responsibility" of gas companies, member states and the Commission (European Parliament and Council of the European Union, 2010, p. 6). It imposed a number of new obligations on member states, such as the adoption of national Risk Assessments, on the basis of which they had to establish a Preventive Action Plan "containing the measures needed to remove or mitigate the risks identified" (ibid. p. 7), and an Emergency Plan "containing the measures to be taken to remove or mitigate the impact of a gas supply disruption" (ibid.). The regulation also strengthened the position of the Gas Coordination Group and made it compulsory for transmission system operators to enable bidirectional capacity on all cross-border interconnections between member states (exemptions from this obligation could be requested from national regulators) (ibid. p. 10).

Regulation 994/2010 updated the "supply standard" of Directive 2004/67/EC and established a new "infrastructure standard". These security of supply-standards had to ensure that the gas infrastructure and supply of member states could withstand disruptions and other extreme events. Specifically, the infrastructure standard required member states to take the necessary measures so that, "in the event of a disruption of the single largest gas infrastructure, the capacity of the remaining infrastructure [...] [could] satisfy total gas demand of the calculated area

during a day of exceptionally high gas demand occurring with a statistical probability of once in 20 years" (the so-called N-1 principle) (ibid. p. 9).

The supply standard instructed member states to take the needed measures to ensure gas supply to customers in case of extreme temperatures, exceptionally high demand and disruptions. This updated supply standard was formulated in much more narrow fashion than the original set by Directive 2004/67/EC, which was notoriously vague and left member states with large amounts of discretion. Under the supply standard of Directive 2004/67/EC, member states were free to determine themselves the severity of the extreme events their gas supply had to be able to withstand; no minimum durations were set at EU level. Regulation 994/2010 was considerably more rigid than its predecessor: member states had to be able to guarantee supply in the event of extreme weather conditions during a 7-day peak period, and during a period of at least 30 days of exceptionally high demand/in case of the disruption of the single largest gas infrastructure under average winter conditions (ibid. p. 11).

Analysts have advanced divergent opinions on the merits of Regulation 994/2010. Talus (2013, p. 103) stated that the regulation created "a 'European approach' to gas security" and shifted the central role in this regard from the member state level to the European level. Other analysts were more critical of Regulation 994/2010's added value. Noël (2013) for instance doubted that this regulation would be more effective than its predecessor in achieving a secure European gas supply, even though it *prima facie* appeared much more sophisticated than Directive 2004/67/EC and was a much more complex instrument. Boersma (2015) emphasised the instrument's contribution to transparency and the overall level of information, which helped policymakers, both at the supranational and national level, to make better sense of the bottlenecks and vulnerabilities of the European gas system. Nevertheless, he simultaneously highlighted the

limited means for EU policymakers to address these detected vulnerabilities, and concluded that, due to the lacklustre implementation of the regulation by member states (see *infra*), the ultimate contribution of Regulation 994/2010 to EU gas security was “modest at best” (Boersma, 2015, p. 68).

However, while its adequacy with respect to achieving EU security of gas supply can certainly be called into question, its importance should simultaneously not be understated. Indeed, as Boersma (2015, p. 64) acknowledges, with Regulation 994/2010, the Commission “seemed to cut in on the action when security of gas supply was concerned” and started to play an active role in the domain of security of gas supply. Regulation 994/2010 made the supranational level into a genuine locus of precautionary measures, imposing direct obligations on member states such as enabling bidirectional capacity on cross-border interconnections. This was a huge leap in comparison to previous supranational legislation in the areas of security of oil and security of gas supply, where the EU’s role remained very limited and hardly went beyond the coordination of precautionary measures that had been decided at the national level. As such, Regulation 994/2010 was one of the initial indications towards the riskification of the internal energy governance of the EU. This in turn pointed to the success of the Commission’s discursive strategy in combination with the facilitating conditions of the late 2000s in framing EU import dependence as a problem requiring the establishment of supranational precautions to ensure that the IEM delivered security of (gas) supply (see also Maltby, 2013). Regulation 994/2010 would also provide a stepping stone for more stringent action in the domain of security of gas supply, as Regulation 2017/1938 illustrates.

3.2.2 Regulation 2017/1938

After the Ukraine crisis in 2014, a “stress test” assessed “the resilience of the European gas system to cope with a severe disruption of gas supply to the EU” (as proposed by the Commission in its European Energy Security Strategy) (European Commission, 2014b, p. 2). This stress test exercise further underlined how uncoordinated national measures had the potential to significantly exacerbate the negative impact of serious supply disruptions and how enhanced cooperation among member states in the event of a crisis could conversely bolster European security of supply, and also pointed to the insufficiency of Regulation 994/2010 (Boersma, 2015, p. 66).

Also in 2014, a Report on Regulation 944/2010 revealed its lacklustre implementation – undoubtedly a major factor in explaining its limited added value – particularly and surprisingly by the member states most vulnerable to gas supply disruptions (European Commission, 2014c; Boersma, 2015, p. 68). This of course puts the success of the Commission’s riskifying moves in another light. If these would have truly created an intersubjective understanding among the member states of import dependence as a problem requiring the establishment of certain supranational precautions, they would not only have adopted Regulation 994/2010, but also correctly implemented this instrument.

This was hardly the case. The way in which the supply standard had been implemented varied widely between different member states. Often, not even the basic information that would allow to verify the fulfilment of the standard was available. The Report stipulated that Regulation 994/2010 had “failed to bring about a clear system in which the supply standard is monitored and enforced in a systematic manner” (European Commission, 2014c, p. 6). Moreover, three member states – Bulgaria, Greece and Lithuania, all highly dependent on Russian gas to satisfy their energy

needs – failed to comply with the infrastructure standard of Regulation 994/2010 (ibid. p. 8). Thirdly, the compulsory Risk Assessments, Preventive Action Plans and Emergency Plans that member states had to draw up were exclusively nationally focused, without much attention to the cross-border impact of measures taken at the domestic level (European Commission, 2014c, p. 16).

Another revision of the regulatory framework for security of gas supply was therefore envisaged as part of the Energy Union Strategy, leading to the adoption of Regulation 2017/1938. This regulation takes a self-declared "risk-based approach to assessing the security of supply and establishing preventive and mitigating measures" (European Parliament and Council of the European Union, 2017a, p. 3). This will enable the coordination of member states' efforts and will bring "significant benefits in terms of the effectiveness of measures and optimisation of resources" (ibid.). One of the novel elements brought by this regulation is the requirement for member states to cooperate in regional groups/"risk groups" to assess the risk of disruptions to their gas supply and to agree on joint precautionary measures to prevent or mitigate the consequences of such disruptions. This regional approach is designed to prevent the Risk Assessments and Plans of the member states from being overly nationally focused, as pointed out by the 2014 Report on the implementation of Regulation 994/2010.

Regulation 2017/1938 also introduces a solidarity principle. This obligates member states to assist a neighbouring member state in guaranteeing gas supply to vulnerable customers ("solidarity protected customers") in case of acute and severe shortages, if requested to do so by the neighbouring member state in question. This will "reduce the risk of dependency on external sources" (European Commission, 2017b). It distinguishes Regulation 2017/1938 from its predecessors, which also alluded to

solidarity among the member states in the event of a supply disruption but failed to link this to concrete obligations (Rocco, 2018, pp. 183-184).

Moreover, under the new regulation, the European Network for Transmission System Operators for Gas (ENTSOG) has to carry out simulations of EU-wide disruptions to gas supply and infrastructure at least once every four years, “in order to provide a high level [*sic*] overview of major supply risks for the EU” (European Commission, 2017b). Gas companies are now also required to inform the relevant member state authorities regarding major cross-border supply contracts with a duration of more than twelve months (ibid.).

Regulation 2017/1938 thus reinforced the top-down harmonisation/regulation of measures for security of gas supply and further moved the centre of gravity in this domain to EU level. It imposed new direct obligations on member states and granted the EU additional competences/tasks, such as the composition of the risk groups (which could be amended through delegated acts by the Commission) and EU-wide simulations of supply disruptions (which had to be carried out by ENTSOG). Syriopoulos (2021, p. 40) also argued that this update “dramatically improved Europe’s resilience to possible gas supply disruptions”, although this can of course be called into question in light of the Russian invasion of Ukraine and the ensuing European energy crisis.

Nevertheless, Regulation 2017/1938 undeniably demonstrates the successful exploitation of the post-2009 policy window by the Commission to develop an increasingly rigid European framework for security of gas supply. For obvious reasons, it has become hard to argue that it has made the European gas supply sufficiently secure, but it still presents enormous progress compared to Directive 2004/67/EC. Regulation 2017/1938 has transformed the supranational level into a legitimate locus of action in the

domain of security of gas supply and has established a riskified type of regulatory governance of the gas sector at EU level, characterised by regulation for liberalisation/market integration, as well as by "precautionary regulation" specifically directed towards increasing the resilience of the European gas supply. The Commission's riskifying moves have successfully cultivated an intersubjective understanding of the European dependence on gas imports as a problem requiring regulatory safeguards at EU level, in order to reduce and adequately manage its risk to security of supply. This is also exemplified by the risk grammar permeating Regulation 2017/1938. All its provisions are either aimed towards preventing supply disruptions or mitigating their negative impact. Thus, the alleged risk posed by import dependency, its potential to cause harmful events like supply disruptions, is now an issue that is clearly dealt with at the supranational level. As such, European energy governance has departed from the market-regulatory mode of governance of the 1990s and the 2000s, where security of gas supply was essentially left to the markets and/or the member states, with a merely coordinating role for the EU in this domain.

3.3 Facilitating the implementation of intra-European infrastructure projects: Catalytic measures for security of supply

As mentioned in Chapter 2, the negative impact of the 2009 disruption was significantly exacerbated as a consequence of the infrastructural deficiencies of the European gas system, which did not allow for a reversal of gas flows from Western Europe to Eastern Europe. In combination with the Great Recession, this opened a policy window for supranational action in the domain of strategic infrastructure, which, it will be argued below, the Commission successfully exploited as well (see also Maltby, 2013).

To stimulate European infrastructure development and enhance security of supply in the aftermath of the second gas crisis, as well as overcome the investment gap that was caused by the economic crisis, the Commission proposed a new supranational funding programme for energy projects. This resulted in the establishment of the European Energy Programme for Recovery (EEPR) in 2009. The total budget of the EEPR was 3.98 billion euros, of which 2.365 billion euros was dedicated to gas and electricity infrastructure projects (and the remainder to offshore wind energy projects and carbon capture and storage projects) (European Parliament and Council of the European Union, 2009f, p. 34). This was a substantial increase in comparison to previous funding schemes. In the past, low levels of available funding at EU level meant that supranational financial support had been restricted to financing feasibility studies for projects. This lack of financial back-up ultimately rendered EU infrastructure policy rather lacklustre as a whole, even with successive revisions of the TEN-E framework in 2003 and 2006 (Crisan & Kuhn, 2017, p. 169; Prontera, 2019a, pp. 106-107). With the EEPR, the EU could now intervene in the implementation and construction phases of energy projects, which allowed the EU to play a more important, catalytic role in infrastructure development (Prontera, 2019a, p. 107).

In the gas sector, a total of 32 projects were selected for funding by the EEPR. These had to diversify EU gas supply (for instance by opening up the SGC, e.g. the Nabucco and ITGI-Poseidon projects), improve the interconnection on the internal gas market and establish bidirectional capacities in Central and Eastern European member states (European Parliament and Council of the European Union, 2009f). In the electricity sector, 12 projects were declared eligible for financing from the EEPR. The selected projects had to foster the interconnection of isolated member states (so-called “energy islands”) with their neighbours and the rest of the

EU, as well as enhance the integration of renewable energy sources into the European electricity grid (ibid.).

Almost all of these projects were completed within scheduled time (European Commission, 2018a). This enhanced electricity and gas network interconnection, which improved both the security of the gas and the electricity supply in the EU. The gas projects especially boosted the security of supply of those (Central and Eastern European) member states most affected by the second gas crisis (Crisan & Kuhn, 2017, p. 169; Prontera, 2019a, p. 108). As mentioned previously, the negative impact of the 2009 supply cut in Central and Eastern European member states was not caused because there was a lack of gas in Europe, but because the existing infrastructure was unable to redirect flows from an East-West to a West-East direction (European Commission, 2013a, p. 6). This is why Regulation 994/2010 imposed an obligation on national transmission system operators to install bidirectional capacities on each cross-border interconnector on the internal gas market (see *supra*). EEPR funding facilitated and contributed to the swift implementation of that provision across the EU (ibid.). By 2015, out of the 14 reverse flow projects that were selected, 13 had been implemented. One project in Romania was terminated by the Commission in 2014 (European Commission, 2015b, p. 3).

Where the EEPR ended up being less effective, however, were the more complex, international projects included in the programme: Nabucco, ITGI-Poseidon (SGC pipelines) and Galsi (pipeline between Algeria and Italy) (European Commission, 2013a; Prontera, 2019a, p. 108). EU funding was not able to remedy the significant obstacles faced by each of these projects and was eventually terminated for all of them in 2014 (European Commission, 2015b, p. 3). This exposed the lack of diplomatic clout and

leverage of the EU vis-à-vis external energy suppliers (Prontera, 2019a, p. 148; Verda, 2016; see Chapter 4).

Nevertheless, through the EEPR, the EU started playing a more proactive role in infrastructure development, and it did so in a way that visibly bolstered the resilience of the European gas system. Just as the establishment of an increasingly rigid regulatory framework for security of gas supply, this indicated that the EU was moving away from the pre-2009 market-regulatory mode of governance and its "neoliberal" approach towards security of supply. In the new, emerging mode of energy governance, security of supply was no longer left to the market or to the member states but was also pursued through both reactive and more proactive precautionary policies at EU level. Indeed, the establishment of the EEPR highlighted the success of the Commission's discursive strategy of riskification not only in respect to the development of regulatory safeguards, but also with regard to more selective, interventionist measures outside the scope of the regulatory state. The precautionary conceptualisation of security of supply that was continuously propagated by the Commission was clearly gaining traction in the substantive internal energy policy of the EU.

3.3.1 2013 TEN-E guidelines and the CEF-E funding programme

Although Regulation 663/2009 (establishing the EEPR) may have stated that "the special programme established by this Regulation should in no way set a precedent for future co-financing rates in the field of infrastructure investments" (European Parliament and Council of the European Union, 2009f, p. 31), in reality, it would do exactly that (Prontera, 2019a, p. 108). Just as Directive 2004/67/EC concerning measures to safeguard security of natural gas supply opened up a window of opportunity for increasingly stringent updates, the EEPR would function as

a stepping stone for further EU involvement in infrastructure development. It served as the foundation for the Connecting Europe Facility-Energy (CEF-E) programme, which formalised the EU's policy of financial support towards priority infrastructure projects. The EEPR – especially its limits – would also function as a catalyst for another revision of the TEN-E guidelines in 2013 (European Commission, 2013a; Prontera, 2019a, p. 108).

While an innovative instrument, the EEPR exemplified the fact that there was still no truly integrated and consistent approach towards infrastructure development at EU level (Crisan & Kuhn, 2017, p. 169). For that, the selection of EEPR projects still happened in an overly haphazard manner, without the necessary long-term vision and without much consideration for the bottlenecks in the European energy network, and for the most appropriate way to deal with those in a sensible, commercially viable manner (ibid. pp. 169-170). Moreover, the EEPR exposed the limited added value of the existing TEN-E guidelines as a framework for regulatory support to European network development. Especially the "complex and lengthy" permit granting procedures remained a considerable impediment to the timely implementation of priority projects (European Commission, 2013a, p. 3), which neither the original 1996 TEN-E guidelines nor the successive updates in 2003 and 2006 had been able to tackle.

In 2013 therefore, a third revamp of the TEN-E guidelines materialised. The revised guidelines were no longer adopted as a decision, but instead in the form of a regulation, i.e. Regulation 347/2013. In contrast to the rather insubstantial revisions of the 2000s, Regulation 347/2013 presented a major overhaul of the TEN-E framework. It re-introduced a uniform label for priority infrastructure, with only the category of PCI remaining (the distinction between PCIs, Priority projects and Projects of European interest thus disappeared). PCIs were to be granted "priority status" by

member states in their respective jurisdictions, and a range of other measures had to facilitate their swift implementation. Crucial were the introduction of accelerated permit granting procedures, streamlined environmental assessment processes, “one-stop shops” for permits and enhanced transparency and public consultation for PCIs. PCIs could also benefit from improved regulatory treatment for cross-border cost allocation and EU financial support through the CEF-E programme (European Parliament and Council of the European Union, 2013a). As such, Regulation 347/2013 established a comprehensive framework for regulatory support to energy projects considered crucial for achieving a secure, competitive and sustainable European energy supply.

It also introduced a more coherent approach towards network planning at EU level, with a strong regional orientation (Crisan & Kuhn, 2017, p. 170). In Annex 1, Regulation 347/2013 identified four Priority Electricity Corridors (Northern Seas offshore grid, North-South electricity interconnections in Western Europe, North-South electricity interconnections in Central Eastern and South Eastern Europe and Baltic Energy Market Interconnection Plan in electricity), four Gas Priority Corridors (North-South gas interconnections in Western Europe, North-South gas interconnections in Central Eastern and South Eastern Europe, SGC and Baltic Energy Market Interconnection Plan in gas) and one Priority Oil Corridor (Oil supply connections in Central Eastern Europe). While the Priority Electricity Corridors were predominantly aimed towards integrating electricity from renewable energy sources into the grid, the Gas Priority Corridors and Priority Oil Corridor were mostly inspired by a desire to enhance security of oil and gas supply (European Parliament and Council of the European Union, 2013a, pp. 62-63).

Based on these Priority Corridors, Regulation 347/2013 then established twelve regional groups (just as Regulation 2017/1938 would later establish

regional “risk groups”, see *supra*). These regional groups were composed of a decision-making body which included concerned member states and the Commission, and a larger structure including national regulatory agencies, transmission system operators, ACER and ENTSOG/the European Network of Transmission System Operators for Electricity (ENTSO-E) (European Parliament and Council of the European Union, 2013a, p. 46). Their function is to propose and review candidate projects and establish regional lists of PCIs. On the basis of the regional lists, the Commission adopts a “Union list” of PCIs through a Delegated Act, which then has to be approved by the Council and the Parliament. If the list is accepted, PCIs can then apply for grants from the CEF-E programme (ibid.).

The CEF-E programme, the new supranational framework for financial support towards infrastructure implementation launched in conjunction with the 2013 TEN-E guidelines, was similarly justified on the basis of the perceived limitations of the previous approach. The implementation report on the EEPR mentioned that “difficulties in accessing long term financing on competitive terms” remained an important problem for infrastructure projects, which hampered network development (European Commission, 2013a, p. 4). The CEF-E programme was proposed as a fund “designed to help projects put together the necessary financing package and trigger their fruition” and to overcome “the commercial viability gap of projects of European importance” (ibid.), and was consequently established by Regulation 1316/2013.

It was specifically aimed towards supporting projects designated as PCIs under the new TEN-E framework. A total budget of 5.4 billion euros was made available for energy infrastructure for the period 2014-2020, 4.6 billion euros of which would be managed in the form of grants by the new Innovation & Network Executive Agency or INEA (in April 2021 replaced by

the European Climate, Infrastructure and Environment Executive Agency (CINEA)) (INEA, 2022). With its extensive budget, the CEF-E programme could aim at making substantial contributions to the implementation/construction phases of infrastructure projects, in particular those projects that were not granted exemptions from the requirements of the Third Energy Package (European Parliament and Council of the European Union, 2013a; Prontera, 2019a, pp. 110-111). It confirmed the trend initiated by the EEPR of more direct intervention by the EU in infrastructure implementation through financial support to strategic energy infrastructure (even though the Regulation establishing the EEPR had assured such financial support was a one-time thing), and was further evidence of the EU's move beyond the regulatory state in its internal energy policy (Prontera, 2019a). Indeed, like the 2013 TEN-E guidelines (and the EEPR), the CEF-E programme was illustrative of a redefinition of the EU's role in internal energy governance, where the EU moved away from being a pure regulator (employing regulation in neutral ways to create a level playing field for market actors) to being a facilitator as well (selectively employing a variety of policy tools to support and promote market actors) (Prontera, 2019a).

After the 2009 gas crisis, the riskifying moves of the Commission, with their continuous plea for political, financial and regulatory support to facilitate intra-European energy projects, were thus clearly accompanied by corresponding policy developments. An obvious connection existed between the observed changes in substantive policy and the proposals of the Commission set out in its Green Papers and Communications. The 2013 TEN-E guidelines and the CEF-E programme institutionalised the catalytic approach towards network development first introduced as a so-called temporary measure by the EEPR. This further underlines the emergence of a precautionary conceptualisation of security of (gas) supply at the supranational level, characterised by reactive as well as proactive

precautions to ensure the resilience of the European gas system in light of the risk associated with the EU's import dependence.

3.3.2 After the 2014 Ukraine crisis: Further institutionalisation of the catalytic approach

The Energy Union Strategy, which was built around the five central dimensions of security, competition, decarbonisation, energy efficiency and research and development and served as the basis for European energy policy after the 2014 Ukraine crisis, called for "resolute action at EU level" in the area of energy infrastructure (European Commission, 2015a, p. 4). As such, the Commission took further measures to accelerate project implementation across the EU.

To reinforce the regional group setting provided by Regulation 347/2013, it launched four so-called High Level Groups (HLGs) for regions considered particularly vulnerable/problematic in terms of security of supply: the Baltic energy market interconnection plan HLG (which was in fact already established in 2009, but was now upgraded), the Central Eastern and South Eastern Europe energy connectivity (CESEC) HLG, the HLG on Interconnections for South-West Europe and the HLG on North Seas Energy Cooperation. These informal "forms of enhanced regional cooperation" (European Commission, 2015c, p. 14), chaired by the Commission, had to foster network interconnection by tackling "broader policy priorities that go beyond project specific issues of planning and implementation" and by ensuring high-level political commitment to priority projects among the member states concerned (ibid. p. 13). The HLGs developed into important political venues to discuss regional network development and facilitated infrastructure implementation by providing projects with the necessary political push (mostly PCIs but projects not included in PCI lists have been supported by HLGs as well) (Crisan & Kuhn, p. 173, Prontera, 2019a, p. 111). In these HLGs, the Commission

used its own political weight to in turn leverage member states' political power/support to speed up the realisation of energy infrastructure of strategic importance. As such, the HLGs further exemplify how the Commission, in bringing stakeholders together and promoting their cooperation, started to function as a facilitator in the energy sphere rather than purely as a regulator (Prontera, 2019a).

Besides the HLGs, 2015 also saw the establishment of the European Fund for Strategic Investment (EFSI), as part of the Investment Plan for Europe or so-called "Juncker Plan" to overcome the investment gap caused by the Great Recession (European Commission, 2014d). EFSI, launched jointly with the EIB, was explicitly designed to catalyse/leverage other sources of funding. With a total budget of 21 billion euros, it aimed to mobilise 315 billion euros of additional investment in the European economy (ibid.), which was achieved by mid-2018. The fund was not solely aimed towards energy infrastructure, but the energy sector was one of its main beneficiaries. In 2017, the lifespan of EFSI was extended from mid-2018 to the end of 2020, with a new investment target of 500 billion euros (European Parliament and Council of the European Union, 2017b). A year later, the CEF-E programme was renewed for the period 2021-2027, making another 5.8 billion euros of funding available for energy infrastructure projects (CINEA, 2022). All of these developments confirmed the trend of continuously growing supranational financial involvement in network development after the launch of the EEPR and the original CEF-E programme.

Overall, after 2009, a comprehensive supranational framework for support towards energy projects was gradually established. Crucial was the substantial increase in available funding for infrastructure at EU level. This significantly enhanced the EU's ability to facilitate the implementation of strategic infrastructure, by allowing for direct intervention in the

construction phases of projects. Where a lack of funding previously left EU infrastructure policy (i.e. the TEN-E framework) rather toothless, the EU could now function as a catalyst of network development, selectively employing its tools to mobilise/leverage other resources and to speed up project implementation in the pursuit of security of supply and other core policy objectives (Prontera, 2019a). As such, the EU became an increasingly hybrid actor in internal energy governance, moving beyond its traditional regulatory role; it was no longer solely focused on creating a level playing field for market actors, but also on promoting, supporting, assisting particular market actors via the selective application of a variety of policy tools – regulation as well as financial and political support.

Certainly, this higher degree of intervention in the European energy sector was not out of line with broader patterns in global energy governance, where a noticeable shift towards increased state intervention could be witnessed from the early 2000s on (see Chapter 2). As such, it was a "sign of the times". What was particular about the European context, however, was the level (or rather levels) from which this intervention now emanated. In response to the changing global energy landscape and reignited concerns over security of supply, member states became gradually more involved in infrastructure development already throughout the 2000s, attempting to facilitate the implementation of projects deemed strategically important (Prontera, 2018, p. 525). After 2009, catalytic measures were no longer solely taken by the member states, but increasingly at EU level as well. This illuminates the merit of the riskifying moves of the Commission. Arguably, without its "policy entrepreneurship" (see Maltby, 2013), the national level would have remained the sole source of growing public interference in infrastructure implementation. In other words, the biggest achievement of the Commission's discursive strategy was not that it legitimised a new class of more interventionist measures, but rather that it harnessed the post-2009 policy window of opportunity to translate the

increased appetite for such measures existing within member states to concrete action at the supranational level as well.

Where the regulatory precautions for security of gas supply, Regulation 994/2010 and Regulation 2017/1938, established a riskified type of regulatory governance at EU level, the catalytic precautions in this section signified a more radical departure from the previously existing mode of supranational energy governance. They not only represented a move beyond market-regulatory governance, but also effectively beyond regulatory governance as such, by expanding the EU's toolkit with new policy tools such as financial support, which were also used/applied in a selective way incompatible with the regulatory state-ideal type. The significance of this shift is difficult to overstate; regulatory governance did not just dominate the energy policy of the EU since the late 1980s, but EU economic policy as a whole.

The Commission's riskifying moves thus not only established an intersubjective understanding of the European dependence on (gas) imports as a problem requiring regulatory safeguards at EU level, but also requiring more interventionist, catalytic measures in order to manage the risk to security of supply. As such, post-2009 EU energy governance in the internal dimension is better defined as a riskified mode of governance (cf. "riskified type of regulatory governance" previous section), characterised by a hybrid role for the Commission and a mixture of reactive and proactive precautions to ensure that the IEM delivered security of supply.

It is important to emphasise that, even though the EU's direct involvement in infrastructure implementation after 2009 signalled divergence from the regulatory state, the IEM master frame remained intact. Supranational support had to be enacted only for those priority projects where the market was not able to deliver; the catalytic measures for infrastructure

implementation had to supplement, certainly not replace market functioning. This is very clear from for instance Regulation 1316/2013 establishing the CEF-E programme, which reserved CEF-E grants to "those projects of common interest which are not viable under the existing regulatory framework and market conditions" (European Parliament and Council of the European Union, 2013b, p. 134). A "three-step logic" had to apply to investments in PCIs (ibid.). The market had to be given priority. If that was not sufficient, regulatory solutions had to be explored. If these first two steps had failed to deliver the necessary investment, only then supranational financial assistance could be considered (ibid. pp. 134-135). Just as the regulatory framework for security of gas supply, EU infrastructure policy was therefore firmly inspired by the precautionary conceptualisation of security of supply propagated by the Commission – security of supply as a problem of correcting market failures on the basis of common precautionary measures.

3.4 Undermining Russian-sponsored infrastructure projects: Geo-economic intervention for security of supply

The regulatory and catalytic precautions were the main, but not the sole indications of the riskification of the internal energy governance of the EU. Namely, from 2009 onwards, the EU not only began playing an increasingly active role in facilitating the infrastructure considered beneficial to European security of supply, it also engaged in attempts to impede the implementation of certain infrastructure projects considered to have adverse effects on EU security of supply, *in casu* Russian-sponsored gas infrastructure. In contrast to the regulatory safeguards and the supranational infrastructure policy, such measures were never explicitly proposed by the Commission in the policy documents discussed in Chapter 2. Nevertheless, they are part of the same riskified mode of governance emerging in the internal dimension, belonging to the

interventionist class of precautions aimed towards proactively managing the risk posed by European import dependence to security of supply. Therefore, it is crucial that these measures are also included in the analysis, as they are an integral factor in understanding and correctly assessing the acceptance of the Commission's riskifying moves by the member states.

Rather than amounting to a cohesive and comprehensive policy, this selective obstruction has happened on an ad hoc basis; there is no such thing as an institutionalised policy of opposition towards Russian-sponsored infrastructure projects (this would of course be in obvious conflict with the EU's obligations under World Trade Organisation (WTO) law, the ECT and European law itself). There exist, however, specific cases where the Commission has decided to strategically employ the regulatory tools at its disposal in order to impede the implementation of such projects.

Undoubtedly the most prominent case in this respect is Nord Stream 2. Nord Stream 2 was an offshore pipeline project via the Baltic Sea that would run in parallel with Nord Stream 1, proposed in 2015 by President Putin. Unsurprisingly, the project was contentious from the get-go (Goldthau, 2016, p. 7; Łoskot-Strachota, 2016, p. 1). Nord Stream and Nord Stream 2 would have a joint capacity of 110 billion cubic metres (bcm) per annum, more than two thirds of the total amount of Russian gas imported by the EU. In this way, Nord Stream 2 would make Gazprom less reliant on the other gas transport corridors to Europe and there were concerns that when operational, it would have made these other routes – especially the Ukrainian transit system – redundant (Goldthau, 2016, p. 7; Łoskot-Strachota, 2016, p. 3). For many Eastern European countries (but especially for Ukraine), this would mean significant losses in annual revenue from transit fees – for Ukraine for instance, this could have

amounted to around 2 billion dollars of lost revenue a year, more than 1 percent of its (pre-war) GDP (Goldthau, 2016, p. 7; World Bank, 2021). Moreover and more importantly, Nord Stream 2 had the ability to solidify Russia's dominance on the European natural gas market and deprive Eastern European countries of an important asset to repel Russian interference: their status as transit countries (Goldthau, 2016, p. 7). Due to these reasons, the US and many Eastern European countries were opposed to the project (de Jong et al., 2022; Schmidt-Felzmann, 2020, pp. 138-139). With the 2019 Protecting Europe's Energy Security Act, the US also placed sanctions on the European companies constructing the pipeline (United States Congress, 2019).

For the same reasons, and for the fact that Nord Stream 2 was hardly compatible with the EU's ambition to diversify away from Russian gas (for instance explicitly expressed in the 2014 European Energy Security Strategy), the project was negatively received by the Commission as well. This led to the adoption of a geo-economic approach towards Nord Stream 2, based around the selective use of the EU's internal market rules for strategic purposes, in an attempt to halt the construction of the project (de Jong & Van de Graaf, 2021; Goldthau & Sitter, 2020, p. 121).

3.4.1 First and second attempt by the Commission to undermine Nord Stream 2: Applicability of Directive 2009/73/EC and the EU-Russia IGA

In a first attempt to undercut the project, the Commission stipulated that offshore pipelines – thus Nord Stream 2 – were subject to the requirements of Directive 2009/73/EC, hoping that this would make the project less attractive to the companies involved (de Jong & Van de Graaf, 2021, p. 500; Talus & Hancher, 2019).[20] This would for instance imply that Nord Stream 2 would have to adhere to the directive's provisions on third-party

[20] Directive 2009/73/EC concerning common rules for the internal market in natural gas formed part of the Third Energy Package discussed above.

access, so that Gazprom would potentially have to share the pipeline's capacity with other gas companies (which would obviously prejudice its investment). What indicated the Commission's selective and strategic employment of IEM legislation, was the fact that it had never made the same argument for other offshore pipelines before – including the Nord Stream 1 pipeline (Talus & Hancher, 2019). Although it tried to frame its approach as neutral, there is therefore little doubt that the Commission specifically targeted Nord Stream 2.

The line of argument advanced by the Commission was however contested by its own legal service, which questioned its compatibility with EU law in a confidential opinion. While the Commission contended that Directive 2009/73/EC was applicable on the basis of EU regulation's general applicability to the territorial waters and the exclusive economic zone of the member states, the legal service stated that the directive did not apply to pipelines from third countries, and that demanding Nord Stream 2's compliance with its requirements would constitute unjustifiable, discriminatory action (European Commission Legal Service, 2016, p. 2).

The Commission decided to disregard this confidential opinion, but encountered additional obstacles (de Jong & Van de Graaf, 2021, p. 500). When a year after the negative advice of its legal service the Commission urged the Bundesnetzagentur to enforce Directive 2009/73/EC on Nord Stream 2, the German regulatory authority responded that it would not demand the project's compliance with the requirements of that directive (Bundesnetzagentur, 2017, p. 5). Just as the Commission's legal service, it argued that the application of IEM legislation to the project would be discriminatory in nature, especially considering the non-application thereof to similar pipelines in the past (*inter alia* Nord Stream 1) (ibid. p. 4). After the Bundesnetzagentur's letter, the Commission abandoned its position

and its first attempt to halt Nord Stream 2 had therefore failed (de Jong & Van de Graaf, 2021, p. 500).

However, the Commission did not stop there. In a second attempt to undermine Nord Stream 2, it requested a mandate from the Council to negotiate an intergovernmental agreement (IGA) with Russia, in a new effort to make the rules of the IEM applicable to Nord Stream 2. The Commission argued that an IGA would prevent Nord Stream 2 from being exposed to two incompatible regulatory regimes (*in casu* German law and Russian law) or from operating in a legal void (ibid.). Again, it is worth mentioning that the Commission never made the same argument for similar pipeline projects in the past (thus indicating the selective and strategic employment of IEM legislation by the Commission).

The Council then requested its legal service to what extent such a mandate would be compatible with EU law. The legal service of the Council refuted the Commission's arguments and stated that international law, including the law of the sea, would apply to the offshore parts of the pipeline (Council of the European Union Legal Service, 2017, p. 5). Just as the Commission's own legal service (and the Bundesnetzagentur), it affirmed the non-applicability of EU rules to offshore (sections of) pipelines and stipulated that there was no legal need for the proposed IGA. It claimed that the decision to grant the IGA mandate would ultimately amount to a political choice (ibid. p. 6).

Moreover, the legal service argued that the IGA mandate could affect member states' right to determine the general structure of their energy supply and their right to choose between different energy sources under Art. 194(2) Treaty on the Functioning of the European Union (TFEU) (ibid. p. 22). This implied that unanimous consent would be needed for the mandate among the member states, as measures liable to affect member

states' rights under Art. 194(2) TFEU "could not be decided without the participation of or against the will of the Member State concerned" (ibid. p. 19). The opinion ultimately cancelled this second attempt to undercut Nord Stream 2, as it strongly diminished the prospects of the Council effectively approving the Commission's request (although it was still allowed to do so) (de Jong & Van de Graaf, 2021, p. 501).

3.4.2 Final "successful" attempt: The Amended Gas Directive

Still, the Commission was not prepared to let go. In a third attempt, the Commission wanted to amend the relevant legislation so that it would apply to offshore import pipelines from third countries. Concretely, the Commission proposed amendments to Directive 2009/73/EC that were clearly aimed at making its provisions applicable to Nord Stream 2 specifically (again with the intention of negatively impacting the implementation of the project), although the Commission obviously refused to admit to this (e.g. European Commission, 2017d). After a long impasse in the Council where the proponents of Nord Stream 2 failed to reject the proposed amendments and opponents of Nord Stream 2 did not manage to garner enough votes to get them approved, the amendments would finally get approved when France, after being initially neutral, declared its support for their adoption in 2019 (de Jong & Van de Graaf, 2021, p. 503). Directive 2019/692 (hereinafter: Amended Gas Directive) entered into force on 23 May 2019 and although it would in principle apply to all the EU's import pipelines from third countries not completed before this date, Nord Stream 2 was *de facto* the only import pipeline that would be affected (Hancher & Talus, 2019; Yafimava, 2019, p. 13).

Arguing that these amendments specifically targeted its pipeline project, Nord Stream 2 AG (the Swiss-based Gazprom subsidiary that was in charge of the construction of Nord Stream 2) then initiated legal proceedings under EU law and under the ECT to combat the alleged

discriminatory treatment by the EU (de Jong & Van de Graaf, 2021, p. 504; Nord Stream 2 AG, 2019a; Nord Stream 2 AG, 2019b).

The success of this last attempt was still dependent on the outcome of these cases and other outstanding legal issues related to the Amended Gas Directive, which will be discussed in greater detail in Chapter 6. However, with the Russian invasion of Ukraine in February 2022, it seems that the fate of Nord Stream 2 is now very much sealed, and the chances that the project will ever enter operation have grown extremely slim, if not non-existent. What can be said with certainty, is that the Commission's initial goal of halting the construction of the pipeline as such was not achieved. In September 2021, the construction of Nord Stream 2 was completed (Reuters, 2021).

It is clear that the Commission's geo-economic approach towards the project was not a straightforward, uncontested process. Its first two attempts to stop Nord Stream 2 failed due to the non-applicability of Directive 2009/73/EC and disagreements with the German regulatory authority and with its own and the Council's legal services. Amending Directive 2009/73/EC was a burdensome undertaking as well, characterised by lots of internal division in the Council and by a variety of legal issues/challenges (see de Jong & Van de Graaf, 2021; Hancher & Marhold, 2019). However, these attempts demonstrate the Commission's willingness to selectively employ IEM legislation for strategic purposes and, in the case of the third attempt, the member states' acceptance of that approach, as they adopted a measure undeniably aimed towards affecting Nord Stream 2 in particular (see de Jong & Van de Graaf, 2021, p. 504). This further highlights the EU's move not only beyond the market-regulatory mode of governance, but also beyond the regulatory state, which in turn underlines the success of the riskifying moves in combination with the deterioration of EU-Russia relations (and other facilitating

conditions) in establishing a riskified mode of energy governance, characterised by the development of precautionary measures for security of supply inspired by the regulatory state, but also by the catalytic state and by a geo-economic logic.

Moreover, Nord Stream 2 is not the only relevant case in this respect. In other instances, the Commission has similarly employed the regulatory tools at its disposal in a selective way to oppose Russian-sponsored infrastructure projects that were capable of reinforcing Gazprom's dominance on the European gas markets. These cases will be discussed in greater detail in Chapter 5, which focuses specifically on EU-Russia gas relations.

3.5 Explaining the post-2009 success of the Commission's discursive strategy

As the above subsections have demonstrated, the 2009 gas crisis truly signalled a turning point for the success of the Commission's discursive strategy of riskification. Before 2009, it achieved only very modest results; the precautionary approach to security of supply continuously propagated by the Commission from the 2000 Green Paper "Towards a European Strategy for the Security of Energy Supply" onwards hardly found any translation in EU internal energy policy. While the legislation adopted for harmonising national measures for security of gas supply and fostering European network development corresponded to the Commission's proposals for precautions on a superficial level, these did not amount to a riskification of the mode of supranational governance. The domains of security of supply and energy infrastructure ultimately remained national prerogatives, with a limited role to play for the EU as a coordinator of member states' policies. As discussed, the first gas crisis in 2006 even increased member states' reluctance to delegate competences to the EU in these areas (Natorski & Herranz-Surrallés, 2008).

How can the successful exploitation of the post-2009 policy window by the Commission's riskifying moves and the subsequent shift in internal energy governance then be explained? Firstly, the 2009 gas crisis should obviously be acknowledged as an important facilitating condition. In contrast to the 2006 gas crisis, the supply disruption of Russian gas lasted much longer and its consequences for EU member states were therefore much more severe. The negative impact was further aggravated by the (infrastructural) inadequacies of the European gas system, preventing the reversal of gas flows from Western to Eastern Europe. Such reverse flows would have enabled a much more effective European response to the crisis. This highlighted that the path chosen by the member states after 2006 – essentially a continuation of the previous approach where they kept policies for infrastructure development and preventing and managing supply crises firmly in their own hands – had brought very little result and left the EU extremely vulnerable to external supply shocks. As such, the 2009 gas crisis not only underlined the risk of the growing import dependence of the EU, which greatly increased the credibility of the Commission's "risk claims", its specific context and features also substantially enhanced its ability to couple this risk to new measures at the supranational level (see Maltby, 2013).

Equally important was the new institutional setting, with the signature and entry into force of the Lisbon Treaty. It was the first treaty amendment containing a dedicated energy chapter, which explicitly delegated competences to the EU in the domains of security of supply and energy infrastructure. Art. 194(1) TFEU stated:

"In the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim, in a spirit of solidarity between Member States, to:

(a) ensure the functioning of the energy market;
(b) *ensure security of energy supply in the Union*;
(c) promote energy efficiency and energy saving and the development of new and renewable forms of energy; and
(d) *promote the interconnection of energy networks*."[21]

This provided the Commission's proposals for precautions with the formal legal basis in EU primary law which they previously lacked, further bolstering their legitimacy vis-à-vis the member states.

Thirdly, the changed audience should be considered; the eastward expansion of the EU in the mid-2000s not only added many new member states whose dependence on Russian gas was much higher, but, as former parts of the Soviet Union/Eastern Bloc, were also much more sensitive to security-based framing of Russian energy supplies (Maltby, 2013, p. 436). While this was not a sufficient condition in combination with the gas supply disruptions for the success of the riskifying moves – this would imply a recalibration of EU internal energy governance already after 2006 (while the opposite was true) – it was, if not a necessary, certainly a crucial facilitating condition for the Commission to take advantage of the post-2009 policy window of opportunity.

On a final note, it is important to distinguish between the oil and the gas sector when assessing the success of the Commission's riskifying moves. Indeed, the precautionary measures established after 2009 overwhelmingly concerned the gas sector. With regard to the oil sector, the recalibration of EU internal energy governance was much less pronounced. Although some tangible results were achieved with Directive 2009/119/EC, this did not lead to the overhaul of the EU's regulatory

[21] Italics added.

framework concerning security of oil supply in the way envisaged/proposed by the Commission. This is of course not a complete surprise. The conditions of the late 2000s and the 2010s were a lot more favourable for the establishment of supranational precautions in the gas sector than they were for new measures in the oil sector. In the case of oil, although prices exponentially increased throughout the 2000s, there was no such dramatic event as the 2009 gas crisis to increase the credibility of the Commission's risk claims. This obviously made it harder for the Commission to frame/legitimise a transformation of the supranational governance of the oil sector as a necessary precaution to deal with the alleged risk posed by the EU's dependence on imported oil to security of supply, hence the divergence vis-à-vis the developments in the gas sector.

Conclusion

This chapter analysed the evolution of the mode of internal energy governance of the EU, distinguishing a pre-riskified era and a riskified era.

In the pre-riskified era from the early 1990s until the late 2000s, the internal energy policy focused almost exclusively on the development of an IEM. The First and Second Energy Package featured a gradual opening of the electricity and natural gas markets of the member states, and the Commission used the antitrust tools at its disposal to curtail the monopolistic practices of energy companies impeding cross-border trade and the establishment of a fully integrated energy market in the EU. Meanwhile, areas such as infrastructure development and security of supply remained tightly in national hands.

The second gas crisis in 2009, which blatantly exposed member states' inability to reinforce the resilience of the European energy system on their own, ushered in the riskified era. The precautionary measures for security of supply continuously promoted by the Commission since the early 2000s

were now able to garner the necessary levels of support. Two amendments to the existing directive for security of gas supply installed an increasingly firm supranational grip on national measures to prevent/mitigate (the effect of) gas supply disruptions.

More proactive measures were put in place as well. After years of being chronically underfunded, budget increases finally pushed the TEN-E framework into relevance. Other catalytic precautions established and institutionalised a comprehensive policy of supranational financial, regulatory and political support towards European network development. This transformed the EU into a more hybrid actor in the energy sphere, functioning no longer solely as a regulator, but now also as a selective facilitator in the implementation of strategic infrastructure projects deemed important for security of supply (Prontera, 2019a).

As the Nord Stream 2 case demonstrates, the Commission also selectively applied IEM legislation in order to obstruct and oppose Russian-sponsored infrastructure projects (other cases are discussed in Chapter 5). This happened *with* the member states' stamp of approval, as the adoption of the Amended Gas Directive has shown. Just as the catalytic measures for priority projects, these geo-economic precautions underlined the EU's move beyond not only the market-regulatory paradigm, but also beyond the regulatory state in internal energy governance.

All these policy developments exemplified the emergence of a riskified mode of governance, where an amalgam of reactive and proactive precautions had to ensure that the ongoing liberalisation process did not undermine security of supply in the face of the growing dependence on energy imports in Europe. This in turn indicates the success of Commission's discursive strategy in combination with the facilitating conditions of the late 2000s in framing market integration in itself as

insufficient for achieving a secure European energy supply, and in reconceptualising internal energy governance beyond the market-regulatory paradigm. In the next chapter, the contemporary evolution of the EU's external energy policy will be the object of inquiry.

CHAPTER 4: The riskification of the EU's external energy policy

Introduction

Chapter 3 analysed the acceptance of the riskifying moves of the Commission by examining the developments in the internal dimension of EU energy policy. It highlighted a post-2009 recalibration in line with the precautionary conceptualisation of security of supply, characterised by a variety of safeguard measures to reduce and mitigate the alleged risk posed by the EU's rising import dependence.

In this chapter, the focus shifts towards the external dimension. Here, it will be argued that the external energy governance of the EU has evolved largely in parallel to internal energy governance. In the window of opportunity of the 1990s, the EU was able to develop an external energy policy centred on rule export with a view to establish an integrated Eurasian energy market, i.e. a policy derived from the market-regulatory paradigm propagated in the Commission's discourse at that time. Throughout the 2000s, in a context of surging energy prices and renewed resource nationalism, EU external energy policy hardly deviated from this model, and remained firmly oriented towards market building beyond EU borders by externalising the rules of the IEM to third countries (or at least attempts at that). However, after the second gas crisis in 2009, a departure from this market-regulatory mode of external governance can be discerned, in accordance with the proposals for precautionary measures made by the Commission on the basis of its riskifying moves.

The first two sections will analyse the pre-riskified external energy policy of the EU in the 1990s and from 2000 to 2009, respectively. The third section will scrutinise the developments after 2009, and reveal the EU's

divergence from the market-regulatory paradigm and the riskification of the mode of external governance following the second gas crisis. It will also discuss an area where the Commission's riskifying moves "failed" (see *infra*).

1 The immediate post-Cold War window of opportunity: The development of the first initiatives for rule export

Before the 1990s, the external energy policy of the EU consisted of not much more than informal policy dialogues, cooperation with international organisations on technical matters and technical and financial assistance programmes towards developing countries. This hardly amounted to a comprehensive external energy policy and it did not affect member states' ability to conduct an external energy policy of their own (McGowan, 2008, pp. 93-94).

This dramatically changed when the Soviet Union imploded. The end of the Cold War not only presented an extraordinary window of opportunity for the development of the first legislative measures aimed towards the liberalisation of the electricity and natural gas markets of the member states, it also created an extremely favourable climate to project the EU's rules-based, market-oriented model for energy governance abroad, as a tremendous optimism for international cooperation governed global politics. Therefore, at the same time the IEM came to fruition, an embryonic external energy policy emerged at EU level as well.

As international regimes governing the energy sector were non-existent (the EU's attempts to cover the energy sector under WTO rules also failed), the EU chose to develop its own initiatives in the external sphere (Prontera, 2019a, p. 140). Their overarching goal was to export the EU's

internal rules and standards to third countries in order to externalise the IEM, i.e. expand the IEM beyond EU borders, and create an integrated and competitive energy market in the wider Eurasian region (see e.g. Goldthau & Sitter, 2015b; Prontera, 2019a; Van de Graaf, 2017). These initiatives will be analysed below.

1.1 The Energy Charter Process and the EEA

Undoubtedly the most prominent EU-sponsored initiative in the 1990s was the Energy Charter Process. When the Soviet Union imploded, much of the previously existing obstacles to engage with the East suddenly disappeared. The energy sector presented an especially alluring venue for mutually beneficial engagement between Eastern and Western Europe. The former Soviet Union possessed immense reserves of oil and natural gas. Western Europe, conversely, had the financial resources at its disposal to exploit this natural wealth, as well as a strategic desire to diversify away from Middle Eastern oil (Konoplyanik & Wälde, 2006, p. 524). The European Council tasked the Commission to develop a vision for a pan-European energy community, first proposed by Dutch Prime Minister Lubbers at the Dublin summit in 1990.

The Commission's proposal (the 1991 Communication "A European Energy Charter" discussed in Chapter 2) would serve as the basis for the European Energy Charter, signed in 1991 in The Hague by the representatives of 50 countries and the EU.[22] The Charter, which was heavily influenced by the EU's own blueprint, propagated the idea of a

[22] The following 50 countries were the original signatories of the European Energy Charter in 1991: Albania, Armenia, Australia, Austria, Azerbaijan, Belarus, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Kazakhstan, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, The Netherlands, Norway, Poland, Portugal, Romania, Russia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Tajikistan, Turkey, Turkmenistan, Ukraine, United Kingdom, United States, Uzbekistan and Yugoslavia (European Energy Charter, 1991). Of these signatories, only Canada and the United States would not end up signing the ECT (Bamberger, 1996, p. 2).

European energy market based on the principles of free competition and non-discrimination (European Energy Charter, 1991). This was, however, not a legally binding document and in fact merely a political declaration, a pledge, or in the words of the Commission a “code of conduct [...] to be implemented by a series of specific agreements or protocols imposing binding obligations on the signatories” (European Commission, 1991, pp. 3-4).

That “series of specific agreements or protocols imposing binding obligations on the signatories” came in the form of the Energy Charter Treaty (ECT) and the Protocol on Energy Efficiency and Related Environmental Aspects (PEEREA), which were signed in 1994 and entered into force in 1998 (Energy Charter Treaty, 1994; Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects, 1994). The ECT established a legally binding framework for energy cooperation on the basis of participating states’ adherence to common rules on trade, transit and investment in energy products, which were partly derived from the legislative proposals of the Commission for the First Energy Package (Konoplyanik & Wälde, p. 528). It was a first important exponent of the EU’s rule-exporting policy, although it would fail to deliver on its central objective, i.e. involving Russia in a stable, market-oriented regime for energy cooperation. This will be discussed in-depth in Chapter 5.

The European Economic Area (EEA) similarly endeavoured market building beyond EU borders but took a different approach (Agreement on the European Economic Area, 1992). This agreement, which was signed in 1992 and entered into force in 1994, dealt with much more than energy alone, but acquired an important energy dimension with the inclusion of Norway, one of the EU’s most important oil and gas suppliers. Under the EEA, all European law considered “EEA relevant” had to be implemented by the EEA European Free Trade Association (EFTA) countries (i.e.

Norway, Liechtenstein and Iceland). Naturally, the gas and electricity sectors were deemed EEA relevant sectors, which meant that the energy *acquis* of the EU applied to/had to be implemented by Norway (ibid.; Andersen et al., 2017c, p. 196).

Furthermore, through the EEA, Norway committed itself to the supervision of the EFTA Surveillance Authority, which, just like the Commission does for EU law, monitors the implementation of EEA law (EFTA Surveillance Authority, 2022). Norway also agreed to submit to the jurisdiction of the EFTA Court, which is competent in dealing with infringement actions brought by the Surveillance Authority against an EEA state with regard to the implementation, application and interpretation of EEA law (thus, EU law) (EFTA Court, 2022). As such, the EEA effectively subjected Norway to EU legislation in the energy sector, as well as to (supranational) surveillance, enforcement and sanction mechanisms ensuring their binding character, very similar to those provided by EU law (Lavenex et al., 2009, p. 817).

The EEA thus presented a much more explicit (i.e. institutionalised and "legalised") form of regulatory extension than the ECT (see Lavenex et al., 2009). Whereas the ECT attempted to bring third countries closer to the internal market by establishing a common, EU-inspired ground, the EEA externalised the internal model by ensuring the direct and binding convergence of third countries' legislation with EU law. It made Norway, for all means and purposes, a part of the IEM. As such, the EEA can be considered a very successful case of "externalisation", especially since it included one of the EU's biggest energy suppliers. As will be seen below, the EU would be much less successful in exporting its rules to other oil-and-gas producing countries in its neighbourhood.

1.2 Other EU initiatives in the 1990s

The ECT and the EEA were complemented by other, minor initiatives, which nevertheless shared the same objective of exporting internal rules to neighbouring third countries in order to create an integrated Eurasian energy market. In 1996, the EU launched the Interstate Oil and Gas Transportation to Europe (INOGATE) programme, directed at the EU's Eastern neighbours (INOGATE, 2022a).[23] INOGATE mainly provided technical assistance for the development of oil and gas infrastructure, but also encouraged regulatory reforms to attract more foreign direct investment in the energy sector of the countries concerned (Prontera, 2019a, p. 141).

Vis-à-vis the Southern neighbours, the EU established the Euro-Mediterranean Energy Forum (1997), as part of the Euro-Mediterranean Partnership launched by the Barcelona Declaration in 1995. This platform had "to ensure continuity of dialogue at political and expert level among all the partners, as well as promoting projects of common interest" (European Commission, 1997). It did not impose binding obligations on the countries involved, but rather served as a general framework for dialogue to discuss regulatory reforms on the basis of market principles (Prontera, 2019b, p. 225). However, countries in the Southern Mediterranean, especially big gas and oil producers like Libya, Algeria and Egypt, resisted market-based reforms, as these would erode the central position of the state in their domestic energy industries and were therefore regarded as a threat to the stability of the political regime (ibid.).

A final component of the nascent external energy policy of the EU in the 1990s were the PCAs with the EU's Eastern neighbours, most of which

[23] The INOGATE Partner Countries were Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Ukraine and Uzbekistan (INOGATE, 2022a).

entered into force right at the end of the decade (Armenia (1999), Azerbaijan (1999), Georgia (1999), Kazakhstan (1999), Kyrgyzstan (1999), Moldova (1998), Russia (1997), Ukraine (1998) and Uzbekistan (1999)). The most notable one was the one with Russia, which was signed in 1994 and entered into force in 1997. All of the PCAs contained a clause which stated that "[energy] cooperation shall take place within the principles of the market economy and the European Energy Charter" (Art. 54 EU-Armenia PCA, 1996; Art. 55 EU-Azerbaijan PCA, 1996; Art. 56 EU-Georgia PCA, 1996; Art. 53 EU-Kazakhstan PCA, 1995; Art. 54 EU-Kyrgyzstan PCA, 1995; Art. 60 EU-Moldova PCA, 1994; Art. 65 EU-Russia PCA, 1994; Art. 61 EU-Ukraine PCA, 1994; Art. 53 EU-Uzbekistan PCA, 1996) and defined general areas where energy cooperation was envisaged such as "improvement in management and regulation of the energy sector in line with a market economy" (ibid.).

They did not however include more specific commitments regarding energy cooperation (Herranz-Surrallés, 2017, p. 244), and were characterised by low degrees of legalisation. The Cooperation Councils established as part of the PCAs, consisting of ministers of the contracting parties and responsible for handling disputes arising from these treaties, could only give non-binding recommendations as a means of settling disputes (Art. 89 EU-Armenia PCA, 1996; Art. 92 EU-Azerbaijan PCA, 1996; Art. 92 EU-Georgia PCA, 1996; Art. 87 EU-Kazakhstan PCA, 1995; Art. 86 EU-Kyrgyzstan PCA, 1995; Art. 93 EU-Moldova PCA, 1994; Art. 101 EU-Russia PCA, 1994; Art. 96 EU-Ukraine PCA, 1994; Art. 89 EU-Uzbekistan PCA, 1996). This absence of real enforceability and judicial control for already vague and broad provisions made the contribution of these instruments to the EU's regime of rule export lacklustre. This was especially true with regard to Russia, which began to increasingly vigorously reject "the principles of the market economy and the European

Energy Charter" promoted in Art. 65(1) of the EU-Russia PCA towards the end of the 1990s (Casier, 2011, p. 548).

Just like the ECT and the EEA, INOGATE, the Euro-Mediterranean Energy Forum and the PCAs thus endeavoured regulatory approximation in the EU's neighbourhood. However, they were much softer and/or indirect tools for achieving the desired objective. Whereas the EEA outright bound third countries by IEM rules, these arrangements fostered rule export through technical cooperation (INOGATE) or dialogue/voluntary collaboration on market-based reforms of the energy sector (Euro-Mediterranean Energy Forum and PCAs). Therefore, they did not provide the same assurances regarding third countries' effective adoption and implementation of legislation in line with IEM rules (and thus regarding the externalisation/expansion of the IEM beyond EU jurisdiction).

In sum, the initiatives that made up the external energy policy of the EU in the 1990s varied widely in terms of legalisation (level of bindingness, precision and enforceability of commitments) and degree of institutionalisation (level of organisation of rule expansion, i.e. direct vs. indirect regulatory approximation) (see Lavenex et al., 2009). On one end of the spectrum was the EEA, which effectively integrated the EFTA signatories (most importantly Norway) into the internal market. At the other end of the spectrum were INOGATE and the Euro-Mediterranean Energy Forum, which were nothing more than frameworks to support/discuss market-based regulatory reforms, without imposing any kind of binding obligation on the third countries involved. They were nonetheless inspired by the same goal of exporting the internal mode of energy governance to neighbouring third countries, in order to expand the IEM beyond EU borders.

In parallel to the internal dimension, the EU thus pursued market integration by means of regulation, in line with the market-regulatory paradigm and the neoliberal conceptualisation of security of supply (i.e. security of supply as an automatic outcome of competitive energy markets) that was propagated by the Commission. According to this paradigm, the establishment of competitive conditions in the energy sector, both in the internal dimension and in the wider Eurasian region, was the best guarantee for European security of supply. Of course, as Youngs (2007, p. 7) rightly observed, "'the European approach' of extending internal market networks is far from being a rationalised philosophy of energy security, but is simply the area in which the Commission has enjoyed energy-related competence and thus the inevitable focus of Brussels proposals so far". In other words, the market-regulatory mode of external governance was not necessarily a matter of choice or conviction, but merely the area where member states allowed the EU to act, while they preserved a national prerogative over other aspects of their external energy relations.

2 The 2000s: An amalgam of new regional and bilateral initiatives for externalising the IEM

In the 2000s, in a context of resurging resource nationalism across the globe, the Commission recalibrated its discursive strategy. To adequately deal with the risk posed by Europe's growing import dependence, a common strategy for diversification had to be developed to promote and facilitate the implementation of strategic energy infrastructure considered vital for security of supply.

Such proposals became prominent in the Commission's discourse particularly in the second half of the decade. The 2006 Green Paper "A European Strategy for Sustainable, Competitive and Secure Energy" for instance called for "a clear policy on securing and diversifying energy supplies" at EU level (European Commission, 2006, p. 15), and the 2007

Communication “An Energy Policy for Europe” stressed the need for “an effective external EU Energy Policy” “to improve the conditions for investments in international [infrastructure] projects” (European Commission, 2007a, p. 19). The 2008 Green Paper “Towards a Secure, Sustainable and Competitive European Energy Network” similarly highlighted the importance of encouraging the development of “international energy networks projects serving EU security of energy supply” through a “long-term political framework for commitments” at the supranational level, stating how a special emphasis could be put on infrastructure projects where private investors perceived the “non-commercial risks as too significant” (European Commission, 2008b, p. 9).

These proposals deviated from the market-regulatory paradigm because they (1) approached insecurity of supply as a market failure, as a problem of insufficient rather than excessive public intervention (i.e. the precautionary conceptualisation of security of supply of the riskified paradigm) and (2) implied a more interventionist, hybrid role for the Commission in external energy governance as “facilitator” rather than purely as rule-exporter, on the basis of selective diplomatic support to strategic infrastructure projects (policy solution derived from the catalytic state-model) (see Prontera, 2019a for more with regard to the latter).

However, during the 2000s, the primary orientation of the substantive external energy policy of the EU would remain rule export, aimed towards externalising the IEM and the construction of an integrated Eurasian energy market on the basis of internal rules. As in the internal dimension, the market-regulatory mode of governance established in the previous decade thus persisted. Rather than committing to a common, EU-wide strategy for diversification, member states chose to pursue their own, mutually conflicting national strategies for security of supply in the

emerging state-capitalist order of the 2000s, next to the nascent external energy policy of the EU itself (Baumann & Simmerl, 2011, p. 2).

The EU launched a flurry of new regional and bilateral initiatives on top of the already existing frameworks, leading to a complicated, heterogeneous architecture for projecting the EU's internal mode of energy governance onto the countries in its neighbourhood, with varying degrees of success. These will be discussed below.

2.1 New regional initiatives for rule export

Undoubtedly the most prominent and most important regional initiative of the 2000s was the Energy Community, which should rightly be considered as one of the "Big Three" of the external energy initiatives of the EU, together with the ECT and the EEA. This legally binding instrument was signed in 2005, entered into force in 2006 and endeavoured the direct extension of the rules of the IEM to the enlargement countries of the Western Balkans (Albania, Bosnia & Herzegovina, Croatia, Kosovo, Montenegro, North Macedonia and Serbia) (Treaty establishing the Energy Community, 2005). It was envisaged as a pre-accession instrument and a way of offering the countries in the Western Balkans some membership perspective – considered crucial for the stability of the region after the conflicts of the 1990s – while at the same time postponing actual accession to the EU in light of the enlargement fatigue after the big enlargement wave of 2004 (Renner, 2009, p. 5; Van Elsuwege, 2013, p. 221). Just as the EEA, the Energy Community was about "'integration' rather than mere 'cooperation'" (Prange-Gstöhl, 2009, p. 5299), but took a sectoral approach, focusing on the energy sector rather than on the externalisation of the internal market as a whole. It belongs to the same class of binding, "more demanding, structured and specific convergence" of third countries with the regulatory provisions of the IEM (Prontera, 2019a, p. 145). The signatories of the treaty, the so-called Contracting

Parties, committed themselves to the transposition of the EU's energy *acquis* into national law, as well as to the effective implementation of this legislation within their respective jurisdictions.

The Energy Community is inspired by the same neo-functionalist logic as the European Communities, based on the idea of ensuring lasting peace by means of sectoral integration and gradual spill-over into other domains, and its institutional set-up was explicitly modelled after the ECSC (Renner, 2009, p. 7). Specifically, it consists of a Ministerial Council, a Permanent High-Level Group, a Regulatory Board, the Energy Community Fora and a permanent Secretariat based in Vienna to monitor the transposition and implementation of Energy Community law by the Contracting Parties (Energy Community, 2022a). While not as formally and densely organised as the mode of regulatory expansion of the EEA, this strong, top-down institutionalisation of rule export sets the Energy Community apart from the other, looser arrangements, and gives it a special place in EU external energy relations (Prange-Gstöhl, 2009, p. 5299).

Nevertheless, the initiative is not without its weaknesses. An obvious point is the Secretariat's lack of resources to monitor and ensure signatories' compliance with Energy Community law in comparison to for instance the resources at the disposal of the Commission for observing member states' conformity with EU law (ibid.). A second issue is the lack of adequate enforcement and sanction mechanisms. The only possible sanction for non-implementation or a violation of the obligations by Contracting Parties is a suspension of their rights under the treaty, such as representation in the different institutions of the Energy Community (Energy Community, 2022b). Whereas "the intensity of the obligations arising from EEA law is comparable to that of Community law" (Lavenex et al., 2009, p. 817), the lower level of legalisation provides this instrument with much weaker incentives for compliance. For this reason, Goldthau & Sitter (2015a, p.

956) have stated that the Energy Community is “soft power par excellence”, as the lack of convincing sanctions assumes that Contracting Parties will comply with the obligations imposed on them purely out of their own interests (for instance a willingness for closer association with the EU, market access to the EU, … (Prange-Gstöhl, 2009)), not because there are negative consequences involved with non-compliance.[24]

Alongside the Energy Community, the EU also established new regional initiatives with more modest ambitions, such as the Baku Initiative in 2004. The Baku Initiative was an upgrade of the INOGATE programme for “implementing enhanced energy cooperation” among the INOGATE Partner Countries (Baku Initiative, 2004, p. 3). It shared the same technical orientation, but presented a more institutionalised format for rule export. It explicitly aimed towards “the progressive integration of the Black Sea and Caspian Sea region energy markets with the EU markets” (ibid.) and set up a working group for “harmonising the legal and technical standards with the aim to create a functioning integrated energy market in accordance with EU and International legal and regulatory framework” (ibid.). Through technical assistance projects, capacity building programmes and workshops with government officials of the INOGATE Partner Countries, the Baku Initiative attempted to introduce and diffuse the standards and rules of the IEM and promoted the approximation of third countries’ regulatory frameworks to the legislation of the internal market (INOGATE, 2022b; Prontera, 2019a, p. 143). Weber (2014) analyses the case of Azerbaijan for instance, where domestic officials were inexperienced with gas regulation. EU officials were able to use this lack of experience and their own expertise in the subject at hand to frame the issues in the way

[24] What is also remarkable is the fact that Contracting Parties essentially agree to comply with EU rules and accept the associated costs of compliance, without having a seat at the table in the establishment thereof or any concrete membership perspective (Prange-Gstöhl, 2009, p. 5299). This in fact also applies to the EEA, where Iceland, Liechtenstein and Norway agree to comply with EU rules, without partaking in the process of establishing them.

they saw fit, which then enabled them to suggest solutions in line with internal market rules (Weber, 2014, p. 161). However, the Baku Initiative did not impose binding obligations on third countries in any way; rule-import happened on a purely voluntary basis. While it thus pursued regulatory harmonisation with the EU in more direct fashion than INOGATE – unsurprising considering the fact that at the time of INOGATE's establishment IEM rules did not yet exist – its degree of legalisation was still equally low. Nevertheless, this did not necessarily imply failure. Earlier mentioned Azerbaijan for instance introduced a moderate degree of unbundling and market pricing in its domestic gas sector on the basis of EU-Azeri cooperation within the Baku Initiative (ibid.).

After the first gas crisis, two new regional initiatives were established on top of the already existing patchwork of external arrangements: the Central Asia Strategy and the Black Sea Synergy, both designed as more security of supply-oriented frameworks for dialogue (Prontera, 2019a, p. 143). The Central Asia Strategy and the Black Sea Synergy envisioned regulatory convergence with the IEM, but also had to serve as platforms to explore, discuss and support diversification of the EU's gas supply via respectively the Central Asian and Black Sea regions (European Commission, 2007f; Youngs, 2007, pp. 3-4). Neither of these arrangements however developed into more stable frameworks for energy cooperation; the Central Asia Strategy was not further pursued and the Black Sea Synergy was side-lined for the Eastern Partnership in 2008 (Prontera, 2019a, p. 143).

The Eastern Partnership, yet another regional initiative, aimed to reinforce and support bilateral cooperation of the EU with a number of countries in the EU's Eastern neighbourhood (Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine) and would "initiate a structured [legislative and regulatory] approximation process" (European Commission, 2008c, p. 10). This was considered "essential to the partners' progress in coming close to

the EU" (ibid.). Naturally, energy was among the core areas of focus. One of its four "thematic platforms" was the Energy Security Platform, which had to "accelerate the harmonisation of partners' energy policies and legislation with EU practice and acquis" through "intensified cooperation with key stakeholders (national administrations, regulators, agencies)" (ibid. p. 12). Also after 2006, the main orientation of EU external energy policy towards the Eastern neighbours thus remained regulatory expansion.

This also applied to the Southern neighbourhood. In the immediate aftermath of the gas crisis, the EU first attempted to extend the Energy Community to the big gas producers in the Southern Mediterranean (i.e. Algeria, Egypt and Libya), but these countries remained uninterested in market-oriented reforms of their energy sectors, let alone legally binding commitments to adopt and implement IEM rules (Prontera, 2019b, p. 225). Thus, the EU opted for a less institutionalised, less legalistic, bottom-up model for rule diffusion (ibid.). In 2007, in the framework of the newly established Union for the Mediterranean (an upgrade of the Euro-Mediterranean Partnership), Medreg was launched, which grouped national regulators in the Mediterranean region and had to promote regulatory harmonisation via technical collaboration on the expert level (Herranz-Surrallés, 2018, p. 129; Medreg, 2022). However, results with regard to its main targets – Algeria, Egypt and Libya – remained meagre, as regulatory reforms were still unable to garner genuine support at the political level in the countries concerned (Prontera, 2019b; Tagliapietra & Zachmann, 2016).

2.2 New bilateral arrangements

On the bilateral level, the EU established the EU-Russia Energy Dialogue (2000), which had to serve as the basis for an EU-Russia energy partnership and had to circumvent the stalemate caused by Russia's

refusal to ratify the ECT (Hadfield, 2008, p. 237). This dialogue is discussed in-depth in the next chapter.

The 2000s also saw the establishment of the European Neighbourhood Policy (ENP). This overarching framework served as the basis for bilateral policies towards the EU's neighbours and resulted in several so-called ENP Action Plans. These were aimed at the general approximation of target countries' legislation to the EU in light of the gradual integration of their economies into the EU's internal market and its regulatory structures – not solely at the energy sector – but all of them contained specific references to energy as well (Van Elsuwege, 2013, p. 219). However, these Action Plans were nothing more than declarations of intentions and did not have any binding effect whatsoever. Their value and success thus entirely depended on the political willingness of the parties involved. As these concerned countries with either no or very vague membership perspective, incentives for buy-in and implementation were often low (see Prange-Gstöhl, 2009). Therefore, the Action Plans proved rather ineffective in triggering regulatory reforms in the energy sectors of the ENP countries.

The EU also signed several Memoranda of Understanding (MoUs) on energy cooperation with third countries in the neighbourhood: Ukraine (2005), Azerbaijan (2006), Kazakhstan (2006), Egypt (2008) and Turkmenistan (2008). Whereas the MoUs with Kazakhstan, Egypt and Turkmenistan only set out some broadly defined areas where collaboration was envisaged with vague references to regulatory cooperation, harmonisation or market reforms, the MoUs with Ukraine and Azerbaijan detailed more specific commitments (EU-Azerbaijan MoU, 2006; EU-Egypt MoU, 2008; EU-Kazakhstan MoU, 2006; EU-Turkmenistan MoU, 2008; EU-Ukraine MoU, 2005). The MoU with Ukraine envisioned the "full integration" of the Ukrainian energy market into the IEM (EU-Ukraine MoU, 2005). Importantly, it also made plans for Ukraine's accession to the newly

established Energy Community, moving the country to observer status as a first step (ibid.).

Similarly, the MoU with Azerbaijan aimed at the “gradual harmonisation of Azerbaijani legislation with the Community legislation in the energy field leading to the convergence of the electricity and gas markets” (EU-Azerbaijan MoU, 2006, p. 6). It listed concrete measures that Azerbaijan vowed to take such as electricity and gas pricing reforms and “measures to improve the collection of electricity and gas bills”, but also for instance the establishment of an independent regulatory authority and electricity and gas transmission system operators in line with the provisions of the Second Energy Package (ibid. pp. 6-7). Although these were non-binding commitments, they certainly presented a more specific roadmap for collaboration and regulatory convergence than the MoUs with Kazakhstan, Egypt and Turkmenistan.

Finally, the EU’s Association Agreements (AAs) with some of the Southern neighbours entered into force in the early to mid-2000s (Algeria (2005), Egypt (2004), Israel (2000), Jordan (2002), Lebanon (2006) and Morocco (2000)), which were similar to the PCAs concluded with the Eastern neighbours. The energy chapters of the AAs with Egypt, Israel, Jordan, Lebanon and Morocco outlined very general areas for energy cooperation such as the promotion of renewable energy, energy efficiency and savings and the modernisation of energy networks – hardly actionable content (Art. 53 EU-Egypt AA, 2001; Art. 51 EU-Israel AA, 1995; Art. 74 EU-Jordan AA, 1997; Art. 54 EU-Lebanon AA, 2002; Art. 57 EU-Morocco AA, 1996).

The EU-Algeria AA contained a more elaborate energy (and mining) chapter, with more narrow, specific priorities for collaboration such as the “adaptation of the institutional, legislative and regulatory framework of activities in the energy and mining sectors to market economy rules by

means of technical, administrative and regulatory assistance" (needless to say, this "adaptation" obviously concerned Algeria more than it did the EU) (Art. 61 EU-Algeria AA, 2002). Compared to the PCAs, this AA (as well as the others) foresaw a stronger dispute settlement mechanism. The Association Council established in accordance with the agreement could take binding decisions in settling disputes regarding the application and interpretation of the agreement (Art. 100 EU-Algeria AA, 2002). However, the AA did not in fact confer a binding obligation on Algeria to reform its energy sector or adopt and implement legislation in line with IEM rules, it merely defined regulatory approximation as an area of focus for EU-Algerian cooperation. In other words, it did not necessitate actual reforms taking place. Thus, the added value of the strengthened dispute settlement mechanism was rather low where it concerned the EU's rule-exporting ambitions in the energy sphere.

In conclusion, the predominant direction of the EU's external energy policy in the 2000s remained regulatory expansion. On top of the initiatives established in the 1990s came many additional, partially overlapping bilateral and regional arrangements, characterised by various levels of stringency, ambition and success, leading to an undeniably convoluted regime for projecting the internal mode of energy governance beyond EU borders. While the EEA and the Energy Community were highly institutionalised, top-down oriented arrangements which imposed binding and enforceable obligations on third countries to adopt, implement and comply with IEM rules and standards, many other initiatives were much looser, less centralised forms of rule export, which fostered regulatory convergence with the internal market by serving as frameworks for dialogue or technical assistance, without binding commitments for third countries (Prontera, 2019a, p. 145). All of them were nevertheless united in their "diffusionary logic" (Weber, 2016, p. 142), with a view to externalise

the IEM and create an integrated and competitive energy market in the wider Eurasian region.

Yet, the observation by Youngs (2007) cited in the previous section still applies. The EU's continuation of the market-regulatory mode of external governance of the 1990s was not necessarily by choice, but simply the only facet of external energy relations where member states tolerated supranational action. The area of energy diplomacy remained firmly in national hands. In parallel to the internal dimension, neither reignited concerns over security of supply in the early 2000s nor the first gas crisis in 2006 proved sufficient as facilitating conditions for the success of the Commission's riskifying moves and the development of a common approach towards diversification among the member states. Indeed, the 2006 supply disruption rather led to a reassertion of national beliefs in the need for sovereignty in the energy domain, internally as well as externally (Natorski & Herranz-Surrallés, 2008).

3 After 2009: Mirroring the internal approach?

As seen in the previous chapter, the events of 2009 – Russia's formal refusal to ratify the ECT but especially the second gas crisis – were crucially important for the member states' acceptance of the Commission's riskifying moves with regard to the internal dimension of European energy policy. After 2009, a notable shift towards a riskified mode of governance could be discerned, as various types of precautions (regulatory, catalytic as well as geo-economic measures) were established to ensure that the IEM would effectively deliver security of supply in the face of the risk posed by the EU's rising import dependence. Where the first gas crisis in 2006 instead increased member states' resistance to EU-level action in the energy domain (Natorski & Herranz-Surrallés, 2008), they now endorsed the riskified policy paradigm promoted by the Commission since the early 2000s, and accepted the calls for supranational measures in the areas of

security of supply and intra-EU infrastructure development. This was not in the least because the second gas crisis blatantly exposed the weaknesses of the existing constellation and division of labour in internal energy governance. Member states had clearly not been able to make the EU's energy system more resilient to supply disruptions themselves, to the contrary: divergent national approaches had exacerbated, rather than alleviated the negative impact of the 2009 supply shock.

The flaws of the existing mode of external governance were equally exemplified by the events of 2009. The combination of EU-sponsored initiatives for rule export alongside national energy diplomacies had not been able to bring any meaningful diversification of the European energy supply, or the required degree of security with existing suppliers. While the EU was quite successful in externalising its internal model to the Balkans and *de facto* integrated Norway into the IEM, it had not been able to involve major oil and gas exporters in its Eastern and Southern neighbourhood in a rules-based, market-oriented regime for energy cooperation (Van de Graaf, 2017, p. 173). Most importantly, it failed to establish a stable relationship with its most important energy partner, Russia, which vehemently rejected the EU's approach.

Nevertheless, just as the EU did not halt or reverse the liberalisation of the European electricity and gas markets in the internal dimension, it did not relinquish its attempts to export the rules of the IEM beyond EU borders in the external dimension. In 2010, the Energy Community was for instance extended to Moldova and Ukraine (in 2017, Georgia also became a Contracting Party to the treaty). However, after the second gas crisis, the EU started playing an increasingly interventionist, hybrid role that signalled divergence from the market-regulatory paradigm (see e.g. Herranz-Surrallés, 2016; Kuzemko, 2014; Prontera, 2019a). Its market building

efforts were now supplemented by precautionary policies, which aimed to achieve security of supply and diversification in more direct fashion.

As the previous approach had undeniably and conclusively failed, the EU recalibrated its policy towards Russia. As part of the EU-Russia Energy Dialogue, the so-called Early Warning Mechanism was developed, which foresaw in "an early evaluation of potential risks and problems related to the supply and demand of natural gas, oil and electricity" and "the prevention and rapid reaction in case of an emergency situation or a threat of an emergency situation" (EU-Russia Memorandum, 2009, p. 1). Established in 2009, this was an initial and clear example of the introduction of a precautionary logic in EU external energy policy following the second gas crisis, as this initiative was obviously directed towards increasing the governance and resilience of the EU's energy supply, rather than towards the creation of a common energy market with Russia on the basis of IEM rules. The focus in the EU's Russia policy shifted from externalisation to "risk management", in accordance with the riskified paradigm promoted by the Commission (see Chapter 5).

The EU also revised its external energy policy more broadly, by engaging in a proactive search for diversification away from Russian energy imports. This as well demonstrated divergence from the pre-2009 market-regulatory mode of governance, as the relevant measures developed in this respect were no longer based around rule export to foster market integration, and were inspired by a precautionary rather than a neoliberal conceptualisation of security of supply – security of supply as a market failure requiring adequate supranational precautions, instead of as an automatic outcome of market competition. These measures will be discussed below.

3.1 A supranational strategy for diversification

The Commission repeatedly utilised its riskifying moves to legitimise the development of a supranational strategy to pursue the goals of diversification and security of supply "with a common voice, forging effective partnerships to translate these into a meaningful external policy" (European Commission, 2007a, p. 18). In parallel to the internal dimension, it is particularly after 2009 that this discursive strategy resulted in substantive policy developments, which corresponded to the proposals advanced by the Commission in its policy documents. Specifically, after the second gas crisis, the EU visibly increased its diplomatic involvement in the implementation of international gas projects (see e.g. Prontera, 2019a; Siddi, 2019; Talus, 2015). Secondly, it recalibrated its previously established arrangements for rule export, employing them as vehicles to promote diversification and to facilitate the realisation of strategic infrastructure considered important for EU security of supply (see Prontera, 2019a).

3.1.1 EU pipeline diplomacy: The Southern Gas Corridor

The Nabucco pipeline

From the 2000 Green Paper "Towards a European Strategy for the Security of Energy Supply" onwards, the Commission consistently promoted the diversification of the European energy supply via the Southern and South-eastern neighbourhood. The so-called "Southern Gas Corridor" (SGC), meant to bring natural gas from the Caspian Sea and Middle Eastern regions to Europe, was proposed by the Second Strategic Energy Review as one of the EU's strategic priorities in 2008, and was later endorsed by the European Council after the supply disruptions of 2009 (European Commission, 2008a, p. 4; European Council, 2009).

Opening the SGC became the primary focus of the EU's post-2009 diversification strategy. The initial priority was the realisation of the

Nabucco project (a proposed pipeline between Turkey and Austria which would connect the EU with the gas suppliers of the Caspian region, while circumventing Russia and Ukraine), to which the EU extended its diplomatic support. In 2009 for instance, the Commission attended various "Nabucco summits", organised to accelerate the implementation of the project (Prontera, 2019a, p. 128). It also played an instrumental role in the establishment of the Nabucco IGA (ibid. p. 94), signed between Austria, Bulgaria, Hungary and Romania in July of that year, acting as a (in its own words) "facilitator in the negotiations for all sides, helping to find solutions to real problems" (European Commission, 2009b). Importantly, this agreement subjected Nabucco to third-party access rules, in line with the provisions of the Third Energy Package; 50 percent of the pipeline's capacity would be sold on the open market (ibid.).

Furthermore, the Commission engaged in direct negotiations with Azerbaijan and Turkmenistan in order to convince these countries to connect their gas supply to the Nabucco pipeline (Bocse, 2019, p. 159). In doing so, it set aside its regulatory agenda and focused purely on securing these countries' cooperation on the SGC, an important shift from the pre-2009 approach (Weber, 2017). In the case of Azerbaijan, this led to the signature of the Joint Declaration on the Southern Gas Corridor, affirming both sides' commitment to the swift implementation of the SGC, *without* references to regulatory harmonisation on the basis of IEM rules and norms (EU-Azerbaijan Joint Declaration, 2011).

In 2011, the EU also signed a new MoU with Uzbekistan on energy cooperation, where infrastructure was among the key areas of focus and with the two sides declaring their willingness to cooperate "in developing new energy infrastructure in the Republic of Uzbekistan on the East-West axis that would be beneficial for transit towards the European Union" (EU-Uzbekistan MoU, 2011, p. 5). This cooperation could include the

“promotion of the realization of such investments through involvement of European partners, including European banking institutions” (ibid.). More importantly, later that same year the Commission received a mandate from the Council to negotiate a treaty for the Trans-Caspian Pipeline with Azerbaijan and Turkmenistan (Council of the European Union, 2011), which would run under the Caspian Sea and would link the Nabucco pipeline up with the substantial reserves of Turkmen gas. It was the first time that the Commission would conduct such negotiations in support of an infrastructure project on behalf of the member states, instead of leaving this matter up to the exclusive discretion of individual member states and their companies as had always been the case before (Socor, 2011).

Then Commissioner for Energy Günther Oettinger was quick to say that the EU was “now speaking with one voice” in external energy affairs (Oettinger in European Commission, 2011a), but this was an obvious exaggeration. Some member states for instance chose to support pipeline projects which stood in direct competition with the Nabucco pipeline, such as the (Russian-sponsored) South Stream pipeline (Prontera, 2019a, p. 148; Stern et al., 2015, p. 2). Although the negotiating mandate was an important step forward and was illustrative of the post-2009 divergence from the market-regulatory paradigm, its value as an indicator of the acceptance of a supranational strategy for diversification by the member states should therefore not be overstated, since they still pursued national strategies for security of supply as well (which openly contradicted the “common” strategy at EU level).

It could also hardly be argued that the EU’s energy diplomacy was successful in and of itself, as demonstrated by the demise of the crown jewel of the SGC, the Nabucco project, in 2013. The events leading up to its cancellation revealed the chronic lack of leverage and diplomatic clout of the EU in the relations with the transit -and energy-producing countries

in the neighbourhood (Prontera, 2019a, p. 148; Verda, 2016, p. 80). As stated above, the IGA signed in 2009 envisaged Nabucco to operate under a regime of third-party access rules, which would guarantee non-discrimination as well as security of supply (Herranz-Surrallés, 2016, p. 1398). Turkey was never particularly supportive of this model, because it implied a loss of control over its own transmission network, and would therefore undermine the position of state-owned oil and gas company BOTAŞ (ibid. p. 1399). As a consequence, BOTAŞ brokered a deal with Azerbaijan on the Trans-Anatolian Natural Gas Pipeline (TANAP), effectively making the first section of the Nabucco pipeline obsolete. SOCAR, the state-owned energy company of Azerbaijan, would hold a majority stake in the project, while BOTAŞ would be allowed to negotiate a price discount for supplies delivered to the domestic gas market (ibid. p. 1400).

The part of the Nabucco pipeline that remained, renamed Nabucco West, would ultimately undergo the same fate as the Turkish section of the project. In 2013, it was abandoned in favour of the so-called Trans-Adriatic Pipeline (TAP) by the companies operating the Shah Deniz gas field in Azerbaijan (ibid.). As such, the EU's "pipe dream" of gas supplies from the Caspian region via Turkey to the EU on the basis of a non-discriminatory transit regime had died a silent death. The Nabucco project had succumbed to political realities. Instead of an independent, third-party access pipeline dedicated to EU diversification, came multiple pipelines based on bilateral deals between predominantly state-owned companies with little regard for IEM rules (ibid.).

EU energy diplomacy post-Nabucco

Although the SGC was not developing in the way that was originally envisaged, the EU did not dial back its pipeline diplomacy. As the Ukraine crisis and the annexation of Crimea by Russia in 2014 brought a new sense of urgency to diversify away from Russian gas, the EU revitalised its

diplomatic involvement in the establishment of the SGC (Siddi, 2019). The Commission for instance played an active role in the SGC Advisory Council. This arrangement was originally envisaged by Azerbaijan, but the Commission supported its eventual establishment in 2015. It was launched as a venue to provide the necessary political backing to the different projects comprising the SGC, and had to foster coordination among the various state and non-state actors involved in their implementation (Prontera, 2019a, pp. 158-159).

The first meeting took place in Baku in 2015, and was attended by the Commission, some EU member states (Bulgaria, Greece, Italy and the UK), some non-EU member states (Albania, Georgia and Turkey) as well as the US (which supported the diversification of the EU's energy supply through the SGC (Bocse, 2020, p. 7)). Energy companies, SGC pipeline consortia (TANAP and TAP) and the European public banks (EBRD and EIB) were among the non-state actors involved (Prontera, 2019a, pp. 158-159). The Commission and the participating government representatives confirmed their commitment to the implementation of the SGC and stated that the Advisory Council would adopt "a targeted approach" and "promote the development of strategic infrastructure making the best use of the existing framework of the European Union" (Southern Gas Corridor Advisory Council, 2015, p. 3). In the following meetings the number of participants steadily grew, and the scope of the discussions gradually expanded. Pipeline projects of strategic interest to the EU not part of the SGC were now also being discussed. With each meeting, the Advisory Council further institutionalised. It developed into a prominent platform for diplomatic support towards strategic infrastructure important for the diversification of the EU's energy supply, in which the Commission played an active, facilitatory role (Prontera, 2019a, pp. 159-162).

These post-2014 diplomatic efforts of the EU were flanked by both regulatory and financial support towards the SGC projects. TAP was granted an exemption from the rules on third-party access, regulated tariffs and ownership unbundling of the Third Energy Package for a 25-year period (European Commission, 2013b). Also, TAP, TANAP and SCP (the South Caucasus Pipeline, which connects the Shah Deniz gas field in the Caspian Sea with TANAP) were all declared PCIs and included on the two-yearly PCI lists released in 2013, 2015, 2017 and 2019 (European Commission, 2013c; European Commission, 2016b; European Commission, 2018b; European Commission, 2020a). Furthermore, the EU provided and enabled financial support to these projects. TAP received a grant from the CEF-E programme and in 2016, the Commission approved Greek state aid to the project under the 2014 Guidelines on state aid for energy and environmental protection (European Commission, 2016c). Moreover, in 2018, the EIB offered TAP a 1.5 billion euros loan – its biggest ever to an energy project – which the Commission endorsed and backed by an EFSI guarantee (Prontera, 2019a, p. 129). Additionally, the EBRD granted a 500 million euros loan to the project as well. The TANAP pipeline, in turn, also received loans from the EBRD and the EIB, to the amounts of respectively 500 million dollars and 932 million euros (Reuters, 2017; Reuters, 2018). TANAP also received a grant from the CEF-E programme, although this only amounted to a total of 5 million euros (Trans-Anatolian Natural Gas Pipeline, 2022).

In contrast to Nabucco, the EU's diplomatic efforts were now rewarded with the realisation of the projects in question; TANAP became operational in 2018 and TAP in 2020, and the first Azeri gas reached Italy right at the end of 2020 (SOCAR, 2020).

Where the EU was less successful were its attempts to extend the SGC beyond Azerbaijan, i.e. to Turkmenistan and Iran. Linking up with these

countries' enormous gas reserves would have been able to significantly enhance European diversification via the SGC, but both options were hindered by considerable legal, geopolitical, commercial and other obstacles that EU diplomacy proved unable to resolve (see e.g. Pirani, 2018; Siddi, 2019; Verda, 2016). Together with Azerbaijan, Turkey and Turkmenistan, the EU signed the Ashgabat Declaration in 2015. This declaration established a Working Group on the Trans-Caspian Pipeline, which would consider the various issues related to gas supplies from Turkmenistan to the EU. A first meeting of this Working Group was held in Brussels in 2015, and a second one in Istanbul in 2016. In contrast to the SGC Advisory Council, however, the Working Group failed to develop into a more institutionalised arrangement to discuss infrastructure implementation (Prontera, 2019a, p. 156). This was caused by the uncertain legal status of the Caspian Sea and demarcation disputes among the littoral states (Azerbaijan, Iran, Kazakhstan, Russia and Turkmenistan), but also more generally by the difficult geopolitical constellation in the region and unfavourable economic conditions (Pirani, 2018, pp. 13-14; Prontera, 2019a, p. 156). In 2018, Azerbaijan, Iran, Russia, Turkey and Turkmenistan signed the Convention on the Caspian Sea's Legal Status. This removed an important obstacle for the realisation of the TCP, but the difficult political circumstances in the Caspian region and commercial limitations impeded further progress (see Pirani, 2018). At the time of writing, the Russo-Ukrainian war of 2022 has not provided any meaningful impetus to the TCP, even though talks on other buried projects like the EastMed pipeline have been revived (Euractiv, 2022a).

The EU's diplomatic engagement with Iran has not proven fruitful either. After international sanctions were lifted and the Joint Comprehensive Plan of Action (JCPOA, or the so-called "Iran deal") was adopted in 2016, the Commission, led by High Representative of the Union for Foreign Affairs and Security Policy (HR/VP) Mogherini, visited Tehran to discuss the

possible extension of the SGC to Iran (Bocse, 2019, p. 161). This led to the adoption of the Joint Statement on Energy by the EU and Iran, launching the High Level Energy Dialogue on Non-nuclear Energy. Among the “key themes” of the dialogue, as per the Joint Statement, were the “development prospects of oil and gas export infrastructure in the Islamic Republic of Iran to contribute to the EU’s energy security” (EU-Iran Joint Statement, 2016, p. 1). With President Trump's decision to withdraw from the JCPOA and the reinstatement of US sanctions in 2018, however, any hopes for further rapprochement quickly dissipated. The resulting political uncertainty made the already poor prospects for an extension of the SGC to Iran grow even slimmer (Prontera, 2019a, p. 157).

In conclusion, the EU’s energy diplomacy in the context of the SGC was far from an outright success. As a supranational entity, the EU employed a more limited toolbox than traditional states and was often confronted with its own limits in its attempts to engage in “pipeline politics”. As Nabucco, the flagship project of the SGC, was overtaken by a collection of bilateral pipeline deals, the Commission was reduced to a bystander in the implementation of its own initiative. It lacked both the political leverage and financial tools to steer the opening of the SGC in the desired direction. Also with regard to the extension of the SGC to Turkmenistan, the Commission lacked the diplomatic clout and financial resources to resolve the (significant) political and commercial obstacles standing in the way of the TCP.

Nevertheless, the accomplishments should not be dismissed. The Commission played an important role in brokering the Nabucco IGA and acted as a driving force in the SGC Advisory Council. And although not in the way originally envisaged, the SGC was effectively implemented, as TAP became operational and the first deliveries of Azeri gas reached Italy in 2020. Moreover, the EU’s pipeline diplomacy did not develop in the

complete absence of member state support, as illustrated by the 2011 Council mandate granted to the Commission to engage in negotiations with Turkmenistan and Azerbaijan on a Trans-Caspian Pipeline. While this far from represented the establishment of a "single voice" in external energy affairs at EU level, exemplified by the fact that some member states chose to support (Russian-sponsored) pipeline projects which directly competed with the SGC, the mandate was nevertheless unprecedented and undeniably a big leap forward for supranational energy diplomacy. It demonstrated that the Commission's discursive strategy had been at least somewhat successful in establishing an intersubjective understanding of a common approach towards diversification as a necessary precaution to mitigate the risk of import dependence to security of supply, certainly when compared to the period before the second gas crisis.

In any case, the EU's diplomatic involvement in the implementation of the SGC, regardless of its success, unequivocally signified a move beyond the pre-2009 market-regulatory mode of governance, where the overwhelming direction of EU external energy policy was regulatory expansion to neighbouring third countries with a view to create an integrated energy market in the wider Eurasian region. The EU's post-2009 energy diplomacy departed from this model, and indicated a more direct, proactive approach towards security of supply and diversification in line with the riskified paradigm that was propagated by the Commission. As such, the state-capitalist order that had emerged in global energy politics from the early 2000s onwards now found clear reflection in EU external energy governance.

3.1.2 The "catalytic shift" in the EU's rule export initiatives

The second component of the EU's post-2009 diversification strategy – although this perhaps implies a more deliberate policy than was in fact the case – revolved around the employment of the previously established rule

export initiatives as vehicles for support towards strategic infrastructure implementation and diversification (Prontera, 2019a, p. 149). These efforts, just as the pipeline diplomacy discussed in the previous subsection, similarly revealed the supranational move beyond the market-regulatory mode of external governance dominant until the late 2000s, as well as the emergence of a precautionary conceptualisation of security of supply. This section builds on and adds to the work of Prontera (2019a), who first studied this "catalytic shift" (although not labelling it in this way).

Regional arrangements in the Eastern neighbourhood

The catalytic shift is best illustrated by the evolution of the Energy Community, as the initiative redirected its focus from market building towards network development after the Ukraine crisis in 2014. The previous chapter discussed Regulation 347/2013, the 2013 revision of the TEN-E framework, which established an extensive supranational regulatory framework for support to intra-EU infrastructure implementation. In 2015, the Energy Community adopted an adapted version of Regulation 347/2013 – Decision 2015/09/MC-EnC (Ministerial Council of the Energy Community, 2015). This Decision laid down guidelines for identifying so-called Projects of Energy Community Interest (PECIs) and Projects of Mutual Interest (PMIs). Just as EU member states with regard to PCIs under Regulation 347/2013, the Contracting Parties of the Energy Community were required to grant PECIs and PMIs "the status of the highest national significance possible" under Decision 2015/09/MC/EnC. Equally, PECIs and PMIs benefited from streamlined national administrative procedures, enhanced transparency and public consultation, cross-border cost allocation procedures and access to EU financial support via the Instrument for Pre-Accession Assistance and the Neighbourhood Investment Facility (ibid.). In other words, projects allocated PECI or PMI status under Decision 2015/09/MC-EnC in the Energy Community enjoyed the same all-round improved regulatory treatment as projects granted PCI status under Regulation 347/2013 within the EU.

In parallel to the regional groups established by Regulation 347/2013, Decision 2015/09/MC-EnC also established a so-called Gas-Oil Group and an Electricity Group, responsible for identifying and selecting PECIs and PMIs. These were chaired by the Commission and the Energy Community Secretariat and consisted of representatives of the Contracting Parties and of EU member states concerned, national regulatory authorities, transmission system operators and, upon invitation, ENTSOG/ENTSO-E. Decision-making powers in these Groups were restricted to the Contracting Parties (Ministerial Council of the Energy Community, 2015, p. 5).

Effectively, with the adoption of Decision 2015/09/MC-EnC, the Energy Community no longer solely functioned as a framework to promote market integration in the EU's neighbourhood via regulatory extension, but now also as a vehicle to support the realisation of strategic infrastructure such as the projects of the SGC, which were included on the 2018 PECI/PMI list (Ministerial Council of the Energy Community, 2018; Prontera, 2019a, p. 150). The Energy Community underwent a "catalytic shift", a shift towards a more proactive governance of the energy sectors of its Contracting Parties not dissimilar to the developments witnessed in the EU's internal energy governance, characterised by convergence with the rules of the IEM, as well as by the adoption of catalytic precautions for security of supply. As Prontera (2019a) notes, Decision 2015/09/MC/EnC also changed the role of the Energy Community Secretariat, the executive body of the Energy Community, which now had been given certain tools to facilitate the implementation of infrastructure projects in the Contracting Parties (ibid.). In accordance with Art. 10 of Decision 2015/09/MC-EnC, the Energy Community Secretariat could for instance appoint "PECI coordinators", which had to promote, support and assist projects facing serious obstacles to their implementation, *inter alia* by facilitating the cross-border dialogue among the various stakeholders concerned.

In 2016, the first list of PECIs/PMIs was adopted by the Ministerial Council of the Energy Community. This list included nine PECIs (six electricity projects, three gas projects and one oil project) and ten PMIs (two electricity and eight gas projects) (Energy Community, 2022c; Ministerial Council of the Energy Community, 2016). The following lists of PECIs/PMIs were adopted in 2018 and 2020 (Ministerial Council of the Energy Community, 2018; Ministerial Council of the Energy Community, 2020). The Energy Community Secretariat actively contributed to the establishment of these lists and became directly involved in the implementation of the selected projects. It monitored their progress, prepared reports and fostered cooperation among the different governments, companies and international financial institutions involved in each project (Prontera, 2019a, p. 151). Although the resources at its disposal obviously remained much more limited than those of the Commission, Decision 2015/09/MC-EnC thus effectively allowed the Secretariat to start playing a more hybrid role of regulator/facilitator within the Energy Community, further underlining the latter's catalytic shift.

Similar shifts can be distinguished within other external arrangements of the EU, such as the ENP and the Eastern Partnership. Initially, these initiatives were firmly oriented towards converging the EU's neighbours' legislative frameworks with the rules of the IEM. Especially after the 2014 Ukraine crisis, a shift in focus could be observed. In the 2015 Review of the European Neighbourhood Policy released as a Joint Communication by the Commission and the HR/VP, concepts like "energy sovereignty" and "energy independence" featured prominently in the section on "Energy security and climate action" (European Commission & HR/VP, 2015a, p. 11). Also remarkable was how energy cooperation was embedded within the broader security context, and was explicitly framed as a "security measure" (ibid.).

Especially regarding the EU's Eastern neighbours, a reorientation of the ENP's policy focus away from regulatory convergence towards security of supply and diversification could be discerned (ibid.; Prontera, 2019a, p. 152). The Joint Communication for instance stated: "Some partner countries in the East are vulnerable to over-dependence on specific suppliers and therefore have a vital interest in increasing sovereignty by diversifying their sources of supply. The EU will continue to support such efforts" (European Commission & HR/VP, 2015a, p. 11). Moreover, one of the two main priorities stated for the ENP in the energy sphere was EU support for "greater energy interdependence through support to diversification of energy sources, better cooperation on energy efficiency, and transition to the low carbon economy" (ibid.). The importance of adequate infrastructure and infrastructure support in "achieving pan-European energy security" (ibid.) was also emphasised, making an explicit reference to the potential contribution of the SGC in this regard. It is not to say that regulatory convergence through the ENP was no longer an objective ("the EU should [...] pursue regulatory approximation with other partners on sectors of mutual interest" (ibid. p. 12)), but it is obvious that this objective was no longer the primary or sole focus for the ENP, and that the framework was now also considered a vehicle to funnel diversification efforts.

Notably, this shift was broadly underwritten by the member states and other stakeholders, as the Joint Communication clarified: "The consultation [of member states and other stakeholders] revealed strong support to give energy cooperation a greater place in the ENP, both as a security measure (energy sovereignty) and as a means to sustainable economic development" (ibid. p. 11). An accompanying Staff Working Document stated: "Several respondents said that the EU should support the construction of infrastructure for energy and transport interconnectivity

between ENP countries and the EU" (European Commission & HR/VP, 2015b, p. 14).

The shift in policy focus for the ENP towards diversification and strategic infrastructure implementation did not happen in the absence of member state support, to the contrary – member states explicitly demanded such a shift. This was indicative of the emergence of an intersubjective understanding of diversification as something that required common action at the supranational level, pointing to the success of the Commission's discursive strategy of riskification in the external dimension. Indeed, these developments within the ENP quite obviously corresponded to the proposals made by the Commission for a common external strategy towards strategic infrastructure.

In parallel to the ENP, the policy focus of the Eastern Partnership was also redirected from regulatory convergence towards diversification and infrastructure development, especially after the 2014 Ukraine crisis (Prontera, 2019a, p. 152). In the Joint Declaration following the Eastern Partnership summit in Riga in 2015, "strengthening energy security" and "enhancing the diversification of supply" were among the main priorities (Eastern Partnership, 2015, p. 12). As regards infrastructure implementation, the Declaration stated: "Participants concerned reaffirm their commitment to facilitate the development, in a result-oriented way, of strategic infrastructure, notably in relation to the Southern Gas Corridor" (ibid.).

In comparison, the Joint Declaration adopted after the Eastern Partnership summit in Warsaw in 2011 still stated: "The participants of the Warsaw summit agree to further strengthen long term energy security, including through cooperation on stable and secure energy supply and transit, nuclear safety, competitive energy markets, *and through enhancement of*

physical infrastructure according to market principles" (Eastern Partnership, 2011, p. 5, italics added). Also the 2011 Joint Declaration: "With regard to the development of strategically important infrastructure to ensure the diversification of the routes of the supply of energy to the European market from the Caspian Sea, the EU and partners concerned take note of the concrete steps taken towards the realisation of the Southern Corridor" (ibid.). With the 2015 Joint Declaration, therefore, the Eastern Partnership clearly took a turn in the catalytic direction. Whereas the 2011 Joint Declaration still affirmed the importance of a market-driven approach to energy infrastructure, the 2015 Joint Declaration instead emphasised the role of state actors in facilitating the realisation of strategic energy infrastructure.

This shift was further highlighted by the EU4Energy Programme, launched within the framework of the Eastern Partnership in 2016. This initiative aimed to "improve the quality of energy data and statistics, shape regional policy-making discussions, strengthen legislative and regulatory frameworks and improve access to information in the partner countries" (EU Neighbours East, 2022). This Programme established *inter alia* the EU4Energy Governance Project. The EU4Energy Governance Project was a technical assistance project funded by the EU, targeting policy makers working in the energy sector of Eastern Partnership countries, to help them "strengthen their legislative and regulatory frameworks as well as identify investment opportunities in key energy infrastructure projects" (Energy Community, 2022d). Although under the auspices of the Eastern Partnership, this project was managed by the Energy Community Secretariat (another example of the Energy Community Secretariat's changing role), and one of the concrete deliverables of the project was the development of a methodology for identifying Projects of Eastern Partnership Interest, similar to the procedures under Regulation 347/2013 and Decision 2015/09/MC-EnC for identifying respectively PCIs and PECIs

and PMIs. Once established, this methodology was used to assess "energy infrastructure priority investment opportunities" (Energy Community, 2022e) in the Eastern Partnership countries on the basis of their contribution to e.g. security of gas supply, which in turn enabled "project promoters and [Eastern Partnership] governments to allocate resources to those cross-border projects that were assessed to be the most beneficial in socio-economic terms and to take informed decision [*sic*] in developing these projects further" (ibid.). In this way, just as the Energy Community, the Eastern Partnership also started functioning as an instrument for the facilitation of infrastructure implementation in the external dimension.

Bilateral arrangements in the Eastern neighbourhood

While the catalytic shift manifested itself most prominently in regional arrangements, there were similar developments on the bilateral level. In 2018, the Cooperation Council established under the EU-Azerbaijan PCA adopted a Recommendation on Partnership Priorities for EU-Azeri relations. These entailed *inter alia* "enhancing energy interconnections among partner countries" (EU-Azerbaijan Cooperation Council, 2018, p. 21). Azerbaijan could play "a key role in contributing to Europe's energy security", and the EU could play "an important role in contributing to the enhancement of efficiency, competitiveness, sustainability and security of the energy sector of Azerbaijan" (ibid.). In this light, both parties committed themselves to a "swift completion of the Southern Gas Corridor and the timely beginning of the gas deliveries to the European market" (ibid.). As such, the EU-Azerbaijan PCA was used to ensure political commitment and support to strategic energy infrastructure, in line with the riskified paradigm and the precautionary conceptualisation of security of supply.

Also worth noting are the EU's newly concluded AAs (including Deep and Comprehensive Free Trade Agreements) with Georgia (in force since 2016), Moldova (in force since 2016) and Ukraine (provisionally applied

since 2016), which replaced the PCAs with these countries, and the new Comprehensive and Enhanced Partnership Agreement (CEPA) with Armenia (provisionally applied since 2018). In their preambles, all of these agreements include a commitment to facilitating “appropriate” infrastructure (the AA with Georgia referred specifically to the “Southern Corridor”) (EU-Armenia CEPA, 2017; EU-Georgia AA, 2014; EU-Moldova AA, 2014; EU-Ukraine AA, 2014), which was absent from the PCAs previously in place.

Additionally, the energy chapters of the AAs specified energy infrastructure as one of the priority areas for cooperation (Art. 298 EU-Georgia AA, 2014; Art. 77 EU-Moldova AA, 2014; Art. 338 EU-Ukraine AA, 2014). The PCAs concluded in the 1990s made similar references, but these were much vaguer. The 1994 PCA with Moldova for instance stated in Art. 60(2):

“The [energy] cooperation shall include among others the following areas:
[...]
- modernisation, development and diversification of energy infrastructure,
[...].”

The 2014 AA with Moldova, on the other hand, affirmed in Art. 77:

“The [energy] cooperation shall cover, among others, the following areas and objectives:
[...]
(d) energy infrastructure, including projects of common interest, in order to diversify energy sources, suppliers and transportation routes in an efficient economic and environmentally sound manner, inter alia, through the facilitation of loan and grant funded investments;
[...].”

Clearly, the 2014 AA is a lot more explicit than the 1994 PCA, specifying for instance concrete methods for the facilitation of infrastructure implementation such as financial assistance, unlike the PCA.

The EU-Ukraine AA even contains a specific article on cooperation in the domain of gas infrastructure, stipulating that both parties "shall endeavour to facilitate the use of gas transmission infrastructure and gas storage facilities and shall consult or coordinate, as appropriate, with each other on infrastructural developments" (Art. 274 EU-Ukraine AA, 2014).

As they advocate catalytic precautions, these provisions illustrate the integration of the precautionary logic in the new bilateral agreements of the EU with Eastern neighbours, and the utilisation of these instruments to promote a more proactive approach to infrastructure in the energy sphere. This contrasts with the approach taken in the PCAs of the 1990s, where these bilateral instruments focused instead on regulatory approximation and supporting and reinforcing the Energy Charter Process.

With regard to the latter, it is worth noting that references to the European Energy Charter/ECT have disappeared from the energy chapters in the new agreements. All PCAs contained a clause stating:

"Cooperation shall take place within the principles of the market economy and the European Energy Charter ([…]), against a background of the progressive integration of the energy markets" (Art. 54 EU-Armenia PCA, 1996; Art. 55 EU-Azerbaijan PCA, 1996; Art. 56 EU-Georgia PCA, 1996; Art. 53 EU-Kazakhstan PCA, 1995; Art. 54 EU-Kyrgyzstan PCA, 1995; Art. 60 EU-Moldova PCA, 1994; Art. 65 EU-Russia PCA, 1994; Art. 61 EU-Ukraine PCA, 1994; Art. 53 EU-Uzbekistan PCA, 1996).[25]

[25] In some PCAs, such as for instance the EU-Armenia PCA and EU-Georgia PCA, these clauses also included references to the ECT and PEEREA:

In the CEPA with Armenia for instance, this is now replaced by:

"The Parties shall cooperate on energy matters on the basis of the principles of partnership, mutual interest, transparency and predictability. Cooperation shall aim at regulatory approximation in the areas of the energy sector areas referred to hereinafter, taking into account the need to ensure access to secure, environmentally friendly and affordable energy" (Art. 42(1) EU-Armenia CEPA, 2017).

Although regulatory approximation was still the stated objective, the "principles of the market economy and the European Energy Charter" have been swapped for the "principles of partnership, mutual interest, transparency and predictability". This highlighted a discernible reconceptualisation of security of supply in line with the precautionary logic of the riskified paradigm. Whereas the PCAs of the 1990s propagated market competition as the fundamental principle and the central policy solution, the EU-Armenia CEPA instead emphasised e.g. "predictability" as a guiding principle for cooperation, indicating a departure from the neoliberal notion of competitive conditions as the be-all and end-all for ensuring "secure, environmentally friendly and affordable energy" (ibid.).

A "pragmatic shift" in Southern neighbourhood initiatives

In the arrangements aimed towards the EU's Southern neighbours, the catalytic shift was less outspoken. Where the Eastern neighbourhood arrangements were employed as vehicles to support diversification and the implementation of strategic infrastructure projects such as the pipelines comprising the SGC (although to varying degrees), the Southern neighbourhood arrangements predominantly assumed more pragmatic

"Cooperation shall take place within the principles of the market economy and the European Energy Charter *and bearing in mind the Energy Charter Treaty and the Protocol on Energy Efficiency and Related Environmental Aspects*, against a background of the progressive integration of the energy markets in Europe" (Art. 54 EU-Armenia PCA, 1996; Art. 56 EU-Georgia PCA, 1996, italics added).

forms than before, with a stronger emphasis on security of supply (Herranz-Surrallés, 2018, p. 133; Prontera, 2019a, p. 153). Instead of the overwhelming focus on regulatory approximation, the EU's objective in the Southern Neighbourhood was now to collaborate "on a tailored basis, to promote the production, distribution, trade and efficient consumption of energy" (European Commission & HR/VP, 2015a, p. 12).

In 2015, three "Platforms" were established in the framework of the Union for the Mediterranean (see *supra*), respectively dealing with natural gas, electricity and renewables. These brought together government representatives and energy companies and endeavoured technical, bottom-up forms of cooperation, without necessarily having a hidden normative agenda on the EU's part (Prontera, 2019a, p. 153). For instance, rather than fixating on regulatory harmonisation/market creation, the Gas Platform prioritised security of supply, and focused on fostering collaboration in the areas of gas exploration & production and infrastructure development (Herranz-Surrallés, 2018, p. 133).

However, the shift in Southern neighbourhood initiatives was rather benign relative to their Eastern neighbourhood counterparts. An explanation might be found in the Commission's different perception of the two regions. Evidently, from the mid- to late-2000s onwards, the Eastern neighbourhood, more specifically the Caspian Basin, became perceived as "the strategic region" in the energy sphere, offering the best opportunities for diversifying the European gas supply. This might then also be the simple reason for the observed divergence between the evolution of rule export arrangements in each of these two regions.

Overall, a distinct turn can be detected in the EU's external energy initiatives. Where they were initially firmly aimed towards regulatory convergence of third countries to foster market integration in the wider

Eurasian region, after the 2014 Ukraine crisis a precautionary logic emerged. These initiatives started serving dual purposes: promoting rule export, but also EU diversification and security of supply, for instance by functioning as vehicles for accelerating the implementation of priority infrastructure projects.

3.2 Where the Commission's riskifying moves "failed": Joint purchases of natural gas

As discussed in Chapter 2, the Commission not only proposed regulatory and catalytic precautions to mitigate the alleged risk posed by the EU's import dependence to security of supply, it also explored more radical deviations from the market-regulatory paradigm in its policy documents, i.e. joint purchases of natural gas. Such a mechanism was first discussed by the Commission in the Second Strategic Energy Review in 2008, for the purchase of Caspian gas in the context of the SGC initiative (the so-called "Caspian Development Corporation") (European Commission, 2008a, p. 17). This idea resurfaced after the 2014 Ukraine crisis, as then Polish Prime Minister Donald Tusk proposed an EU block purchasing mechanism for Russian natural gas, later repeated by the Commission in the 2014 European Energy Security Strategy and 2015 Energy Union Strategy (European Commission, 2014a, p. 19; European Commission, 2015a, p. 6; Offenberg, 2016, p. 15).

In contrast to the other precautionary measures proposed by the Commission, this type of measure was no longer compatible with the IEM master frame – at least not in the way proposed in the European Energy Security Strategy and Energy Union Strategy (Prontera, 2019a, p. 96). Its objective was not to supplement or correct, but rather to replace market functioning, by pooling European consumer power in order to leverage the EU's bargaining position vis-à-vis external suppliers (Andersen et al., 2017b, p. 20). Joint gas purchases would not enhance competition, but

deliberately distort it by creating a buyers' cartel, a monopsony (a market situation with one buyer). These proposals were inspired by a geopolitical logic, based on the strategic use of the EU's economic power (cf. geo-economic measures to halt Nord Stream 2, which strategically employed the EU's *market-oriented*, regulatory tools).

However, a supranational joint purchasing mechanism would never materialise. Not only key (former) member states such as Germany and the UK rejected the idea due to its obvious clash with the IEM master frame (Andersen et al., 2017c), the Commission in fact did too (Offenberg, 2016, p. 15). As mentioned also in Chapter 2, the Commission begrudgingly included it in the European Energy Security Strategy and Energy Union Strategy on the request of (mainly Eastern European) member states (see Prontera, 2019a, p. 96), but was far from an active proponent of these anti-market measures (Offenberg, 2016, p. 15). For instance, where Prime Minister Tusk had called for the establishment of a mandatory instrument for the joint procurement of Russian gas, the Commission's documents only spoke of assessing the "options for *voluntary* demand aggregation mechanisms" (European Commission, 2014a, p. 19, italics added), which "would need to be carefully designed and executed to ensure compatibility with EU legislation and trade law" (ibid.). Considering the Commission's own half-heartedness, it is therefore hardly surprising that the riskifying moves "failed" in this regard.

Interestingly, the Russian invasion of Ukraine in February 2022 once again pushed common gas purchases onto the European political agenda – more forceful than ever before. In its Communication "REPowerEU: Joint European Action for More Affordable, Secure and Sustainable Energy" released right after the start of the war, the Commission proposed a "joint European platform for contractualisation of gas supply on bilateral negotiations with major gas producers" to ensure "security of supplies on

favourable conditions for all buyers across the EU" (European Commission, 2022a, p. 5). Remarkably, its discourse is now visibly more supportive than in the past, arguing for instance that "using the collective leverage of the Union to help secure gas imports in the best possible conditions is essential to avoid Member States bidding against each other for the same supplies" and stating that "the EU should act jointly to harness its market power through negotiated partnerships with suppliers" (European Commission, 2022b, p. 4). In contrast to past documents, the language of the Commission is less sceptical and hesitant, and references to the need for ensuring the compatibility of joint purchases with WTO law and EU competition rules or to their voluntary nature have disappeared.

Although it is too soon to make definitive statements, this is indicative of the erosion of the IEM meta frame in the Commission's policy paradigm following the war in Ukraine, which had appeared extremely robust in the face of deteriorating EU-Russia relations over the past 15 years. This may turn out to be a fundamental shift with drastic implications for the overall direction and orientation of European energy governance in the coming decades.

Nevertheless, it should be noted that in the short term, prospects for the establishment of a compulsory mechanism for collective gas purchases are still poor. Northern European member states, most importantly Germany, remain opposed (Euractiv, 2022b). A so-called EU Energy Purchase Platform was established in April 2022, but this is a "*voluntary* coordination mechanism, bringing together the Commission and the Member States, supporting the purchase of gas and hydrogen for the Union, by making optimal use of the collective political and market weight of the EU" (European Commission, 2022c, italics added). For this instrument to be effective, a high degree of member state buy-in will be required. As this is

currently not the case, prospects are therefore rather poor at this point in time.

3.3 Comparison of the "internal" and "external" success of the Commission's discursive strategy

Internally as well as externally, the Commission's riskifying moves together with the facilitating conditions of the late 2000s spurred supranational action in the area of security of supply. These internal and external measures however diverged notably in terms of their *degree* of alignment with the proposals made by the Commission.

In the internal dimension, the EU developed a progressively more rigid framework for security of gas supply and a comprehensive infrastructure policy based on selective financial, regulatory and political support to projects of common interest.

In the external dimension, conversely, the Commission's much-touted "single voice" vis-à-vis third countries remained a distant dream. The supranational strategy for diversification lacked both coherence and effectiveness. On the one hand, the EU's energy diplomacy towards the SGC was actively undercut by member states' own diplomacies and support to competing pipeline projects. The catalytic shift, on the other hand, neither unfolded in uniform fashion, nor brought particularly compelling results. Both in form and effect, the post-2009 developments in the internal dimension aligned much more closely with the precautionary measures promoted by the Commission since the early 2000s.

What are the reasons for this observed discrepancy? After all, the facilitating conditions present internally also appear to have applied externally: the second gas crisis underlining the dysfunctional nature of the division of competences between the EU and member states, the Lisbon

Treaty providing the EU with a formal competence in the energy domain, and the enlargement waves of 2004 and 2007 transforming the member states into a more receptive audience of the Commission's riskifying moves.

This is not entirely accurate. The Lisbon Treaty, although it provided European energy policy with a general basis in EU primary law, did little for the establishment of common measures in the area of external diversification. Instead, it codified national sovereignty in this domain. This is evidenced by Art. 194(2) TFEU, which stipulates that supranational measures "shall not affect a Member State's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply". In contrast to the internal dimension, external decision-making thus continued to rely on intergovernmental procedures also after the Lisbon Treaty's entry into force (Maltby, 2013, p. 440).

Apart from this disparity in formal legal terms, external action also lacked the powerful discursive frame of the IEM as a source of legitimation. Indeed, the previous chapter discussed how the Commission explicitly used the internal market to justify the need for a regulatory framework for security of gas supply at EU level, which then came in the form of Directive 2004/67/EC. This directive served as a stepping stone for successive amendments, which gradually expanded EU involvement in the area at hand. It was obviously much harder for the Commission to rely on this potent frame and the related dynamics of path dependence to legitimise supranational measures in the external dimension.

Finally, the Commission also faced a much higher degree of contestation externally. A common external approach not only relied on the willingness of member states to delegate competences in this domain to EU level, but

also on the willingness of third countries to acknowledge the EU as a partner for cooperation and negotiation.

Third countries did not always perceive this to be in their own interest. Russia, for instance, much rather preferred to deal with member states bilaterally. This provided it with more leverage in negotiations, more room for geopolitical manoeuvring, and with the ability to apply its divide and rule strategy and play out member states against each other (see *infra*). In the unlikely scenario that member states would have allowed the Commission to conduct negotiations on their behalf with Russia, the supranational approach could still have been simply rejected by Russia itself. Other energy producers in the EU's neighbourhood, for instance Algeria, have exhibited a similar disinterest in engaging with the EU at EU level (Prontera, 2019a, p. 189).

Due to the perceived centrality of energy diplomacy and external diversification in national sovereignty, the Commission was also confronted by stronger contestation from within. In particular bigger member states with strong domestic energy companies ("national champions") such as France, Germany, Italy and the Netherlands resisted a transfer of competence in the external domain (de Jong & Schunz, 2012, p. 179). These viewed their market size and national energy champions as sufficient safeguards against import dependence for their security of supply, thus did not consider a loss of sovereignty to the European level warranted (ibid.).

National energy champions openly objected the Commission's increasing involvement in external energy affairs as well, perceiving it as a possible challenge to their own dominant role and influence in the European energy sector (Herranz-Surrallés, 2016, p. 14). Purportedly in defence of market principles – a rather ambivalent position considering their known close ties

to their respective governments – these companies opposed supranational financial support to international energy projects (ibid.). They also criticised the Commission for its support to the block purchasing mechanism for Caspian gas (see *supra*) and the EU more generally for disturbing long-standing businesses practices in the energy sector, such as underpinning infrastructure investments by long-term contracts (ibid.).

On top of the lack of a formal legal competence and the absence of the IEM within which to frame policy proposals, the Commission's ventures into energy diplomacy were thus also heavily contested from various sides. Combining all these elements, the observed discrepancy between the internal and external dimension is hardly surprising.

Conclusion

This chapter studied the contemporary evolution of the EU's external energy policy. In parallel to the EU's internal energy policy, it identified a pre-riskified and a riskified era.

From the early 1990s until 2009, the mode of external governance was firmly centred on "externalising" the IEM. A complex patchwork of bilateral and regional arrangements developed, pursuing the legislative convergence of third countries in the EU's neighbourhood with internal rules, standards and norms with a view to establish an integrated energy market in the wider Eurasian region. Whereas these effectively integrated Norway and the countries of the Western Balkans into the IEM via respectively the EEA and the Energy Community, these were much less successful in respect to the major energy producing countries in the EU's Southern and Eastern neighbourhood, not in the least Russia.

After 2009, the EU started to diverge from this market-regulatory mode of external governance. While rule export remained one of the main

endeavours, this was now supplemented by a more proactive search for security of supply. First of all, a supranational pipeline diplomacy developed as the natural extension to the policy of selective facilitation of infrastructure in the internal dimension. The EU directed significant diplomatic and financial resources as well as granted regulatory support towards the pipelines comprising the SGC, which had to diversify the European energy supply away from Russian gas. Secondly, the EU started employing its previously established initiatives for rule export as vehicles to funnel diversification efforts and to accelerate the implementation of strategic infrastructure projects. Prominent examples in this regard were the Energy Community, the ENP and the Eastern Partnership (see also Prontera, 2019a, pp. 149-154).

Together, these policies formed the EU's external "strategy" for diversification, a less cohesive, comprehensive and institutionalised continuation of the infrastructure policy developed in the internal dimension. EU energy diplomacy towards the SGC occurred on an ad hoc basis, did not always enjoy the necessary support from member states and was ultimately unable to steer the initiative in the desired direction, as bilateral pipeline deals *de facto* cancelled the flagship Nabucco project. Similarly, the recalibration of the rule export initiatives happened in rather fragmented fashion, and was not so much part of a deliberate strategy as it was an impromptu expression of a redefinition of policy issues and priorities in the external sphere.

Notwithstanding their relatively haphazard appearance, these catalytic precautions still demonstrated a reconceptualisation of security of supply away from the market-regulatory paradigm with clear support from the member states, as revealed by for instance the TCP negotiating mandate and the 2015 Review of the European Neighbourhood Policy. While the post-2009 developments hardly amounted to the establishment of "one

voice" in external energy affairs, they nevertheless indicated a recognition among member states that the supranational level was at least a part of the solution, which was previously not the case. In combination with the internal developments, this further underlined the emergence of an intersubjective understanding of import dependence as a risk to security of supply requiring common, EU-level precautions.

Where the riskifying moves of the Commission were still somewhat successful with regard to the legitimation of catalytic measures, they failed completely in respect to geopolitical measures, *in casu* demand-aggregation mechanisms for natural gas. However, this was not particularly surprising, as the Commission, along with big member states like Germany and the UK, did not in fact genuinely subscribe to these measures itself. They clashed too radically with the IEM master frame, the market-oriented blueprint of European energy policy, and were discussed in the 2014 European Energy Security Strategy and the 2015 Energy Union Strategy predominantly because the Commission had been urged to do so by a group of member states. In the context of the 2022 war in Ukraine and the ensuing energy crisis in Europe, joint purchases of gas have resurfaced on the agenda. Importantly, the Commission has now transformed into an increasingly vigorous advocate of these measures, potentially signalling a fundamental shift in discourse with wide-ranging implications for the future direction of European energy policy in the next years and even decades.

The next chapter will consider the impact of the emerging riskified mode of governance on the dynamic of the EU's gas relations with Russia.

CHAPTER 5: The riskification of EU energy policy and EU-Russia gas relations

Introduction

As stated in the introduction, in analogy with the securitisation-ideal type of Buzan et al. (1998), successful riskification can be conceptualised as a process consisting of the following three steps:

(1) riskifying moves, construing an issue as a risk to a referent object to legitimise a plan of action to increase the resilience of that referent object,

(2) the acceptance of the riskifying moves by the audience, leading to the adoption of the proposed plan of action,

(3) the effects of (2) on the relations between actors within the applicable regional security complex.

Chapter 2 dealt with the first step of the riskification process at hand, the riskifying moves of the Commission, which framed import dependence as a risk to security of supply. Chapters 3 and 4 concerned the second step, the acceptance of those moves by the member states, and the adoption of the supranational "plan of action" proposed by the Commission. The objective of this chapter is now to analyse the third step, therefore to consider the effect of that supranational plan of action on the EU's relations with other units within the European security complex.

To do this, this chapter will focus on a specific case of interunit relations: EU-Russia gas relations. Unequivocally, Russia is what Buzan et al. (1998, p. 36) have called a "functional actor" in the European energy sector, which "significantly influences decisions in the field of security". It played a central

part in the riskification process described in the previous chapters. The gas crises in 2006 and 2009 and the Ukraine crisis in 2014 were crucial facilitating conditions for the Commission's riskifying moves. The precautionary measures established in both the internal and external dimension were also firmly "Russo-centric"; predominantly if not wholly directed towards alleviating the risk posed by the European dependence on Russian imports to security of supply (e.g. the EU's external strategy for diversification, the Gazprom clause, the Amended Gas Directive, …).

The same applies to natural gas. The riskification of supranational energy governance centrally revolved around the alleged risk posed by (Russian) gas imports and naturally, was most visible in the European gas sector. The regulatory, catalytic and geo-economic precautions principally focused on safeguarding security of gas supply (cf. limited recalibration of EU governance in the oil sector post-2009).

As such, EU-Russia gas relations provide an "influential case" to test the validity of the central hypothesis of this dissertation, i.e. that the contemporary evolution of EU energy policy can be understood as a successful process of riskification. The case is not representative as regards the larger sample of EU energy relations with third countries in its neighbourhood, but "has a profound effect on the probability of the thesis being true" (Gerring & Cojocaru, 2016, p. 403). If the riskified mode of governance has no noticeable impact on the dynamic of EU-Russia gas relations, the thesis can be considered falsified. If there is, on the other hand, a significantly altered dynamic as a consequence of the post-2009 recalibration of EU energy policy, further inquiry is warranted.

The chapter will first consider the "pre-history" of EU-Russia gas relations, the gas relations of the EEC/the Community with the Soviet Union, which is essential to comprehend the post-Cold War developments. The next two

sections will analyse the dynamic from 1991 to 1999 and from 2000 to 2009, respectively. The fourth section will examine the developments after 2009. Finally, the fifth section will provide a tentative outlook on EU-Russia gas relations in light of Russia's invasion of Ukraine in February 2022.

1 East-West gas trade as a source of "hidden integration"[26] in Cold War Europe

At a time where the EU is desperately attempting to push Russian fossil fuels out of its energy mix, the origins of its energy dependence on Russia are all the more peculiar. Paradoxically, when in the decades after the Second World War the member states of the Community began importing natural gas and oil from the Soviet Union, this was instigated by a desire to increase the security and diversification of their energy supply. Even more remarkable was the fact that in a period characterised by such stark division as the Cold War, energy – and especially gas – would transform into a source of rapprochement and one of the most prominent venues for mutually beneficial cooperation on the European continent, unlike the source of contention, conflict and even outright war it has become today.

1.1 "Red Oil" as Western Europe's solution to dependence on the Middle East: Initial energy trade between the EEC and the Soviet Union

At first, the energy trade between the countries of the EEC and the Soviet Union only concerned oil. During the 1950s, a dramatic expansion of the Soviet oil industry had taken place, which had quickly transformed the Soviet Union into the second biggest oil producer in the world, right behind the US (Perović, 2017, p. 11). This was soon accompanied by a similarly explosive rise in Soviet oil export, at the time dubbed the "Soviet oil offensive", much of which was directed towards Western Europe (ibid.).

[26] See Högselius, 2013.

While the British government placed an embargo on Soviet oil imports in 1959 (Jensen-Eriksen, 2017, p. 106), other Western European countries quickly began to import increasingly large quantities of “red oil”, as the Soviets almost always managed to offer lower prices than the Western oil majors (e.g. Shell, BP, Exxon) (Yergin, 1991, p. 515).[27] In 1960, Italian state-owned ENI for instance signed a barter contract with the Soviets for the supply of 12 million tonnes of oil over a four year period, in exchange for pipe and other materials to complete the Druzhba (“Friendship”) pipeline to the borders of Western Europe, so that the crude in this deal was effectively valued at the cut-throat price of $0.06/barrel, in comparison to the official price of $1.59/barrel (Bini, 2017, p. 209). Because of these extremely enticing rates, other Western European countries such as Belgium, France and West Germany quickly followed in Italy’s footsteps and began importing substantial amounts of Soviet oil as well.

The East-West oil trade offered advantages to both parties concerned. During the 1950s, in the face of faltering domestic coal industries, Middle Eastern oil had experienced a meteoric rise in the Western European energy mix. The 1956 Suez crisis, which caused a large disruption of the oil supply from the Middle East with grave consequences for the European industry, had shown that this was not without its problems (see Yergin, 1991, pp. 479-498). Soviet oil offered the countries of the EEC a cheap alternative, and a way to reduce their undiversified dependence on a single region. For the Soviet Union, on the other hand, it established a lucrative source of export revenue and provided some much-needed hard currency for its imports from the West (Siddi, 2018a, p. 251).

Nevertheless, in the context of the Cold War, the emerging oil trade across the Iron Curtain was not uncontroversial. Many in the West suspected

[27] Indeed, as Yergin (1991) states: “It [the Soviet Union] wanted whatever buyers it could obtain, and it cut prices to get them as part of what became known in Washington as the ‘Soviet Economic Offensive’” (Yergin, 1991, p. 515).

political motives for the Soviet oil offensive, such as making Western Europe strategically dependent on the Soviet Union and undermining unity within the Western Bloc (Yergin, 1991, p. 519). The Commission also warned of the growing share of Soviet oil in the EEC's energy mix, even though this still concerned "small quantities" (European Economic Community Commission, 1961, p. 121). It emphasised the need for a common policy towards oil supply to prevent distortions on the internal market, especially with regard to "petroleum imports of Russian origin", where this was considered "particularly acute" (ibid.).

The North Atlantic Treaty Organisation (NATO) advised its members to limit their Soviet oil imports and later even banned the export of pipe and pipeline technology to the Soviet Union (Perović, 2017, p. 12). However, this did not avert a continuously growing share of red oil in the EEC's energy mix. As the quantities imported remained relatively low in comparison to the imports from the Middle East, these were not perceived as a substantial threat or risk to security of supply, or thought of in terms of strategic dependence on the Soviets (ibid. p. 11). This allowed for the gradual expansion of the transcontinental oil trade throughout the 1960s.

1.2 From Red Oil to "Red Gas": First gas contracts between Western Europe and the Soviet Union

Natural gas initially remained out of the scope of the East-West energy trade on the European continent. The Soviet Union considered the construction of a dedicated export infrastructure to transport gas to Western Europe too risky, as it would be hard to repurpose such infrastructure if the West for whatever reason decided to discontinue its imports (Högselius, 2013, p. 223). However, as enormous reserves were continually discovered in Western Siberia, the Soviet Union eventually decided in favour of gas export and in the mid-1960s, negotiations were initiated with parties on the other side of the Iron Curtain to explore the

possibilities for “red gas” (ibid. p. 218). The Soviet Union for instance engaged in talks with ENI to discuss the prospects of Siberian gas exports to Italy in exchange for 1.3 million tonnes of steel for the construction of an East-West gas pipeline (ibid. p. 42). In 1968, these negotiations would result in a first tangible development, when Austria, the first Western country to do so, signed a gas contract with the Soviets, with deliveries starting that same year (ibid. p. 218).

In August 1968, when Austria was preparing to receive its first imports of Soviet gas, the Soviet Union invaded Czechoslovakia in response to the waves of protest and the political liberalisation in the country during the Prague Spring. Whereas one would naturally assume this jeopardised the future of red gas in the capitalist world, it paradoxically functioned as a significant catalyst of the further expansion of the Soviet gas export to Western Europe. Most Western European governments thought that a policy aimed towards rapprochement rather than confrontation would ultimately be the best weapon against Soviet totalitarianism, and amended their foreign policy towards the Soviet Union accordingly (ibid. p. 218).

West Germany’s *Ostpolitik* (“Eastern Policy”) under Chancellor Willy Brandt, aimed towards normalisation of the country’s relations with the Eastern Bloc, is the most prominent example. One of the formative concepts informing the *Ostpolitik* was *Wandel durch Handel*, or “transformation through trade”. Improving trade relationships with the Soviet Union, it was thought, would not only provide economic benefits but would also enhance West German-Soviet political relations, which had been very tense up until then (Perović, 2017 p. 15).

Natural gas was viewed as an excellent opportunity to bring this concept into practice. West German-Soviet gas negotiations were initiated in 1969, and a deal was signed in 1970. The Soviet Union committed itself to

delivering an annual amount of 3 bcm of gas to West German company Ruhrgas for a period of at least 20 years, starting from October 1973, in exchange for the export of 1.2 million tonnes of pipe in the other direction, plus a credit amounting to 85 percent of the value of the exported pipe. The very favourable terms set with regard to the latter exemplified the political nature of this “gas for pipes” deal, and its perception by West Germany as not only a trade deal but also a foreign policy tool and a crucial component of the *Ostpolitik* (Högselius, 2013, p. 122). That *Ostpolitik* would soon bear fruit. In 1971, the Four Power Agreement on Berlin was signed and in 1972, West and East Germany recognised each other as sovereign states. As such, the Ostpolitik successfully normalised relations between West Germany and the Eastern Bloc, and ushered in a period of *détente* (Krempin, 2017, p. 260).

Other countries similarly identified natural gas as a vehicle for rapprochement, and commenced negotiations with the Soviet Union. Italy in fact already signed a contract for the procurement of Soviet gas in 1969, to become the first recipient of red gas within the EEC with deliveries planned to start in January 1973. As with the gas contract between the Soviet Union and West Germany, this was in exchange for pipe and other types of industrial equipment and materials (Bini, 2017, pp. 221-222; Högselius, 2013, p. 128). France, on its part, reached an agreement with the Soviets in 1971, with deliveries to start in 1977 with shipment via Czechoslovakia and Germany (Beltran & Williot, 2017, p. 238; Högselius, 2013, p. 128).

These contracts consolidated the position of the Soviet Union as a gas supplier to Western Europe. In contrast to the delivery of Soviet gas to Austria, these new deals required and were accompanied by much bigger and expensive infrastructural undertakings, such as the Mittel-Europäische Gasleitung (MEGAL) and the Trans-Austria Gasleitung (TAG) pipelines

(Beltran & Williot, 2017, p. 239; Högselius, 2013, p. 219).[28] Although the Soviet Union struggled greatly in finishing its designated part of the network in time, the pipelines became operational and Germany and Italy received their first deliveries of red gas in 1974 (Högselius, 2013, p. 219).

To understand why energy was selected as the preferred field for cooperation with the Soviet Union after 1968 and why the East-West gas trade developed seemingly devoid of security considerations in a period characterised by such harsh political and economic division on the European continent as the Cold War, it is important to consider the broader developments in the global political economy of energy at the time.

During the 1960s, the neo-colonial order in global energy governance, characterised by an oligopolistic market dominated by a select number of vertically integrated oil companies from the West, came under increasing pressure (Dannreuther, 2015, p. 471). With the establishment of OPEC in 1960, the balance of power on the global oil market gradually shifted in favour of the oil-exporting countries of the Middle East at the expense of the previous preponderance of the oil-consuming countries and the oil majors of the West. The emergence of OPEC meant that the Middle Eastern oil supply that satisfied an ever-increasing share of Western European energy needs was no longer as secure or stable as it once was.

The Arab-Israeli Six-Day War in 1967 served as a first illustrative instance, when Egypt once again closed down the Suez Canal and the major Arab oil producers imposed an embargo on Western countries that held either pro-Israel or anti-Arab positions. Due to *inter alia* ample oil stocks in the West the first employment of the so-called “oil weapon” did not lead to the disruptive effects the Arab world had hoped for (Daoudi & Dajani, 1984),

[28] For the supplies to Austria, a small extension was constructed to the existing pipeline infrastructure, which linked up the Soviet-Czechoslovakian and Austrian transmission systems (Högselius, 2013, p. 219).

but it was nevertheless a writing on the wall of the ongoing shift in the global energy order, as well as a foreboding of what was yet to come.

The Western European policy of rapprochement through energy cooperation should surely be interpreted in light of the events of 1967. The desecuritisation of the East-West gas trade after the 1968 Soviet invasion of Czechoslovakia was as much driven by European pragmatism, as it was by the securitisation of the dependence on Middle Eastern oil in the context of a growingly assertive OPEC, through which gas imports from the Soviet Union became regarded as part of the solution rather than as part of the problem (Högselius, 2013, p. 219). Naturally, the oil shocks of the 1970s would further invigorate these conjoined processes of securitisation and desecuritisation of respectively Middle Eastern oil and Soviet gas.

1.3 After the 1973 oil crisis: “Pragmatism” and further expansion of trans-European energy trade

In October 1973, a coalition of Arab states led by Syria and Egypt launched military operations to recapture the territories occupied by Israel since 1967. In an attempt to undermine international support for Israel, the oil exporters of the Middle East once again employed the oil weapon. However, in contrast to the 1967 embargo, the consequences were now much more severe. The oil-consuming countries attempted to outbid each other in their desperate search for sufficient oil supplies, which caused an outright explosion of the global oil price and significantly exacerbated the negative impact of the embargo. The ensuing inflation in combination with slowing growth (stagflation) led the West into a deep economic recession.

Unsurprisingly, the 1973 oil shock markedly fuelled the securitisation of Middle Eastern oil and instigated a frantic quest for diversification in the EEC. The Soviet Union had now clearly become “the lesser evil in the eyes of the Europeans in terms of the security of their energy supply” (Perović,

2017 pp. 17-18). Especially Soviet gas was regarded as a promising opportunity to reduce European energy dependence on the Middle East. It not only offered geographical diversification but also “greener pastures”, as it would help to move the Community’s energy system away from more polluting oil and coal consumption, in line with environmental concerns which appeared on the Western European policy agenda for the first time in the 1970s (Högselius, 2013, p. 225). The Soviets in turn perceived the scarcity on the oil markets caused by the Arab embargo as an opportunity for deepening economic rapprochement with the West, and were also eager to expand the trans-European energy trade (Perović, 2017, p. 15).

The Western European countries already involved with the Soviet Union before 1973 (i.e. Italy, West Germany, Austria, France) were able to conclude new gas contracts without much difficulty. The degree of mutual trust established through previous negotiations proved important for further cooperation. With much of the necessary East-West gas infrastructure already in place, many parts of Western Europe were now served by red gas (Högselius, 2013, p. 219). Central and Eastern European countries, then Soviet satellites but future EU member states, had also become major importers of Soviet gas. By 1975, Romania was the only satellite state that did not yet import gas from the Soviet Union (ibid. p. 171). New potential Western importers, among which EEC member states like the Netherlands and Belgium, were however unsuccessful in concluding gas deals with the Soviet Union at this time (ibid. p. 219).

In the 1980s, the Yamal pipeline would further consolidate the Western European gas dependence on the East. This project was first envisaged by the Soviets in the late 1970s as a dedicated export pipeline from the Yamburg gas field in Western Siberia to Western Europe. Such a project would require substantial amounts of gas to be transported in order to be profitable, so interested parties were encouraged to think big in terms of

volumes for the supply contracts (ibid. p. 180). As was preferred by the Soviets, West German Ruhrgas took up the initiative in bringing Western European stakeholders together and forming a consortium of importers. Through the talks initiated in this regard, it became clear quite quickly that there was substantial interest for a Yamal gas consortium across the Community (ibid.). The 1979 Iranian Revolution, which collapsed plans to bring Iranian gas to Western Europe via the Soviet Union, sparked the enthusiasm for the Yamal pipeline project on both sides of the Iron Curtain even further (ibid. p. 183).

Not even the Soviet Invasion of Afghanistan later that same year dampened the prospects for Yamal. In parallel to 1968, Western European parties refused to let political considerations come in between the East-West gas trade, and bilateral negotiations with the Soviets commenced in the first half of 1980 (ibid. p. 184). This prevalence of economic interests should again be read against the broader context in global energy governance. Namely, the Soviet invasion transpired simultaneously with the second oil crisis, which resulted from the Iranian Revolution and the ousting of the Shah regime in 1978/79 and instigated a new worldwide economic recession. As such, Soviet gas continued to be conceived as a way to mitigate the threat to European security of supply rather than as the threat itself. This was hardly unfounded either; the Soviet Union had appeared a remarkably dependable gas supplier and had never exhibited a willingness to employ its exports as a geopolitical tool. In fact, the Soviets were so preoccupied with demonstrating their reliability as a supplier that they even prioritised their Western European customers over domestic customers when facing shortfalls in production, quite literally leaving the latter in the cold in times of need (ibid. p. 6).

However, in the context of reignited Cold War tensions in the early 1980s, newly elected President Reagan was not as inclined as his Western

European counterparts to adopt such a “no-nonsense” position with regard to the Yamal pipeline. He presented himself as a fierce opponent of the project and attempted to securitise Yamal. Reagan identified the pipeline as a threat to Western Europe’s security, and he and his administration persistently tried to persuade Western European allies to drop the project (Demidova, 2013; Högselius, 2013, p. 185). This was the first time the Americans objected to the ever-growing flow of red gas beyond the Iron Curtain (but certainly not the last), but to no avail. Reagan’s securitising move was unsuccessful, and American pleas to withdraw from Yamal negotiations remained unconvincing to Western European ears.

Western European governments called attention to the limited capacity of the Yamal pipeline (less than 4 percent of overall Community gas consumption) and contended that the project would contribute to, rather than undermine the security and diversification of the European energy supply (Demidova, 2013, pp. 79-80; Högselius, 2013, pp. 192-193). Interestingly, the Commission also rejected the American securitising move; Etienne Davignon, then Commissioner for Energy, stipulated that American concerns were unsubstantiated as the Commission was in the process of developing a system that would allow the Community to withstand complete disruptions of Soviet gas (Högselius, 2013, p. 193). A thorough investigation into the Community’s security of supply ensued, followed by a report that concluded that shortfalls in Soviet supply would cause hardly any problems, which the Community would be able to successfully manage “even in a severe winter” and “in the most extreme circumstances” (European Commission, 1982, as cited in Högselius, 2013, p. 193).

Despite American objections, bilateral negotiations regarding Yamal between the member states and the Soviet Union thus proceeded. Similar to previous deals, countertrade schemes were envisaged where the Soviet

Union would supply Western Europe with natural gas in exchange for Western European pipe and other equipment to build the Yamal pipeline. Talks advanced relatively quickly due to previous experience in negotiating these contracts, and West Germany was the first to sign a supply contract with the Soviet Union in 1981 (ibid. p. 186). This contract provided for annual deliveries of red gas to West Germany amounting to 10.5 bcm up until 2008 and starting in 1984, increasing the share of Soviet gas in West German domestic gas consumption to 30 percent (Krempin, 2017, p. 271). In return, a consortium of Western European manufacturers led by the industrial conglomerate Mannesmann would supply the Soviet Union with the steel pipe and gas compressors required for the construction of the 5000-km long Yamal pipeline (Gross, 2016, p. 5).

Unhappy with this progress, the Reagan Administration then decided to take it one step further. An embargo was placed on the sale of all American energy-related equipment (e.g. gas compressors) to the Soviet Union, which greatly depended on the import of Western technology to implement Yamal (Demidova, 2013, p. 67; Högselius, 2013, p. 188). Furthermore, the Americans threatened to blacklist Western European companies if they refused to cooperate with the embargo (Högselius, 2013, p. 189). Both Western European governments and the Soviet Union strongly condemned US actions. Italy and France told their compressor manufacturers to disregard the American sanctions and respect their contracts with the Soviets. The Soviet Union, on the other hand, warned of countermeasures against European companies if they were in breach of their contractual obligations (ibid.). In November 1982, after continuing protest from Western European companies, governments and American companies alike, the embargo was lifted (Krempin, 2017, p. 271).

Meanwhile, a deal with France had already been signed in January of that year and a deal with Italy was later signed in 1983, for annual deliveries

amounting to respectively 6.4-8 bcm and 4.8-6 bcm (in contrast to earlier contracts with the Soviets, these contracts included flexible amounts of gas to be delivered) (Högselius, 2013, p. 188). As in the case of the West German deal, French and Italian companies in exchange supplied the Soviet Union with the pipe and compressor stations needed for the construction of Yamal. These contracts effectively doubled Soviet gas exports towards Western Europe (ibid.).[29] The Yamal pipeline was eventually inaugurated in late 1983 (ibid. p. 197). As such, the Reagan Administration's attempts to meddle and to disrupt the further development of the East-West gas "market" on the European continent had demonstratively failed.

Remarkably from a contemporary point of view, the natural gas trade between the Soviet Union and the Community was therefore not a source of contention or divisiveness during the Cold War. It was instead, as the West German Foreign Office stated, a "stabilising element" (West German Foreign Office, as cited in Krempin, 2017, p. 271) and one of the very few domains where mutually beneficial cooperation beyond the Iron Curtain was established, providing for an intriguing case of "hidden integration" on the European continent in an era characterised by such stark division as the Cold War (Högselius, 2013, p. 3).

What enabled this desecuritised development of the East-West gas trade, it was argued, were broader patterns in global energy governance during the 1960s and 1970s, more specifically, the rise of OPEC and the accompanying shift of power from the oil-consuming countries of the Organisation for Economic Co-operation and Development (OECD) to the oil-producing countries of the Middle East. These effectively left security considerations out of the equation of the trans-European natural gas trade.

[29] Belgium and the Netherlands, the remaining EEC member states involved in the Yamal negotiations, again failed to come to an agreement with the Soviets (Högselius, 2013, p. 188).

The consecutive Arab oil embargoes (and their drastic economic repercussions) caused a securitisation of the Middle Eastern oil supply in Western Europe, so that Soviet gas effectively became perceived as a way to bolster European diversification and security of supply, as a solution rather than as part of the problem, as exemplified by the debates surrounding Yamal (Högselius, 2013, p. 219). On a final note, it is clear that the EEC and the Commission were not driving actors in the establishment of these increasingly intimate energy relations between the member states and the Soviet Union, and that this process was largely driven by national governments and their respective energy champions. As the next sections will illustrate, this will gradually change in the post-Cold War era, and the Community and later the EU will become central actors in defining the dynamic of gas relations on the European continent.

2 The 1990s: The rule-giver and the rule-taker

In 1991, the dissolution of the Soviet Union resulted in an amalgam of 15 successor states. Although this led to considerable chaos in respect to the East-West gas trade, creating new transit countries (Ukraine, Belarus, Moldova) while old partners simply disappeared (the Soviet Union, Czechoslovakia), total disruption was averted through the long-term supply contracts established during the Cold War, which foresaw in deliveries well beyond 1991 (cf. West German Yamal contract, running until 2008) (Högselius, 2013, p. 207). Mingazprom, the Soviet Ministry of the Gas Industry responsible for these contracts, was disbanded and split into various national entities. The Russian one, by far the largest of them all, was Gazprom (ibid. pp. 203-204). In contrast to Mingazprom, a state agency, Gazprom was organised as a state-owned company. It was granted an export monopoly and was characterised by a vertically integrated structure, with activities along the entire gas value chain – production, transmission, distribution (Boussena & Locatelli, 2013, p. 182). Gazprom took over the most important long-term supply contracts

concluded between the Soviet Union and Community member states and Eastern European countries, and instantly became a key player in the European gas trade (ibid.).

As stated before, in Western Europe, the end of the Cold War was accompanied by a profound sense of victory and tremendous optimism for international collaboration. This especially applied to the energy sphere, where the fall of the Iron Curtain was regarded as an unprecedented window of opportunity to surmount previous divisions on the European continent and to involve the resource-rich countries of the Former Soviet Union, most importantly Russia, in a rules-based framework for cooperation, in order to liberalise the oil and gas trade and build an integrated Eurasian energy market (Konoplyanik & Wälde, 2006, p. 524). This would guarantee a competitive as well as a secure European energy supply (see European Commission, 1991).

Although intentional cut-offs almost immediately developed into one of Gazprom's favourite instruments in solving contractual or political disputes with former Soviet republics and satellite states in Central and Eastern Europe, within the Community the prevailing opinion was therefore that the dependence on Russian gas did not have to be reduced, but merely had to be managed (Högselius, 2013, p. 210). Import dependence on Russia was not a problem *in se*, but simply needed to be organised within a stable, market-oriented form of governance. This would naturally and automatically resolve any vulnerability associated with such dependence, as economic incentives, not political motives, would drive the gas trade. The same free-market approach had proven overwhelmingly successful in breaking OPEC's dominance during the 1980s and in establishing an abundant, secure supply of cheap oil (see Dannreuther, 2015).

This neoliberal consensus greatly aligned with the fundamental principles of the Community laid down in the Treaty of Rome in 1957 and was music to the Commission's ears, which was particularly fit to translate the post-Cold War *zeitgeist* into concrete action and policies. Where member states' reluctance to cede competences in the energy domain had relegated the Commission to not much more than an observer of the national strategies for security of supply of the member states in the preceding decades, it would now gradually grow into relevance in the international energy arena and took a leading role in the Western European engagement with Russia in the immediate aftermath of the Cold War.

2.1 Energy Charter Process and EU-Russia Partnership and Cooperation Agreement

The Energy Charter Process constituted Western Europe's most elaborate attempt at involving its biggest energy partner in a long-term, rules-based framework for energy trade. It led back to a proposal by Dutch Prime Minister Ruud Lubbers for an Energy Charter "to capitalise on the complementary relationship between the European Economic Community, the USSR and the countries of Central and Eastern Europe" at the Dublin summit of the European Council in June 1990 (European Commission, 1991, p. 2), as the process of disintegration of the Soviet Union that would result in its inevitable collapse a year later was already in full swing.

As a testament to its newfound significance in the external energy dimension instigated by the ongoing dissolution of the Soviet Union, the Commission then took the lead and further developed Prime Minister Lubbers' proposal for an Energy Charter, and was later granted a mandate by the European Council to draft an outline for its contents (Batzella, 2018, pp. 122-123). This document served as the basis for the European Energy Charter, which, in turn, provided the political foundation for the Energy

Charter Process that culminated with the establishment of the ECT in 1994.

The ECT, signed by the Community, all Community member states, the Former Soviet republics, Eastern European countries as well as some countries outside the Eurasian region, was the first legally binding, multilateral treaty concerning the energy sector. From a Community perspective, the ECT was not solely aimed towards Russia but rather towards the newly independent states of the post-Soviet space more broadly, but one of its central objectives was certainly to involve primarily Russia in a stable framework for energy cooperation after the collapse of communism and the Eastern Bloc in 1991. While it contained some concessions to Russia such as the acknowledgement of "state sovereignty and sovereign rights over energy sources" (Art. 18 ECT), the ECT was overwhelmingly derived from the liberal blueprint of the Community itself (Kuzemko, 2014, p. 63), aiming towards market integration in the Eurasian energy sector on the basis of participating states' adherence to common rules on investment protection, the removal of barriers to trade in energy products and the principles of non-discrimination, competition and freedom of transit.

This was of course not surprising in light of the perceived victory of the Western ideals of political and economic liberalism in the early 1990s and "the understanding that Russia had 'lost' the battle of ideas" (ibid.), which enabled the Community to gain the upper hand in the treaty negotiations and to define the terms of the East-West energy trade on the European continent (ibid.). At least initially, Russia also *wilfully* accepted these terms. It saw its participation in the Energy Charter Process as a way to attract the needed investment to revive its domestic oil and gas industry after the dissolution of the Soviet Union (Pominova, 2014, p. 5). Moreover, Russia feared international isolation "and was therefore, in particular during the

first half of the 1990s, anxious to express its good will and demonstrate its cooperative attitude with the West" (Casier, 2011, p. 547). Consequently, the dynamic in the direct aftermath of the Cold War was mainly one of the Community as rule giver, with Russia as the acquiescent rule taker (Kuzemko, 2014, p. 63).

This was also exemplified by the energy chapter of the EU-Russia PCA (Art. 65 EU-Russia PCA), which was similarly designed around market-oriented reforms and the gradual convergence of the Russian energy industry with the rules and standards of the internal market. It stated how energy cooperation would "take place within the principles of the market economy and the European Energy Charter, against a background of the progressive integration of the energy markets in Europe" (Art. 65(1) EU-Russia PCA), and included among the areas of cooperation the "improvement in management and regulation of the energy sector in line with a market economy" and "the introduction of a range of institutional, legal, fiscal and other conditions necessary to encourage increased energy trade and investment" (Art. 65(2) EU-Russia PCA). Quite obviously, the provisions of the EU-Russia PCA envisaged energy collaboration to happen on Community terms and aimed at strengthening the existing rule export regime via the Energy Charter Process.

2.2 Russian refusal to ratify the ECT

As a signatory of the ECT, Russia provisionally applied the ECT in accordance with Art. 45(1) ECT:

"Each signatory agrees to apply this Treaty provisionally pending its entry into force for such signatory in accordance with Article 44, to the extent that such provisional application is not inconsistent with its constitution, laws or regulations."

Due to the last component of this article, this provisional application of the ECT did not provide the same degree of legal certainty as would full application of the ECT following Russian ratification of the treaty. In fact, in the landmark Yukos case (by the Yukos Oil Company's controlling shareholders Hulley Enterprises, Yukos Universal and Veteran Petroleum regarding the alleged expropriation of the company's assets by the Russian state), Russia disputed the validity of the claims on the basis of this provision. It contested the jurisdiction of the investment tribunal to which the Yukos shareholders had submitted their claims, arguing that Art. 26(3)(a) ECT, which foresees Investor-State Dispute Settlement (ISDS) for disputes arising from the treaty, was not binding because it was inconsistent with the Russian constitution and Russian law (Voon & Mitchell, 2017, pp. 462-463).

The provisional application of the ECT by Russia was therefore less than ideal from a Community's point of view. However, although the ratification procedure had been initiated in 1996 when the ECT was introduced in the Duma (the Russian national parliament), Russian ratification was continuously delayed due to dissatisfaction with the ongoing negotiations regarding the ECT Transit Protocol, as well as other concerns of Gazprom and the Russian government over the Energy Charter Process (Belyi, 2009, p. 4; Nappert, 2008). Gazprom mainly objected to the freedom of transit-provision of the ECT (Art. 7(1) ECT), which, in their view, would provide Central Asian gas producers with third-party access to the Russian transmission network. This could transform Russia, Gazprom argued, into a transit corridor for natural gas export from Central Asia to Europe and would weaken its strategic position as a central energy supplier on the Eurasian continent (Belyi, 2009, p. 4). Another concern was the transit dispute settlement (Art. 7(7) ECT), which, according to Gazprom, was attributing too much power to the conciliator in setting supply terms (Belyi, 2009, p. 4).

Russia's main concern were the negotiations over the Transit Protocol, and these would become the focal point of EU-Russian disputes over the Energy Charter Process (ibid. p. 3; Westphal, 2006, p. 54). Russia considered the conclusion of a reasonable Transit Protocol as a prerequisite for ratification of the ECT (Belyi, 2009, p. 4). This Protocol would clarify the transit provision of the ECT, which defined that "[e]ach Contracting Party shall take the necessary measures to facilitate the Transit of Energy Materials and Products consistent with the principle of freedom of transit" (Art. 7(1) ECT), a formulation that was considered to be too vague and in need of further development (Belyi, 2009, p. 3).

The EU and Russia found themselves diametrically opposed in what they wanted this Transit Protocol to achieve. Whereas Russia wanted to consolidate the system of long-term supply contracts and thus enhance security of demand, the EU's objective was to introduce more competition by shortening supply and transit contracts (ibid.). What aggravated Russia, was the EU's attempt to include a Regional Economic Integration Organisation or "REIO" clause in the Transit Protocol (ibid. p. 4; International Energy Charter, 2015). Such a clause would enable the EU to exempt itself from the obligations arising from the Protocol by claiming the particularity of its own regime, while at the same time imposing those obligations on Russia. Russia could then not rely on the Protocol to gain non-discriminatory access to networks within EU jurisdiction, but at the same time would have to grant such access to its own networks to non-Russian companies (Belyi, 2009, p. 4; International Energy Charter, 2015). These issues prevented the successful conclusion of an ECT Transit Protocol and added to the Russian resistance to ratify the ECT.

What would also grow to become one of the main obstacles to Russian ratification, was the perception of the ECT as an EU-sponsored treaty, in the sense that Russia viewed it as a derivative of EU law (Belyi, 2009, p.

4). Of course, this was not entirely unfounded either. The ECT was indisputably inspired by the fundamental principles of European integration (fostering market creation via the establishment of a level playing field for market actors across borders (Konoplyanik & Wälde, 2006, pp. 527-528)) and its provisions were in fact partially derived from the Commission's legislative proposals for the First Energy Package in the early 1990s (ibid. p. 528). Moreover, the Commission certainly viewed the Energy Charter Process as an extension of the nascent internal energy policy of the Community, enabling the expansion of the IEM beyond EU borders, as its 1991 Communication "A European Energy Charter" plainly illustrates: "This objective [of the European Energy Charter] finds itself fully integrated within the energy policy which the Commission wishes to promote and which consists of ensuring the security of supply in the Community with a view to completing the internal energy market and providing an external relations policy to back it up. The European Energy Charter fits in fully with this strategy" (European Commission, 1991, p. 3). In addition to the failure to conclude a Transit Protocol, this also prevented Russian ratification, causing persistence of the less-than-ideal provisional application of the ECT.

While in the first few years after the Cold War the EU's efforts to externalise its internal model towards Russia had thus been relatively successful as Russia also perceived this to be in its own interest – as exemplified by its signature of the European Energy Charter, the ECT and the EU-Russia PCA – the rule giver-rule taker dynamic in EU-Russia energy relations quickly waned towards the end of the 1990s. Owing to *inter alia* the 1998 Russian financial crisis, there was a "growing perception in Russia that national interests [were being] damaged intentionally" (Casier, 2011, p. 547) by the West. Although the Russian energy industry did undergo some degree of privatisation, this was not in the way envisioned by the Commission (Kuzemko, 2014, p. 63). As such, the EU

and the member states had not been successful in managing the import dependence on Russian gas by involving Russia in a market-led model of energy governance derived from internal standards and rules. This failure would only become more pronounced throughout the 2000s.

3 The 2000s: The "milk cow" and the "alpha male"[30]

The early 2000s would radically reshape EU-Russia energy relations. A surge in global energy prices, mainly owing to a rapid growth of the energy demand in China and India, transformed Russia from the acquiescent, beaten down rule-taker in the "lost decade" of the 1990s into the assertive international actor under the presidency of Vladimir Putin in the 2000s (Casier, 2011; Kuzemko, 2014). This was not matched by an equally substantial shift in EU policy. The Commission's riskifying moves had not yet found meaningful translation in either the internal or external dimension, thus the EU's strategy towards Russia remained essentially the same: managing the dependence through the creation of competitive and integrated energy markets.

3.1 EU-Russia Energy Dialogue

In the external dimension, the Commission instituted the EU-Russia Energy Dialogue in 2000. This initiative had to circumvent the deadlock encountered in the Energy Charter Process, where continuing Russian discontent prevented ratification of the ECT (Hadfield, 2008, p. 237). Even though it took a less legalistic approach, the EU-Russia Energy Dialogue similarly endeavoured IEM rule transfer (Kuzemko, 2014, p. 63).

However, in the Russia of President Putin, the "early post-Soviet openness to foreign investment and the neo-liberal agenda of economic liberalisation,

[30] The metaphor is drawn from Øverland (2017).

deregulation and privatisation" (Dannreuther, 2015, p. 475) made place for an increasingly vehement rejection of the EU's market-oriented, rules-based approach to energy governance. Rising oil and gas prices not only boosted Russia's assertiveness, but also prompted a wave of resource nationalism. The Russian oil and gas reserves became perceived as key resources in the country's re-emergence as a great power on the international scene. This implied a state-led mode of governance with restrictions on foreign investments and ownership in the domestic energy sector (Kuzemko, 2014, p. 64). The EU model, conversely, was considered at odds with Russia's strategic interests, and consequently dismissed. This became evident when in 2003, the limited privatisation of the 1990s was overturned and a renationalisation of Russian energy assets ensued (Dannreuther, 2015, p. 475). Due to this increasing divergence with the EU regarding the desirability of government intervention, the Energy Dialogue ended up dealing with day-to-day trivialities rather than broader issues like the creation of "a common regulatory space" (European Commission, 2003a, p. 16), as desired by the Commission (Westphal, 2006, p. 56).

At the same time Russia closed its market off from the EU, it further consolidated its position on the IEM. Gazprom signed numerous new bilateral deals with member states and exploited the ongoing liberalisation provided by the Second Energy Package to buy up assets in the downstream market segment and bolster its preponderance in the European gas supply (Boussena & Locatelli, 2013; Øverland, 2017, p. 117). New pipeline projects were announced which would significantly expand the Russian export capacity to Europe. The 55-bcm Nord Stream 1 pipeline was especially controversial, as it would bypass the traditional transit routes via Central and Eastern Europe and therefore left many of the new member states in the region fearing over their security of supply and a weakening of their bargaining position vis-à-vis Russia (Westphal, 2006, p. 57).

The lack of a common external policy among the member states in combination with the move towards the IEM thus enabled Russia to penetrate and dominate the European gas markets, while having to pay the EU virtually nothing in return in terms of market access to its domestic oil and gas industry. Particularly the large member states were unwilling to commit to concerted action in the external dimension, and eagerly stuck to bilateral strategies in their dealings with Moscow (which, unsurprisingly, was also Russia's first choice) (ibid. p. 56). Italy and Germany (the biggest importers and consumers of Russian gas in the EU) enthusiastically signed new long-term supply contracts with Gazprom, which cemented their dependence on Russian imports well into the 2030s (Łoskot-Strachota & Pełczyńska-Nałęcz, 2008, p. 5). After a long history of stable gas trade with the East going back to the 1970s, the riskifying moves of the Commission had not been able to instil in these countries an intersubjective understanding of Russian gas as an indirect cause of harm to security of supply. The adoption of a "single voice" vis-à-vis Russia and a common, supranational approach towards diversification as proposed by the Commission then hardly appeared necessary precautions. In fact, countries such as Germany and Italy perceived the pursuit of a joint strategy to pressure Russia into ratifying the ECT and opening its energy sector as counterproductive, as this could potentially antagonise Russia and strain EU-Russian relations (Belkin, 2008, pp. 88-89). This reluctance to pool resources at the supranational level effectively left the European gas markets for Gazprom to seize, divide, monopolise and rule.

3.2 Enforcement of EU competition law in Gazprom supply contracts

While the division among member states thus left the EU more or less powerless vis-à-vis Russia, it would surely be wrong to say that the Commission simply stood by and watched as Gazprom snatched up downstream assets and steadily fortified its vertical integration on the

European end-consumer gas markets. The areas where it was allowed by the member states to act, it did do so. As mentioned in Chapter 3, the Commission used the antitrust provisions inscribed in the treaties to curb the anti-competitive behaviours of both EU and non-EU energy companies operating on the IEM. This also included Gazprom. Specifically, the Commission launched investigations into the long-term supply contracts concluded between Gazprom and a number of European companies, and negotiated the nullification of the clauses in these contracts deemed in breach of EU competition rules.

A first settlement was reached with Gazprom and ENI in 2003, where both companies agreed to the removal of certain types of restrictive clauses in their existing contracts that prevented gas-on-gas competition and undermined "the on-going creation of a European gas market" (European Commission, 2003b). These concerned territorial restriction/destination clauses, which prohibited ENI from reselling the gas it bought from Gazprom, as well as consent clauses, which required Gazprom to obtain ENI's consent when selling gas to other customers in Italy (ibid.). Both parties also agreed to refrain from using similar clauses in new supply contracts (ibid.).

Two more settlements were reached in 2005 for contracts concluded between Gazprom on the one side and respectively OMV and E.ON Ruhrgas on the other (European Commission, 2005a; European Commission, 2005b). These similarly voided territorial restriction clauses inhibiting the re-sale of gas for the parties concerned, as well as consent (Gazprom-OMV contracts) and most favoured customer clauses (Gazprom-E.ON Ruhrgas) for Gazprom (ibid.).[31]

[31] Most favoured customer clauses obligated Gazprom to offer E.ON Ruhrgas equally favourable conditions as it offered to E.ON Ruhrgas' competitors (European Commission, 2005b).

Thus, while neither the Energy Charter Process nor the EU-Russia Energy Dialogue managed to subject the Russian upstream gas sector itself to market principles, the EU still succeeded in ensuring Gazprom's compliance with EU competition rules when operating on the internal market. However, it could hardly be argued that Gazprom perceived its obligations under EU law as an impediment to the expansion of its business. To the contrary – it felt more confident than ever, and "saw itself, and was often seen by others, as some kind of alpha male", as Øverland (2017) aptly puts it. The EU, conversely, was seen as "weak, indecisive and irrational", as "a milk cow, a docile creature" that Gazprom, and by extension Russia, were "keen to milk" (Øverland, 2017, pp. 116-117).

In summary, where the door for EU rule export towards Russia already started closing in the second half of the 1990s, the 2000s would slam it shut. Soaring energy prices led to a resurgence of Russian resource nationalism, and the market-regulatory mode of governance propagated by the EU was no longer found to be compatible with the key role attributed to hydrocarbon resources in Russia's recovery after the implosion of the Soviet Union (Kuzemko, 2014, p. 64). As a consequence, the EU failed to manage its dependence on Russian gas via an extension of the provisions of the IEM and the construction of a common, integrated EU-Russian energy market. However, its repudiation of the EU model did not preclude Russia from gaining full access to the internal gas market, and actively exploiting the aforementioned provisions to assert its central position in the European gas supply. Member states rejected or simply ignored the Commission's proposals for a unified approach to diversification and external suppliers, which made it impossible to demand and coerce Russia into granting reciprocal access to its domestic energy industry. Big member states such as Italy and Germany were the principal obstacles to the establishment of such a "single voice" in the EU (Westphal, 2006, p. 56). These countries perceived Russia as a dependable energy partner after

their long history of stable gas trade with the East and could not be persuaded by the Commission's riskifying moves and the accompanying pleas for a common external energy policy. In fact, it appears that they deemed the transit via Central and Eastern Europe as a bigger risk to their security of supply than the supply from Russia itself, as they negotiated deals for pipelines that circumvented these traditional transit routes, i.e. the Nord Stream 1 and South Stream projects. As such, new member states were left in the cold – figuratively but during the 2009 gas crisis also literally – and the EU was left a cow for Gazprom to milk.

4 After 2009: Milk cow turns bull(ish)

Chapters 3 and 4 analysed the post-2009 emergence of an intersubjective understanding among the member states of import dependence as a risk to security of supply requiring common solutions and the associated reconfiguration of the supranational mode of internal and external energy governance (see also Maltby, 2013). This riskification process centrally revolved around the deterioration of the EU's energy relations with Russia, following the 2009 Russo-Ukrainian gas crisis and Russia's termination of its provisional application of the ECT that same year.[32]

Consequently, the precautionary measures established as part of the riskified mode of governance principally aimed towards mitigating the risk posed by specifically Russian gas to security of supply, rather than the risk posed by the EU's import dependence more broadly. Where the EU had previously attempted to manage the gas trade with Russia indirectly via market creation through regulation, it now revised its approach in accordance with the precautionary conceptualisation of security of supply.

[32] It should be noted that, despite Russia's termination of its provisional application, it remained bound by the investment protection provisions in Part III and the dispute settlement provisions in Part V of the ECT for a period of twenty more years following the effective date of termination, in accordance with Art. 45(3)(b) ECT. Thus, the ECT will only stop conferring legal obligations on Russia by 19 October 2029 (Voon & Mitchell, 2017, p. 463).

Instead of “passive management” of the reliance on Russian gas, the EU now opted for a policy of active risk containment on the basis of reactive and proactive precautions. These were *inter alia* designed to expressly prevent/mitigate supply disruptions (e.g. Regulation 994/2010 and Regulation 2017/1938), gradually reduce the dependence (e.g. the Southern Gas Corridor) or obstruct Russian attempts to further increase the dependence (e.g. policy towards Nord Stream 2).

A selection of these will be discussed in-depth and specifically in their relation to Russia and Gazprom, to illustrate how this shift in EU policy had significant repercussions on the dynamic of EU-Russia gas relations.

4.1 The “Gazprom clause”

This chapter previously discussed how Gazprom took advantage of the Second Energy Package to buy its way up the European gas supply chain and develop its downstream presence (Łoskot-Strachota & Pełczyńska-Nałęcz, 2008, p. 22). It bought up shares in European enterprises and also acted through subsidiaries, joint ventures and affiliated companies to gain access to the final gas markets in several of the member states (ibid. p. 23). This vertical integration enabled Gazprom to sell gas (in)directly to European end consumers and further bolstered its monopolistic position on the IEM.

Some member states, especially those in Central and Eastern Europe, feared that the ownership unbundling proposed under the Third Energy Package would allow Gazprom to buy up even more assets in their domestic gas markets (Politico, 2008). As such, the Third Energy Package contained the so-called “Gazprom clause” (Art. 11 of Directive 2009/73/EC), which introduced a new certification scheme for companies from third countries operating on the internal gas market. This obligated third-country firms (thus Gazprom) to seek approval from national

regulatory authorities for acquiring control over gas transmission networks located in member states. Regulatory authorities were allowed to refuse "certification" if this would "put at risk the security of energy supply of the Member State and the Community" (European Parliament and Council of the European Union, 2009, p. 107). In making their decision, regulatory authorities had to take into account the rights and obligations arising under international law vis-à-vis the third country in question, as well as "other specific facts and circumstances of the case and the third country concerned" (ibid. p. 108), in accordance with Art. 11(3)(b)(iii) of Directive 2009/73/EC. Recital 22 of Directive 2009/73/EC clarified what could be included under such "specific facts and circumstances"; the decision by regulatory authorities required "in particular, an assessment of the independence of network operation, the level of the Community's and individual Member States' dependence on energy supply from third countries, and the treatment of both domestic and foreign trade and investment in energy in a particular third country" (ibid. p. 96).

Evidently, Art. 11(3)(b)(iii) made the Gazprom clause into "an extremely political provision" (Talus, 2013, p. 84). By allowing regulatory authorities to assess the risk for security of supply on a case-by-case basis without defining strict criteria for evaluation, it effectively granted them *carte blanche* when certifying non-EU companies within their respective jurisdictions. As such certification was required for acquiring, owning and operating transmission networks within the EU, the Gazprom clause could be used to selectively deny external suppliers access to the internal gas market for strategic reasons (Goldthau & Sitter, 2015a, p. 955). It therefore opened the door for a geo-economic application of EU regulation. As Recital 22 makes clear, Gazprom could for instance be refused certification (and thus access to the final gas markets of member states) on the basis of the lack of reciprocal treatment for European trade and investment in the Russian energy industry, or even simply because the EU's dependence on

Russian gas was considered to be excessive by the regulatory authority in question.

The inclusion of the Gazprom clause in the Third Energy Package was one of the first indications of the EU's post-2009 departure from the market-regulatory mode of governance and the "passive management" of the dependence on Russian gas. Rather than allowing Gazprom to freeride on the liberalisation process within the EU, precautions were now installed to prevent the company from abusing the unbundling obligations under EU law to cultivate its vertical integration on the internal gas market. Risk containment would now become the dominant policy orientation of the EU's Russia policy.

4.2 Gazprom antitrust case

Initially – in true alpha male fashion – Gazprom simply ignored the developments under the Third Energy Package and the potential implications on its EU business (Øverland, 2017, p. 117; Siddi, 2018b, p. 1565). It promoted new mega projects such as Nord Stream 1 and South Stream, which would make the export to Europe less reliant on the transit via Ukraine and would further strengthen its grip on the internal gas market. However, it soon became impossible to just look away.

In 2011, the Commission raided the European offices of Gazprom and affiliated companies in Central and Eastern Europe, on suspicion of anti-competitive behaviours such as market partitioning, excessive pricing and hindering network access in breach of EU competition law (European Commission, 2011b). Although Gazprom confidently said that it would take years before the Commission would be able to draw any conclusions from the results of these raids (Reuters, 2011), legal proceedings were initiated one year later, and a formal indictment followed in 2015 (European Commission, 2012).

In the latter, the Commission accused Gazprom of anticompetitive practices and “pursuing an overall strategy to partition Central and Eastern European gas markets” (European Commission, 2015d). The Commission’s allegations fell into three general categories. First of all, it accused Gazprom of utilising territorial restrictions in its supply contracts with wholesalers in eight different member states in Central and Eastern Europe (Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland and Slovakia). These concerned export ban clauses (provisions explicitly prohibiting the export of gas), destination clauses (provisions containing territorial restrictions regarding the resale or consumption of the gas purchased by customers) and other types of restrictive clauses, for instance requiring customers to request Gazprom’s consent for exporting or reselling purchased gas, which prevented cross-border gas flows and caused market partitioning (European Commission, 2015e). Secondly, the implementation of a discriminatory pricing policy in five member states (Bulgaria, Estonia, Latvia, Lithuania and Poland), charging prices to wholesalers far exceeding Gazprom’s costs or benchmark prices (European Commission, 2015d). Thirdly, leveraging its dominant market position in Bulgaria and Poland by making the gas supplies to these countries conditional upon certain infrastructure-related commitments. Specifically, Gazprom allegedly coerced Bulgaria into supporting the South Stream pipeline “despite high costs and an uncertain economic outlook” (European Commission, 2015e), and made its supplies to Poland conditional upon maintaining control over the Polish section of the Yamal pipeline (ibid.). According to the Commission, these practices constituted an abuse of Gazprom’s market position in breach of Art. 102 TFEU (European Commission, 2015d). If found guilty, Gazprom could have been fined up to $7.6 billion, the equivalent of 10 percent of its revenue in 2014 (Reuters, 2016).

Looking to avoid a fine, Gazprom sought to settle the charges with concessions (ibid.). A deal was eventually reached with the Commission in 2018, containing a set of legally binding obligations or “commitments” that Gazprom had to adhere to for a period of eight years (European Commission, 2018c). Firstly, Gazprom had to remove territorial restrictions from its supply contracts with customers in the member states concerned (ibid.). Secondly, in order to compensate for the lack of interconnection of the Baltic states and Bulgaria with neighbouring countries, Gazprom had to offer the possibility of “swaps” to customers in Central and Eastern Europe. Such swap arrangements would allow customers in Hungary, Poland and Slovakia to ask Gazprom to have their gas delivered to Bulgaria or the Baltics instead, and vice versa (allowing customers in the isolated markets in question to re-sell their gas if they had spare volumes). This had to foster market integration in the region, even in the absence of adequate infrastructure and sufficient interconnection (ibid.). Thirdly, Gazprom had to offer customers with long-term supply contracts in the five member states where it had been accused of inequitable pricing policies the option of demanding a lower price if their price diverged from competitive Western European benchmark prices, once every two years with an extra “joker” every five years (ibid.). Finally, it would not seek damages from its Bulgarian business partners for the cancellation of South Stream (see *infra*). If it failed to live up to any or all of these promises, Gazprom would still be liable to a fine of up to 10 percent of its annual revenue (ibid.).

The EU’s policy was “fundamentally ambivalent” (Øverland, 2017, p. 121). On the one hand, it could be argued that the antitrust probe was merely a continuation of the Commission’s competition policy pursued in the energy sector since the early 2000s (ibid.). On the other hand, it could just as well be interpreted in a geo-economic light, i.e. as the strategic employment of EU competition law in order to thwart Gazprom’s operations on the internal

market, thus as an indicator of the reorientation of the EU's approach following the riskification of Russian gas (ibid. p. 120).

What is certain, however, is that cracking down on the monopolistic practices of the Russian gas giant in Central and Eastern Europe implied a weakening of Russia's strategic position vis-à-vis the EU in a time of severe deterioration of EU-Russia relations. While the antitrust case should therefore not necessarily be seen as a clean-cut exponent of a geo-economic strategy, it surely indicated the changing nature of EU-Russia gas relations, characterised by an increasingly confrontational and unapologetic Commission, which employed its regulatory toolbox in a way that severely curtailed Gazprom's ability to "milk the cow" (see Øverland, 2017). Furthermore, it was far from the only instance in which the latter would see its traditional mode of operation constrained after the second gas crisis (Siddi, 2018b). As will be seen below, in these other cases the EU's motivations would be much less ambiguous.

4.3 Cancellation of South Stream

Chapter 3 already discussed the Nord Stream 2 saga, but this was not the sole or even the first case where the Commission selectively employed the provisions of the Third Energy Package to obstruct Russian-sponsored pipeline projects.

The aforementioned South Stream pipeline provides an earlier example of this geo-economic approach. Between 2008 and 2010, in line with its long tradition of a bilateral approach to European gas trade, Gazprom signed IGAs with six EU member states (Austria, Bulgaria, Croatia, Greece, Hungary and Slovenia) and Serbia for the onshore sections of this pipeline project (Stern et al., 2015, p. 2). Apart from the countries that would benefit from the increased gas transit through their territories (especially Bulgaria, Hungary and Serbia), the European reception of the project was

overwhelmingly negative. It would weaken the strategic position of Ukraine, would strengthen Gazprom's grip on the internal market and would impair the diversification of the European energy supply by standing in direct competition with the SGC (ibid. p. 5).

Against this background, the Commission stated that the IGAs concluded between Gazprom and EU member states infringed upon the third-party access and unbundling requirements of the Third Energy Package (Behrens, 2014, p. 1). As such, these would have to be either renegotiated or renounced. If the member states involved refused, the Commission warned it would not hesitate to commence legal proceedings (Stern et al., 2015, p. 4). However, Russia argued that the Commission, by demanding the compliance of the IGAs with the provisions of the Third Energy Package, was retroactively applying the latter, as the agreements for South Stream preceded the Third Energy Package's date of entry into force. This, according to Russia, would violate the "fundamental principle of international law that no law may be retroactive" (Chizhov, 2014, as cited in Kyiv Post, 2014). It contended that it was in fact the EU, and not Russia or Gazprom, which had to amend its legislation, not the other way around (Chizhov, 2014, as cited in Euractiv, 2014a).

The member states that signed an IGA with Gazprom found themselves in a catch-22: they could either uphold their IGAs and open themselves up to penalties by the Commission, or revoke their IGAs and face punitive action from Russia (Stern et al., 2015, p. 4). When the Commission initiated infringement procedures against Bulgaria, the construction of Bulgarian section of the pipeline was halted. *De jure*, a compromise between the Commission and Russia was perfectly feasible, but the 2014 Ukraine crisis and the ensuing deterioration of EU-Russia relations rendered a deal practically impossible. It was not that negotiations were difficult, but simply that these could not even take place – all activities under the EU-Russia

Energy Dialogue were suspended following the Russian annexation of Crimea (ibid. pp. 4-5). As such, President Putin announced the cancellation of South Stream in December 2014 (ibid. p. 5).

Quite obviously, Gazprom's strategy of indifference was not an option anymore. In the emerging riskified mode of governance, the Commission would no longer refrain from employing the regulatory tools at its disposal selectively and for geopolitical purposes, i.e. to stymie Gazprom's attempts to extend and cement its reign on the internal gas market, and to prevent a further lock-in of Russian gas in the European energy mix. The milk cow had turned bullish, not afraid to charge when provoked.

One could argue that, by demanding South Stream's compliance with the requirements of the Third Energy Package, the Commission was purely acting to preserve the competitiveness of the IEM (in line with the market-regulatory paradigm). However, several elements call into question this interpretation of the Commission's behaviour.

First of all, if the Commission was only motivated by a desire to build a competitive gas market, why then did the Commission not also request the compliance of TAP with the requirements of the Third Energy Package? TAP, an import pipeline coming into the EU via the Southern transit route not dissimilar to South Stream, instead received the full EU support package – a 25-year exemption from third-party access, tariff regulation and ownership unbundling requirements, PCI status and a grant under the CEF-E programme (European Commission, 2013b; European Commission, 2013c). This wide disparity in treatment by the Commission could only be explained by strategic incentives, as the main distinction was indisputably that TAP, unlike South Stream, was not a Russian-sponsored pipeline. If the Commission had truly been driven by nothing more than fostering competitive conditions on the internal gas market, not in any way

by a riskified perception of the dependence on Russia, it would have indiscriminately enforced the Third Energy Package vis-à-vis the two projects in question, whatever third country the natural gas they carried originated from (see also de Jong & Van de Graaf, 2021, p. 497).

Secondly, the timing must be taken into consideration. The Commission launched its infringement procedures against Bulgaria in June 2014 (Euractiv, 2014b), a mere three months after Russia annexed Crimea. It appears rather improbable that this was a "happy coincidence" – the specific context is undeniably suggestive of a geo-economic interpretation of the Commission's behaviour.

4.4 OPAL exemption decision saga

The OPAL exemption saga equally exemplifies the EU's reconfigured understanding of the dependence on Russian gas and the accompanying regulatory crackdown on the Russian monopolist, seemingly oblivious after too many years of undisturbed expansion on the internal market. OPAL (Ostsee Pipeline Anbindungsleitung), an onshore pipeline running along Germany's eastern border towards the Czech Republic, links Nord Stream 1 up with the European gas markets. Thus, this pipeline was an important determinant of Gazprom's ability to exploit the full potential of the Baltic Sea transit route. As such, Gazprom requested an exemption for OPAL from the third-party access requirements under the Second Energy Package from the German regulatory authority, the Bundesnetzagentur, in accordance with Art. 22 of Directive 2003/55/EC.[33]

In 2009, the Bundesnetzagentur approved the exemption request, which would allow Gazprom to use the full capacity of OPAL. In accordance with the exemption procedure under Art. 22 of Directive 2003/55/EC, this was

[33] The Third Energy Package was adopted in 2009, but the date of transposition by member states was set in 2011.

notified to the Commission, which could either approve the decision, or request the regulator for it to be amended or withdrawn. Because the Commission did not agree with the Bundesnetzagentur's reasoning that the exemption would have a positive impact on the state of competition in the downstream gas market of the Czech Republic and because it was unable to determine that it would not strengthen Gazprom's market power in the Czech upstream gas market, it asked to amend the decision by exempting only half of OPAL's capacity from third-party access (Boute, 2020, p. 893; Yafimava, 2017, p. 6). The German regulator complied with this request, which effectively allowed Gazprom to only utilise 50 percent of the pipeline's capacity, thus limiting its access to a highly profitable market (Boute, 2020, p. 894; Yafimava, 2017, p. 7).

Gazprom consequently initiated negotiations with the Commission that lasted close to three years, in an attempt to still obtain a full exemption from third-party access for OPAL. Both parties ultimately agreed to an arrangement where Gazprom would be permitted to exploit 100 percent of the pipeline capacity, except when third parties requested access to the pipeline (Yafimava, 2017, p. 10). In October 2013, these terms were incorporated in a settlement agreement concluded between Gazprom and the Bundesnetzagentur. This agreement, which would *de facto* allow the full utilisation of OPAL by Gazprom, still required the Commission's formal approval before the end of 2014 in order to enter into force. However, the Commission deferred its approval several times referring to technical difficulties, without going into further detail what these exactly entailed (ibid.). As Yafimava (2017) notes, this would perhaps not have raised as many questions regarding the Commission's intentions, were it not for the fact that the Commission "had itself participated in negotiations of the substantive changes that were incorporated into the October 2013 settlement agreement, and had verbally approved the latter" (ibid. pp. 10-11).

The Commission's continuous postponement eventually led to the expiration of the settlement agreement at the end of 2014. As a consequence, Gazprom was still only allowed to use 50 percent of OPAL's capacity, even though there was no demand for the other half by third parties (ibid. p. 11). The specific circumstances of the case as well as the timing – right when EU-Russia relations had reached a new low following the 2014 Ukraine crisis – again pointed to the Commission's strategic employment of IEM legislation vis-à-vis Gazprom (although this was obviously denied by the Commission itself (ibid.)).

However, not willing to concede, Gazprom applied for a new exemption with the Bundesnetzagentur, even though the chances of success were estimated rather low (Stern et al., 2015, p. 4). In 2016, this resulted in a new settlement agreement, practically identical to the 2013 deal, which was subsequently notified to the Commission (Yafimava, 2017, p. 14). Contrary to what was expected, the Commission now approved the settlement agreement, notwithstanding the inclusion of some additional conditions (European Commission, 2016d). This would allow Gazprom to use at least 80 percent or, in the absence of third-party demand, 100 percent of OPAL's capacity (Yafimava, 2017, p. 29).

However, this was heavily opposed by many member states in Central and Eastern Europe (Boute, 2020, p. 894). Poland, supported by Lithuania and Latvia, challenged the decision before the General Court on the basis of the principle of energy solidarity inscribed in Art. 194 TFEU. In yet another turn of events, the General Court ruled that the Commission's approval of the settlement agreement was in breach of the principle of energy solidarity and annulled the contested decision (General Court, 2019). Germany appealed the General Court's judgment before the European Court of Justice (ECJ), arguing that the principle of energy solidarity was a purely political notion and not a legal criterion, but the ECJ dismissed the German

appeal and therefore upheld the General Court's 2019 ruling (Court of Justice, 2021). As such, Gazprom remained locked into the capacity access restrictions prescribed by the original OPAL exemption decision of 2009.

Thus, when the Commission had effectively abandoned the strategic application of EU law, the European Courts jumped to the rescue of the geo-economic approach. It demonstrates how riskification extended to the judicial branch of the EU as well. Clearly, annulling the exemption decision and consequently upholding the annulment was fundamentally grounded in "riskified" thinking. In its judgment, the General Court understood the principle of energy solidarity as an obligation for the EU and member states "to endeavour, in the exercise of their powers in the field of energy policy, to avoid adopting measures liable to affect the interests of the European Union and the other Member States, as regards *security of supply, its economic and political viability, the diversification of supply or of sources of supply*, and to do so in order to take account of their interdependence and de facto solidarity" (General Court, 2019, para 73, italics added). In deeming the OPAL exemption decision in violation of the principle of energy solidarity, the General Court thus implied that the Commission, in making this decision, had exercised its powers in a way that was liable to affect the EU's/member states' "security of supply, its economic and political viability, the diversification of supply or of sources of supply". Since the exemption decision at hand would in essence bolster the dominance of Russian gas in the EU's energy mix by enhancing Gazprom's ability to exploit the Baltic Sea or Northern transit route more fully, it necessarily followed that the General Court viewed gas originating from Russia as "liable to affect" European diversification and security of supply. This, in turn, indicated an understanding of the EU's dependence on Russian gas in terms of (at least) a risk to security of supply.

In any case, the OPAL exemption saga was yet another illustrative example of the post-2009 shift from passive management to active risk containment. The reliance on Russian gas was no longer merely "managed" via the creation of competitive energy markets, but rather proactively mitigated via targeted precautions such as the geo-economic employment of EU regulation. This visibly restrained Gazprom's commercial operations on the internal gas market, which, in turn, radically altered the dynamic of EU-Russia gas relations.

4.5 Russia's response: Disregard, denial, bargaining and "acceptance"

How did Russia and Gazprom react to this altered paradigm informing supranational energy governance? Initially, as discussed before, the Russian perception of the EU as a weak actor seemed to prevail, as the developments under the Third Energy Package were simply ignored (Øverland, 2017, p. 117; Siddi, 2018b, p. 1565). The 2011 dawn raids would change things. The EU and the Commission were now no longer ignored, but rather met by firm denial. The Russian government and Gazprom rejected the Commission's antitrust allegations and proclaimed their commitment to the principles of market competition and liberalisation, contending that it was in fact the EU, not Russia, that was anti-market (Øverland, 2017, p. 121). President Putin himself even went a step further, calling EU energy law "uncivilised" (Putin, 2012, as cited in Reuters, 2012), in particular the retroactive application of the provisions on ownership unbundling of the Third Energy Package (ibid.). This kind of baseless denialism, however, proved less than useful in dealing with the Commission (Øverland, 2017, p. 121), which could only possibly interpret this as an indication that it was finally getting a grip on the alpha male operating on the internal market, and was not showing any signs of backing down.

Russia therefore also pursued other strategies, including recourse to legal means to deal with, but also to challenge the increasingly constrained regulatory environment on the IEM (Romanova, 2016, pp. 866-868). The discussion on Nord Stream 2 in Chapter 3 already mentioned the court cases initiated by Nord Stream 2 AG against the EU concerning the alleged discriminatory nature of the Amended Gas Directive. The antitrust case, where Gazprom proactively offered the Commission a detailed set of commitments in order to settle the latter's concerns over anticompetitive behaviours, equally exemplified this "legal" strategy (European Commission, 2017c; Siddi, 2018b, p. 1566).

Furthermore, in 2014, Russia launched proceedings under the WTO, alleging the inconsistency of the Third Energy Package and the 2013 TEN-E guidelines with the EU's obligations under GATT and GATS. As regards the Third Energy Package, Russia raised several concerns, all relating to Directive 2009/73/EC. Firstly, it stated that the **unbundling provisions** in the directive, in particular where these allowed for the implementation of different unbundling models by member states, as well as **the implementation of those provisions and the exemption regime therefrom for government-controlled entities in Croatia, Hungary and Lithuania**, were in breach of respectively the non-discrimination obligations in Art. II:1 GATS and Art. I:1 and Art. III:4 GATT, and the market-access obligations in Art. XVI:2 GATS and the national treatment obligation in Art. XVII GATS (World Trade Organisation, 2018).[34] Secondly, Russia contended that **extra-EU LNG imports** were favoured over Russian gas imports via pipelines, as LNG system operators, unlike operators of transmission pipelines were not required to unbundle, in breach of Art. I:1 GATT (ibid.). Thirdly, Russia claimed that the **infrastructure exemption provisions** of the directive, allowing certain categories of gas infrastructure to be exempted from the requirements of

[34] Parts put in bold for clarity.

the directive, as well as the **OPAL exemption decision** pursuant hereto, were in violation of Art. II:1 GATS and Art. I:1, X:3 and XI:1 GATT (ibid.). Fourthly, Russia, argued that the **non-application** of the third-party access, unbundling and tariff regulation requirements of Directive 2009/73/EC to **upstream pipelines**, granted an unfair advantage to gas from non-EU countries transported via upstream pipelines in comparison to Russian gas transported via transmission pipelines in breach of Art. I:1 and III:4 GATT (ibid.).[35] Finally, unsurprisingly, Russia challenged the **Gazprom clause** under Art. II:1 GATS, as well as **the implementation of the Gazprom clause in Croatia, Hungary and Lithuania** under Art. VI:1, VI:5(a) and XVII GATS (ibid.).

As regards the 2013 TEN-E guidelines, Russia asserted that the **selection procedure for PCIs** was discriminatory towards Russian gas, stating that the objective underlying the criterion of "diversification of gas supply" was to reduce the supply and transmission of Russian gas into and within the EU, in violation of Art II:1 GATS and Art. I:1 and III:4 GATT (ibid.).

The WTO Panel rejected the bulk of Russia's claims in its 2018 report, but upheld the claims regarding the inconsistency of the implementation of the Gazprom clause by Croatia, Hungary and Lithuania with the national treatment obligation under Art. XVII GAT, the OPAL exemption decision with Art. XI:1 GATT, and the TEN-E guidelines with Art. I:1 and III:4 1994 (ibid.).

As regards the OPAL exemption decision, where Russia had stipulated that the 50 percent capacity cap imposed on Gazprom amounted to a quantitative restriction on the volume of Russian gas imports into the EU, the Panel upheld its claim, stating that the capacity cap limited the

[35] This concerned the Norwegian Zeepipe, Franpipe, Norpipe, Europipe 1 and Europipe 2 export pipelines to Europe, which were classified as upstream pipelines under Directive 2009/73/EC (Offenberg, 2016, p. 18).

“competitive opportunities for the importation of Russian natural gas into the European Union” (ibid.), constituting a violation of the prohibition on quantitative restrictions under Art. XI:1 GATT.

As regards the 2013 TEN-E guidelines, the Panel agreed with Russia that this legislation granted more favourable conditions for the transportation of gas not originating from Russia, in breach of the most-favoured nation and national treatment obligations of the EU under respectively Art. I:1 and Art. III:4 GATT. Both Russia and the EU appealed the Panel Report but the appeal proceedings were adjourned in 2019. This resulted from the American blockage of appointments to the WTO Appellate Body, which led to a suspension of its activities (European Commission, 2022d, p. 19).

Nevertheless, Russia’s initiation of WTO proceedings against the EU were just as the antitrust settlement and the Nord Stream 2 AG cases illustrative of this rather paradoxical development in EU-Russia relations. By opting for a more strategic approach itself and treating Russia as a risk to be contained rather than as a rule taker, the EU succeeded in securing Russia’s commitment and recourse to legal means rather than hard power tools (e.g. supply disruptions) – at least until the winter of 2021/22 and Russia’s military invasion of Ukraine in February 2022. By pursuing this legal strategy – “part and parcel of the market approach to energy policy” (Romanova, 2016, p. 866) – Russia was seemingly internalising the model which it had so vigorously rejected before. In other words, by no longer attempting to involve Russia in a rules-based, market-oriented framework for energy cooperation, the EU seemed to do exactly that, a remarkable by-product of the EU’s recalibrated approach.

Moreover, it was not the only instance of this apparent internalisation of the market-regulatory paradigm by Russia. In 2015 for example, Gazprom started organising auctions for spot supplies on the internal market (Siddi,

2018b, 1566). These had always been advocated by the Commission as tools to stimulate competitive conditions because they would curtail the EU's dependence on long-term, oil-indexed supply contracts (an integral part of Gazprom's commercial strategy) and would therefore result in more liquid European gas markets (ibid.). In this respect, however, a rude awakening would follow for the Commission in the winter of 2021/22. The EU's increased reliance on spot markets enabled Gazprom to lower its supplies in a period of heightened demand without having to break contractual obligations, orchestrating a severe energy crisis with record-high gas and electricity prices in Europe (Milov, 2022). Putin even mocked the EU for abandoning long-term supply contracts, recounting an old Russian parable where he likened Europe to a tricked, hapless wolf with its tail stuck in an ice hole by cause of a cunning (Russian) fox (Politico, 2021). Put differently, Russia's apparent internalisation of the market-regulatory paradigm was sheer fiction.

It should also be noted that, besides this more adaptive strategy, Gazprom and Russia resorted to more predictable, traditional tools. After the continuous obstruction of South Stream by the Commission, Putin not only announced its cancellation in December 2014, but in the same press conference also its replacement, the Turkish Stream project, later renamed TurkStream (Stern et al., 2015, p. 5). Just as South Stream, this pipeline was not designed to bring additional volumes to the EU, but rather to diversify the Russian gas exports away from the transit via Ukraine (Tagliapietra, 2018). With an annual capacity of 31.5 bcm per annum, it would run from the Russian Black Sea coast to the Greek-Turkish border across the Black Sea. Additional infrastructure would then have to be built and operated by EU member states in order to receive supplies via TurkStream (Siddi, 2018b, p. 1562). Construction for TurkStream was completed in 2019 and the pipeline eventually became operational in 2020.

Thus, Gazprom had seemingly found an easy fix for the constrained regulatory environment in the EU – avoiding it. However, TurkStream signalled a substantial reorientation of its commercial strategy. Vertical integration through asset purchases in the final gas markets of the EU, which had become one of the key components for Gazprom to further reinforce its supremacy in the European gas supply (Boussena & Locatelli, 2013), was no longer a valid option. Instead of being a nifty tool to exploit its favourite cash cow, IEM legislation had turned into a serious impediment to Gazprom's operations.

In a similar vein as TurkStream was Russia's "gas pivot to Asia" (Henderson, 2018). Russia and China had engaged in gas talks as soon as 2004, but it was the Ukraine crisis in 2014 that proved to be the crucial catalyst for substantial developments in this respect (ibid. p. 1). In May 2014, Gazprom reached an agreement with the China National Petroleum Corporation (CNPC) to deliver 38 bcm of natural gas per annum over a thirty-year period through a pipeline which was yet to be built, the so-called Power of Siberia-pipeline (ibid.). Although the construction of this pipeline progressed slowly at first, the first gas started flowing from Russia to China in 2019 (Reuters, 2022a). In addition to pipeline deliveries, Russia gradually expanded its LNG exports to China as well as other Asian markets. In the beginning of February 2022, still before the war in Ukraine, Gazprom also clinched a deal with CNPC for another new pipeline, which would have a capacity of 10 bcm per annum. In raw numbers, the gas pivot to Asia amounted to 33 bcm in 2021, in comparison to a total of 155 bcm of Russian gas deliveries to the EU that year (European Commission, 2021a). Tsafos (2022) notes that, while volumes delivered to the Asian market could eventually reach European levels, "as a source of income and geopolitical heft, Asia will be a second-best alternative" (Tsafos, 2022).

In conclusion, it is clear that the EU's post-2009 departure from the market-regulatory mode of governance once more thoroughly transformed EU-Russia gas relations. The emergence of a shared understanding of Russian gas as a risk to be actively contained justified the geo-economic (selective and strategic) employment of EU regulation vis-à-vis Gazprom. This seriously constrained the latter's ability to apply its "divide and rule tactics" on the internal gas market (Andersen et al., 2017b, p. 17), which in turn altered the overall dynamic between the EU and Russia in the energy sphere. Russia's assertiveness was reciprocated by the EU's own idiosyncratic version of assertive behaviour; Russia could continue to shield off its domestic oil and gas industry from the EU but this was no longer free of charge. It now had to pay a price for its rejection and disregard for IEM rules and norms when operating within EU jurisdiction. This led to some rather paradoxical outcomes, as Russia responded to the EU's divergence from its purely rules-based and market-led approach by conversely converging to the European model, for instance by choosing to battle its alleged discriminatory treatment by legal means. However, as Gazprom's (successful) attempts to orchestrate a European energy crisis during the winter of 2021/22 and the war in Ukraine have now conclusively demonstrated, any optimism regarding Russia's apparent internalisation of the market-regulatory paradigm was clearly in vain.

5 EU-Russia gas relations after the Russian invasion of Ukraine: The End?

Evidently, all of the above pales in comparison to the turmoil brought by the Russian invasion of Ukraine in February 2022, which has caused the most dramatic upheaval in EU-Russia (gas) relations yet. Whereas the gas crises of 2006 and 2009 and the Ukraine crisis in 2014 gradually established an understanding of Russian gas imports as constituting a risk requiring some form of active supranational management, the events of

2022 seem to have launched European discourse (and policy) directly into the territory of existential threat.

The Communication “REPowerEU: Joint European Action for More Affordable, Secure and Sustainable Energy”, released by the Commission only a few weeks after the start of the war, immediately exemplified this discursive shift. The Communication talked about “eliminating our dependence on Russian fossil fuels” and proposed the development of a plan to cut gas imports from Russia by two-thirds by the end of 2022 and to completely phase out Russian gas, coal and oil in the EU’s energy mix “well before 2030” (the so-called REPowerEU Plan published in May 2022) (European Commission, 2022a, p. 5). This is incomparable to anything seen in Commission policy documents before 2022. The European energy dependence vis-à-vis Russia is not construed as something to be managed and/or gradually reduced, but, in the Commission’s own words, must be urgently eliminated.

It indicates the introduction of a new grammar of security in European energy policy, a shift beyond riskification and towards securitisation; Russian gas/energy imports are no longer framed as a governable risk but instead as a direct threat, requiring the establishment of extraordinary measures “breaking the dependency” on Russia (ibid. p. 10). The Commission proposed to “drastically accelerate the clean energy transition and thereby increase Europe’s energy independence” (ibid.), but also “diversifying gas supplies, via higher LNG imports and pipeline imports from non-Russian suppliers” (ibid. p. 5).

While the success of the Commission’s securitising moves in legitimising the clean energy transition as a necessary emergency measure is still mere speculation at this point, what is absolutely certain is that the logic of existential threat will fundamentally revise (e.g. end) EU-Russia gas

relations. An import ban on Russian coal was announced by the EU as part of the fifth sanctions package against Russia in April 2022, and an embargo on imports of Russian seaborne crude and petroleum products later followed as part of the sixth sanctions package in June (European Commission, 2022e; European Commission, 2022f). These EU ventures into hard economic power present an unprecedented move beyond the IEM master frame, and demonstrate how the securitisation of Russian energy imports has legitimised extraordinary supranational action that was quite literally un-thinkable before the start of the war in Ukraine. Sanctions on Russian gas have proven more elusive as member states – most importantly Germany – dread their economic consequences. However, at the time of writing, Russia has taken matters in its own hands and has been gradually reducing gas flows to Europe, cutting off several member states completely (i.e. Bulgaria, Denmark, Finland, the Netherlands and Poland) (Reuters, 2022b). This has stoked fears over a complete halt of the Russian gas supply to the EU. Whatever the outcome, it appears inevitable that the final chapter in EU-Russia gas relations is currently unfolding – unquestionably, in the most dramatic, surreal way imaginable.

Conclusion

This chapter examined the evolving dynamic of EU-Russia gas relations, discerning five general stages of development.

The origins of the EU's dependence on Russian gas can be traced back to the late 1960s and early 1970s, when the first gas deals were signed between EEC member states and the Soviet Union. In the context of the oil crises, OPEC dominance and tight markets of the 1970s, "red gas" became seen as one of the main ways for Western Europe to diversify away from Middle Eastern oil. This caused a persistent desecuritisation of the trans-European gas trade, which quickly made Soviet gas imports into a core component of the Community's energy mix. Even a resurgence of

the Cold War in the early 1980s or American securitising moves could not curb the continuous expansion of the gas flows across the Iron Curtain, as member states continued to perceive these as a solution, as a way to reinforce their security of supply, rather than in terms of risk or threat in any way. As such, gas trade served as a remarkable case of economic cooperation on the European continent, which "ran counter to the fundamental logic of the Cold War" (Högselius, 2013, p. 3).

In the immediate aftermath of the Cold War, the Community defined the dynamic of the gas relations. It attempted to involve Russia in a market-oriented model of governance, as this was seen as the optimal way to achieve both affordable and secure energy supplies. While Russia initially appeared quite willing to take up the role of rule taker in the relationship, by the late 1990s this had already begun to change, as the EU model was increasingly regarded as running contrary to Russian national interests.

In the 2000s, soaring energy prices shifted the balance strongly in Russia's favour. Under the presidency of Vladimir Putin, the Russian oil and gas reserves became seen as key tools in the nation's re-emergence as a great power after the "humiliation" of the 1990s. Domestic reforms were overturned and the access of foreign investors to the Russian oil and gas industry restricted. Simultaneously, Gazprom used the ongoing liberalisation in the EU to buy up assets in the European downstream segment and reinforce its supremacy on the internal gas market. This was the best of both worlds; Russia gained access to the lucrative European markets without having to pay virtually anything in return. This owed mainly to the refusal of larger member states such as Italy and Germany to commit to a common approach towards the EU's biggest energy partner, as these rejected the Commission's riskifying moves after their long history of stable, undisrupted gas trade going back all the way to the 1970s. As such, the EU was left at the mercy of Gazprom's *divide et impera*-strategy

– “a milk cow, a docile creature” for Russia “to milk” (Øverland, 2017, p. 117).

After the second gas crisis in 2009, member states began to accept that the gas dependence on Russia required common precautions in order to adequately mitigate the associated risk for security of supply. The chapter focused on the various instances in which the EU employed the regulatory tools at its disposal to constrain Gazprom’s operations on the internal market. This again shifted power back to the EU, as Russia’s rejection of a rules-based, market-led mode of governance now came at a price in terms of its access to the European gas markets. The Russian response was varied, and contained predictable elements, as witnessed in the case of South Stream and its replacement by TurkStream or the “gas pivot to Asia”, but also some more surprising ones, such as legal challenges to the geo-economic measures as well as concessions to the EU’s market model. In any case, the member states’ acceptance of the riskifying moves of the Commission and the ensuing recalibration of the mode of supranational governance had a pervasive impact on the dynamic of EU-Russia gas relations.

Finally, the chapter reflected on the developments following Russia’s invasion of Ukraine in February 2022. These point to a securitisation of Russian gas and by extension Russian coal and oil in European energy policy, as exemplified by Commission discourse in the documents released after the start of the war. This has already instigated unprecedented supranational action in the energy domain, i.e. the phased-in EU embargoes on imports of Russian coal and oil products announced as part of respectively the fifth and sixth sanction packages against Russia. While gas sanctions were not yet seriously discussed at EU level, Gazprom has taken matters in its own hands and started cutting off supplies to several of its European customers. What the near-term future holds is still unclear,

but there is hardly any doubt that EU-Russia gas relations are currently in the “end game”. In any case, current events will not just have drastic implications for the direction of European energy policy, but also for the future of the EU as such.

The next chapter will discuss the “risks of riskification”, by analysing and evaluating some of the key features of the riskification process described in this and the previous chapters more in-depth.

CHAPTER 6: The risks of riskification

Introduction

Previous chapters have described and analysed the transformation of European energy policy on the basis of a common understanding of import dependence as a risk or constitutive cause of harm requiring a variety of proactive and reactive supranational precautions to safeguard security of supply. This chapter aims to critically reflect on this process by evaluating two of the main features of this riskification process, discussing the "risks of riskification", with a view to assess the weaknesses of this approach and offer some concrete guidance and recommendations for the future.

Firstly, the chapter will consider the departure from the regulatory state and the hybrid mode of governance that has emerged at EU level following the acceptance of the Commission's riskifying moves by the member states. It argues that the selective application of EU policy tools via catalytic and geo-economic precautions comes with a legal risk. Specifically, this may be incompatible with EU law as well as the EU's obligations under international law, which in turn may result in legal challenges that not only undermine the precautions in question themselves, but also the legitimacy of EU regulation as well as the credibility of the Commission as a neutral regulator.

Secondly, the chapter will focus on the precautionary conceptualisation of security of supply of the riskified mode of governance (i.e. security of supply as a market failure requiring the establishment of supranational precautions, rather than as an automatic outcome of competitive conditions). It contends that this decoupling of security of supply from market integration involves a variety of risks. Namely, it may lead to decision-making that ignores commercial factors and thus to an inefficient

allocation of EU resources, may interfere with the EU's climate objectives, and may undercut its normative ambitions and the ability to promote democratic values beyond EU borders.

Both of these elements will be elucidated via a case study. The first section will elaborate on the legal risk of selective measures by examining the Nord Stream 2 saga. The second section will illustrate the risks associated with the precautionary conceptualisation of security of supply by scrutinising the SGC initiative.

1 The legal risk of the departure from the regulatory state: The Nord Stream 2 saga

Undoubtedly one of the most prominent characteristics of the riskified mode of supranational energy governance analysed in the previous chapters was its move "beyond the regulatory state" (Prontera, 2019a). Rather than revolving around the neutral application of regulatory tools, many of the supranational precautions for security of supply involved a more deliberate, targeted use of EU policy tools. As part of the policy for intra-EU network development and the external strategy for diversification, regulatory, financial and diplomatic support was offered to a select number of infrastructure projects considered strategically important. Conversely, to prevent Russia from further strengthening its grip on the internal gas market, the rules of the IEM were selectively applied to obstruct the implementation or operation of Gazprom-sponsored infrastructure projects.

In enacting these proactive (i.e. catalytic and geo-economic) precautions, the Commission no longer solely shaped the regulatory environment in which market players operated, but also began actively promoting, supporting and impeding them. It transformed into a hybrid actor, combining its traditional role of regulator and enforcer of EU law with a

more interventionist role where EU security of supply was “at risk”, acting in selective ways in the pursuit of strategic goals.

These selective measures and the accompanying transformation of the Commission’s role carry a distinct legal risk. To illustrate this risk, the next subsections will discuss the legal challenges provoked by what is probably the most notorious and controversial instance of the post-2009 “selectivity”: the EU’s successive attempts to stymie the Nord Stream 2-project.

1.1 Applicability of Directive 2009/73/EC

In its first attempt to undermine the project’s implementation, the Commission had publicly stated that the rules of the Third Energy Package, specifically Directive 2009/73/EC and its provisions on third-party access, tariff regulation and ownership unbundling, applied to Nord Stream 2 on the basis of the general applicability of EU law to the territorial waters and the exclusive economic zone of the member states.

In an internal and confidential opinion, this line of argument was contested by the Commission’s legal service. While the legal service argued that “from a general and abstract perspective” the applicability of EU law to the exclusive economic zone and the territorial waters of member states could be derived from the principles of European and international law, it stated that the applicability of EU law depended not on those general principles but much rather on “the specific provisions of secondary EU law relevant for the legal issues at stake” (European Commission Legal Service, 2016, p. 3). In other words, Directive 2009/73/EC could only be considered applicable to Nord Stream 2 if that was compatible with the provisions of that directive.

According to the legal service, this was not the case. It stated that Nord Stream 2 could not be considered as an “interconnector” as defined in Art.

2(17) of Directive 2009/73/EC, “a transmission line which crosses or spans a border between Member States for the sole purpose of connecting the national transmission systems of those Member States” (European Parliament and Council of the European Union, 2009, p. 102). Because of this, the operator of Nord Stream 2 would not be able to request an exemption from the tariff regulation, third-party access and ownership unbundling requirements under Art. 36 of Directive 2009/73/EC, which reserves the right to request an exemption for “major new gas infrastructure, i.e. interconnectors, LNG and storage facilities” (ibid. p. 119), as Nord Stream 2 does not belong to any of the applicable categories. Requesting compliance of Nord Stream 2 with the requirements of Directive 2009/73/EC without giving it the possibility to seek an exemption from these requirements, would then depart from the “coherent regime foreseen by the legislator and give that pipeline a different and less favourable treatment in comparison to a similar pipeline crossing an internal border” (European Commission Legal Service, 2016, p. 2). It further stated:

“There is no indication that such a differential treatment would be the deliberate will of the EU legislator. On the contrary, the fact that no possibility of exemption is foreseen for transmission lines between a Member State and a third country under Article 36 tends to confirm the interpretation that the legislator has not foreseen the application of the Directive to a pipeline crossing an external border” (ibid.).

The legal service thus stressed that requesting compliance of Nord Stream 2 with Directive 2009/73/EC was not in the spirit of the directive because it would result in discrimination between transmission pipelines crossing external borders and transmission pipelines crossing internal borders, by subjecting the former “to the full burden of liberalisation without being able to obtain relief” via the exemption procedure provided under Art. 36 of

Directive 2009/73/EC (Hancher & Marhold, 2019, p. 295), unlike non-import pipelines, not excluded from that procedure.

However, the Commission deliberately ignored this confidential opinion and stuck to its position, even after it was leaked to Politico and became publicly known (de Jong & Van de Graaf, 2021, p. 500). Yet, when in 2017 the Commission asked whether the Bundesnetzagentur would demand Nord Stream 2's compliance with the Third Energy Package, the German regulator, just as the Commission's legal service, emphasised the unlawful and inequitable character of the Commission's request:

"[…] it is long-standing regulatory practice of the European Commission not to regard such pipeline projects [i.e. import pipelines from third countries] under the regime of the internal market. This applies to Nord Stream 1, but also to other import pipelines from third countries such as Green Stream and MEDGAZ. It would constitute a discriminatory practice if other requirements were to apply to Nord Stream 2 without the existence of an adequate legal basis for them in the third internal market package" (Bundesnetzagentur, 2017, p. 4).

Without such an adequate legal basis, the Bundesnetzagentur contended, "national regulatory agencies should not presume the competence to quasi further develop law" (ibid. p. 5). It was for the European legislator to evaluate "the necessity to further develop the European legal framework, in order to be able to apply certain regulatory standards to such projects according to harmonised European criteria" (ibid.). Accordingly, the Bundesnetzagentur denied the request, as selectively applying the Third Energy Package to Nord Stream 2 "would certainly go beyond its competence" (ibid.).

This led the Commission to finally abandon its position and as such, its attempt to sabotage Nord Stream 2 by requesting the project's compliance with the requirements of Directive 2009/73/EC had failed. It serves as a first illustrative example of the legal risk associated with the selective application of EU policy tools. The Commission's attempt to employ internal market rules in a targeted and deliberate way to achieve strategic objectives – halting Nord Stream 2 to mitigate the risk posed by this project to European security of supply – was dismissed by internal actors because they considered it incompatible with EU law. Whereas the legal service deemed the Commission's interpretation unlawful because it provided external transmission lines with less advantageous treatment than internal transmission lines, the Bundesnetzagentur rather deemed it unlawful because it applied different requirements to Nord Stream 2 than to other import pipelines from third countries. This was obviously problematic since it eventually forced the Commission to abandon its position, undermining its first attempt to obstruct the realisation of the Russian-sponsored pipeline project.

1.2 EU-Russia IGA

After the Bundesnetzagentur's negative response, the Commission requested a mandate from the Council to negotiate an IGA with Russia for the offshore section of Nord Stream 2, in a second attempt to undercut the project's viability by subjecting it to the requirements of the Third Energy Package. The Commission claimed that in the absence of such an IGA, Nord Stream 2 would either be subjected to conflicting regulatory regimes or to a legal void (de Jong & Van de Graaf, 2021, p. 500).

The Council subsequently requested its legal service to assess whether the Commission's arguments were valid grounds to grant a negotiating mandate. The legal service of the Council, however, refuted both of the Commission's lines of reasoning. It first rejected the Commission's "legal

void”-argument, stating that “the offshore parts of the pipeline would in any event be subject to the relevant rules of international law, including the law of the sea” (Council of the European Union Legal Service, 2017, p. 5). Then it rejected the Commission’s “conflict of law”-argument:

“[...] the Commission identifies the risk of ‘*applying two different legal regimes*’ and even ‘*applying several contradictory regimes to one and the same stretch of pipeline*’. Moreover, the Commission argues that ‘*[o]nly via negotiation of a specific agreement can the underlying conflict of laws be resolved, which comes from contradicting legal principles in the Russian legislation and the Union acquis*.’

Such a situation of “conflict of laws” between Russian law and the internal EU energy acquis, in particular Gas Directive 2009/73 (“the Directive”), cannot currently exist.

There could currently be a ‘conflict of laws’ if both the Union and the third country had applied their respective jurisdiction to the pipeline. As regards to the Union, this would necessarily presuppose that Gas Directive 2009/73 is indeed applicable to the part of the Nord Stream 2 pipeline which is under the jurisdiction of the Union and Germany. As will be set out further below, the Legal Service does not consider that this is the case. This excludes actual conflict of laws, at least with respect to the Union.”[36]

Therefore, as an IGA would neither resolve a legal void or a conflict of laws as was alleged by the Commission, the Council concluded that “the decision whether or not to negotiate the envisaged agreement is not related to a legal need derived from these notions but instead a matter of political choice” (ibid. p. 6). According to the Council, rather than being

[36] Council of the European Union Legal Service, 2017, pp. 5-6. Lay-out copied from original document.

concerned with resolving legal issues, the IGA was inspired by a desire "to 'externalise' the principles of the Union's internal energy acquis at the international level" (ibid. p. 12), and it risked affecting member states' right to choose between different energy sources and to determine the general structure of their energy supply, pursuant to the second subparagraph of Art. 194(2) TFEU (ibid. p. 22).

Although the Council's legal service's confidential opinion was not legally binding, it severely reduced the chances of the member states granting the IGA negotiating mandate, and stranded the Commission's second attempt to undermine Nord Stream 2 (de Jong & Van de Graaf, 2021, p. 501). This again exemplifies the legal risk associated with attempts to employ EU regulation in targeted, intentional (i.e. geo-economic) fashion, as precisely the strategic nature of the Commission's request – the lack of a legal rationale – stood in the way of a positive assessment by the Council's legal service and ultimately its approval by the Council.

1.3 Amending Directive 2009/73/EC

After the Commission's failed attempts to selectively apply the existing legislation to the project, it proposed to amend the legislation in question, Directive 2009/73/EC, so that its requirements would become applicable to import pipelines from third countries (and thus Nord Stream 2) (de Jong & Van de Graaf, 2021, p. 501). This attempt was more successful, as the proposed amendments were effectively adopted in April 2019, and entered into force on May 23, 2019. These concerned *inter alia* the definition of "interconnector", now defined as "a transmission line which crosses or spans the border between Member States for the purpose of connecting the national transmission system of those Member States *or a transmission line between a Member State and a third country up to the territory of the Member States or the territorial sea of the Member State*" (European Parliament and Council of the European Union, 2019, p. 3,

italics added). Due to these changes, the requirements of the directive and the exemption regime for new infrastructure now applied to transmission pipelines to and from third countries at the border of EU jurisdiction. Moreover, member states were henceforth allowed to grant derogations from the third-party access, ownership unbundling and network tariff requirements of the directive to existing import pipelines – pipelines completed before May 23, 2019 (European Parliament and Council of the European Union, 2019, p. 5).

Whereas the two previous sections highlighted the legal risk of *attempts* to selectively apply EU rules, this section will showcase that there is also a legal risk associated with the actual adoption of selective measures by the EU.

1.3.1 Nord Stream 2 AG's legal proceedings

Shortly after its entry into force, Nord Stream 2 AG stated that the Amended Gas Directive was specifically directed towards Nord Stream 2 (as did most analysts, some even labelling the Amended Gas Directive as "Lex Nord Stream 2" (Talus, 2018; Zafoschnig, 2019)). Indeed, although the Amended Gas Directive would in principle apply to all import pipelines from third countries to the EU not completed by the date of entry into force, Nord Stream 2 was *de facto* the only import pipeline that would be affected (European Commission, 2017d; Yafimava, 2019, p. 13). It therefore initiated two court cases to combat the alleged discriminatory treatment by the EU, one before the General Court and one under the ECT (de Jong & Van de Graaf, 2021, p. 504).

Even though the Russian invasion of Ukraine in February 2022 and the ensuing war have reduced the chances that Nord Stream 2 will ever enter into operation to effectively zero, these cases merit discussion as they might still pose legal obstacles to the Amended Gas Directive, and are

therefore demonstrative of the legal risk associated with the selective application of EU regulation.

Nord Stream 2 AG case before the General Court

Before the General Court, Nord Stream 2 AG submitted an action for annulment of the Amended Gas Directive, because of:

(1) alleged infringement of the general EU law principle of equal treatment, as the Amended Gas Directive left Nord Stream 2 “without the prospect of derogation from the application of the rules of Directive 2009/73/EC, [...] whereas all other existing offshore import pipelines are eligible for derogation” (Nord Stream 2 AG, 2019a),

(2) alleged infringement of the general EU law principle of proportionality, “as the amending Directive is incapable of achieving its stated objectives and cannot, in any event, make a sufficiently meaningful contribution to those objectives that outweigh the burdens it imposes” (ibid.),

(3) alleged infringement of the general EU law principle of legal certainty, “as the amending Directive fails to incorporate appropriate adaptations with respect to the particular situation of the Applicant, but on the contrary, is specifically designed to impact it negatively” (ibid.),

(4) alleged misuse of powers, “as the Amending Directive was adopted for a purpose other than those purposes for which the powers used to pass it were conferred” (ibid.),

(5) alleged breach of essential procedural requirements (ibid.),

(6) alleged failure to state reasons as required by Art. 296 TFEU (ibid.).

The General Court, however, did not hear on the substance of the case and declared the action for annulment as inadmissible for procedural reasons, as Nord Stream 2 AG was not directly and individually concerned by the Amended Gas Directive, because “it is only through the intermediary of the national measures transposing the contested directive that the

Member States [...] will adopt or have adopted that operators such as the applicant will be or are subject, under the conditions agreed on by those Member States, to obligations under Directive 2009/73 as amended by the contested directive" (General Court, 2020, para 110).

Hence, the General Court stipulated that Nord Stream 2 AG was only indirectly affected by the Amended Gas Directive. The directive did not impose any direct obligation on the company; any obligation regarding ownership unbundling, third-party access or regulated tariffs imposed on Nord Stream 2 AG could solely be derived from national measures transposing that directive. As such, its action for annulment could not be considered admissible, as the criteria set out in Art. 263 TFEU were not met. Pursuant to Art. 263 TFEU para 4, only when a regulatory act does not entail implementing measures and is of direct concern to an individual, that individual can institute proceedings against the regulatory act in question before the CJEU.

Nord Stream 2 AG lodged an appeal against the order of the General Court with the ECJ. In October 2021, Advocate General Bobek delivered his Opinion on the appeal, which suggested the ECJ to refer the case back to the General Court. The Advocate General argued that the reasoning of the General Court, where it declared the applicant's proceedings as inadmissible because the contested act was a directive and could therefore not be of direct concern to an individual, was incorrect and incompatible with the case law on the subject (Advocate General Bobek, 2021, para 37-38). Namely, this would equate direct concern with direct effect, whereas the former was a much broader category, merely requiring that the challenged act produced legal effects vis-à-vis third parties (ibid. para 40).

In the case at hand, the Amended Gas Directive did in fact produce such legal effects, which altered the legal position of Nord Stream 2 AG (ibid.

para 42). Moreover, there was a direct causal link between the directive and this alteration, as there was no additional intervention required by member states capable of breaking that link (ibid. para 43). Indeed, where the exemption and derogation procedure in principle provided member states with some room for additional intervention, member states had no genuine discretion regarding the implementation of the directive in respect to Nord Stream 2, as neither of those procedures were applicable to the project and member states thus lacked "*any room for manoeuvre*" and acted as a "*longa manus* of the Union" (ibid. para 75). Accordingly, the Advocate General deemed the condition of direct concern satisfied (ibid. para 85).

Furthermore, the Advocate General pointed to the existence of an individual concern to Nord Stream 2 AG vis-à-vis the Amended Gas Directive, presenting four different arguments. First of all, Nord Stream 2 AG was the only company belonging to the "(purely theoretical) group of individuals affected by the contested measure" (ibid. para 194). Secondly, Nord Stream 2 AG was in "a *unique position* vis-à-vis the contested measure", as it was neither eligible to apply for an exemption from the requirements of the directive due to the advanced stage of construction of Nord Stream 2, nor could it benefit from a derogation from those same requirements because construction was not completed before the amendments' date of entry into force (ibid. para 195). No other company would ever be in that position, as they would in principle be eligible for either a derogation or exemption from the requirements of the directive (ibid. para 196). Thirdly, EU institutions had not only been aware that Nord Stream 2 AG was going to be subject to the newly established legal regime introduced by the amendments, "they acted with the *very intention* of subjecting the appellant to that new regime" (ibid. para 197). Finally, given the advanced stage of construction of Nord Stream 2 and the investment already made, it was evident that the Amended Gas Directive would oblige

Nord Stream 2 AG to introduce “profound changes to its corporate and financial structure and to its business model” (ibid. para 199).

As such, Advocate General Bobek argued that the criteria of Art. 263 TFEU para 4 were fulfilled in the case at hand, and advised the ECJ to annul the contested order and to refer the case back to the General Court (ibid. para 206).

In its July 2022 Judgment, the ECJ followed the line of reasoning advanced by the Advocate General and agreed that Nord Stream 2 AG had to be considered directly and individually concerned by the Amended Gas Directive.

First, the ECJ emphasises the existence of direct concern, as the two cumulative criteria for direct concern – the contested act directly affects the legal situation of the appellant, and the act leaves no discretion to the addressees entrusted with the task of implementing that act – were fulfilled in the case at hand.

With regard to the first criterium – whether the contested act is capable of directly affecting the legal situation of the appellant – the ECJ argued that the Amended Gas Directive, “by extending the scope of application of Directive 2009/73 to interconnectors located between the Member States and third countries, such as the interconnector that the appellant intends to operate, has the consequence of subjecting the operation of that interconnector to the rules laid down in that directive, thus rendering applicable to the appellant the specific obligations that it lays down on that matter” (Court of Justice, 2022, para 75). Thus, it concluded that the Amended Gas Directive did in fact directly affect the legal situation of Nord Stream 2 AG, and that the General Court erred in law by arriving at the opposite conclusion on this point (ibid. para 77).

With regard to the second criterium – whether the contested act leaves a margin of discretion to the addressees entrusted with the task of implementing that act – the ECJ stipulated that, “while it is true that the Member States enjoy a margin of discretion in relation to the grant of such exemptions and derogations to gas undertakings that meet the conditions laid down in Articles 36 and 49a of Directive 2009/73 respectively, they do not however have any discretion as regards the possibility of granting those exemptions or derogations to the appellant, which does not satisfy those conditions” (ibid. para 105). As such, the ECJ stated that the General Court committed an error of law when it found that the Amended Gas Directive accorded discretion to member states with regard to the obligations imposed on Nord Stream 2 AG as a consequence of that directive (ibid. para 114).

Since both criteria for direct concern were therefore fulfilled, the General Court was wrong to hold that Nord Stream 2 AG was not directly concerned by the Amended Gas Directive, and to declare as inadmissible Nord Stream 2 AG’s proceedings before the General Court for this reason (ibid. para 115).

The ECJ then assesses whether the contested act is of individual concern to the appellant (something which was not assessed by the General Court as direct concern and individual concern are cumulative conditions and it did not consider the first condition of direct concern to be fulfilled). For individual concern to exist for a natural or legal person, the contested act needs to affect that person “by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons” (ibid. para 156). Since Nord Stream 2 could neither benefit from an exemption nor a derogation under the Amended Gas Directive and is, amongst both existing interconnectors and interconnectors yet to be constructed which fall within the scope of the

directive, “the only pipeline which is, or which could be, in such a situation” (ibid. para 161), the ECJ found that Nord Stream 2 AG was individually concerned in the case at hand (ibid. para 163).

Thus, with the Amended Gas Directive being of both direct and individual concern to Nord Stream 2 AG, the ECJ concluded that the latter’s action for annulment had to be declared admissible and it referred the case back to the General Court (ibid. para 167). While it “remains for the General Court to rule on the merits of that action” (Court of Justice of the European Union, 2022), this case demonstrates how targeted precautions may evoke serious legal challenges under EU law, which could result in these measures being overturned before the CJEU, in turn undermining whatever specific goal they attempted to pursue.

Nord Stream 2 AG ECT claim

On 12 April 2019, Nord Stream 2 AG activated the three-month consultation period between itself and the EU for an amicable settlement of their disputes regarding the Amended Gas Directive – compulsory before starting arbitration proceedings under the ECT (Nord Stream 2 AG, 2019b). Unsurprisingly, an amicable settlement was not reached and that same year, Nord Stream 2 AG served a formal notice of arbitration against the EU (International Energy Charter, 2019). In these proceedings, the company argued that the Amended Gas Directive was in breach of the EU’s obligations under the ECT, by treating Nord Stream 2 as ineligible for a derogation from the requirements of the Amended Gas Directive that existing pipelines benefited from. Just as Nord Stream 2 AG’s case before EU courts, the outcome of these proceedings is still to be seen, as the case is still pending.

Prima facie, Nord Stream 2 AG had a strong case. It was far from a secret that the EU’s amendment of Directive 2009/73/EC was primarily motivated by a desire to bring Nord Stream 2 within the scope of the Third Energy

Package, in the hope that this would negatively impact the project. Moreover, by the time of entry into force of the Amended Gas Directive, the construction of Nord Stream 2 was almost halfway. Therefore, it would be reasonable for Nord Stream 2 AG to argue that it had already fully committed to the investment, and that the contested measure subjected this investment to discriminatory treatment by retroactively applying a regulatory regime it could not have anticipated, in breach of the EU's obligations under the ECT to guarantee fair and equitable treatment under Art. 10 ECT and amounting to expropriation under Art. 13 ECT (Riley, 2019, pp. 2-3).

Riley (2019) argued that, upon closer inspection, Nord Stream 2 AG's ECT claim was not as strong for several reasons. Firstly, Nord Stream 2 AG made a final investment decision and initiated the construction of the pipeline without having obtained the necessary permits from national regulatory authorities. Specifically, the company proceeded with the implementation of the project without the Danish route permit in place. This would have enabled the EU to frame Nord Stream 2 AG as an irresponsible investor, since that permit was absolutely essential for the pipeline and could have been denied on environmental and other grounds (ibid. p. 2). The EU could have pointed to the timing of the investment to further strengthen this argument. If it would have appeared that Nord Stream 2 AG was specifically motivated by a desire to make as much progress with pipe-laying before the new legislation's entry into force, this would have seriously hurt its case (ibid. p. 3).

Secondly, the EU could have raised legitimate justifications for the amendments, contending that these were a "timely, proportionate, and legitimate response to a legitimate threat to EU interests", since Nord Stream 2 would have weakened both Eastern European member states' and Ukraine's strategic position vis-à-vis Russia (ibid. p. 4). This would

have directed attention to another central flaw in Nord Stream 2 AG's case, i.e. its claim that its investment was subjected to discriminatory treatment by the EU because it was *de jure* excluded from the derogation regime under Art. 49a of the Amended Gas Directive. Since Nord Stream 2 failed to meet any of the criteria of Art. 49a – no detrimental impact on competition, the functioning of the internal market and/or security of supply – it would have never been granted a derogation even if the company would have been able to apply for one, which could, according to Riley (2019, p. 4), "fatally undermine its case".

Himmelreich (2020) questioned the validity of Nord Stream 2 AG's ECT claims for another reason. As a Swiss company – Switzerland being a party to the ECT – Nord Stream 2 AG was able to rely on the treaty's ISDS provisions to initiate arbitration proceedings against another party to the treaty, *in casu* the EU. However, Nord Stream 2 AG was wholly owned by Gazprom, a company in which the Russian government, which refused to ratify the ECT, had a majority stake. Himmelreich (2020, p. 215) asserted that it was "highly doubtful" whether Nord Stream 2 AG could invoke the protection of the treaty simply because it was headquartered in Switzerland, as this would essentially allow Russia to claim rights under the ECT by relying on a foreign subsidiary, while at the same time evading the obligations associated with the treaty domestically. According to Himmelreich (2020, p. 215), this could not be considered "compatible with the Charter".

While Himmelreich (2020) presented a very strong argument in favour of the EU, the arguments of Riley (2019) not only revealed flaws in Nord Stream 2 AG's ECT claims, but also inadvertently underlined their strengths. Firstly, if the EU would have chosen to emphasise the timing of Nord Stream 2 AG's investment decisions, this would have provided the latter with a useful opportunity to conversely call attention to the EU's own

timing in negotiating, adopting and implementing the Amended Gas Directive. This undeniably endeavoured to apply the requirements of the Third Energy Package to Nord Stream 2 specifically, while simultaneously excluding the project from both the exemption and derogation regime provided under the directive. Consequently, the EU's arguments would have been easily countered, and this approach could conceivably have impaired rather than have improved its case.

Secondly, while raising legitimate justifications for the amendments because Nord Stream 2 posed a threat to EU interests seems overly justified in hindsight, before the war in Ukraine this would have implied a concession on behalf of the EU regarding the geo-economic employment of IEM rules in order to obstruct the project. This was always denied by the Commission (e.g. European Commission, 2017d), and risked affecting the EU's position in a possible new case brought by Nord Stream 2 AG before the General Court. Thirdly, while the argument that the chances of a derogation for Nord Stream 2 would have been *very low* either way was obviously entirely legitimate, *de jure* excluding the project from the derogation regime under Art. 49a of the Amended Gas Directive rendered this completely impossible, an important qualitative difference. As such, it was hard to say if this argument would have helped yet have compromised the EU's case. Thus, the arguments proposed by Riley (2019) demonstrated that potential avenues for the EU to invalidate and disprove the ECT claims often risked undercutting its own position.

In summary, Nord Stream 2 AG's ECT proceedings and the case before the General Court highlight the considerable legal contestation resulting from the successful selective and strategic application of EU regulation. Arguably, once established, selective measures pose an even bigger legal risk than mere attempts of the EU at such selective application. As this subsection demonstrates, the parties affected may initiate legal

proceedings to combat the EU's discriminatory treatment, alleging its incompatibility with the EU's obligations under EU and international law. If these proceedings succeed, this would not only stymie the selective application in itself, but also the goals this attempts to accomplish.

1.3.2 The Amended Gas Directive's other legal issues

Apart from Nord Stream 2 AG's cases, the Amended Gas Directive is still subject to other legal obstacles as well.

First of all, questions have arisen regarding possible interference of the directive with EU treaty law, in particular with member states' rights to determine their own energy mix and the general structure of their energy supply under Art. 194(2) TFEU. Namely, Hancher & Marhold (2019) have argued that the Amended Gas Directive has altered the division of competences between the EU and member states in ways liable to affect these rights. As stated previously, before the Amended Gas Directive's entry into force, import pipelines from and to third countries were not covered by EU law (indeed, this was the whole reason why the legislation was eventually amended). As a consequence, IGAs with third countries to regulate these pipelines could not affect common rules or alter their scope. Thus, member states retained the competence to conclude such IGAs, in accordance with Art. 3(2) TFEU (Hancher & Marhold, 2019, p. 301).

With the Amended Gas Directive's entry into force, however, import pipelines from and to third countries are covered by EU law up to the border of EU jurisdiction. Therefore, IGAs with third countries to regulate these pipelines are now liable to affect common rules or alter their scope in the meaning of Art. 3(2) TFEU. In accordance with Art. 3(2) TFEU, which defines that such fall under the exclusive competence of the EU, it then follows that the competence for concluding these IGAs has been transferred from the national level to the supranational level (ibid.).

Moreover, in accordance with Art. 36(9) of the Amended Gas Directive, the Commission's power to veto exemptions granted by national regulatory authorities (cf. OPAL) now extends to import pipelines as well (ibid. p. 302). As such, Hancher & Marhold (2019) contended, member states can no longer unilaterally determine the rules that are applicable to the operation of these pipelines (ibid.).

Is this transfer of competences to the supranational level via the Amended Gas Directive consistent with Art. 194(2) TFEU? Indeed, in its assessment of the compatibility of the negotiating mandate for a Nord Stream 2 IGA with EU law, the legal service of the Council noted that "any measures which would amount to regulating structurally the gas supply of one or several Member States from a third country", risked affecting member states' rights under Art. 194(2) TFEU and should not be decided "without the participation of or against the will of the Member State concerned" (Council of the European Union Legal Service, 2017, p. 19). It also stated that "not only the elimination of a pipeline from a Member State's choice of supply routes, but even restrictions on its operation, could in principle, depending on their scope and effects, affect the rights of the Member State as regards the general structure of its energy supply" (ibid. p. 21).

Arguably, IGAs regarding import pipelines to or from the EU are measures which "structurally regulate" gas supply of member states from third countries. However, with the Amended Gas Directive, the conclusion of such future IGAs is now an exclusive external competence of the EU; these agreements can therefore be decided without the participation of the concerned member states (see Hancher & Marhold, 2019, p. 301). In addition, the extension of the Commission's veto power to import pipelines could result in the restriction on the operation of such pipelines, as exemplified by the Commission's past exemption decisions regarding internal pipelines. The 2009 OPAL exemption decision for instance

severely constrained the operation of OPAL, as it allowed Gazprom to utilise only 50 percent of its capacity, which effectively left the other half of the pipeline unused as there was no demand from other parties for this capacity (Yafimava, 2017, p. 11). As the legal service of the Council suggested, both of these elements might affect member states' rights to determine the general structure of their energy supply, and might therefore be incompatible with treaty law. This might in turn lead to legal challenges against new IGAs with third countries concluded by the Commission, or against exemption decisions of the Commission regarding import pipelines, by member states invoking their rights under Art. 194(2) TFEU (Hancher & Marhold, 2019, p. 302).

These apparent incompatibilities of the Amended Gas Directive with EU primary law further underline the troubled relationship of effectively adopted selective measures with the EU's legal order. This troubled relationship may not only lead to legal action that may in turn thwart the measures themselves, there are wider repercussions to be considered as well. The authority of the EU's legal order is based on the neutrality of its regulation, aimed towards the creation of a level playing field. Similarly, the legitimacy of the Commission is derived from the impartial and objective application of that regulation. The targeted use of EU regulation described above challenges these notions and raises questions regarding the EU's devotion to the rule of law and the principles of non-discrimination and legal certainty (Goldthau & Sitter, 2020, p. 123; Talus & Wüstenberg, 2019, p. 329). The Commission's geo-economics – i.e. selectively applying its regulatory toolbox to pursue strategic objectives – may erode its credibility as a regulator, which can negatively affect its ability to function as an enforcer of EU law. The EU's normative power, its reputation as a global promoter of democratic values and the rule of law, might equally be negatively affected in this way. It may become harder to label the energy

geopolitics by third countries as wrong, when its own approach is increasingly informed by strategic motives (Kuzemko, 2014, p. 70).

2 The risks of the precautionary conceptualisation of security of supply: The case of the Southern Gas Corridor

Previous chapters described the shift from a neoliberal to a precautionary conceptualisation of security of supply. Rather than as a natural by-product of competitive and integrated energy markets, security of supply became understood as a result of a combination of reactive and proactive supranational precautions, which adequately mitigated the risk posed by Europe's ever-growing import dependence. This reconceptualisation effectively decoupled security of supply from market integration and established it as a policy objective in its own right, pursued no longer solely indirectly via market integration, but also directly via a number of precautionary measures.

This decoupling comes with various risks. This will be demonstrated on the basis of an analysis of the (implementation of the) SGC below.

2.1 The risk of misallocating EU resources

The EU dedicated considerable financial and diplomatic resources towards opening the SGC, as well as provided the initiative with the necessary regulatory support. Without question, this was overwhelmingly motivated by a desire to diversify the European energy supply away from Russian gas in order to enhance EU security of supply. Has the SGC achieved these goals?

The havoc wreaked on the European continent by the Russian supply cuts in the winter of 2021/22 and following Russia's invasion of Ukraine in

February 2022 has conclusively demonstrated that this has not been the case. The SGC has not reduced the EU's vulnerability to supply disruptions from Russia to any significant extent.

This is not particularly surprising when considering the limited amount of gas that the SGC is capable of bringing into Europe, a mere 10 bcm per annum (cf. the capacity of Nord Stream 1 & 2, standing at 55 bcm per annum each) (Trans Adriatic Pipeline, 2022a). Offsetting this against the total volume of gas imported (337.5 bcm) and gas consumed (412 bcm) by the EU in 2021, this is equivalent to only ca. 3 percent of imports/ca. 2.5 percent of consumption (European Commission, 2021a). As several analysts pointed out well before the Russian "gas shock" of 2022, these proportions were never going to be able to make a substantial contribution to the diversification of the EU's gas supply (see e.g. Pirani, 2018; Siddi, 2019; Verda, 2016). Considering that the initiative was motivated by a desire to do exactly that, one can wonder whether the quantity of resources allocated to the project was truly commensurate with the project's return on investment in terms of security of supply.

However, proponents of the SGC (e.g. the Commission) have contended that the capacity of TAP, the pipeline effectively bringing the gas into the EU, can be expanded to 20 bcm per annum. Besides the fact that 20 bcm would still be a rather inconsequential amount of gas considering the 155 bcm of imports from Russia in 2021 (European Commission, 2021a), there are other issues worth noting as well. First of all, there are doubts that Azerbaijan is able to deliver an additional 10 bcm to European markets. Azeri gas production is gradually expanding, but rising domestic demand raises questions over whether these supplies will/can be directed to Europe (Stein, 2021). Azerbaijan may have "expressed [its] willingness" to increase its gas exports to the EU (European Commission & HR/VP, 2022, p. 3), being capable of doing so is still something else.

Since Azerbaijan is currently the only big gas supplier connected to the SGC, this necessarily implies that new infrastructure would have to be built to supply 20 bcm of natural gas through TAP, which would link other gas producers in the Caspian region up with the SGC. This is also illustrated by the results of the TAP market test, launched in accordance with the 2013 exemption decision by the Commission. The latter granted a 25-year exemption on third-party access to TAP, but this only applies to the original capacity (European Commission, 2013b). Any capacity added on top of the current 10 bcm is not exempted from the third-party access requirements of the Third Energy Package. As such, the TAP consortium is required to organise market tests every two years, competitive bidding processes designed to evaluate market interest in a capacity expansion (Trans Adriatic Pipeline, 2022b).

The first market test was organised in 2019 and opened bids for three different expansion scenarios: an expansion to 14.4 bcm per annum, an expansion to 17.1 bcm per annum, and a full expansion to 20 bcm per annum. In July 2021, the TAP consortium announced that the 2019 market test had been concluded, and that it had not received binding offers for any of the different expansion scenarios (Trans Adriatic Pipeline, 2022c). That same month, a new market test was launched, but it remains difficult to see why the result would now be any different (Stein, 2021).

What would effectively allow 20 bcm to be delivered to the EU via TAP, would be infrastructure that would connect either Turkmenistan or Iran to the SGC. However, EU energy diplomacy has proven ineffective in this respect in the past, as discussed in Chapter 4. As regards Turkmenistan, the Commission was unable to resolve the significant legal, political and commercial obstacles impeding the construction of the so-called TCP. It lacked the diplomatic clout to pressurise and broker an agreement among the Caspian littoral states (Azerbaijan, Iran, Kazakhstan, Russia and

Turkmenistan) regarding the legal status of the Caspian Sea, as well as the resources and the mandate to provide the direct financial support necessary “to create the political conditions to satisfy both the Turkmen government and Western operators” (Verda, 2016, p. 78). While the littoral states eventually found agreement on a treaty concerning the legal status of the Caspian Sea in 2018 (which the Commission had little to do with), political and commercial factors remained insurmountable impediments to the realisation of the TCP. As regards Iran, the JCPOA gave new impetus to a possible extension of the SGC to Iran, but any hope for further progress instantly evaporated when the US decided to withdraw from the deal and reinstated sanctions against the country (Prontera, 2019a, p. 157).

Even in the context of the catastrophic energy crisis facing Europe following Russia’s invasion of Ukraine, it is unlikely that the SGC will be linked up with Iran or Turkmenistan. While skyrocketing gas prices and a desperate push for diversification in Europe *prima facie* appear to make new pipeline deals considerably more attractive on both the supply side and the demand side, the precarious long-term outlook for natural gas in the EU in light of the bloc’s climate ambitions dampens the prospects for new mega projects such as the ones that would be required at hand (Stein, 2021). For the EU, LNG provides a much more attractive option for diversification than an SGC expansion, as this does not require such substantial upfront investments in new fossil fuel infrastructure and long-term commitment to natural gas. This is visible in the REPowerEU Package, which proposes to replace 50 bcm of Russian gas via additional LNG imports, compared to only 10 bcm via additional non-Russian pipeline gas (European Commission & HR/VP, 2022, p. 3). For Iran and Turkmenistan, the stagnating European gas market does not hold particularly alluring prospects. Rapidly growing gas markets in Asia such as China offer much more commercially attractive alternatives with a level

of security of demand that the EU cannot possibly provide (see Tagliapietra & Zachmann, 2015).

Thus, although the REPowerEU Plan may state that "the expansion of the Southern Gas Corridor to 20 bcm per year will play a major role to secure gas supply for South Eastern Europe […] and the Western Balkans" (European Commission, 2022g, p. 12), any contribution by the SGC to EU diversification on top of the current 10 bcm seems rather unlikely. Unless Azeri gas production manages to seriously exceed expectations in the coming years, there will be little reason for expanding TAP's capacity. And even *if* Azerbaijan somehow manages to drastically increase its output, it must be pointed out that documentation released by the TAP consortium as part of the 2019 market test has indicated that the capacity expansion would take at least until October 2026 to complete (Trans Adriatic Pipeline, 2021, p. 13). This raises further doubts about a "major role" for the SGC in diversifying EU gas supply away from Russia.

Apart from its limited capacity and the poor prospects for expansion, Siddi (2019, pp. 132-133) also calls attention to the fact that the SGC presents "an inherently insecure gas transport route". At several points alongside its route through the Caucasian region, the SCP, the pipeline connecting the Shah Deniz gas field to TANAP, is in close proximity to zones characterised by volatile security situations. This includes Nagorno-Karabakh, South Ossetia as well as Turkish territory where the Turkish army regularly clashes with Kurdish rebel groups (ibid. p. 133). In the current context, especially the second is cause for concern. South Ossetia is a *de facto* independent region occupied by Russian troops since the Russo-Georgian war in 2008.[37] Notably, during that conflict, the SCP had

[37] In May 2022, the *de facto* President of South Ossetia announced a referendum for the annexation of the region by Russia on July 17 2022, but this was overturned a few weeks later (Reuters, 2022c).

to be closed down and gas production from the Shah Deniz field was temporarily halted (Oil & Gas Journal, 2008).

In light of the deterioration of EU-Turkey relations since 2016, the transit via Turkey is a factor to be considered as well. Especially now that the EU is desperately counting on imports from non-Russian origin to replace Russian gas and to satisfy its energy needs, Turkey possesses a potentially powerful "transit weapon" – its strategic position as a SGC transit country – which it may wish to exploit vis-à-vis the EU (Siddi, 2019, p. 134). In fact, before the SGC was even implemented, Turkey already attempted to use its future position as a transit country to leverage concessions in its EU accession negotiations (Kardaş, 2011). Depending on its willingness to employ this transit weapon, gas deliveries via the SGC could thus become subject to Turkish goodwill (Siddi, 2019, p. 134).

To say the least, the SGC's contribution to EU diversification appears rather questionable. This exemplifies a first risk of the precautionary logic installed in supranational energy governance and the decoupling of security of supply from market integration. The security of supply-driven nature of decisions and measures derived from this logic, *in casu* the EU's pipeline diplomacy, may underplay important commercial and other limitations (see also Siddi, 2019, pp. 131-134). The EU, relying on a more limited toolbox than traditional states, may also prove inadequate in resolving these limitations, as the Commission's failed attempts to involve Turkmenistan and Iran in the SGC illustrate (as well as the failure of Nabucco, see Chapter 4) (see Verda, 2016). This, in turn, may cause the misallocation of EU resources, as well as the ineffectiveness of precautionary measures in achieving their declared goals.

2.2 The risk of carbon lock-in

While the SGC's negligible impact on diversification possibly presents its most glaring flaw considering its declared intent, it highlights other important issues associated with decoupling security of supply from market integration as well. How can the SGC for instance be reconciled with the core objective of sustainability?

As part of the European Green Deal, the EU has adopted a binding target of climate neutrality by 2050, and aims to cut greenhouse gas emissions by 55 per cent compared to 1990 levels by 2030 (European Parliament and Council of the European Union, 2021). These ambitions require a rapid reduction in fossil fuel consumption via energy efficiency measures and the deployment of renewable energy sources on a massive scale. Under the REPowerEU Plan released after Russia's invasion of Ukraine, the Commission has proposed a 45 percent share of renewables in the EU's energy mix by 2030 (European Commission, 2022d, p. 6), compared to the current share of 22 percent (Eurostat, 2022).

The SGC, a massive, long-term investment in natural gas (financial and otherwise), can hardly be considered compatible with these goals (Siddi, 2019, p. 138). It might not only contradict, but also actively undermine the EU's clean energy transition by creating a so-called carbon lock-in. This refers to the path dependence associated with carbon-intensive systems, causing them to lock out low-carbon and/or zero-carbon technologies and therefore impeding the transition towards cleaner alternatives (Erickson et al., 2015). While fossil fuel infrastructure projects like the SGC are very costly to implement and construct, they are characterised by comparatively low levels of operating costs. As such, they reinforce the dependence on fossil fuels and complicate their phase-out.

By extending diplomatic, financial and regulatory support to the implementation of the SGC, the EU has hampered the rollout of renewables and compromised the objectives of climate neutrality and decarbonisation. The SGC's potential for carbon lock-in is perfectly illustrated by the 25-year supply contract signed between Italy and SOCAR in 2020, which already secures a relatively substantial position for gas in the European energy mix until at least 2045 (Euractiv, 2020), only five years away from the EU's self-imposed deadline for climate neutrality. There is also a distinct opportunity cost to the supranational energy diplomacy. The financial resources allocated to the pipeline projects comprising the SGC are resources no longer available to support energy efficiency investments and the implementation of renewable energy projects in EU member states – measures that would have also diversified the energy supply away from Russian gas and ultimately have lowered the EU's dependence on third-country energy imports as a whole (Siddi, 2019, p. 138).

Notably, neglect of the sustainability dimension has been a feature of supranational support towards other natural gas projects as well. In 2019, the European Ombudsman received a complaint relating to the gas projects included on the fourth list of PCIs. The complainant argued that the Commission had insufficiently assessed the sustainability of gas projects before their inclusion on the 2019 list of PCIs (European Ombudsman, 2020).

In response to the complaint, the Commission stated that for the previous lists of PCIs, satisfactory assessments of this criterion had been prevented by the lack of a uniform approach and the absence of quality data (ibid.). For the fourth list of PCIs in 2019, the Commission had therefore requested ENTSOG to develop an approach for assessing the sustainability of candidate gas projects, in order to come to a more uniform

and consistent evaluation of gas projects' contribution to EU decarbonisation (ibid.). ENTSOG proposed an approach where it was automatically assumed that gas projects lowered CO_2 emissions, for instance because of fuel switches from coal to gas (ibid.).

This approach was obviously flawed, as it would not enable to distinguish between gas projects making an actual contribution to the EU's sustainable energy transition and projects making no or negative contributions to the EU's sustainability, as such negative contributions were simply not considered a possibility (ibid.). Owing to these flaws, the Commission decided not to apply ENTSOG's approach but also failed to include an alternative approach in the PCI selection process, leading to inadequate and suboptimal assessments of the sustainability benefits of the gas projects on the 2019 list of PCIs (ibid.).

Nevertheless, the Ombudsman concluded that the selection of PCIs "appears to have happened in accordance with the applicable rules" (ibid.). Namely, to be included on a PCI list, a gas project is required to significantly contribute to one or more of the criteria specified in Regulation 347/2013: market integration, security of supply, competition and/or sustainability. None of the gas projects included on the 2019 list of PCIs was selected based on the expectation that it would make a significant contribution to the sustainability of the EU's energy supply (ibid.). All of them were selected based on their contributions to other areas, primarily security of supply (European Commission, 2017e; European Ombudsman, 2020).

This underlines the structural nature of the neglect of the sustainability dimension as a consequence of the precautionary understanding of security of supply as an independent policy objective, which could set back EU climate ambitions. However, it should be noted that for the selection of

gas projects for the fifth list of PCIs adopted in 2021, the Commission used an updated sustainability criterion, which had to allow for more adequate assessments of the sustainability benefits of candidate gas projects before receiving the PCI label. According to the Commission, this revised sustainability assessment methodology was the reason for the lower number of gas projects on the 2021 list of PCIs – a total of 20 projects, whereas the 2019 list of PCIs still included 32 gas projects (European Commission, 2021b).

Furthermore, in December 2020, as part of the European Green Deal, the Commission adopted a proposal for another revision of the TEN-E guidelines (European Commission, 2020b). It proposed the establishment of mandatory sustainability criteria for the evaluation and selection of PCIs, which would effectively exclude fossil fuel projects from future PCI lists. The only funding that would remain available for fossil fuel infrastructure would be for projects retrofitting existing gas infrastructure in order to allow for the transport and storage of renewable gas types such as hydrogen. All other gas and oil projects would be excluded from receiving CEF-E funding (European Commission, 2020b, European Parliament, 2021).

2.3 The ethical risk

Apart from the risk for carbon-lock in, the SGC also showcases the ethical risk of the precautionary conceptualisation and its decoupling of security of supply from market integration (see e.g. Van Elsuwege, 2013; Siddi, 2019). As part of the supranational pipeline diplomacy to open up the SGC, the EU cooperated and intensified/sought to intensify its ties with countries in the wider Caspian region such as Azerbaijan, Iran, Turkmenistan and Uzbekistan (Siddi, 2019, p. 136).

Several instances were discussed and analysed in Chapter 4. In 2011, the EU and Azerbaijan signed the Joint Declaration on the Southern Gas

Corridor, which affirmed the political commitment of both sides to the realisation of the SGC. Notably, it did so without imposing normative requirements (i.e. respect for human rights) or regulatory convergence on Azerbaijan, an important deviation from the past (Weber, 2017). The Commission also worked together with Azerbaijan in the SGC Advisory Council and concluded new Partnership Priorities with the country in 2018, where the "swift completion of the Southern Gas Corridor and the timely beginning of the gas deliveries to the European market" were among the key objectives (EU-Azerbaijan Cooperation Council, 2018, p. 21).

Similarly, the EU sought to strengthen its ties with Uzbekistan, signing an MoU on cooperation in the energy sector in 2011. This MoU talked *inter alia* about collaboration "on the basis of a pragmatic and constructive approach" (EU-Uzbekistan MoU, 2011, p. 2) in the area of infrastructure "that would be beneficial for transit towards the European Union" (ibid. p. 5), whilst containing no references to either regulatory convergence or human rights, the rule of law, good governance or the promotion of democratic values. This differed from the MoU's signed with for instance Kazakhstan and Turkmenistan before 2009, which still made – albeit vague and general – references to regulatory harmonisation or cooperation (EU-Kazakhstan MoU, 2006; EU-Turkmenistan MoU, 2008).

The EU also intensified its engagement with Turkmenistan, with high-ranking Commission officials paying several visits to Ashgabat to discuss a possible extension of the SGC across the Caspian Sea. In 2015, the EU, Turkmenistan and a few other countries signed the Ashgabat Declaration, which established a Working Group where Commission and Turkmen government representatives discussed the various obstacles standing in the way of the implementation of the TCP.

Finally, after the JCPOA lifted the international sanction regime (later reinstated by President Trump in 2018), the EU stepped up the diplomatic engagement with Iran. Multiple delegations of high-level EU officials including HR/VP Mogherini visited Tehran, leading to the EU-Iran Joint Statement on Energy in 2016. This launched the High-Level Energy Dialogue on Non-nuclear Energy aimed towards "building trust between key stakeholders in the EU and the Islamic Republic of Iran" and "promoting and enhancing mutually energy security of Iran and Europe" (EU-Iran Joint Statement, 2016, p. 1).

In other words, the implementation of the SGC went hand in hand with new partnerships with third countries notorious for their extremely poor human rights records. In the 2021 Democracy Index compiled by the Economist Intelligence Unit, all of the countries mentioned above occupied places near the absolute bottom of the table – *nota bene*, all below Russia. Out of the 167 countries included in the index, Azerbaijan – the highest of the four – was ranked 141st, Uzbekistan 150th, Iran joint 154th together with Yemen and Libya, and Turkmenistan 161st (Economist Intelligence Unit, 2022). The regimes in these countries are uniformly classified as authoritarian and score very low across all five factors considered – electoral process and pluralism, civil liberties, functioning of government, political participation and political culture (ibid.).

As such, the SGC demonstrates the "ethical" risk of the precautionary conceptualisation of security of supply. Decoupling security of supply from market integration – thus, in the external dimension, from regulatory convergence – has simultaneously delinked the pursuit of this policy objective from the EU's normative ambitions. This calls into question the devotion to the purported fundamental values of the EU and "produces a fundamental incoherence in the ENP […], which is based *inter alia* on the

partner countries' commitment to democracy, human rights, rule of law" (Siddi, 2019, p. 136).

This ethical risk – the neglect of core values in the pursuit of security of supply – therefore has broader implications as well. The EU cannot credibly propagate democratic principles or deplore human rights violations beyond its borders if these are seemingly only relevant insofar as its strategic interests are not considered at play. Moreover, by ignoring the ethical dimension and by strengthening the ties with third countries regardless of their adherence to core European values (and by importing gas from their state-owned companies), the EU ends up directly supporting, maintaining and bolstering authoritarian regimes, which, as the events transpiring in February 2022 have made more palpable than ever, may have wide-ranging consequences.

Conclusion

This chapter has discussed some of the risks of riskification, by reflecting on the consequences and implications of two of the most prominent features of the riskification process analysed in the previous chapters.

First, it illustrated the legal risk of selective precautions by analysing the various legal challenges arising from the Commission's consecutive attempts to stop Nord Stream 2. The first two attempts, where the Commission sought to stymie the project by using the existing legislation (i.e. Directive 2009/73/EC), highlighted the legal risk of *attempts* to utilise EU policy tools in a selective and deliberate fashion. Internal actors – including the Commission's own legal service – rejected such strategic employment because they deemed it in conflict with EU law, resulting in the failure of the attempts at such. The third attempt, where the Commission tried to derail the project by amending the existing legislation, exemplified the legal risk of effectively established selective measures.

After the amendments' entry into force, Nord Stream 2 AG commenced legal proceedings against the EU under both European law and the ECT. Moreover, it is possible that the transfer of competence to EU level regarding the conclusion of IGAs for import pipelines brought by the Amended Gas Directive is incompatible with member states' rights under Art. 194(2) TFEU.

Secondly, it highlighted the various risks associated with the precautionary conceptualisation of security of supply by scrutinising the SGC initiative. It showcased the risk of misallocating EU resources by pointing to the SGC's lacklustre contribution to the diversification of the European gas supply, as well as the limited prospects for SGC expansion. Secondly, it discussed the risk of carbon lock-in emanating from the riskified understanding of security of supply by underlining the incompatibility of the SGC with EU climate objectives as well as the neglect of the sustainability dimension in the PCI selection process of gas projects. Finally, it emphasised the ethical risk of this reconceptualisation by showing how the implementation of the SGC was accompanied by a neglect of core EU values and uneasy partnerships with authoritarian regimes.

The next chapter will present the conclusions of this dissertation.

CHAPTER 7: Conclusions

1 Summary

This dissertation has been concerned with the contemporary evolution of the energy policy of the EU in light of the changing geopolitical circumstances of the 21st century, which it has sought to describe, explain and evaluate by employing a blended theoretical framework and an interdisciplinary approach.

Specifically, by relying on insights and typologies from securitisation theory and IPE and through consideration of discursive, legal, regulatory and policy developments, it has conceptualised the current mode of supranational energy governance as the result of a successful process of riskification, both caused and enabled by the specific international environment of the 2000s and 2010s. This riskification process consisted of the following three stages:

(1) riskifying moves by the Commission, framing Europe's dependence on energy imports as a risk to security of supply requiring the establishment of regulatory and catalytic precautions at the supranational level,

(2) the acceptance of those riskifying moves by the Commission's "audience", the member states, leading to the adoption of regulatory, catalytic and geo-economic precautions and an overall recalibration of the supranational mode of energy governance,

(3) the effect of (2) on the EU's gas relations with Russia, i.e. an alteration of their dynamic as a consequence of an intersubjective understanding of Russian gas as a risk to security of supply and the accompanying supranational precautions developed to mitigate that risk.

It also evaluated two key features of this riskification process, i.e. the adoption of selective measures and the establishment of security of supply as a policy objective in its own right.

This chapter will summarise the key findings of this dissertation, discuss their theoretical, methodological and policy implications, and suggest areas for future research.

2 Overview of findings

Chapter 2 analyses the first step of the riskification process at hand, the riskifying moves of the Commission, by conducting a discourse analysis of the main policy documents pertaining to energy policy released by the Commission between 1988 and 2018. It argues that in the early 2000s, in a context of rising energy prices and an emerging state-capitalist order in global energy governance, the Commission fundamentally recalibrated its discursive strategy. Where its discourse previously attempted to reconcile the security of supply-objective with the principles of market integration and competition, the Commission now started pursuing a discursive strategy of riskification. It framed the European dependency on energy imports as a risk to security of supply, a "constitutive cause of harm" (Corry, 2012, p. 255), which exposed the EU's energy supply to harmful events such as external supply disruptions. In this way, the Commission attempted to cultivate a new, precautionary understanding of security of supply as an outcome of market competition in combination with supplementary supranational precautions. This contrasted with the neoliberal conceptualisation propagated by the Commission in the late 1980s and the 1990s, where security of supply was much rather framed as a natural outcome of competitive and integrated energy markets.

This precautionary conceptualisation had to legitimise a riskified mode of supranational energy governance, characterised by regulatory measures

aimed towards market liberalisation, as well as by additional precautionary measures which had to ensure that liberalised markets would effectively deliver security of supply in the face of Europe's growing reliance on energy imports. This diverged from the existing market-regulatory mode of governance, which was overwhelmingly directed towards market building in both internal and external respects, while other aspects of energy policy remained firmly in the hands of the member states.

From the early to the mid-2000s, the Commission's main focus was the legitimation of reactive, regulatory precautions, such as the harmonisation of national measures for the security of gas supply or updates to the EU's oil stocks mechanism. After the first gas crisis in 2006, the Commission increasingly started advocating more proactive precautions as well, such as supranational financial, regulatory, political and diplomatic support to foster intra-EU infrastructure development and to accelerate the implementation of international energy projects of strategic importance. These concerned more radical deviations from the market-regulatory mode of governance, as they were no longer derived from the regulatory state-model – based around the neutral application of regulatory tools to create a level playing field for market actors – but were rather inspired by the catalytic state-model – based around the selective application of policy tools to promote and support (the activities of) certain market actors and around a facilitatory rather than a regulatory role for the Commission.

The second gas crisis in 2009 and the Ukraine crisis in 2014 reinforced the shift towards more proactive, interventionist measures in the policy paradigm of the Commission, but the framing of the EU's import dependence in terms of risk remained markedly consistent, and the precautionary conceptualisation of (in)security of supply as a market failure intact. In other words, notwithstanding a move "beyond the regulatory state" in terms of policy solutions, the Commission's grammar of security

stayed the same. Import dependence was still construed as an indirect, not a direct cause of harm/existential threat (cf. securitisation). The policy paradigm of the Commission also remained compatible with the IEM master frame. The measures proposed by the Commission had to correct, regulate and ameliorate market functioning, rather than outright replace it. When the Commission proposed supranational action outside the IEM master frame, i.e. common purchase mechanisms for natural gas in the 2014 European Energy Security and 2015 Energy Union Strategy, this was on request of particular member states, not on its own initiative.

Chapters 3 and 4 consider the second step of the riskification process, the acceptance of the riskifying moves of the Commission by the member states, by analysing the extent to which the proposed supranational precautions were adopted in internal and external respects.

Chapter 3 turns towards the internal dimension of EU energy policy, distinguishing three general periods: 1990-1999, 2000-2009 and 2009-2022. In the extraordinarily favourable environment of the 1990s, the Commission was able to force a breakthrough with the adoption of the First Energy Package, containing the first directives for the liberalisation of the electricity and gas markets of the member states, despite significant opposition to market reforms among the member states. After decades of stagnation of European integration in the energy domain and failed attempts by the Commission to launch a common energy policy, the resonance of the market-regulatory paradigm and its conceptualisation of security of supply as a natural outcome of competitive conditions with the neoliberal order in global energy governance decisively turned the odds in the Commission's favour. Some supranational action was undertaken in the areas of energy infrastructure and the harmonisation of national measures for security of supply, but these were rather trivial developments and far from presented a major overhaul in either of the aforementioned

fields. This was not surprising, as the Commission's policy documents predominantly focused on legitimising market liberalisation as an instrument for security of supply, and much of its discursive resources were thus "spent" elsewhere. As such, in the nascent internal energy policy of the EU in the 1990s, market integration was "the central, determining factor" (European Commission, 1995b, p. 3).

This would remain true for much of the 2000s. After reports demonstrated that member states had not proceeded with the implementation of the First Energy Package at the desired pace, the Commission pushed for a revision of the existing legislation. This resulted in the adoption of the Second Energy Package in 2003, which introduced stricter unbundling obligations for energy companies, as well as other measures to hasten the opening of member states' electricity and gas markets. In addition, the Commission employed the antitrust provisions inscribed in the treaties to battle the enduring discriminatory practices of vertically integrated undertakings operating on the internal market. These were by far the most noteworthy instances of supranational action in the internal dimension in the period 2000-2009.

There was no complete absence of developments in the areas of energy infrastructure and supply risk mitigation & prevention, but these hardly amounted to a "riskification" of the internal energy governance in the way envisaged by the Commission. Directive 2004/67/EC was the first binding piece of legislation for security of gas supply, but merely established a framework for member states to work out their own approach, with the Commission in a purely coordinating role. The EU's framework for network development, the TEN-E guidelines established by Decision 1254/96/EC, was revised in 2003 and again in 2006. However, these revisions could not compensate for the negligible amount of funding made available for infrastructure projects at the supranational level, which ultimately left EU

infrastructure policy rather inconsequential as a whole. Thus, the precautionary conceptualisation of security of supply propagated by the Commission had not yet found enough traction among the member states, and the market-regulatory mode of governance of the 1990s persisted. While the first Russo-Ukrainian gas crisis in 2006 brought concerns over security of supply to a higher level, the Commission did not manage to harness these concerns to legitimise a more substantial transformation of the internal mode of governance. In fact, the 2006 disruption increased rather than diminished member states' reluctance to delegate additional competences to EU level in the energy domain, as it reaffirmed their belief in a national prerogative over security of supply.

Chapter 3 identifies the second gas crisis in 2009 as the critical juncture for the Commission's riskifying moves and the accompanying proposals for supranational precautions. This event, which caused a much longer and serious disruption of the Russian gas flows to the EU than had been the case in 2006, critically exposed the weaknesses of the existing division of competences between the EU and the member states. Divergent national approaches towards infrastructure development and supply crisis prevention/mitigation had not been able to make the European gas system more resilient to external supply shocks. To the contrary, they had in fact considerably aggravated the negative impact of the 2009 disruption. In combination with the entry into force of the Lisbon Treaty in December 2009 and the enlargement waves of the mid-2000s, this decisively affected the success of the Commission's discursive strategy of riskification. Successive amendments of Directive 2004/67/EC in 2010 and 2017 gradually shifted the centre of gravity in the domain of security of gas supply and crisis management from the national to the European level. The EEPR provided the necessary financial backing to finally push EU infrastructure policy into relevance. It served as the basis for a new revision of the TEN-E guidelines and the CEF-E programme, which

institutionalised supranational involvement in intra-EU network development and enabled the EU to facilitate specific infrastructure projects of strategic importance. As part of the Energy Union Strategy, this catalytic role was further consolidated, *inter alia* through the establishment of the HLGs and budget increases for energy infrastructure at EU level. Finally, the EU not only started playing an increasingly important role in facilitating the realisation of projects considered beneficial to European security of supply, but also consciously attempted to obstruct the implementation of Russian-sponsored infrastructure projects. Chapter 3 discusses the Commission's geo-economic approach to undermine Nord Stream 2, based around the selective and strategic employment of internal market rules.

These regulatory, catalytic and geo-economic measures for security of supply shifted the internal energy governance of the EU beyond the market-regulatory paradigm, but also beyond the regulatory state. They highlighted the emergence of a riskified mode of governance, and the development of an intersubjective understanding among the member states of security of supply as an outcome of market liberalisation in combination with a variety of reactive as well as more proactive precautions to mitigate the risk of the EU's increasing import dependence.

Chapter 4 studies the external dimension of EU energy policy, where the same three periods are identified: 1990-1999, 2000-2009 and 2009-2022. The external energy policy developed largely in parallel to internal developments. Indeed, the exuberance and optimism of the 1990s not only provided an excellent environment for the development of a market-regulatory mode of governance at home, but also for simultaneously projecting that model abroad.

In fact, before the first legislative measures for the liberalisation of member states' electricity and gas markets were even adopted, the Community already developed an amalgam of arrangements to export their provisions to the third countries in the neighbourhood. These varied widely in terms of scope and ambition. While an initiative like the EEA effectively made Norway a part of the IEM, a framework like the Euro-Mediterranean Energy Forum served as nothing more than a policy dialogue to discuss market reforms with third countries, without imposing any kind of binding obligation on either of the parties involved. However, they were all inspired by the same goal of "externalisation", an expansion of the internal model beyond EU borders.

Although the international energy environment of the 2000s radically differed from the environment of the 1990s, EU external action remained practically unchanged. Many new initiatives came on top of the already existing architecture for rule export, and similarly aimed towards the outward expansion of the EU's internal mode of governance. The Energy Community, which endeavoured the direct extension of the rules of the IEM to the countries of the Western Balkans, was the most prominent example, but many other, less ambitious regional and bilateral arrangements such as the Baku Initiative, the Eastern Partnership, Medreg, … were established as well. They varied widely in terms of success. Especially with regard to the energy-producing countries in the EU's neighbourhood, results were often poor. However, a real alternative was lacking, because the member states were not willing to delegate additional competences in this domain to the Commission. Just as in the internal dimension, the first gas crisis in 2006 did not provide the necessary impetus either, but rather reinforced member states' disinclination to commit to a common strategy for diversification, and to "speak with one voice" in external energy affairs. As such, the market-regulatory mode of external governance of the 1990s, centred around the

convergence of third countries with the rules of the IEM in order to create an integrated and competitive energy market in the wider Eurasian region, persisted.

Here as well, the second gas crisis is identified as the turning point. While rule export remained a major component of the EU's post-2009 external energy policy, it was no longer the *sole* component. The Commission stepped up its diplomatic involvement in the implementation of international infrastructure projects of strategic interest (i.e. capable of diversifying the European gas supply away from Russia), most importantly the pipelines comprising the SGC. Initially, the main focus was the Nabucco pipeline, envisioned as a dedicated export pipeline from the Caspian region to the EU. The Commission acted as a driving force behind the Nabucco IGA and engaged in direct negotiations with Turkmenistan and Azerbaijan to secure their political commitment to the opening of the SGC. Moreover, the Council granted the Commission a mandate for concluding an IGA with these countries on the Trans-Caspian Pipeline, which would connect Nabucco with the massive reserves of Turkmen gas. This was unprecedented – never had the EU conducted such negotiations on behalf of its member states.

However, the limitations of the supranational energy diplomacy quickly became apparent. When Nabucco was being overtaken by other, competing projects based on bilateral deals between companies and national governments, the Commission stood idly by. In the context of the 2014 Ukraine crisis and renewed concerns over security of supply, it nevertheless doubled down on its diplomatic involvement in the opening of the SGC, even if not in the way initially conceived. These efforts were ultimately rewarded in 2020, when the SGC entered into operation and the first Azeri gas flowed into the EU.

Apart from the EU pipeline diplomacy, Chapter 4 also discusses the "catalytic shift" in the EU's rule export arrangements. Namely, after 2014, these were no longer solely employed to build markets beyond EU borders, but also increasingly as vehicles to promote diversification and support the realisation of strategic infrastructure projects such as the pipelines comprising the SGC. The Energy Community epitomised this catalytic shift. After the adoption of a revised version of the 2013 TEN-E guidelines, this framework no longer solely focused on the gradual integration of the Contracting Parties' energy markets into the IEM, but also began serving as an instrument to support the implementation of energy infrastructure in the third countries concerned. This also changed the role of the Energy Community Secretariat, the executive of the Energy Community, which became directly involved in infrastructure development, fostering cooperation among the different stakeholders for each of the so-called PECIs (the Energy Community's equivalent of PCIs). The catalytic shift most prominently concerned the regional and bilateral arrangements of the EU directed towards the Eastern neighbourhood, while being less outspoken in the Southern neighbourhood. Chapter 4 suggests that this could be attributed to the Commission's perception of the Eastern neighbourhood as the region of greater strategic significance, as exemplified by the SGC initiative.

Together with the supranational pipeline diplomacy, this catalytic shift comprised the EU's emerging strategy for diversification, revolving around political and other support towards infrastructure projects deemed strategically important. This "strategy" was more ad hoc, less cohesive and less institutionalised than the comprehensive policy for energy network development established in the internal dimension, but nevertheless indicated the post-2009 departure from the market-regulatory paradigm in the EU's external energy policy. The almost exclusive focus on rule export was replaced by a hybrid mode of external governance, focused not only

on building markets in the neighbourhood, but also engaging in a more direct search for diversification of the European energy/gas supply. In parallel to the internal dimension, this indicated a reconceptualisation of security of supply in line with the riskified paradigm, which was no longer considered as something that could be achieved solely by externalising the IEM, but also required more proactive measures at the supranational level. This, in turn, further underlined the acceptance of the Commission's riskifying moves by the member states.

Finally, Chapter 4 examines an area where the Commission's discursive strategy of riskification seemingly failed: joint purchasing mechanisms for natural gas. This type of "geopolitical" measure was distinct from the regulatory/catalytic/geo-economic precautions proposed/established at EU level in that it could no longer be considered compatible with the IEM master frame. Indeed, the goal of such measure would not be to adjust but instead to intentionally subvert market functioning, by pooling the gas demand of member states in order to strengthen the EU's bargaining position vis-à-vis external suppliers. However, the Commission was never in fact a big proponent of such purposeful distortions of competition itself, and rather unwillingly included these in the 2014 European Energy Security Strategy and the 2015 Energy Union Strategy at the request of a group of member states. Thus, the Commission's "failure" cannot come as a surprise in this respect.

Chapter 5 investigates the third and final step of the riskification process, the effect of the EU's intersubjective understanding of import dependence as a risk to security of supply requiring certain supranational precautions on interunit relations. It considers one specific case of interunit relations, i.e. EU-Russia gas relations. The chapter first looks at the East-West energy trade on the European continent in the Cold War period, to consider the roots of the EU's dependence on Russian gas. During the

Cold War, energy and specifically gas developed into one of the very few areas where mutually beneficial cooperation was established beyond the Iron Curtain. This, Chapter 5 argues, could be attributed to broader developments in global energy governance. Against the backdrop of the disintegration of the neo-colonial world order and the rise to power of OPEC, Soviet gas became perceived by the member states of the Community as a way to diversify away from Middle Eastern oil and increase their security of supply, as a solution instead of a problem. This kept security considerations out of the equation in the energy relations between the Soviet Union and the Community. In the context of a resurgence of the Cold War in the early 1980s, attempts by the Reagan Administration to securitise the Yamal project and to put the continuous expansion of the transcontinental gas flows to an end were unanimously rejected by the member states as well as the Commission. As such, by the end of the 1980s, “red gas” had become a core component of the Community energy mix.

The implosion of the Soviet Union led to considerable chaos, but the long-term supply contracts concluded during the Cold War with expiration dates well beyond 1991 prevented large-scale disruptions to the European gas trade. In the exuberance and optimism of the immediate post-Cold War period, the Community perceived the fall of the Iron Curtain as an opportunity above all else. Russia and the other newly independent states of the post-Soviet space could now be involved in a rules-based framework for energy cooperation, which would grant unprecedented access to their vast oil and gas reserves and would ensure cheap and abundant energy supplies for the foreseeable future. Thus, the dependence on Russian gas did not necessarily need to be reduced, it simply needed to be managed in an appropriate way, i.e. in line with market principles. In the early 1990s, Russia also expressed its willingness to be the “rule taker” in the relationship, as demonstrated by its participation in the Energy Charter

Process and its signature of the European Energy Charter, the ECT and the EU-Russia PCA. However, by the late 1990s, this window of opportunity already started to wane. The ratification process of the ECT in the Duma was delayed several times as Russian discontent with the Energy Charter Process grew, which was increasingly perceived in a negative light and not in Russia's national interest.

The EU's failure to "manage" the gas dependence on Russia would only become more evident in the early 2000s, as skyrocketing energy prices restored Russia's confidence and led to an increasingly vigorous rejection of the European approach to energy governance under the presidency of Vladimir Putin. While the market-oriented reforms in the Russian energy sector of the 1990s were reversed, Gazprom sought to reinforce its dominant position on the internal gas market. It exploited the ongoing liberalisation under the Second Energy Package to gain access to the downstream gas markets in the EU and announced new pipeline projects to diminish its reliance on the transit via Ukraine and the new member states in Central and Eastern Europe. The lack of a common approach, primarily owing to the refusal of larger member states in Western Europe to give up their bilateral dealings with Gazprom, tipped the balance in EU-Russia gas relations decisively in the latter's favour during the 2000s.

This would again change after the second gas crisis in 2009, as the EU revised its approach in line with the riskified paradigm. The goal was no longer to manage the dependence on Russian gas via market creation, but to proactively contain its risk via precautionary measures. The Commission employed the regulatory tools at its disposal to obstruct and curtail Gazprom's monopolistic practices on the internal gas market. Chapter 5 discusses the antitrust proceedings against Gazprom, South Stream as well as the OPAL exemption case. While the antitrust case could be interpreted in multiple ways, the Commission's treatment of South Stream

and OPAL quite obviously pointed in the direction of the geo-economic employment of EU rules. Whatever their inspiration or motivation, however, all of these instances markedly constrained Gazprom's capability to divide and rule the European gas markets.

After both ignoring the Commission and firmly denying the allegations of abusive behaviours proved futile, Russia began pursuing more serious strategies to deal with the increasingly difficult regulatory environment in the EU. It responded by resorting to traditional pipeline politics as exemplified by TurkStream (and Nord Stream 2), but also undertook more surprising courses of action such as legal proceedings to battle the Commission's geo-economic approach as well as making concessions to the EU model. The section concludes that while any appearance of internalisation of rules-based, market-oriented governance by Russia was clearly deceptive, the acceptance of the riskifying moves by the member states had an undeniable impact on the post-2009 dynamic of EU-Russia gas relations.

Finally, Chapter 5 briefly examines the developments after Russia's invasion of Ukraine in February 2022. While conclusive statements are not yet possible, both Commission discourse as well as the unprecedented import embargoes on Russian coal and oil are indications that the EU has moved into the territory of securitisation. It is beyond a shadow of a doubt that the episode currently unravelling will have a decisive and lasting impact on EU-Russia gas relations, the general direction of EU energy policy and even on the EU as a whole.

Chapter 6 considers the "risks of riskification", evaluating two of the key features of the riskified mode of supranational energy governance analysed in the previous chapters and discussing their (potential) adverse effects and implications.

It first showcases the legal risk associated with the departure from the regulatory state and the adoption of proactive precautions by scrutinising the various legal challenges emanating from the Commission's geo-economic approach towards Nord Stream 2. This section starts with an analysis of the Commission's attempt to selectively apply the provisions of Directive 2009/73/EC to the project, which failed as respectively its own legal service and the German regulatory authority, the Bundesnetzagentur, rejected the strategic employment of EU regulation. Both deemed the approach of the Commission discriminatory vis-à-vis Nord Stream 2 and therefore incompatible with EU law.

It then discusses the Commission's attempt to subject Nord Stream 2 to the rules of Third Energy Package by concluding an IGA with Russia, for which it requested a mandate from the Council. The Council, in turn, asked its legal service to assess the consistency of such a mandate with EU law. Whereas the legal service of the Council did not deem it in outright violation of EU law, it emphasised the lack of a legal rationale and the strategic character of the mandate. This advice *de facto* resulted in the failure of this second attempt of the Commission to halt Nord Stream 2, as it severely diminished the chances of the Council granting its approval for the mandate. Chapter 6 contends that these first two attempts illustrated the legal risk of *attempts* to selectively apply EU policy tools. Namely, internal actors may consider such targeted application inconsistent with European law, which may in turn undermine these attempts.

Finally, the first section studies the Commission's proposal to amend Directive 2009/73/EC in order to bring Nord Stream 2 within the scope of EU legislation, in another attempt to obstruct the implementation of the pipeline project. Here, the Commission was more successful, as the directive was eventually amended in April 2019. However, this was accompanied by new legal contestation. Nord Stream 2 AG, the Gazprom

subsidiary in charge of developing Nord Stream 2, initiated legal proceedings against the EU before the General Court and under the ECT, claiming that the Amended Gas Directive amounted to discriminatory treatment of its pipeline project. Furthermore, the Amended Gas Directive can be found in violation of member states' rights to determine the general structure of their energy supply provided under Art. 194(2) TFEU, as the conclusions of IGAs for import pipelines with third countries now falls under the exclusive competence of the EU. Chapter 6 argues that these legal challenges underlined the risk not of attempts to selectively employ EU policy tools, but of the effective adoption of selective measures at EU level. Not only may these be overturned because they are potentially in conflict with EU law and the EU's obligations under international law, but they might also erode the legitimacy of the EU's legal order and the credibility of the Commission as a neutral regulator.

The second section of Chapter 6 highlights the risks arising from the precautionary conceptualisation of security of supply, which decoupled security of supply from market integration and established it as a policy objective in its own right, by pointing to the various flaws of the SGC. First, it demonstrates how the SGC makes only a lacklustre contribution to the diversification and security of the European energy supply, due to the limited amount of gas it is capable of bringing into the EU. Moreover, it shows how this is unlikely to improve anywhere in the near future, as the prospects for a capacity expansion of the SGC are poor. This underlines the risk of the precautionary logic of misallocating EU resources, as it may instigate decision-making that minimises commercial as well as other limitations of measures/projects. This may in turn result in precautionary measures that are inadequate and unable to attain their supposed goals, as in the case of the SGC.

Secondly, it focuses on the incompatibility of the SGC with EU climate objectives. The SGC not only opposes these goals, but may even directly undermine them. This is due to the substantial upfront investment required in combination with low operational costs for fossil fuel projects, which may cause a so-called carbon lock-in. In this way, the SGC may impede the transition towards renewable energy sources and thus also the EU's ambition of achieving climate neutrality by 2050. Furthermore, this neglect of the sustainability dimension is not limited to the SGC but can also be observed with regard to supranational support to other "strategic" natural gas projects, as the selection process for the 2019 list of PCIs has shown. Thus, the precautionary conceptualisation of security of supply also carries a risk in terms of EU climate ambitions, as it may lead the EU to extend its support to infrastructure projects that lock its energy systems into fossil fuels rather than expediting their decarbonisation.

Thirdly, it reveals how the supranational energy diplomacy as part of the SGC has coincided with partnerships or an intensification of EU ties with authoritarian regimes known for their widespread violations of human rights (e.g. Iran, Turkmenistan, Azerbaijan). This disregard for core EU values in the pursuit of diversification and security of supply may not only legitimise and help maintaining these regimes, it may also impair the EU's credibility to act as a normative power and promote these values beyond its borders. This, it is argued, constitutes the ethical risk of the precautionary conceptualisation of security of supply.

3 Theoretical, methodological and policy implications

This dissertation has revolved around the central question of EU actorness – what type of power the EU represents – in the energy sphere. Since energy resurfaced on the European political agenda in the late 2000s, this topic has been the object of fierce scholarly debate. Initially, this was

mainly conducted on the basis of dichotomous conceptual frameworks, focusing on how the EU as an inherently "liberal" actor was adapting to an increasingly "geopolitical" world (e.g. Correljé & van der Linde, 2006; McGowan, 2008; Westphal, 2006; Youngs, 2007). However, evaluating the evolution of European energy policy along these two poles hindered nuanced analyses and stood in the way of a more accurate understanding of the EU's role in the energy sector. At best, scholars were able to conclude that the EU was neither convincingly liberal nor completely geopolitical but was "hovering ineffectively between market and geopolitical approaches" (Youngs, 2007, p. 1; see Prontera, 2019a).

In the 2010s, works with firmer theoretical grounding, for instance in IPE (e.g. Andersen et al. 2017a; Goldthau & Sitter, 2015b; Kuzemko et al., 2012), in discursive institutionalism (Herranz-Surrallés, 2016), in new institutionalism (Kuzemko, 2014) or securitisation theory (e.g. Judge & Maltby, 2017; Szulecki, 2018), provided more detailed and precise accounts of (the evolution of) EU actorness in international energy governance. However, the underlying assumption that the EU was "fundamentally a liberal actor – a regulatory state" (Goldthau & Sitter, 2015b, p. 3) remained dominant, and the markets vs. geopolitics-dichotomy often implicitly or explicitly present (e.g. Goldthau & Sitter, 2014; Goldthau & Sitter, 2015b; Herranz-Surrallés, 2016; Kuzemko, 2014; Siddi, 2019).

This resulted in the same "in-betweenness", as Prontera (2019a, p. 193) puts it, as before. Goldthau & Sitter (2014, p. 1468) argued for instance that the EU was "increasingly caught between its liberal market model and a world less and less inclined to stick to this model". Herranz-Surrallés (2016, p. 1388) talked about "the EU's particular 'third way' of conducting external energy relations", Andersen et al. (2017a, p. 238) about "a grey area between the neutral application of regulatory power to make markets

work and the politically motivated use of the EU's economic might to change the behaviour of other states". Kuzemko (2014, p. 70) contended that EU energy policy was "neither market liberal nor geopolitical nor environmental", but instead a mix of all these elements. Moreover, it also caused certain "blind spots" in these analyses. Measures such as diplomatic and financial involvement in strategic energy infrastructure were not scrutinised to the extent necessary or acknowledged as the integral features of supranational energy governance which they had arguably become, because this was not compatible with the conception of the EU as a "market" actor/regulatory state.

To resolve both this in-betweenness and "blindness" of the previous wave of research, the dissertation has conceptualised the contemporary evolution of EU energy policy on the basis of a blended theoretical framework derived from IPE and securitisation theory. By advancing the notion of a riskified mode of supranational energy governance characterised by market-building as well as a variety of precautionary measures for security of supply, it overcomes the in-betweenness and is able to account for the specificity of the EU's approach. Furthermore, by ascribing the regulatory, catalytic and geo-economic/liberal mercantilist measures to the same precautionary logic informing EU energy policy, it reconciles the notions of the EU as a regulatory power, catalytic power and liberal mercantilist and is able to account for the hybridity of the EU's approach.

Thus, it presents both a precise analysis and encompassing synthesis of EU actorness in the energy sphere, which goes beyond the geopolitics vs. markets-dichotomy and beyond the regulatory state. Moreover, it not only conceives the emerging hybrid mode of energy governance in a specific but simultaneously inclusive fashion, it also uncovers its roots, by conceptualising it as the outcome of a successful riskification process

facilitated by certain political-economic and other conditions. As such, this thesis offers an original conceptualisation of EU energy governance that captures its current intricacies. It contributes to the theoretical understanding of the EU as “a complex actor in a complex world” (Prontera, 2019a, p. 191), playing a variety of roles whilst employing different tools which are being used for diverse purposes, all while being inspired by a precautionary logic of security.

Apart from these theoretical implications, this research has methodological and policy implications as well. As regards the former, the dissertation makes a unique case for involving legal instruments and doctrinal methods in securitisation studies. Complementing the empirical analysis of the riskification process with the doctrinal analysis of sources of EU law enriched and deepened the understanding of security construction in EU energy policy and provided additional evidence to support the central thesis. Future studies on security discourse in EU context or elsewhere may take this into consideration in order to enhance the securitisation analysis.

As regards policy repercussions, the case studies in Chapter 6 highlight some of the main risks involved with the EU’s departure from the regulatory state and the pursuit of security of supply as an independent policy objective. As these two features are likely to become much more prominent elements of the supranational mode of governance following Russia’s invasion of Ukraine and the apparent securitisation of EU energy discourse, these case studies serve as warning signs not to be ignored. If the EU chooses to pursue a more selective, security of supply-driven and strategically inspired energy policy (cf. EU import embargoes on Russian coal and oil), this might evoke significant amounts of legal contestation under EU law, WTO law and the ECT by member states, third countries and both EU and non-EU energy companies alike. It can undermine the

EU's legal order, centred around the neutral application of regulatory tools to foster market integration and the EU's adherence to the principles of legal certainty, non-discrimination and the rule of law (see Talus & Wüstenberg, 2019). Moreover, it might lead to short-term policy measures that neglect the sustainability dimension as well as core EU values, which may respectively compromise European climate ambitions and the EU's ability to promote those core values beyond its borders.

4 Areas for future research

During the research and writing process, a few areas were identified where the application of the theoretical framework employed in this dissertation appeared promising, but which could not be included due to time and/or space constraints.

A first area involves the developments in EU energy policy following Russia's invasion of Ukraine in February 2022. As indicated in the discussion on joint purchasing mechanisms (Chapter 4 Section 3.2) and on EU-Russia gas relations post-invasion (Chapter 5 Section 5), these seem to mark a fundamental shift beyond both riskification and the IEM master frame. This thesis can serve as a promising point of departure for future analysis. The idiosyncratic combination of securitisation theory and IPE provides a useful lens to consider both the new security logic emerging in European energy discourse (cf. "eliminating our dependence on Russian fossil fuels" (European Commission, 2022a, p. 5)) as well as the shifting mode of energy governance (e.g. European embargoes on coal and oil imports, EU Energy Purchase Platform), but also to analyse and comprehend the relation and interaction between these two elements.

The second area relates to the climate dimension of EU energy policy. While this dissertation has focused on the discursive and policy developments arising from the changing geopolitical circumstances of the

21st century, applying the theoretical framework to the developments emanating from the challenges posed by global climate change holds equal promise. The approach could be analogous to the one employed in this thesis. A first step would then be to analyse the discursive moves of the Commission pertaining to the issue of climate change, i.e. to study the (evolution of the) Commission's framing of this issue in policy documents, as well as the measures that are proposed on the basis of this framing. The next step would be to investigate to what extent these moves have been accepted by the member states, by scrutinising how the substantive developments in EU internal and external energy policy correspond to the proposals made by the Commission. If these point in the direction of an intersubjective understanding among the member states of the issue of climate change in the way propagated by the Commission, the effects thereof on the EU's energy relations with third countries could subsequently be considered. These findings could be used to conduct a comparative analysis of the discursive strategies of the Commission regarding import dependence on the one hand and climate change on the other, which would be able to generate substantial insight into the facilitating conditions determining these respective strategies' success.

A third possible area for future research pertains to the third step of the riskification process set out in this thesis, i.e. the effects on EU external energy relations following the acceptance of the riskifying moves by the member states. The "influential case" (Gerring & Cojocaru, 2016, p. 403) of EU-Russia gas relations was examined in Chapter 5, but other cases deserve consideration as well. Interesting cases include EU-Azerbaijan and EU-US gas relations, as both of these are characterised by a dynamic that has considerably evolved over the last decade. These additional case studies could help to further demonstrate the empirical validity of the conceptualisation of contemporary European energy governance as the result of a successful process of riskification.

Finally, a fourth area concerns the role of actors besides the Commission in the riskification of EU energy policy. The role of member states has mostly been depicted as that of passive audience in this thesis, but this is obviously not an accurate portrayal of their real-world influence in European energy governance. For instance, they can act as securitising/riskifying actors themselves and advance security claims competing directly with those of the Commission. The Commission must also continually consider the preferences of national governments in shaping its discursive strategy, as alignment with these preferences will be a key determinant to the strategy's success. An exploration of member states' duality as both the audience and shapers of the Commission's riskifying moves appears an intriguing prospect for further analysis. It would be especially interesting to examine the historical evolution of processes of security construction within big member states like Germany and Italy in relation to the development of the Commission's discursive endeavours. This could be key to get a further grip on the underlying "network of causality" (see Balzacq, 2010a) informing the riskification process of the 2000s and the 2010s. The analysis could also look beyond member states. For instance, exploring the contribution of the European Parliament to EU security discourse over time could help us better understand the relation between the gradual expansion of its formal competences and the institution's relative weight in European decision-making.

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