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INSTITUTIONS, ENERGY, AND DECISION-MAKING IN THE EUROPEAN UNION

A case study on the decision-making process of security of gas supply legislation

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LEPPÄNEN, HEINI: Institutions, energy, and decision-making in the European Union: A case study on the decision-making process of security of gas supply legislation

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Abstract:

This thesis is built around the decisions that led to the legislation on security of natural gas supply which first consisted of a directive (OJ L 127, 29.4.2004) that was then changed to a regulation (OJ L 295, 12.11.2010) concerning measures to safeguard security of natural gas supply. I study the decision-making processes behind the legislation on the security of gas supply and the role that the main institutions of the EU, namely the European Commission, the Council of the European Union and the European Parliament, play in the process.

The theory used in this thesis is based on Mark A. Pollack's (2003) perception of the principal-agent analysis in rational choice institutionalism. The analysis is guided by this theoretical framework. Based on the main theory, I formulate two general research questions and three sets of hypotheses. The formulated hypotheses determine which categories were used when interpreting the gathered evidence. The method of my thesis is an intrinsic case study. The case is the decision-making process that led to the legislation on security of natural gas supply. The primary material for this research consists of the official documents written in the process of formulating the directive and regulation. These documents were supplemented with journalistic reports.

The main result of this thesis is a founding according to which the roles of the institutions did change in the course of the decision-making process. The Council started as the dominant actor in the decision-making process of the directive, possessing the most influence on the conduct of the process and consequently, the resulting decisions. The Commission and the Parliament were left with the roles of a weak agenda-setter and a junior legislator. As the decision-making process proceeded to the regulation, the roles of the institutions changed. The Commission's agenda-setting behaviour became more assertive and it was able to achieve a larger number of goals than earlier. The Parliament's role changed from junior legislator to the Council's co-legislator as it was able to engage itself into a fairly equal bargaining with the Council. The Council, on its part, had to give up its dominant position and accept a more balanced decision-making process with the other institutions, forcing it to assess its preferences in a more critical way. In terms of a zero sum game, the Council lost influence in the course of the legislation process whereas the Commission and the Parliament gained influence.

The reasons behind the change in the roles of the institutions include the changing legal framework of the EU, namely the ratification of the Lisbon Treaty which gave the Commission and the Parliament more influence in the decision-making processes by extending the application of the co-decision procedure to decision-making on energy. Another reason for the change was the gas disruption between Russia and Ukraine in 2009 which brought the matter of urgency into the equation as the Member States preferred a quick adoption of a new regulation compared to the option of continuing with the already existing directive.

1. Introduction

The Ukrainian gas crises in 2006 and 2009 proved yet again how delicate and complex the issue of energy is in today's politics. What started as a business dispute between the Ukrainian oil and gas company Naftogaz Ukrainy and the Russian gas supplier Gazprom, grew into a transnational political issue when Russia decided to cut off all gas supplies passing through the Ukrainian territory. A disruption of gas supply brought the everyday life of Ukrainians to a halt and increased ominous feelings from the back of European minds to the centre of the political agenda. What happens if future events shut the whole of Europe down? Given that our society and way of life is heavily dependent on fossil fuels, their production and inexpensive price, it is not surprising that energy has become the focal point within the decision-making of the European Union (EU) and its Member States.

The central role of energy issues should not be misunderstood as a new phenomenon. In fact, the European integration is said to have begun in 1952 when the European Coal and Steel Community was first founded. However, with time, energy lost its relevance in relation to other more pressing concerns of the Member States. In consequence, the initial institutional arrangements were not supplemented with more up-to-date arrangements. This neglect of energy policy is quite puzzling given the relevance of energy matters and especially due to the progress made towards integration in areas closely related to the common market. It has even been said that energy policy was an orphan of the integration process up to, and through much of the 1990s. (Birchfield and Duffield, 2011, 2.)

Despite the earlier development, the marginalisation of energy policy experienced a profound change in the first decade of the twenty-first century. Numerous new proposals, directives and regulations were introduced leaving no aspect of energy policy untouched. What is remarkable is not only the upheaval in the amount of energy policy decision-making but also the way in which decisions are conducted. An area traditionally held in the hands of the Member State governments (Matlary, 1997, 1) had now witnessed an entry of the EU institutions such as the European Commission and the European Parliament. In fact, the change has been so profound that it makes one wonder: what are the main forces behind the constantly growing EU legislation on energy? Energy as a subject of research is of course not new. In the field of International relations geopolitics of energy is a widely studied and popular subject. However, surprisingly little research

has been done on the subject of energy in the field of political science, and especially on energy decision-making processes in the EU. Therefore, I have decided to focus on this subject matter.

This thesis will be built around the decisions which led to the legislation on the security of natural gas supply which first consisted of a directive (OJ L 127, 29.4.2004) that was then changed to a regulation (OJ L 295, 12.11.2010) concerning measures to safeguard security of natural gas supply. The decision to focus on this specific legislation on natural gas is based on a number of reasons, most importantly its distinctive dependency on pipelines. As the Ukrainian incidence proved, pipeline dependency makes the geopolitics of natural gas different from the geopolitics of other energy sources. Furthermore, due to the EU's increasing dependency on imported gas (Commission of the EC, 2011a, 47) the EU is constantly forced to diversify its energy sources as well as to secure its current gas imports. This is why focusing on natural gas will offer an interesting subject for analysing the decision-making of the EU.

I will be using new institutionalism as the theoretical approach to my study. Being fully aware of the drawbacks new institutionalism is claimed to have as an analytical tool (Warleigh, 2002, 5) I still find it the most suitable approach for my research. The theory used in this thesis will be based on Mark A. Pollack's (2003) perception of the principal-agent analysis in rational choice institutionalism, which will enable me to consider the Member States as key authoritative actors in decision-making processes while, at the same time, allows me to recognise the possible independent preferences the EU institutions have.

The method of my thesis will be an intrinsic case study. Robert E. Stake (2000, 437) describes it as a study that is undertaken because the researcher wants to come to a better understanding of a particular case. The purpose is not to understand a generic phenomenon, but to study a case because of an intrinsic interest in that specific case and its nature. My case will then be the decision-making process that led to the legislation on the security of natural gas supply. I will argue that analysing the process will provide further insight into the decision-making processes of the EU as well as on EU's evolving role in the area of energy security.

1.1. Research questions and their motivation

As mentioned in the introduction, surprisingly little research has been made on the matter of energy policy and the EU. Decision-making, on the contrary, has been a widely researched topic among the scholars of the European Union. My goal is to combine these two fields. I want to study the decision-making processes behind the energy security legislation, and more precisely, the legislation on the security of gas supply, and the role that the main institutions of the EU, the European Commission, the Council of the European Union and the European Parliament, play in the process. Therefore the questions that this study wishes to answer are:

1. What roles do the main EU institutions play in the decision-making process of the security of gas supply legislation?
2. How did the roles of the institutions change in the process, if they changed, and what are explanatory factors behind these developments?

The reason for focusing on this particular legislation process is the multidimensionality of the topic, the security of gas supply. It could be easy to assume that the increase in competence of the EU institutions in the energy field (see chapter 2.2.) would be seen to include energy security. However, this is a premature judgement because the security of gas supply issue has features that make it distinct from other energy related matters. On one hand, the Member States have traditionally been very determined to hold on to their decision-making power in the area of foreign policy formation. This indicates that they want to preserve their control over energy security decisions, an area closely related to foreign policy, as well. On the other hand, the Ukrainian crises demonstrated that external events play a particularly important role in energy supply issues, especially, in those relating to energy security, which could force states to rely not only on themselves, but also on the EU. This argument is supported by the constantly changing legal framework of the EU, namely the ratification of new treaties, which have given the EU institutions more influence in the decision-making processes. These new treaties have made it possible for the EU to accept more responsibility. The aim of this study is to analyse the role of the institutions in the decision-making process of the legislation for the security of gas supply in a way that encompasses the multidimensionality of the issue.

To grasp the multidimensionality, I have formulated several hypotheses to specify the research questions presented above. These hypotheses are based on the principal agent analysis by Mark A.

Pollack and they are introduced in more detail in chapter 3.3. First, I hypothesise that in order to assure the gas supply security in a cost efficient manner, the Member States would want to delegate certain functions to the institutions of the EU. This delegation is then executed on a case by case basis, which would indicate that the prevailing conditions play a key role in the delegation process. This set of hypotheses is aimed at answering, in part, both research questions. Information about the delegated functions indicates what kind of roles the institutions are expected to play. Understanding the effect of the conditions, in turn, gives us information about the possible changes in the roles that occurred during the process. Second, I hypothesise that the pro-integrationist motives of two of the institutions, the Commission and the Parliament, force the Member States to attempt to control them. However, due to the conditions, Member States attempts will not automatically be fully successful. This set of hypotheses is aimed at both of the research questions as well. An analysis of the institutions' motives explains the roles that each is playing, whereas examining the control mechanisms Member States use, and the ongoing bargaining between the institutions and the Member States, illustrate both, the roles of the institutions, and, the development of the legislation process. Third and finally, I hypothesise that the powers of the Commission and the Parliament vary significantly between different decision-making procedures, and that this has an effect on the final decisions. This last set of hypotheses is then aimed at explaining the possible changes in the roles of the institutions during the legislation process.

1.2. Why study the institutions of the European Union?

To understand the reasons for my research questions it is necessary to ask why study institutions in the first place? Guy B. Peters (2005, 1) argues that the roots of political science can be found in the study of institutions. Alex Warleigh (2002, 4) simply notes that because the EU institutions supply most of the actors who are engaged in the policy-making process they are an important part of the EU studies. Institutions provide a forum in which different players cooperate, deliberate and make decisions. As a result, institutions shape the beliefs and values of players and influence their views on how to realise their goals. Ben Rosamond (2000, 114) calls institutions “information-rich” venues which act as variables between actor preferences and policy outputs by offering prevailing transparency and strong trust. For him institutions are not just “simple and passive vessels” (Rosamond, 2000, 114) where politics take place, but instead, they are necessary for understanding the relevance of how political systems have been organised. In addition, Rosamond (2000, 18) notes that on a more general level EU institutions can become an example of regional integration for

scholars in other parts of the world since the EU is the most advanced project of this phenomenon. For Warleigh, this is also one reason why the problems of the EU institutions should be addressed and studied. He especially refers to the problem of the “democratic deficit” which in his mind has tarnished the image and legitimacy of European integration in the past decade. (Warleigh, 2002, 6).

There is a narrow and a broad way to define an institution. The former refers to a formal definition that conceives institution as a physical or legal structure, for example in the case of the EU the Commission or the Lisbon Treaty. According to the latter definition, institutions also include informal and more abstract factors, such as values, norms and behaviours. (Peters, 2005, 18). I will mainly focus on the formal definition of the concept since my goal is to gain an insight of the roles played by each of the official bodies included in the EU legislation. The institutions I will focus on are the European Commission (the Commission), The Council of the European Union (the Council) and the European Parliament (EP). These constitute the core institutions of the EU and are the key players in formulating new directives and regulations. Even though the European Court of Justice is an important institution with regard to the functioning of the EU, it does not take part in the decision-making processes of formulating new legal acts and will, hence, not be included. The Council, being the least supranationalist of the three institutions, will be considered as an EU institution that has to search for a European consensus but at the same time champions for the Member States’ interests. The term “Member States” refers, in turn, solely to the interests of the national governments.

What should be kept in mind is that institutions used as analytical tool also have limitations. First, there is the risk of considering institutions as a deterministic environment where individuals do not have an impact. This is clearly not true and evidence of this is the fact that institutions can lose much of their influence in the absence of an active leader, as Warleigh (2002, 5) points out referring to the decline in influence of the Commission after the leadership of Jacques Delors. Second, the efficacy of the institutions in policy-making processes should not be exaggerated. The Member States are still major actors in the formation of decisions and the implementation of those decisions is often conducted by the national agencies or governmental organs. Third, actors within institutions do not always share the same ideas and opinions so their cohesion should not be considered as self-evident, the party contention in the EP serving as a good example. (Warleigh, 2002, 5).

Even though it is important to acknowledge and to keep these weaknesses in mind, they should not prevent one from studying institutions. As mentioned, institutions are a vital part of the operations

of several organisations and most importantly for the purpose of this study, a vital part of the functioning of the EU. Furthermore, institutions should not be assumed to be tools which are used to fulfil ones needs. In some cases this might be true, but to assume this without further examination would be premature and could hinder the discovery of pertinent insights on the functioning of numerous political systems, not in the least the European Union.

1.3. Why study decision-making of security of gas supply?

The most important reason for choosing natural gas as the focus of my thesis is its infrastructural dependency on pipelines. It has been argued that energy policy is a distinct area of EU policy-making with its unique development. I argue that the security of gas supply is a distinct policy issue among the area of energy security. The reason for this is, indeed, the pipeline dependency which implications I will examine next.

Natural gas as a form of energy can be transported in two ways, either through pipelines or in a condensed form as liquefied natural gas (LNG). Pipelines account for 69.5 per cent of global gas transport and in 2010 pipeline shipments grew by 5.4 per cent compared to the previous year, led by growth in Russia (BP, 2011, 4). Both the pipelines as well as LNG-terminals are extremely expensive investments that require a stable political context in the long term to convince investors of its worth. For short distances pipelines are more economical than the transportation of LNG so pipelines are used where they are economically, technically and politically viable. Due to the capital-intensiveness of pipelines, ensuring sufficient capacity for gas supply in the EU cannot be left solely to private investors and is, therefore, the responsibility of the Transmission System Operators (TSOs), joint ventures of public and private actors, who have a natural monopoly over national gas transport. Their task is to build, own and operate the transmission pipelines and storage facilities. Naturally, third country investors are also needed. They consist primarily of the companies purchasing and supplying natural gas in the selling country. (Bjørnmose et al., 2009, 15)

Since the ability to export natural gas is dependent not just on possessing the resource, but also on a set of geographical, political and economic factors, the dominance in the natural gas market should be analysed by the amount of exports. (Kivistö, 2010, 30-31). This analysis shows that Russia stands out as by far the biggest gas exporter with having almost double the amount of exports than the second biggest country, Norway, both in the overall exports as well as in exports trough

pipelines (BP, 2011, 29-30). When adding to the equation the facts that EU's dependency on imported gas is high and constantly increasing (Commission of the EC, 2011a, 47), and that in 2008 Russia accounted for 31.5 per cent of the EU's overall gas imports (Eurostat, 2010) the following conclusion can be drawn: the EU is highly dependent of Russian gas.

Transportation infrastructure plays a significant role in this dependency. Currently, there are four main corridors for gas imports, most important being the main North-Eastern corridor from Russia covering for 23% of the EU-27 consumption. As Bjørnmose et al. (2009, 24) point out, this corridor, consisting mainly of the Northern Lights and the Druzhba Gas pipelines, is subject to a great deal of political and economic power play, which has in several cases undermined the efficiency of the pipelines, the Ukrainian crises being a case in point.

Interconnections have a particular importance in the matter. Interconnections are pipelines that can connect separate gas transit systems or markets. They are, therefore, a guarantee that a country connected to the gas transit system is receiving its gas supply. Interconnections are also reversible, which means that the direction of gas flow can be changed. This is an important function during a time of a temporary shortage, because it enables more flexible gas transportation from one area to another. The problem with the interconnections during the Ukrainian gas crisis in 2009 was their insufficiency. Due to normal gas transportation pattern, most of the gas pipelines are unidirectional and, hence, the flow of gas cannot be reversed. (Bjørnmose et al., 2009, 20-21.)

The instability of oil and gas exports from Russia has led the EU to create a stronger internal gas market and to adopt means of diversifying supply routes, which would gradually reduce its dependence on Russia and other transit countries in general. The aim of this strategy is to enhance the security of gas supply, which is defined by the Commission as "the availability of gas to users at affordable prices" (Commission of the EC, 2008a, 3). The security of gas supply issue is a part of a larger plan, namely "Energy 2020", which is Commission's Communication published in the end of 2010. "Energy 2020" aims at improving the energy efficiency in the EU, building a European energy market, achieving energy safety and security at affordable prices, expanding the field of energy technology and innovation, and as mentioned, reinforcing the external dimension of energy policy. It recognises that even if the energy and climate change objectives of reducing greenhouse gas emissions by 20%, increasing the share of renewable energy to 20%, and improving energy efficiency by 20 % by the year 2020, are very hard to meet, they will not be sufficient on their own. Therefore, the Commission wants to create a tool for tackling long term challenges facing Europe in

the energy sector as a whole. These challenges will be environmental, but also growingly related to security. (Commission of the EC, 2010, 19-20).

The structure of the thesis will be the following: the second chapter will be devoted to the introduction of the European Union decision-making and energy policy. The chapter will, first, focus on the decision-making system, institutions, and decision procedures of the European Union, and second, the development of European energy policy and the role of institutions within it. In the third chapter, the theoretical framework and hypotheses will be introduced in more detail. The fourth chapter will focus on the method of the study, and the fifth chapter will provide the analysis. Finally, the sixth chapter will offer conclusions.

2. Decision-making and energy policy in the European Union

2.1. The decision-making system of the European Union

The European Union is a political system with a unique constitutional architecture. This means that the European Union does not have a constitution in the traditional meaning of the word but it is rather, as Hix and Høyland (2011, 2-3) describe, a political system whose division of institutional powers and policy competences has evolved around its established norms and practices. This division has been a result of a number of EU Treaties, each leaving its own mark on the institutional design of the Union. As the interest of my thesis is security of gas supply legislation, i.e. decision-making processes that took place in the area of the single market from the year 2002 onwards, this chapter will focus only on the institutions and procedures relevant for these processes.

2.1.1. The institutions of the European Union and decision-making

The most relevant institutions for the purpose of this study are the European Commission, the Council of the European Union and the European Parliament. These institutions form the core of the executive and legislative bodies in the decision-making of the EU and, hence, are the most fruitful targets of an analysis. This overview is based on Simon Hix and Bjørn Høyland's work *The political System of the European Union* (2011), which offers the most recent insight into the functioning of the European Union.

The Commission is the main executive body of the European Union and responsible for proposing EU legislation, implementing EU policies and managing the budget. It also enforces EU law in cooperation with the European Court of Justice and represents the EU in negotiations with international organisations. The Commission is divided into the College of the Commissioners and the directorates-general. The first one is composed of one member from each member state and is mainly responsible of political tasks, while the latter is the bureaucracy of the Commission undertaking responsibilities such as legislative drafting, administrative work and some regulatory tasks. In addition, a number of quasi-autonomous agencies are managing a variety of regulatory and monitoring tasks.

Another core institution, the Council of the European Union has both legislative and executive tasks. The legislative tasks include the adoption of EU legislation and the budget. On most legislative issues the voting rule in the Council is qualified majority voting. Coordinating the Member State's broad economic policy goals, concluding international agreements of the EU, coordinating Common Foreign and Security Policy as well as police and judicial cooperation, and making proposals for reforms to the EU treaties are all part of the Council's executive tasks, which are mostly decided by unanimous vote.

Alongside with the Council, the European Parliament is responsible for the legislation of the EU. The legislative powers of the Parliament include the power to amend and adopt EU legislation and the budget, monitoring the work of the other institutions of the EU, the power of approving or rejecting the nominated Commission President and Commissioners, and the right to censure the Commission, which, however, the Parliament has never exercised.

Hix and Høyland argue that nowadays the executive politics of the EU can be described as "politics of a dual executive" (2011, 46). According to Hix and Høyland (2011, 46), this means that the power to set the policy agenda and to implement EU policies is shared between the Council and the Commission. The national governments in the Council set the long-term agendas and the Commission is in charge for the more day-to-day political issues. The competence of the Commission has, nevertheless, changed throughout the development of the EU. Hix and Høyland (2011, 30) argue that each EU Treaty tells a story of a selective delegation of power by the national governments to the Commission. The authors illustrate this by pointing out that after the extensive delegation of agenda-setting powers through the Single European Act, which introduced the cooperation procedure and altered the voting rules in the Council towards more qualified majority voting, the Member States were less eager to hand over similar powers to the Commission regarding sensitive policy areas in the subsequent treaties. (Hix & Høyland, 2011, 31.)

Regardless of the efforts by the governments to limit the Commission's discretion after the Single European Act, the Commission has been successful in pursuing its own agenda independently from the member state governments. It has mainly been able to do so due to its significant political and administrative resources that have developed through the efforts of the Commission President, Commissioners and directorates-general. This is because, like every bureaucracy, also the Commission is a host of different actors who all have their own institutional interests, policy objectives and support groups, and who all lobby for more influence. For Hix and Høyland, the

increase in the Commission's influence has resulted in a system that can be called a dual executive system. However, they point out that this kind of a dual system has both strengths and weaknesses. Facilitation of extensive compromise and deliberation in the adoption and implementation of EU policies are clearly positive qualities for a multi-national political system. The lack of overall political leadership, and consequently, democratic accountability, are definitely negative qualities of the dual character of the EU executive. (Hix & Høyland, 2011, 47-48.)

On the legislative side, in turn, Hix and Høyland call the EU politics bicameral (2011, 74), which refers to the development in which the Parliament has gained a position of an equal legislator vis-à-vis the Council in most areas of the EU legislation within a relative short space of time. This development is a product of the rational self-interest of the EU legislative institutions, and the strong systems of information gathering, bargaining and coalition building that both the Council and the Parliament have developed alongside the development of an increasingly formalized system of bicameral interaction. Consensus and oversized majorities in coalition formation in the Council and the Parliament can be explained by the institutional rules and policy preferences by the actors. The absolute majority requirement in the second reading of the ordinary legislative procedure (see 2.1.2.) and similar policy preferences of the centre-right and social democrats, have fostered the existence of an informal grand coalition between these two parties in the Parliament. Considering the fact that most governments in the Council are led by centre-right or social democrat parties, it can be concluded that similar policy preferences dominate both legislative bodies of the EU. Therefore, institutional interests of actors and the relative balance between these policy positions across the institutions are currently the main sources of the underlying contestation between the Council and the Parliament. As mentioned, the Parliament has been relatively successful with regards to this contestation and in defending its own institutional interests. Sometimes it has done so even at the expense of its short-term policy gains in order to gain a long-term goal: a genuinely bicameral legislative system in the EU. (Hix & Høyland, 2011, 68-74.)

It should be noted, that even though intra-institutional developments and processes have a great impact on the inter-institutional decision-making processes, and that even though the intra-institutional can never be completely separated from the functioning of the inter-institutional relations (see for example, Naurin & Rasmussen, 2011, 14), I will try to keep the two apart. I will do so in order to offer insight to the actions the institutions take vis-à-vis to each other and, hence, will mainly consider the most supranational of the main institutions, the Commission and the

Parliament, unitary in their functioning. The reason for this is explained in more detail in the chapter 3.3.2.

2.1.2. Treaty based decision-making procedures

The directive establishing measures to safeguard the security of gas supply entered into force in 2004 and was conducted under the rules of the consultation procedure. The regulation concerning measures to safeguard security of gas supply entered into force in 2010 and was, in turn, created with the co-decision procedure. The regulation was a first reading agreement, which was reached after several informal meetings between the institutions. As will be shown in the analysis (see chapter 5), the informal meetings consisted of bargaining over the articles of the regulation and over trade-offs between the Council and the Parliament. I will now introduce consultation and co-decision procedures in more detail.

The rules of the consultation procedure is not described in any specific article in the EU Treaties, but are laid out in the concrete provisions forming the legal basis for formulating pieces of EU law. The consultation procedure can be summarised as follows (Nugent, 1999, 360):

- The Commission prepares a legislative proposal to the Council and the European Parliament.
- The Committee of the Regions, the European Economic and Social Committee and the European Parliament formulate an opinion.
- The Council makes a final decision. It can adopt the proposal by qualified majority or reject by unanimity.

When a decision is made according to this procedure the Commission has the power to propose, the Parliament and committees responsible are allowed to offer their opinions, but in the end, the Council has the sole power to decide on the issue at hand. The Council is not obliged to take the Parliament's opinion into account, but it is not allowed to make a decision before receiving the opinion. The consultation procedure was created before the Single European Act (SEA) introduced the cooperation procedure in 1987 and the Maastricht Treaty the co-decision procedure in 1993 (Hix & Høyland, 2011, 52-53). Since the adoption of the two latter decision procedures the importance of the consultation procedure has declined. In fact, nowadays it is only used in cases that are not explicitly subject to the two other procedures (EUR-Lex, 2009).

As mentioned, the co-decision procedure was first introduced in the Maastricht Treaty in 1993. The procedure was reformed and extended in the following Nice Treaty in 1999, and finally, in the Lisbon Treaty in 2009, it was established as the ordinary legislative procedure (Hix & Høyland, 2011, 52-53). The co-decision procedure under the Lisbon Treaty can be summarised the following way (Article 294 of TFEU):

- The Commission prepares a legislative proposal to the Council and the European Parliament.
- The European Parliament delivers a position on first reading. The position is adopted by simple majority.
- The Commission may alter its proposal by incorporating the amendments proposed by the European Parliament.
- The Council decides on its position on first reading. Three scenarios follow:
 - If the European Parliament has not adopted any amendments, and the Council does not want to make changes to the Commission’s proposal either, the Council can approve the act on that basis by qualified majority.
 - If the European Parliament has adopted amendments, the Council can adopt them by qualified majority if the Commission has incorporated those amendments to its proposal, or by unanimity if the Commission has not done so.
 - If the Council does not want to approve the amendments adopted by the European Parliament, or the European Parliament has not adopted any amendments but the Council is not content with the Commission proposal, it adopts a common position.
- The European Parliament delivers a position on second reading. Three scenarios follow:
 - The European Parliament agrees on the common position made by the Council and the act is deemed to be adopted.
 - The European Parliament rejects the common position by absolute majority of the component Members of the European Parliament, and the act is deemed not to be adopted.
 - The European Parliament adopts amendments to the common position by an absolute majority of the component Members of the European Parliament.
- The Commission gives its opinion on the amendments made by the European Parliament. If the Commission has given a negative opinion on at least one amendment, the Council will have to adopt the amendments by unanimity on second reading.

- The Council decides on its position on second reading. Two scenarios follow:
 - The Council approves the amendments by qualified majority. If the Commission has given a negative opinion, the voting rule is unanimity. The act will be adopted.
 - The Council does not approve the amendments to the common position and a Conciliation Committee is convened.
- If the Conciliation Committee does not create a joint text, the act will not be adopted. If a joint text is agreed on, two scenarios follow:
 - The Council, by qualified majority, and the Parliament, by absolute majority, adopt the joint text and the act will be adopted.
 - The Council and the Parliament do not adopt the joint text and the act will not be adopted.

As the literature on the implications of the decision-making procedures is vast it cannot be introduced here comprehensively. Therefore, I will introduce studies relevant to the subject of my study. A lot of the research on decision-making procedures focus on the relative power the institutions possess vis-à-vis each other under different decision-making procedures, and especially the increasing powers that the Parliament has gained. Despite disagreement on the Parliament's influence under cooperation procedure and the earlier version of co-decision procedure (co-decision I) (see for example Garrett & Tsebelis, 1996; Crombez, 1997), a general agreement in the literature exists that the Parliament has the least influence relative to other procedures under the consultation procedure, and that it has similar powers to those of the Council under the current codecision procedure (co-decision II) (Häge, 2011,21-22). This suggest that the Parliament's influence is significantly higher under the co-decision than the consultation and, consequently, that the relative power of the Council is smaller under the co-decision than under the consultative procedure. I will now assess these notions, and the role of the Commission in the decision-making literature, more closely, starting from the consultation procedure.

Considering the formal rules of the consultation procedure it is not a surprise that many scholars evaluate the Parliament's role to be unimportant in the process, and therefore, focus only on the Council and the Commission. For example, Crombez (1996, 205) includes only the Commission and Council in his spatial theory of the principal legislative procedures in the European Community (EC). For him, the consultation procedure is a combination of supranationalist and intergovernmental characteristics. On one hand, the power to propose a legislative act is in the

hands of the Commission. This gives it a significant amount of power as adopting the proposal requires only a qualified majority in the Council. On the other hand, the decisions are made through negotiations between national governments with the Commission exercising only limited amount of influence. (Crombez, 1996, 212-213.) Also, Garrett (1995) focuses only on the Council and the Commission and argues that the procedure is not solely a process where the Council dictates the result. The consultation procedure enables decisions that are not improving every Member State's preferable situation. This is due to the absence of Member governments' veto power and the relative strength of the Commission's agenda-setting power. These two factors can lead to a situation where a reluctant Member State has to adopt the Commission's proposal as it is or to accept the proposal with the best amendment that could win unanimous support in the Council. (Garrett, 1995, 301-302.)

Nugent (1999, 360-361) explains further why the roles of the Commission and the Council are not straightforward in the consultation procedure. He points out that even though only little progress can be made without the Commission drafting a proposal, it is still difficult to detect which factors contributed the Commission to do so or which actor actually originated the initiative. Sometimes the initiative can come from a national pressure group lobbying a minister who then introduces the issue to the Council. Sometimes the Commission wants to reinforce its position in relation to the Council by hinting the Parliament or interest groups to initiate debate for a proposal.

In practice, the progress of the consultation procedure depends on many factors. On the part of the Commission's draft, these are the level of urgency, the level of pressure the Commission puts on the issue, the inclusiveness of consultation, consensus within the Commission, and the need for a consensus among key actors outside the Commission. On the part of the Council's final decision, at least the following factors affect the progress: the controversiality of the issue; the enthusiasm of the Presidency, the big Member States, or a large number of countries to push the issue forward; and the Commission's flexibility to change its text in case of a disagreement. (Nugent, 1999, 363-365.)

Despite the general focus on the role of the Council and the Commission, some scholars, see it worthwhile to include the Parliament into the analysis of the consultation procedure. In Kardasheva's (2009) opinion the Parliament possesses influence in the consultation procedure by the "power of delay". As the rules of the consultation procedure lay out, the Council has to wait to get the Parliament's opinion before making a decision. Therefore, delaying can be an especially

successful instrument for influencing the decision-making process in case of urgency, in a specific issue area, or when the Parliament is able to link its opinion to another co-decision procedure. (Kardasheva, 2009, 386.) In his computational model, in which lobbyists provide legislators with policy options, Varela (2009) offers some theoretical reasons to back up the argument according to which the Parliament is not completely powerless under the consultation procedure. For him, the fact that the Parliament has to be consulted is a legislative power that cannot be ignored. This legislative power is not as strong as the right to veto or to set agenda as it does not bind the Council. However, it converts the Parliament into an important channel for lobbyists to access the agenda-setter, i.e. the Commission. (Varela, 2009, 28.)

Turning to the literature on the co-decision procedure, one finds that the procedure's impact on the different aspects of the decision-making processes has received a particular amount of attention from the EU scholars. As the initial motivation behind the creation of the co-decision procedure was, first, to increase efficiency of decision-making and, second, to increase the Parliament's leverage in order to respond to the concerns of a "democratic deficit" (Nugent, 1999, 367) it is comprehensible that most debate has been generated around the question of whether these goals, especially the latter one, have been reached. Studies focusing on the change from co-decision I to the current co-decision II, which was introduced in the Amsterdam Treaty, demonstrate this well. For example, Hix and Høyland (2011) argue that due to the rules of co-decision I and the Parliament's strategic voting behaviour, the process of co-decision I ended, in practice, with the conciliation committee. Hence, in co-decision II the third reading was removed, and as a result, the Parliament became close of being an equal legislative partner with the Council. (Hix & Høyland, 2011, 72-73.) One of the most important models of legislative politics in the EU, developed by Tsebelis and Garrett (2000), explains this in spatial terms. Laying out certain assumptions about the EU legislative politics, the spatial model demonstrates how a legislative outcome of codecision II will, in most cases, be in the range of policy preferences of the pivotal government in the Council and the Parliament. Assuming that the Parliament has a pro-integrationist character, this means that the Parliament is able to advance an integrationist agenda more than the degree desired by the pivotal Member State in the Council. Therefore, the advantage the Council had under co-decision I is eliminated and the Parliament can be considered to be its equal. (Tsebelis & Garrett, 2000, 32.)

Despite the common consensus that the Parliament has equal legislative powers under co-decision II (hereafter co-decision procedure), some scholars argue that the Parliament still is at a disadvantage in relation to the Council in the process. For Hagemann and Høyland (2010, 812-813)

this can be demonstrated when examining the rules of the second reading of the co-decision, which require the Parliament to reach absolute majority in order to amend or reject Council's common position. This rule means that amending or rejecting the common position is more difficult than adopting it, and therefore, the Council has an upper hand. In addition, according to Hageman and Høyland the Parliament has trouble meeting the absolute majority requirement especially when the Council is divided because a disagreement in the Council spills over to the Parliament. This means that the parties in the Parliament and the government representatives in the Council share a close connection. (Hageman & Høyland, 2010, 830.)

An important reform in the co-decision procedure, namely the amendment that allowed legislation to be adopted on first reading, has gained growing attention in the literature as well. The share of first reading agreements in the application of the co-decision procedure has increased steadily to the extent that in 2009 more than 90 per cent of the co-decision legislation was adopted at first reading (Hix & Høyland, 2011, 73). This indicates that the efficiency of EU decision-making has grown. However, whether or not democratic legitimacy and accountability in the EU have increased, is still under a debate. In fact, often decision-making in the EU is seen as a trade-off between efficiency and democratic legitimacy. This is because when a decision is reached fast in the first reading of the co-decision procedure it is justified to question whether everyone who should be included actually was included in the process and in what way. Pollack (2005) describes this as a debate between two different legitimacies, namely the "output legitimacy" and the "input legitimacy". The former refers to the efficiency of the EU to deliver decisions and the popularity of those decisions. The latter refers to an attempt to improve the problem of "democratic deficit" by increasing democratic accountability of the EU institutions to the electorate. (Pollack, 2005, 42.)

Farrell and Héritier (2004, 1209) argue that the increase in first reading agreements has resulted in an increase in the use of informal meetings to bargain for the nature of the decision. Bargaining is a part of all the procedures, but according to Nugent (1999, 367-370), it has, indeed, become a central part of the co-decision process. In practise, bargaining means communication between the Commission, the Parliament and the Council taking place in different kinds of forums ranging from formal inter-institutional meetings to informal conversations between the key political actors in order to reach a decision capable of being passed as efficiently as possible (Nugent, 1999, 367-370). In Shackleton and Raunio's (2003, 185) opinion the increase of informal bargaining can potentially reduce the openness of the decision-making and limit the opportunities of appropriate actors, such as the Parliament, to get all the interests it represents heard before the final decisions. Others,

however, see the impact of first reading agreements less harmful for the transparency of decision-making. Anne Rasmussen (2011, 61), for example, states that the Parliament official responsible for the informal bargaining, the rapporteur, often shares the same views with the Parliament and hence, the decision he or she agrees on, represents the opinion of the Parliament as a whole.

As it can be seen, the studies on the co-decision procedure focus mainly on the Council and the Parliament. As a result, the role of the Commission in the co-decision procedure is often neglected. Garrett (1995, 303-305), for example, concludes that the Commission's influence has diminished as new decision-making procedures have been introduced. For him, the establishment of the conciliation committee means that the Commission is not able to affect the opinions of the Parliament and the Council. This is because, the Commission is excluded from the decision-making process before the actual bargaining and decision-making starts. Rasmussen (2003), however, disagrees with this straightforward argument. Even though she recognises the value of formal, rational choice institutionalist's models on the changes in the decision-making procedures and the effects of those changes on the role of the EU institutions, she argues that such models are not sufficient for understanding the overall role of the institutions. Therefore, she does not deny that the Commission has lost influence in relation to the Council and the Parliament with the introduction of the new co-decision procedure, but wants to remind that the Commission's power in absolute terms is still significant. Rasmussen comes to this conclusion by complementing the analysis of formal institutional powers with a softer institutional framework, which includes factors such as institutions' strategic recourses and other informal powers. She argues that the Commission's participation in the internal proceedings of the Council and the Parliament gives it an informational advantage. Furthermore, the Commission's participation in the informal meetings that the three institutions use more and more, gives it a genuine chance to affect those meetings. (Rasmussen, 2003, 9-10.)

Finally, it is useful to be aware of other ways of studying the decision-making procedures. Thomson et al. (2004, 240) criticise the way many scholars study the legislation process of EU. They argue that too many models of the EU's legislative procedures assume that there are similarities between the alignments that the actors have towards different issues. In their opinion one of these false alignments is the "Integration-Independence dimension", which leads to an assumption of a certain status quo followed by institutions, who position their preferences systematically to a certain distance from that status quo. In reality, actors' positions do not have a certain structure, and

therefore one should not focus too much on the formal rules of the decision-making at the expense of the bargaining and compromises, which deliver a specific outcome each time. (Thomson et al., 2004, 257-258.) Now, I will turn to the energy policy of the EU.

2.2. The energy policy of the European Union

2.2.1. An overview of the energy policy of the European Union

Even though my research question focuses on a specific legislation in the field of energy policy, it is nevertheless important to understand the development of European energy policy in general. Two out of three of the original treaties of the European Community concerned energy: the founding of the European Coal and Steel Community (ECSC) and the European Atomic Energy Community (Euratom). However, these treaties failed to lead to the development of a common energy policy, even though many attempts to establish a general energy policy followed each other from the 1950s on. The first of these attempts was the effort to raise the issue of integrating the conventional energy sector on the agenda of the Messina conference in 1955. This effort fell short due to the fact that the relevant players decided to focus on atomic energy instead. The next attempt was a memorandum written by an Inter-Executive Working Party on Energy tasked by the Member States, which also failed as the memorandum was never translated into policy. The next attempt was facilitated by the recently merged Commission. In its initiative “First Guidelines for a Community Energy Policy” (Birchfield & Duffield, 2011, 3) the Commission lays out energy policy and offers concrete measures for creating a common energy market. This time the failure was caused by disagreements within the Council of Ministers on the principles of the initiative. (Birchfield & Duffield, 2011, 2-4.)

The same process repeated itself in the following decades. The Community’s lack of authority was clearly demonstrated during the oil shock of the 1970s, partly because of the Member States’ different interests and partly because of Western Europe’s oil dependency, which resulted in bilateral agreements between exporters and importers rather than in a common energy policy. The launch of the internal market in 1985 gave yet another impulse for an effort to develop an internal energy market, and beyond that a common energy policy, but it failed again. The following years saw several proposals, such as the Green Paper prepared by the Commission in 1995 assessing European Union energy policy and a White Paper by the Commission in 1995 suggesting detailed

guidelines for the energy market, but once again the Member States were unable to agree on anything binding. (Birchfield & Duffield, 2011, 4.)

The first decade of the twenty-first century changed almost all aspects of the energy policy of the EU. In 2006 the Commission set out a Green Paper aiming at formulating a comprehensive strategy for a more sustainable, competitive and secure energy sector. The following year the Council adopted energy and climate change objectives to reduce greenhouse gas emissions by 20%, to increase the share of renewable energy to 20%, and to improve energy efficiency by 20 % by the year 2020. In 2008 the Commission developed an “energy and climate package” presenting concrete measures to achieve the objectives it formulated in 2007. The single energy market was actively promoted as well and, as a result, the year 2007 saw also an adoption of directives demanding the completion of the internal market and a legal unbundling of supply and transmission functions. Other decisions conducted in the years 2006-2009 included the construction of energy infrastructure, reductions in greenhouse emissions and policies to promote renewables and energy efficiency. A true high point of the decade was the ratification of the Lisbon Treaty in 2009 which for the first time brought energy policy into the scope of the EU. (Birchfield & Duffield, 2011, 5-6.)

As a result of these developments, it is nowadays appropriate to talk about European Union energy policy. Within this energy policy, different targets can be distinguished. At the moment these targets are set out in “Energy 2020”, which is a Communication from the Commission aiming at improving the energy efficiency within the EU, building a European energy market, achieving energy safety and security at affordable prices, expanding the field of energy technology and innovation, and reinforcing the external dimension of energy policy. (European Commission, 2010.) These targets are pursued by different “sets” of legislation and each of these “sets” consists of a number of specific laws. Naturally, the current regulation concerning the security of gas supply is then part of a “set” aiming at advancing the security of energy supply. Other legal acts in this “set” include security of electricity supply and strategic oil stocks. It should be also noted that in this study, the directive and the subsequent regulation concerning security of gas supply are both specific laws whereas the process that they are both part of is referred to as the security of gas supply legislation. The development of a European energy policy on the part of security of supply is introduced in more detail along the analysis in chapter 5.

2.2.2. The role of the institutions in energy policy in the European Union

To offer an overview of the role of the institutions in energy policy in the European Union, I rely on two leading works that have been written on energy policy in the Union. The first one, Janne Haaland Matlary's *Energy Policy in the European Union* (1997), explains the development of the European energy policy until the year 1997. The other one, *Toward a Common European Union Energy Policy* edited by Vicki L. Birchfield and John S. Duffield was published in the year 2011 and therefore offers the most recent information on the area. In this section, I will focus on the role of the institutions in energy policy-making through the insights of the books mentioned.

In a chapter dedicated to examining the role of the EU institutions, Matlary states that in the 1990s the Commission had gained a much more active role in breaking stalemates that it did prior to 1985. He illustrates this by explaining that overcoming almost the entire energy industry's and interest groups' unanimous opposition against open access to gas transportation proves that the logic of the internal market advocated by the Commission, was stronger than national or sector interests. Thus, the Commission has been the initiator of decision-making processes as well as the middleman of national representatives' interests. National representatives, in turn, have been playing a dual role in trying to balance between defending national interests and pursuing a consensus. The Council of Ministers has remained the forum for purely national interest whereas the membership in the European Council has imposed a need for a common interest to be defined. However, Matlary points out that the process of committee negotiation and informal consultation and bargaining is central to the contents of policy. Therefore, by the time an issue proceeds to the Council of Ministers, much of the policy-making has already been done. According to Matlary, the role of the Council in forging linkages to give an input to energy decision-making in the earlier stages is relatively unimportant, mainly confined to the provision of general guidelines, and the content of policy is, in fact, proposed by the Commission. When it comes to the EP, Matlary concludes that it has merely expressed opinions and has never amended a proposal in the energy context. (Matlary, 1997, 130-132).

In the second book, which covers the development of EU energy policy until 2011, Birchfield (2011) illustrates the interaction between the EU institutions with examples drawn from policy formation. According to her, these examples show that the Commissions' competence derives nowadays not only from its role as the regulator of the internal market but also from the Commissions' exploitation of institutional rules to redefine the energy sector to the environment

and foreign policy areas. In fact, Birchfield states that the Commission has been quite aggressive in invoking its authority in the external dimension of energy policy. The addressing of the security of supply issue, setting strategies and new organisations into place to ensure diversification and to coordinate energy supply, prove that the Commission has gained a part of decision-making competence that has in the past been a prerogative of the Member States. However, it should not be assumed that the Member States have handed over all their power to the Commission. As Birchfield points out, it is the Member States and their negotiations within the Council that hinder the effort toward a common approach to energy policies, particularly in the areas of competitiveness and security of supply. What is nevertheless significantly different from the time prior to the Lisbon Treaty is that the EP has now become a veritable co-legislator alongside with the Council. This is due to its newly obtained veto power that ensures the EP's opinion to be taken very seriously. As a result, the EP has acted in an increasingly independent way in energy legislation processes and has shaken off its previous role as the weak junior legislator. (Birchfield, 2011, 244-257)

In conclusion Birchfield admits that the EU institutions are having a momentum and have gained a stronger legal basis for exercising authority thanks to the new found powers of the EP, growing assertiveness of the Commission and shift toward Community methods within the Council. However, she continues that these developments might not be enough for the formation of a coherent energy policy since, ironically, the competitive nature of the institutions and intergovernmental barriers of the Member States may form an obstacle to the process. (Birchfield, 2011, 244-257). Despite Birchfield's doubts concerning the formation of a coherent energy policy, it is fair to argue that the rise in the institutions' competence from the signing of the original treaties to this day has been significant.

3. Theoretical framework

As institutions are the main focus of my research it seems only fitting to choose a theoretical framework which enables one to see institutions as strong political actors, namely new institutionalism (NI). However, using NI as theory for my research I have to be cautious not to automatically assume that institutions, or one of them, are the most important actors in the context of security of gas supply, especially as examining their role is the main purpose of the study. This chapter will clarify that the goal of NI is not to announce the institutions as the “winner” of a decision-making power struggle. Rather, by allowing the recognition of other actors’ influence NI enables one to detect all the different, and sometimes obscure, ways institutions matter, or as importantly, do not matter. This chapter will present NI as an umbrella definition for the way institutions in political life have recently been conceptualised and summarise the exact institutional approach I have chosen to apply in this thesis. But first, I will turn to a summary of EU decision-making theories.

3.1. Theories of the decision-making in the European Union

To understand the complex process of decision-making in the EU it is important to be familiar with the different theoretical approaches that have been developed in the course of the European integration. In the past, it was commonly agreed among scholars that examining the integration process would answer the most pressing academic questions concerning the EU. Nowadays, keeping the study of integration separate from the study of the processes within the EU and focusing on finding answers especially to the latter is considered more suitable. The rationale is that the EU is its own unit with its own inner workings and, hence, should be studied accordingly. (Tiilikainen & Palosaari 2007, 20) However, the theories of decision-making in the EU cannot be fully understood without an overview of all of the existing theoretical and conceptual models of policy-making processes, which include also integration theories. It is with the integration theories that I will then start the next overview.

Probably the most contentious debate over the nature of the EU is between the state-centric and nonstate-centric understanding of European integration. The former sees the development of EU history as compromises reached through intergovernmental negotiations and rejects the supranationalist perspectives advocated by the latter group. Andrew Moravcsik can be considered

as the major proponent of intergovernmentalism which suggests that the EU is a regime whose most important task is to offer a form and forum for intergovernmental negotiations. Moravcsik stresses domestic coalition struggles, the role of relative power between states, passive institutions and the autonomy of national leaders regarding the major decisions in the history of the EU and at the same time criticises neo-functionalism for focusing on exactly the contrary and therefore lacking plausible account on the EU history. (Moravcsik, 1993, 473-519).

Neo-functionalism, in part, belongs to the group of nonstate-centric approaches and was developed from functionalism, the oldest of the integration theories. It has been analysed for example by Wayne Sandholtz (1993). In his approach, Sandholtz mentions the role of leadership in the Commission proposals. In his mind leadership can be based on coercion but also on negotiation skills, superior amount of knowledge, new ideas and so on. When governments outline a new policy, they are open to new information and want to compare different options. According to Sandholtz, this is where the leadership that the Commission exercises toward the Member States is performed. (Sandholtz, 1993, 242-70). With Alec Stone Sweet, Sandholtz introduces also the term “institutionalisation” which refers to the importance of rules and the process by which rules are interpreted by those who live under them. Here the authors are mainly speaking of supranational rules creating common European policies that now extend to almost all aspects of policy-formation. (Sandholtz & Stone Sweet, 1998, 16-20).

Despite their importance, intergovernmentalism and neo-functionalism have their opponents. John Peterson and Elizabeth Bomberg (1999, 6-9) have argued that while the approaches in question are good theoretical tools in the area of the “big” decisions and history-making of the EU, they do not suit the analysis of the EU’s inner processes. Hooghe and Marks (2001) have addressed this problem and offer a model of multi-level governance to better explain the functioning of the EU. According to this model, issues are dealt and affected by a diverse range of actors at different levels from local to international. Birchfield is applying multi-level governance in her assessment on the role of the EU institutions in energy policy formation. For her, the fact that this approach does not deny the importance of the Member States but yet asserts that states no longer monopolise the decision-making in the EU, is the reason she chose it as the basis of her work. (Birchfield, 2011, 243).

However, Pollack (1996, 430) accuses all the theories mentioned for not learning from each other and emphasises the usefulness of an approach that can overcome the created impasse by combining

the fundamental insights of the theories in question. According to Pollack, this is accomplished with the framework of new institutionalism which is also able to recognise the continuing primacy of the Member States but is still better equipped to distinguish the history and the independent preferences EU institutions have. New institutionalism will be introduced more thoroughly later in this chapter (see 3.2.).

The EU can also be seen as a policy network where the preparation of decisions is not centralised to a specific actor, or group of actors, but is rather influenced by a vast amount of unofficial communication. According to Jeremy Richardson (2006) the potential of this policy network approach lies in trying to identify the stakeholders of the EU policy processes and the kind of relationships those stakeholders form with each other. Richardson notes that cooperation within various types of policy network brings mutual gains for the actors so focusing on networks can help us to analyse how specific policy proposals are formulated from new knowledge and policy ideas. (Richardson, 2006, 9-14.) However, the same notion that illustrates the asset of the network thinking is also its biggest weakness. As Birchfield puts it, focusing on networks only enlightens the initial phases of policy processes which usually means discerning the way technicalities contribute to policy formation. (Birchfield, 2011, 241.)

Often many of the conventional approaches introduced here give an impression that they only partially explain EU policymaking and are therefore inadequate for understanding the processes of the EU as a whole. Consequently, many researchers are now combining different frameworks to address the problem, Per Ove Eikeland (2011) being one example. Eikeland combines a supranationalist perspective with concepts of policy networks in analysing the EU's third internal energy package and specifically, the elements concerned with creating a free internal energy market. What makes Eikeland's analysis particularly interesting is his conclusion that it is necessary to utilize a complex analytical apparatus and combine different approaches while only seeking to explain a single dimension of EU energy policy (Birchfield, 2011, 242). In Eikeland's mind, applying only one approach would have missed important nuances regarding the actions of the Commission and therefore, the advantage of using a pluralistic perspective in explaining the formation of EU policies, is obvious. (Eikeland, 2011, 259.)

3.2. New Institutionalism

New institutionalism has become a very popular framework for studying the European Union. Its main argument is that institutions matter by acting as independent actors and notable contributors in the decision-making processes of the EU. For example, Peterson and Bomberg (1999, 6-9) note that only few policies in the EU are set without a good measure of sparring between institutions, which makes NI valuable in understanding EU politics and, in consequence, understanding the decision-making processes that the institutions take part in. Viertiö agrees with Peterson and Bomberg by saying that while actual decisions in the EU are made according to the agreed procedures the nature of the process may vary significantly depending on the issue in hand (Viertiö, 2008, 174). The issue affects the sparring, which, in turn, affects the decision-making process.

Therefore, NI is not interested in answering the question of the goal of the EU integration but rather places the analytical focus on the polity. It does so by assuming that the polity affects and structures the input of different actors and, in consequence, the policy outcome. What is characteristic to NI is a refusal to see institution solely as neutral arenas where politics happen but rather as contributors in two ways, first, by creating a kind of bias by structuring which political forces get access to the political process, and second, by developing a momentum for policy change, for example by agenda-setting. (Bulmer, 1998, 368-370.)

Guy B. Peters (2005, 6) notes that the term “new institutionalism” implies that some sort of an “old” version of institutionalism exists. The defining characteristics of “old institutionalism” include an emphasis on the central role of law in governing; an assumption, according to which structure determines behaviour; and a tradition of treating systems as a whole in order to compare them with each other. (Peters, 2005, 6-9.) This way of defining institutions generated a lot of criticism, especially by the behaviouralists. In the behaviouralists’ opinion too much emphasis was put on the formal aspects of politics at the expense of other elements of political behaviour. (Rosamond, 2007, 122.) As a reaction to the criticism a new way of conceptualising institutionalism emerged. Rather than focusing merely on the formal powers and structures of decision-making of institutions, new institutionalism incorporates a wide range of formal and informal practices, customs, relationships and norms into the definition of institutions. As a result, the concerns and interest of institutionalism expanded. Nowadays, several different analytical approaches of new institutionalism can be distinguished. Most important of these are historical institutionalism, rational choice institutionalism, and sociological institutionalism.

Historical institutionalism developed during the 1960s and 1970s and was influenced by structural functionalism, group conflict theories, and neo-Marxism. These influences generated an idea according to which a state is a complex of institutions that structures the outcomes of group conflict, as an alternative to the more common idea according to which the state is only a neutral broker between conflicting interests. (Hall & Taylor, 1996, 937-938.)

Hall and Taylor (1996, 938-942) list four characters typical to historical institutionalism. First, historical institutionalism incorporates the broad definition of institutions, which means focusing both on formal and informal behaviour of actors working within them. Second, it emphasises the ways institutions contribute to an unequal distribution of power. For historical institutionalists some social groups win and others lose as a result of the nature of the surrounding institutional framework. Third, historical institutionalism entails a distinctive idea of historical development. In historical institutionalism, institutions are associated with the organisational structure of a polity and are considered to act as a main shaper of action. An actor compares different means available to him as well as different conceptions of legitimate action and chooses the best course of action based on this comparison (Warleigh, 2002, 7). When the decisions of an actor accumulate, they shape the options available in the future and therefore reinforce the structures of an institution. This circle is created by a process called “path dependency”, which can be seen in the behaviour of many political actors, for example national governments with regard to their decisions on taxation (Warleigh, 2002, 7). Thus, for historical institutionalists the key for understanding the logic of a policy is to understand the initial decisions made in the early stages of its development (Peters, 2005, 20), because those decisions might have produced consequences that seem unintended in the present time. Fourth and finally, historical institutionalism sees a close relationship between ideas and institutions. An example of this is the generally popular idea of trade in the United States and the institutional structures of American economic policies that reinforce trading opportunities. (Hall & Taylor, 1996, 938-942.)

Historical institutionalism has been used in several studies in the context of the functioning of the EU. For example, Pierson (1996, 58) argues that historical institutionalism offers an analytical tool for thinking of the EU as a system of governance, where the national governments are increasingly constrained, as opposite to the idea of the Member States being fully in control of the development of EU policies. For Pierson it is clear that path-dependency and unintended consequences affected the integration process. Bulmer (1994) uses also the governance framework when analysing

different levels of the functioning of EU institutions. He includes both the issue specific level, as well as the overall, trans-sectional level of analysis in his study. In Bulmer's (1998, 382) opinion combining the different levels of analysis is beneficial in explaining how the dynamics, norms and values that are embedded into the EU institutions affect the development of the EU. The purpose is not to predict the destiny of the integration process, but to offer more localised insights.

Due to the concepts such as path dependency and unintended consequences, historical institutionalism has been accused for over-emphasising the role of earlier choices and structures on the expense of individual self-determinism (Warleigh, 2002, 7). In contrast, the second version of institutionalism, rational choice institutionalism, can be said to do the opposite.

Rational choice institutionalism emerged at the same time with historical institutionalism but in a very different context, namely within the study of American politics (Hall & Taylor, 1996, 942). In the rational choice approach, institutions are considered mainly through the formal meaning of the concept and therefore, they are seen as instruments of action. Actors are in control of the institutions and are using them to gain benefits whenever they think unilateral action is not sufficient. As a result, an institution that produces more benefits than costs will continue existing. (Warleigh, 2002, 8-9.) Peters (2005, 19) defines rational choice institutionalists as scholars who argue that institutions emerge for functionalist reasons, to meet economic and social necessities. For him, rational choice institutionalists consider behaviour as a function of incentives and rules that aim at maximising one's utilities and that are determined largely by institutions. (Peters, 2005, 19.)

Hall and Taylor (1996) distinguish four features characteristic to rational choice institutionalism. First, actors work instrumentally and have fixed preferences. Second, politics is seen as a set of dilemmas resulting from collective action. This refers to an actor's lack of incentive to choose a course of action that benefits all, because no guarantee of complementary behaviour by others exists. Third, actors are assumed to act strategically and for the purpose of maximising their gains. Fourth, institutions are instruments of maximising one's gains of cooperation. (Hall & Taylor, 1996, 944-945.)

Rational choice institutionalism is very popular among the EU scholars. Mark A. Pollack's (2003) perception of the principal-agent analysis (see 3.3.) is an example of rational choice institutionalism that is applied to the contexts of the EU. For Downing (2000, 139), studies that create hypotheses and sets of assumptions that can be tested and compared, such as Pollack's, produces a

progressively better understanding of how the EU works. Further examples are studies analysing the decision-making procedures of the EU. Many of them focus on the relative power the institutions possess vis-à-vis each other under different decision-making procedures, and especially the increasing powers that the Parliament has gained (see for example Garrett & Tsebelis, 1996; Crombez, 1997). However, the strengths of rational choice institutionalism are also claimed to reduce its analytical value. For many, the instrumental conception is too narrow to explain the bi-directional relationship between actor and structure (Warleigh, 2002, 8-9), because by defining the institutions purely in functionalist terms the informal practices that emerge around formal procedures are severely ignored (Rosamond, 2007, 124). These informal practices, which are results of actors' interests and identities, i.e. overall socialisation, are the central focus of the third variation of institutionalism, namely the sociological institutionalism.

The third approach, sociological institutionalism, originates, as its name suggests, from sociology. Its development started in the late 1970s when organisational theories were questioned for overemphasising rational goals of bureaucracies. As opposed to focusing solely on rationality, sociological institutionalism conceives institutions as means of understanding the world more widely. (Hall & Taylor, 1996, 946.) According to the sociological approach, institutions offer an understanding of the world by being mediators between actors and the world and by offering symbols, beliefs and rituals. In this approach, institutions can shape behaviour and also identity. (Warleigh, 2002, 9-10.) Indeed, according to Hall and Taylor (1996, 947) especially three characteristics of sociological institutionalism are distinctive compared to the other 'institutionalisms'. First, sociological institutionalists define institutions very broadly, and as a result the distinction between institutions and culture is demolished. For them 'culture' itself is redefined as 'institutions'. Second, following from the cultural way of understanding institutions, sociological institutionalists conceive the relationship between individual behaviour and institutions in a distinctive way. They see the relationship as "highly-interactive and mutually-constitutive" (Hall & Taylor, 1996, 948), which means that when engaging in socially meaningful acts, individuals act according to a social convention, which reinforces the institutions creating them. Hall and Taylor (1996, 949) illustrate this in the following way:

If rational choice theorists often posit a world of individuals or organizations seeking to maximize their material well-being, sociologists frequently posit a world of individuals or organizations seeking to define and express their identity in socially appropriate ways.

Third, the way institutional practices are created and the way they change is understood as a result of the existence and development of values embraced within a broader cultural environment. This means that new institutional practices are adopted because it is socially legitimate. (Hall & Taylor, 1996, 949.)

Peters (2005) does not mention sociological institutionalism, but societal institutionalism. He describes it as a process, in which the relationships between state and society are being structured. For him, the pluralist model of state-society relationship can be included to the group of societal institutionalism as well as corporatism and corporate pluralism. The latest member of the group, in Peters' mind, is the network analysis of state-society relationship. (Peters, 2005, 20-21.) The weakness of sociological institutionalism is that it disregards the formal elements of institutions as well as the possibility of the instrumental usage of institutions. In addition, it should be acknowledged that institutions do never offer a neutral interpretation of the world but a view that has emerged as a result of a political contestation. (Warleigh, 2002, 9-10.)

Apart from the three different variations of NI described here, Peters introduces three more, namely normative institutionalism, empirical institutionalism, and international institutionalism. Even though these are not very common in the study of the EU institutions, it is beneficial to be aware of them, mostly because many of their characteristics can be found within the three main forms of institutionalism. The first one of these has gotten its name as a result of its strong emphasis on norms of institutions as means of understanding their functioning. Normative institutionalists think that certain norms are being enforced in the functioning of institutions, and this determines, or at least shapes, individual behaviour. A great emphasis is placed on the 'logic of appropriateness', which can be described as the norm that tells the actors what should be done in each given situation. According to March and Olsen (1989, 160-161) in this logic behaviour is intentional but not necessary wilful, because actors are fulfilling obligations of a role in order to hold a certain position. Therefore, actions are generated by necessity, not preferences. Considering this, the approach does not go well together with the utility-maximising framework of rational choice institutionalism (Peters, 2005, 19-20.), but is very similar to sociological institutionalism. In fact, Hall and Taylor (1996, 948) categorise these two to be the same forms of 'institutionalisms'.

Empirical institutionalism is, in Peter's (2005) opinion, closest to 'old institutionalism', which all of the variations of NI were developed from. Empirical institutionalists argue that the structure of a government or the institutional rules make a difference for the way in which policies are processed.

To some extent, this can be said to be the 'pure' form of institutionalism. The last variation, international institutionalism, is the least obvious form of NI. Peters defines international institutionalism, not referring to the functioning of United Nations or other international organisations, but referring rather to the effect of structure in explaining the behaviour of states and individuals. Peter argues that the international regime theory is a clear example of this. (Peters, 2005, 20.)

3.3. Mark A. Pollack's principal-agent analysis

Following several authors referred to in this text (see for example Pollack 1996, Matlary 1997, Viertiö 2008), I have adopted a view according to which the substance of a policy area determines the role of the actors which, in turn, affects the nature of the decision-making process. To put it differently, every decision is different in terms of its process and level of institution involvement. Hence, it can be said that the formulation of a general theory on the role of institutions in EU decision-making process is hardly possible. This view is enforced by Eikeland (2011, 259) in his plead for using pluralistic perspectives in explaining the formation of EU policies in order to ensure the appreciation of all the nuances of institutional actions. Even though this study is not focused on a policy formation but instead on a single directive and a following regulation, I presume a pluralistic approach, which recognises the uniqueness of every decision-making process, is the best way to go.

Theory applied in this thesis will be based on Mark A. Pollack's (2003) perception of the principal-agent analysis in rational choice institutionalism. This theory has been widely used within American politics and is now applied to the contexts of the EU in Pollack's theory and many others (see for example Garrett & Tsebelis, 1996; Crombez, 1997). Pollack describes the principal-agent concept as a relationship where actors, such as the Member States, are referred to as principals and supranational institutions, such the Commission and the EP, are called agents. Pollack explains that in the context of the EU a group of collective principals have delegated authority over certain functions to agents. However, this delegation has implications: agents might have preferences different from those of the principals' and, in consequence, might use their power to ignore the principals' preferences in order to pursue their own. Pollack continues that because of asymmetrically distributed information about the agent and its activities the principal is at permanent disadvantage. This means that the principal is likely to have less information on the

agent's performance, technical requirements, and budgetary needs than the agent itself and, as a result, has a disadvantage regarding the distribution of information. (Pollack, 2003, 20-34.)

Applying Pollack's perception of the principal agent relationship to the analysis of the directive and regulation on safeguarding security of natural gas supply enables me to consider the Member States as key authoritative actors while it, at the same time, permits to recognise the possible independent preferences of the EU institutions. Given the Member States' strong role in national energy decisions in the past, it is not a surprise they want to stay in control of the policy area and are in a certain respect successful in doing so. This is why the primacy of the Member States should be properly acknowledged. However it should still not be overestimated. Within the current EU system, the Member States are constrained by the institutions' increased amount of competence and the past power structures cannot reverse the formal base of this fact. Therefore, I will not agree with the earlier notion of rational choice institutionalism according to which only an institution that produces more benefits than costs will continue existing but never grow to be significant with regard to its influence. Next, I will introduce Pollack's theory in more detail.

3.3.1. Principals and delegation and discretion

As already described above, the starting point of a principal-agent analysis is the recognition of the fact that a group of collective principals have delegated authority over certain functions to agents, in the context of the EU, the Member States being the principals and the supranational institutions being the agents. The immediate question that arises is: why do principals want to delegate certain functions to agents? Pollack states that this problem is functional in its nature, because an answer for the presented question can be found in the functions that a given institution is expected to perform. This functionalist approach to institutional design has been widely studied within American politics and international relations and the key finding of these fields is the identification of four functions that principals may delegate to their agents in order to *reduce transaction costs of cooperation*. The first of these is "monitoring compliance" (Pollack, 2003, 21), which refers to a typical collective action problem in which a group of actors wants to cooperate in order to enjoy mutual benefits, but is unable to do so because of uncertainty regarding other actors' compliance. Here, institutions can monitor actors and, therefore, offer information about their monitoring results to the other actors. This reduces uncertainty and, hence, encourages mutually beneficial cooperation by reducing the transaction costs of the actors.

The second function that principals may delegate to their agents is solving problems of incomplete contracting. Pollack argues that any institutional agreement, or contract, setting guidelines of behaviour is invariably incomplete in its details due to incomplete information about future conditions. Based on previous studies actors might delegate the interpretation of agreements and the filling in of missing details to an impartial institution or actor, especially in situations where uncertainty is great and decision-making is expected to be complex. (Pollack, 2003, 22.)

The third function that principals may delegate to their agents is “adopting credible and expert regulation of economic activities in areas where the principals would be either ill-informed or biased” (Pollack, 2003, 21). Here, a regulatory agency can reduce the informational demands and workload of the principals by offering policy-relevant expertise. Even if this function refers to economic activities it can be applied to other regulations with a technical nature and a high level of complexity. In addition to this informational explanation, a second rationale for the regulation has been developed, namely the need for credible commitments. This refers to a situation, in which a national regulation agency’s regulation of negative externalities, such as trans-boundary pollution, is biased in favour of national industries, and hence, regulates them less strictly. This bias might result in a collective regulatory failure when several national regulators behave the same way. In the context of the EU this means that the Member States have an incentive to delegate the regulation of national firms to an impartial supranational agent in order to gain trust and credible commitments. (Pollack, 2003, 23-24.)

Formal agenda setting, or the power to propose and initiate, is the fourth and last on Pollack’s list of functions that principals may delegate to their agents in order to reduce transaction costs of cooperation. For Pollack this fourth function is defined as procedural agenda setting, which, in practice, refers to the right of an agent to make legislation proposals to its principals. This right limits the range of legislative outcomes and, therefore, the choices available to the principals. Pollack illustrates why the principals want to delegate the formal agenda setting function, even if it means that the agenda-setter ends up possessing a high amount of power: in a case where agenda setting is not limited to a formal agenda setter, everyone would have an incentive to present proposals in order to change the previous decisions they did not agree with. This could lead to an endless series of proposals and no decision would reach a final status. Therefore, developing rules that define who is allowed to initiate proposals is highly rational for legislative principals. (Pollack, 2003, 24-26.)

So far, the theory has offered explanations to the question why the principals want to delegate certain functions to agents. However, as mentioned, the agents might develop preferences different from those of the principals and, in consequence, use their power to ignore the principal's preferences in order to pursue their own. Since the rationale behind principals' delegation is to reduce transaction costs of cooperation, it is clear that an agent promoting preferences other than its principals' does not reduce transaction costs but rather increases them. This is why the principals have an incentive to try to mitigate this "bureaucratic drift" that causes them agency losses by adopting various control mechanisms. However, attempts to prevent agents from promoting their own preferences are not cost free either. Here, the main problem for the principals is the asymmetrically distributed information between them and the agents about the agent and its activities. This asymmetry of information favours the agents, as it is natural that an agent is more informed about its own actions than anyone else. This makes the control by the principal difficult and, in result, costly. Therefore, principals are faced with two types of agency problems, first, agency losses caused by the bureaucratic drift and second, agency costs resulting from the control mechanisms principals use trying to minimize the effects of the first problem. (Pollack, 2003, 26-27.)

Considering the potential problems agents cause to principals after a delegation, it is not surprising that principals try to minimize agency losses and to control costs by choosing the most beneficial way to delegate prior to the actual delegation. This is why Pollack argues that the amount of discretion by the principals is not the same for all agents and in all issue areas. Discretion refers here to the act of delegation, which in Pollack's words "establishes the parameters of acceptable agent behaviour" (Pollack, 2003, 28). He differentiates between three conditions that are likely to affect the potential agency losses and controlling costs and, hence, the degree of discretion given to agents. The first of these conditions is, again, the level of uncertainty. Pollack's principal-agent theory argues that a high level of uncertainty provides an incentive to principals to delegate a high degree of discretion to the agents in order to provide the agents with enough tools to acquire the needed information efficiently. If the agents are gathering information efficiently, it should also mean that the principals are receiving information efficiently. When uncertainty is high, also the need for credible commitments is high, which is the second condition affecting the degree of discretion. In an uncertain situation the principals have a need to establish their commitment to a certain policy line, which, consequently, provides incentive for a high degree of discretion to agents who can make sure that the claimed commitments are holding. The third condition is the level of

policy conflict. Here Pollack argues, in turn, that a low level of conflict among the principals and between principals and their agents provides an incentive for a high discretion. This is because in the case of a conflict between two principals, the chance to punish an undesirably behaving agent is more complicated, and in the case of a conflict between principals and agents, the possibility of agents behaving undesirably increases (Pollack, 2003, 27-34).

Until now, I have focused on the point of view of the principals in Pollack's principal-agent analysis. First, I presented Pollack's explanations to the question why principals want to delegate certain functions to agents. He offers four different reasons, all of which aim to reduce transaction costs of cooperation: monitoring compliance, incomplete contracting, adopting credible and expert regulation, and procedural agenda setting. Second, I presented conditions that Pollack argues affect the degree of discretion principals are willing to give to the agents. These conditions are: high level of uncertainty, need for credible commitments, and high level of policy conflict. In the case of the first two conditions, the theory suggests that the degree of discretion would be high, whereas in the third case a high level of conflict would result in a low degree of discretion.

These two points will be the first two hypotheses of my study. The first hypothesis is: *when formulating the security of gas supply legislation, both directive and regulation, the Member States delegated the four presented functions, monitoring compliance, incomplete contracting, adopting credible and expert regulation, and procedural agenda setting, to the institutions of the EU in order to reduce transaction costs.* As Pollack notes, if the hypothesis will not hold, it would suggest that the Member States are motivated by some other concern, rather than reducing the transaction cost of cooperation (Pollack, 2003, 25-26). It should be mentioned that here, Member States refers to the national governments of the European Union Member States functioning through the Council. Therefore, the institutions of the EU refer here to the Commission and the Parliament.

The second hypothesis states: *the three presented conditions, high level of uncertainty, need for credible commitments, and high level of policy conflict, did affect the degree of discretion the Member States gave to the institutions in the final legislative acts, both directive and regulation, concerning measures to safeguard security of natural gas supply.* The aim of this hypothesis is to give us information on whether the conditions, under which the security of gas legislation was formulated, affected the final text adopted. In the introductory chapter I suggested that the conditions, under which the regulation was created, were influenced by the Russian-Ukrainian gas crisis, and were therefore different from those resulting in the formulation of the directive. This

implies that the conditions do play an important role, and with the hypothesis I should find out if this is assumption is accurate.

3.3.2 Agency and accountability

After discussing the reasons for delegation and the conditions under which the degree of discretion should be high according to the principal-agent model, focus should now be turned to examine agency and its functioning. As it has already been explained, agents might develop preferences different from those of the principals and, in consequence, use their power to ignore the principal's preferences in order to pursue their own. Here, the important question is: what do the agents want to achieve by developing their own preferences and pursuing them over the preferences of their principals? Pollack simply adopts a widely used assumption according to which supranational organisations, such as the Commission and the Parliament, are seeking for more integration and more competence. Pollack continues that supranational agents are also rational and unitary in their functioning. This means that despite the fact that agents, such as Commission, are a host of different actors and opinions, which can lead to internal conflicts, the purpose of principal-agent analysis is not to focus on internal conflicts within organisations, but rather the actions of agents vis-à-vis their principals. (Pollack, 2003, 34-39.)

Hence, the starting point of the analysis for Pollack is an assumption, which serves also as one of his hypotheses, stating that supranational agents have both pro-integrationist and competence-maximising preferences and that they can be characterised as unitary and rational in their functioning (Pollack, 2003, 34-39). Considering the limitations of my research material, I could not test the level of unity and rationality of the institutions in a reliable way and, therefore, the third of my hypotheses is formulated the following way: *of the institutions that this study focuses on, the most supranationalist ones, the Commission and the Parliament, both have pro-integrationist and competence-maximising preferences during the decision-making process of the security of gas supply legislation.* Testing this hypothesis is necessary in order to determine, if the Commission and Parliament want more discretion in the first place, and whether or not they are trying to gain more of it. To make the analysis more feasible I will assume, not hypothesise, that the Commission and the Parliament are rational and fairly unitary in their functioning.

Another question concerning the agents that Pollack wants to address is: under what conditions are the agents likely to act on their own pro-integrationist preferences rather than the preferences of their principals? Given that the agents are trying to maximise their competence, this question is closely linked to a more general question about the ability of the principals to control the agents. Here, Pollack differentiates between control mechanism actions prior to the delegation and after the delegation. He calls the actions prior to the delegation administrative procedures, which set out the procedures, instruments and degree of discretion that the agent is required to follow. These might include for example a requirement to disclose information to all interested parties and the consultation of certain actors, such as the most important political constituents of the principals. Administrative procedures are generally written out in the legislation and, therefore, are mechanisms that take place prior the delegation of authority to an agent. From the point of view of the agents, conditions for advancing their own preferences are the most suitable when procedural requirements are minimal, choice of instruments is broad and the degree of discretion is wide. (Pollack, 2003, 39-42.)

This assumption regarding the administrative procedures forms the fourth of my hypotheses: *the Commission and the Parliament have the most suitable conditions for advancing their own preferences, if the procedural requirements written in the final texts of both the directive and the regulation concerning measures to safeguard security of natural gas supply are minimal, and if the choice of mentioned instruments is broad.* This hypothesis will help determine if the Member States feel the need, and were able to, use administrative procedures to control the Commission and the Parliament in the security of supply matter, and if so, what sort of administrative procedures did the Member States choose to incorporate in the final pieces of the legislation. The hypothesis will not determine, however, if the amount of administrative procedures incorporated in the legislation affects the probability of the Commission and the Parliament to act on their own pro-integrationist preferences rather than the preferences of their principals. Answering this question would require wider material and a more thorough analysis than what is possible to undertake in the scope of this study. To provide information on whether the Member States were able to use administrative procedures to control Commission and the Parliament will be sufficient for an interesting analysis at this stage.

The control mechanisms used by principals after the delegation consist of monitoring and sanctioning. The first is taking place when a principal determines the extent of agency losses and the latter when agency loss has been detected and then addressed. In the context of the EU, a good

example of the first mechanism is an oversight procedure established by Member States called “comitology” (Pollack, 2003, 42-43). This procedure was revised in 2011 and now consists of two procedure, an advisory and an examination procedure, both of which aim to ensure that the implementation that the Commission undertakes are in accordance with the views of supervisory committees and, also, the Parliament and the Council (Council of the European Union, 2011). According to Pollack, sanctioning, the second control mechanism used by principals after delegation, generally includes measures such as cutting agency budgets, dismissing agency personnel, refusing to comply with agency decisions, and formulating new legislations to overrule the legislation created by an agent. However, yet again, these functions are not cost free and can turn out to be ineffective means of control for the principals. For example, cutting agency budgets and dismissing agency personnel might not be possible under the provision that was set out in the initial act of delegation. Furthermore, these sanctions might not only serve as sanctions, but prevent agents from performing their initial tasks altogether, which is not the purpose.

The option of formulating a new legislation to overrule the older one created by an agent is also complicated. This is because the likelihood of delegation is the highest when the transaction costs of direct regulation by principals are high in the first place and, hence, formulating a new legislation usually involves significant transaction costs for principals in addition to the costs that have already occurred. Therefore, it has been suggested that the level of difficulty, or ease for that matter, that the principals have to go through before adopting a new legislation to reverse the unwanted effects of agent’s decisions, determines, in part, the discretion of supranational agents. (Pollack, 2003, 45-47). However, I do not think this assumption would suit the security of gas supply case very well. The directive was replaced with a new law, the regulation, but the reason for its replacement was most probably not to reverse unwanted effects of the decisions made by the institutions under the directive, since the regulation does not reduce the degree of discretion of the institutions but, rather, increases it. Furthermore, the regulation is too recent to be a subject of a thorough analysis of the use of monitoring and sanctioning measures at this moment. Therefore, this study will not focus on the monitoring or sanctioning measures introduced here. However, one exception will be made with respect to my fifth and last hypothesis regarding the measure of refusing to comply with agency decisions. I will turn to this a little later.

Pollack draws some conclusions about the control mechanisms used by principals both prior and after the delegation of authority that potentially affect the ability of the agents to pursue their own pro-integrationist preferences on the expense of their principals’ preferences. First, he points out the

possibility of conflicting preferences among multiple principals, a situation that occurs when agents are supervised by multiple principals who all have their own, or at least do not share the same, preferences on proceeding actions. Here, the agents can potentially exploit the existing conflicts and, in consequence, expand their degree of discretion. (Pollack, 2003, 43-45.)

Agents ability to exploit conflicts among its principals is closely related to the second issue Pollack mentions, namely the decision rules governing the use of control mechanisms available to principals. According to Pollack, agents have the highest potential to exploit the conflicts and, hence, to increase their level of discretion, when the decision rule for the application of control mechanisms is very demanding, for example unanimity. As discussed earlier with respect to sanctions, when the use of sanctions is highly costly, as it would be when unanimity among all the principals is required, sanctioning becomes very unattractive for the principals, and the possibility of agents avoiding control mechanisms rises. Even if Pollack talks here about sanctioning that is costly to the principals because of demanding decision rules, I think this notion can be extended to all reasons why sanctioning measures can cause costs to principals. In the case of the security of gas supply a good example would be a measure of refusing to comply with agency decisions. That is a refusal by the Member States, through the Council, to comply with the decisions made by the Commission in the implementation phase of the security of gas supply regulation. I presume that perceived this way, the notion can be used as a hypothesis in the security of supply case and, therefore, the measure of refusing to comply with agency decisions is the only controlling measure I will incorporate into my analysis, as mentioned earlier.

The rationale behind my fifth hypothesis is then the following: as not complying with Commission's implementing decisions could be potentially costly for the Member States, considering the close experiences of the Russian-Ukrainian crisis, this control mechanism is highly unattractive for the Member States. In consequence, the *probability that the Commission was able to avoid this control mechanism was high already in the beginning of the process of formulating the regulation*. This suggests that when formulating the regulation the Member States were in a position that did not allow them to use all of their control mechanism and, hence, made their bargaining possibilities narrower.

To sum up, in this section the focus was on the agents' motives and their potential to act on their own pro-integrationist preferences rather than on the preferences of their principals. First, I presented Pollack's description of the motives behind the agents' action, which also serves as one

hypothesis stating that the Commission and the Parliament have pro-integrationist and competence-maximising preferences. To determine if this hypothesis holds is essential considering the other hypotheses of this section, since it is pointless to analyse the conditions or control mechanisms affecting the degree of the agents' discretion, if delegation is nothing but a random process, and not a strategic endeavour by the actors involved.

After addressing the importance of the motivation of the agents, the focus was turned on the conditions, under which the agents are likely to act on their assumed pro-integrationist preferences, rather than the preferences of their principals. The answer to this question is related to a more general question about the ability of the principals to control the agents. According to Pollack, the control mechanisms available to the principals include measures taken before and after the delegation of authority. I created a hypothesis on both. Regarding the control mechanisms before the delegation of authority, I hypothesise that the Commission and the Parliament have the most suitable conditions for advancing their own preferences when the procedural requirements of the final act of the security of gas supply legislation are minimal, and when the choice of instruments mentioned in the act is broad. This hypothesis helps to determine if the Member States felt the need to, and were able to, use administrative procedures to control the Commission and the Parliament in the security of gas supply matter.

Regarding the control mechanisms after the delegation of authority, my hypothesis concerns one specific control mechanism mentioned by Pollack, namely the measure of refusing to comply with agency decisions. Considering that a control mechanism of not complying would have been potentially costly to the Member States, I argue that the probability that the Commission was able to avoid the mentioned control mechanism was high already in the beginning of the process of formulating the regulation. This suggests that the Member States were in position that gave them less room to bargain with the Commission and the Parliament. These last two hypotheses are related and can support each other, because if the Member States felt pressured to reach a decision fast in a fear of failing to prepare for another gas crisis, they would not be in a favourable position to use all of their control mechanisms against the Commission and the Parliament. This would give a negotiation advantage to the Commission and the Parliament to further their pro-integrationist and competence-maximising preferences in the formulation of the regulation. If this is the case, the amount of procedural requirements, aiming on controlling the Commission and the Parliament, in the final act of the regulation would most likely be minimal due to the negotiation advantage that the two supranational institutions possessed. If the amount of procedural requirements in the final

act of the regulation is not minimal, it would suggest that the Member States were not under a pressure to reach a decision, and that the Commission and the Parliament did not have a negotiation advantage.

3.3.3. Formal agenda setting and procedural rules

As already mentioned, Pollack includes formal agenda setting in the list of reasons why principals want to delegate certain functions to the agents in the first place. This aspect of principal-agent analysis deserves more detailed attention because, for Pollack, agenda setting helps us to examine the functioning of the Commission given that the Commission is the main agenda setting authority in the current legal framework of the EU.

I will use here the formal definition of the concept to examine the Commission's right to set the procedural agenda for the Council and the Parliament. For Pollack, formal agenda setting is primarily based on voting and amendment rules that ensure the influence of the actor who possesses the right to propose legislation (Pollack, 2003, 47-48). The formal agenda setting function is especially distinctive under the co-decision procedure, since the Commission's proposal needs only to get a majority of support, both in the EP and in the Council, to be adopted. In the Parliament the voting rule is simple majority, whereas in the Council a qualified majority needs to be reached. This increases the possibility for proposals to go through without any amendments and, consequently, the agenda setting right becomes more valuable (see 2.1.2.).

In a case where amendments do occur, the Commission is not left to be ignored. After the Parliament has adopted its amendments in a first reading, the Commission is given a chance to go through them and to incorporate them in its initial legislative proposal, if they are acceptable. Whether the Commission chooses to incorporate the Parliament's amendments to its proposal is not an insignificant decision, because it affects the voting rules later in the process. In particular, when the Council decides on its position at a first reading and wishes to adopt the amendments that the Parliament has made, it is able to do so by qualified majority, in the case where the Commission has incorporated the amendments to its proposal, or by unanimity, in the case where the Commission has not done so. A similar process is repeated in a second reading, if the procedure has not delivered a positive decision on the proposal in the first reading.

In contrast to the co-decision procedure, the consultation procedure gives a significantly different amount of agenda-setting power to the Commission. As described in chapter 2.1.2., the Commission has the legal power to propose a legislative act, just like in the co-decision procedure, but in the consultation procedure, the Council is not compelled to take into account whether the Commission agrees with possible amendments that the Council chooses to make to the initial proposal. Furthermore, the Council does have to wait until the Parliament has delivered its opinion on the proposal, but after receiving the opinion, the Council is allowed to ignore it. Hence, under the consultation procedure the power the Commission receives from its agenda-setting right is very limited compared to the co-decision procedure.

The same can be said about the influence of the Parliament when comparing between the two procedures. Even if the Parliament does not possess agenda-setting power like the Commission, its legislative power is significantly broader under decision-making rules of the co-decision procedure than under rules of the consultation procedure. As described above, in the consultation procedure the Parliament delivers an opinion, but cannot force the Council to incorporate it into its decision. However, under the co-decision procedure the Parliament can force the Council to take its opinion into account, because if the Parliament does not approve the amendments made by the Council in the first reading, it can reject them in the second reading by an absolute majority, and, in consequence, the act is deemed not to be adopted. If the Council and the Parliament cannot find an agreement in the second reading, Conciliation Committee is convened. Again, if the Parliament does not agree with the Council, the act is deemed not to be adopted.

Given the clear differences in the powers of the Commission and the Parliament between these two procedures, it is fruitful to analyse the differences in the roles of the Commission and the Parliament during the procedures. To specify the differences, I will compare the two procedures in question. This analysis should show how the ability of the Council, representing the interest of the Member States, to advance its own opinions and ignoring the opinions of the Commission and the Parliament differs between the two different decision-making procedures. Put differently, it clarifies how the ability of the Commission and the Parliament to advance their own opinions differs between the two different decision-making procedures.

In sum, the application of Pollack's principal agent theory that I have formulated for the purpose of this study, focuses on the following questions. First, on the principal side, why delegation happens, and why the degree of discretion is not the same in every case or, put differently, do the conditions

play a role in the process? Second, on the agent side, what are the motives of the agents, were the agents controlled by the principals, and due to the conditions, did the agents have a negotiation advantage? Third, I incorporate a comparison of two decision-making procedures into the analysis. With the help of my hypotheses I will answer the research questions presented in the introduction of this thesis about the roles of the main EU institutions and the possible change that occurred in those roles during the security of gas supply legislation process.

4. Method

Jussi Viertiö argues in his research that decision-making in the EU can often be called irregular and dependent on the prevailing situation. He notes that the decision-making process is started when the circumstances call for it. Certainly, actual decisions are made according to the agreed procedures but the nature of the process may vary significantly depending on the issue at hand. (Viertiö, 2008, 174.) Keeping this and the distinctiveness of the security of gas supply issue in mind, I think that a case study is the most suitable method for this study. Robert K. Yin (2003, 2) states that the purpose of a case study is the understanding of complex social phenomena. For him, the case study method enables the identification of the characteristics of real-life events, organisational processes being one example. Yin encourages the researcher to define their research questions and evaluate if they include the words “how” or “why”. If the words are included and if the aim of the research questions is to examine a contemporary set of events, Yin suggests that a case study is an advantageous research method. (Yin, 2003, 9.) In my case the conditions are met and, hence, this notion gives a further reason for applying the case study method. In this chapter I will introduce the method and the material of my study.

4.1. Case study research

For Bill Gillham (2000, 1) a case is “a unit of human activity embedded in the real world, which can only be studied or understood in the context, which exists in the here and now”. A case study is then research that investigates the case with an aim to answer specific research questions. According to Gillham, research questions are answered based on a range of different kinds of evidence and multiple sources of evidence, which can be found in the case setting. This is the key characteristic of case studies. (Gillham, 2000, 1-2.)

Peters (2005, 137) argues that in the field of political science, case study is by far the most common method of research. Despite its frequent use, Peters admits that the method is often denigrated by researchers who rely on statistical analysis or other more quantitative methods of collecting data. The case study method is said to be insufficient for modern or scientific standards. This is however not the case. As Michael Quinn Patton (2002, 447) puts it, “well-constructed case studies are holistic and context sensitive”, two qualities that are, in his mind, the two most important strategic themes of qualitative inquiry.

Robert Stake differentiates three types of case studies, an intrinsic case study, an instrumental case study and a collective case study. Stake (2000, 437) describes the first as a study that is undertaken because the researcher wants to find a better understanding of a particular case. The purpose is not to understand a generic phenomenon but to study a case because of an intrinsic interest in that specific case and its nature. The second type, an instrumental case study, is for making generalisations and the third type, a collective case study, for studying a number of instrumental cases. This study belongs to the first type because its purpose is to understand one particular decision-making process not to make generalisations but to examine the features that are characteristic to the particular case that is taking place in a particular political context. (Stake 2000, 437-438).

Case study research belongs to the tradition of qualitative research and is then interested in the quality of matters. Sirkka Hirsjärvi describes qualitative research as an illustration of real life. For her, real life is multidimensional, and hence, qualitative research should respect all the aspects of it. However, real life cannot be cut into pieces in an arbitrary way. Events shape each other in countless and endless ways so it is possible to detect countless ways to explain events in relation to each other. The goal of qualitative research is, therefore, not to cut phenomena into pieces, but to interpret them holistically. (Hirsjärvi et al. 2007, 157.)

An inseparable part of qualitative research is its value based nature. In order to determine with qualitative tools how a certain real life phenomenon is, one has to have an idea of what that phenomenon should be like or what constitutes a desirable feature with regards to this phenomenon. This kind of evaluation is always based on values, because values determine how we evaluate matters. (Hirsjärvi et al. 2007, 156-157.) In qualitative research, objectivity is therefore not possible in the same way as in quantitative research. In qualitative research the researcher and the subject of research are inevitably intertwined, and results or conclusions can be given only conditionally, restricted in a certain time and place. (Stake, 1995, 43.)

Hirsjärvi illustrates that qualitative research can be conducted in multiple ways and in multiple fields of study, but what is similar to all qualitative research, in her mind, is a description by Tesch, who states that all qualitative research emphasizes the meaningful nature of social phenomena, and the need to consider that nature when describing, interpreting and explaining communication, culture or social activities (Hirsjärvi et al. 2007, 159). However, it is important to acknowledge that

case studies are not limited to qualitative research alone. Yin (2003, 15) points out that “case studies can be based on any mix of quantitative or qualitative evidence.” Often quantitative and qualitative evidence rather complement each other than rule out each other.

4.2. Advantages and limitations of case study research method

The advantages of case studies can easily be illustrated using the example of democratic peace studies as statistical methods have proven to have several problems in the field. First, complex variables such as democratic norms, are not measurable. In addition, such complex terms make it difficult to detect which variables should be used in each application. Second, statistical methods have problems establishing causal mechanisms for each particular case. George and Bennett (2005) argue that if a case would follow a certain theory in 99 per cent of the time, a statistical analysis would give a confirmation of the hypothesized process at a high significance level. A case study research, in contrast, would focus on that one per cent that formed an exception in the process and probe further on it in order to find the one missing piece. Third, regarding democratic peace and war, the infrequency and small number of wars between democracies create a problem for statistical method. For case study research this is rather a possibility than a limitation. A small number of cases enables a researcher to study each of them thoroughly and, in consequence, to offer a better overall understanding on the issue. (George & Bennett, 2005, 40-45.)

The fourth advantage of case study research is the possibility to create less restricted hypotheses. This is not possible with statistical methods where numerous cases or a restricted number of variables are required in order to get credible results. With the case study method complex events and countless variables can be analysed and non-countable norms can be incorporated into the analysis. The fifth advantage is process–tracing. Here, statistical and case study methods can help each other because after it has been established statistically that democracy can be associated with peace, causality still has to be established. Whether leaders actually consider the regime of a country when planning future wars, can then be analysed by focusing on a certain case. The final advantage of the case study method compared to statistical methods in the field of democratic peace studies is the possibility to create subtypes. This means that qualitatively different “types,” such as types of war or types of democracy, can be developed and utilised in analysis. Making definitions of concepts and differentiating between democratic qualities is often necessary for being able to reach mature conclusions. (George & Bennett, 2005, 45-49.)

In addition to many advantages, the case study method also has some limitations, trade-offs and potential pitfalls that one has to be aware of when using it in their study. One of these pitfalls is case selection bias. This is an evident problem in statistical methods, but with case study method, the researcher might deliberately choose a certain interesting case for the focus of their analysis. However, one has to keep this in mind when generalizing their results. When one chooses cases that support the favoured hypothesis and ignore the cases that appear to contradict the theory, generalizations that are made from these cases to wider populations are likely to be false. Therefore, one should be careful to limit their results only to certain conditions, places and time, and to be aware of the risk of overemphasising the discovered relationship between the variables. (George & Bennett, 2005, 22-25.)

Another limitation of case study research is the fact that it is a lot more suited to answer the question how a variable mattered to the outcome than to evaluate how much it mattered. First of all, it might be possible to determine that a variable favours a certain outcome. This still does not tell us whether the variable is necessary for the existence of the finding or is it simply just a contributing factor. Second, even if we could be able to determine that a variable was necessary, we cannot know how necessary its effect was in the course of the overall process. It might have been the decisive factor all along, or it could have been the straw that broke the camel's back just in the end. Third, the effect of a variable may vary across different cases and, therefore, conclusions on the variable cannot be generalised to other cases. (George & Bennett, 2005, 25-27.)

The third problem one might come across when using the case study method is that evidence can be consistent with a large number of alternative theories. A researcher should then test the other plausible theories in order to determine which theory fits certain cases the best. It might be that even after testing several theories, the researcher is not able to come to a clear result. In this case it is very important to state clearly to what extent the remaining hypotheses are competing or complementary. (George & Bennett, 2005, 28-30.)

Finally, the fourth problem regarding case studies is the potential lack of independency between cases. If correlation is not a result of a new relationship between the variables but rather a result of learning or diffusion from one case to the others, the correlation is hardly offering any new information on the matter. This problem can be reduced by process-tracing, because following a process systematically can reveal unexpected linkages between cases. The most severe situation

occurs precisely when a researcher does not identify the learning or diffusion, but presents their results as independent. However, sometimes linkages between cases can be studied beneficially. This happens when the learning has been detected properly and is used as the focus of a case study. (George & Bennett, 2005, 33-34.)

4.3. Observation and analysis

The method of analysis in my thesis is observing. For Simons (2009), several points are to be considered when talking about observation. First, the purposes of the study and the target audience have to be kept in mind. A study should always be constructed with good knowledge of proper conduct of the particular reader. Second, the researcher should remember to stay open to new discoveries and results. Every study does obviously not result in new scientific revelations, but when new information is found, the old information should not hinder the new one to be embraced. The third one is to see differently. This means to provoke a new angle on a certain question while keeping in mind that every perception is incomplete in that it is always socially constructed. (Simons, 2009, 56-58.)

The primary sources of my thesis are written documents. Simons (2009, 63) argues that documents can be used in many ways to contribute to the analysis, and portray and enrich the context. In her words, “[w]ritten documents may be searched for clues to understand the culture of organizations, the values underlying policies, and the beliefs and attitudes of the writer.” (Simons, 2009, 63). This is the aim of my thesis. The purpose is to detect the attitudes and beliefs of the institutions of the EU in their functioning and decision-making. Simons continues that the more different kinds of documents, for example final versions, drafts, and unofficial commentaries, the researcher is able to collect, the better the understanding of the overall picture. One written statement might not mean anything, but many of them can add meaning to the context of the study. (Simons, 2009, 64.)

Patton (2002) talks about institutional documents and analyses through the writings of Gale Miller. In Patton’s words, Miller has argued that institutional documents are socially constructed realities that give us information on the practical social context of everyday life. Apart from the usefulness of documents, analysing them includes some special challenges that the researcher has to be aware of. One has to understand how and why the documents were produced, has to determine the accuracy of the documents, has to link documents with other sources, such as observations, and has

to deconstruct and demystify institutional text. In Miller's words demystifying institutional text is demystifying institutional authority. (Patton, 2002, 498-499.)

Patton argues that a case study approach represents an analytical process, because it constitutes a specific way of collecting, organising, and analysing data. A case study is also the result of this process, so the term can refer both the product of the analysis and the process of analysing. (Patton, 2002, 447.) For Stake (2005) an analysis is an ongoing process, so it is impossible to distinct any particular moment when the analysing begins. Analysing is taking impressions, observations, and conclusions apart, and then trying to build them back together in a way that makes sense and has more meaning. (Stake, 1995, 73-74.) However, the first thing that researcher should acknowledge when starting the analysing process is that data does not speak, it is the researcher who is giving meaning to the case. The researcher organises data, identifies categories, and decides which data to include in the evidence to create meaning and a story. (Simons, 2009, 118.) Once this has been noted, making sense of the data can begin.

In Simons (2009) opinion, an analysis and interpretation can be done in many ways depending on the case study in question. First, she encourages the researcher to ponder what kind of an overall perspective they want to adopt in making sense of the data. For her, the options include on the one hand a formal process, which entails coding, categorising, and aggregation of data, and on the other hand a direct interpretation, which refers to a more intuitive way of transforming evidence. Second, she suggests the researcher to consider how theory will be used in the analysis and in the interpretation of their case. One option is to start with a theoretical framework and use categories and precoding stemming from the chosen theory. Another option is to derive codes and categories from the data and to evolve an interpretative theory while proceeding with the analysis. Third, Simons (2009) wants the researcher to make sure that they produce a coherent story. Rich data is not sufficient if it is not connected to the theory of the case. This notion applies regardless of the strategic choices one has made. The fourth and last of Simons' notions is her emphasis on intuitive interpretation, a matter she already referred to in her first point. Simons admits that many strategies for making sense of the data are rather formal and rational in their nature. However, she argues that the researcher should not forget instinctive feelings and puzzling observations about certain issues, as well as other artistic ways in which researchers gain intuitive idea of the meaning of the data. The reason for this is that the holistic nature of the data can often be found with intuitive processes. Therefore, the best result can be gained when using use both of these strategies, intuitive and cognitive, simultaneously. (Simons, 2009, 126-127.)

As introduced in the previous chapter, the analysing process of my thesis is guided by the theoretical framework of the study. Based on the main theory, I formulated two general research questions and three sets of hypotheses, which define the research questions in more detail. The formulated hypotheses determine which categories and codes I use when interpreting the gathered evidence. Therefore, I incorporate mainly formal strategies of making sense of the data.

4.4. Introduction to material

I define the case of this study as one legislation process. I do not have two different cases for the directive and the regulation, but rather one process that starts in the year 2002, when the initial legislative document of the directive was drafted, and results in the adoption of the regulation in 2010. Within this one process different stages are differentiated for the purpose of the analysis. Here, a division that separates both decision-making processes into three different stages is applied. These stages are agenda-setting, policy formulation, and policy decision (see for example Rosamond, 2000, 115).

The primary material of this research consists mainly of the official documents written in the process of formulating the directive and regulation. These include the final versions of the legislative acts which have been published in the Official Journal of the European Union as well as the initial legislative documents, opinions, reports, decisions, and positions regarding the proposed pieces of law that were written by the relevant actors in the different phases of the legislative process. On the part of the Commission a total of 19 documents, including 3 Green Papers, 8 Communications, 2 proposals, 4 assessment reports, and 1 statement, is referred to in this thesis. From the Council 5 different documents concerning Council meetings, reports and presidency conclusions, are used. From the Parliament 7 documents, including reports on Commission communications and proposals, legislative resolutions and press releases, are referred to. On behalf of interest groups 5 documents written by Eurogas, which is an organisation composed of natural gas companies, federations of natural gas companies, and international organizations, are used. These documents present Eurogas' views, opinions or comments on various actions taken by the EU institutions. In total 6 final legislative acts, published in the Official Journal of the European Union, are also included.

In addition to these “hard primary sources”, as Pollack (2003, 70) calls them, I have relied also on another source of primary documents, namely journalistic reports. These are used as a supplement to hard primary sources because the official documents do not always reflect actors’ sincere preferences. As Pollack (2003, 71) notes,

journalistic sources can provide additional details regarding the preferences and interactions of key actors, particularly in the case of insider publications [...], which offer detailed, day to day analyses of EU negotiations with comparatively little attention to the public pronouncements of major politicians.

One of these insider publications is “Europolitics”, which is, thus, used extensively, in total 17 times. Other news publications referred to in this study are provided by EurActiv, BBC, Forbes, Reuters, and The Guardian, resulting in 28 news articles. The material was not chosen in any particular way. Rather, I have used every official document related to the directive and the regulation that I was in able to find. Also, the most relevant of the news articles that I found have been used.

5. Analysis of the decision-making process of the security of gas supply legislation

5.1. Background of the legislation

The legislation process of security of gas supply started officially on September 11th 2002 when the Commission published a proposal for a directive concerning measures to safeguard security of natural gas supply (Commission of the EC, 2002). This chapter will offer information on why the Commission made a proposal, and in what kind of political context the legislation process was put forward.

5.1.1. Emphasis on the market

In 1995 the Commission set out a Green Paper (Commission of the EC, 1995a) to assess the European Union energy policy. The Green Paper highlights security of supply as one of three pillars of European Community energy policy, and defines security of supply to be measures ensuring that future essential energy needs are satisfied, and that this could be obtained “by means of a sharing of internal energy resources and strategic reserves under acceptable economic conditions and by making use of diversified and stable externally accessible sources” (Commission of the EC, 1995a, 22). The Green Paper differentiates between short-term and long-term security. For the purpose of this thesis, the first one is of special interest, since it aims at avoidance of supply disruptions caused by exceptional circumstances, primarily concerning oil and gas. According to the Green Paper, the Commission recommends advantage to be taken of the Community dimension to enhance security of supply. To better the short-term security an in-depth examination of the specific measures necessary to respond to gas supply crisis, should be undertaken. However, at the time the Commission believed that open market functioning is the best way to proceed on the matter. In the Green Paper the Gas Industry urges the developers of a future European energy policy to take into account a number of specific aspects of the gas markets in the European Community, such as long term supply contracts, supply diversification, stable economic environment, and setting of market prices by reference to prices of substitute fuels, which have ensured security of supply until that time. (Commission of the EC, 1995a, 22-25.)

As part of the framework that was set out in the Commission’s Green Paper, the Communication “European Community Gas Supply and Prospects” was put forward from the Commission the same

year (Commission of the EC, 1995b). The Communication focuses on two objectives, first, to start a debate on the future direction of the EC gas sector, and second, on measures to be taken to enhance the security of gas supply. The latter objective is addressed in the chapter “Security of supply at EC level”, which states that significant differences exist between the Member States in the gas supply matter. Due to these differences, Member States have made national plans to protect themselves from a gas disruption based on each country’s national conditions, which should be, according to the Commission, sufficient to survive a short-term shortfall in gas supply from external supply sources. Despite this finding, the Commission conducted a study as part of the same Communication on the effect that each Member States’ individual security measures have on the overall security of the European Community. The main conclusions drawn from this study are as follows:

- the use of the EC dimension improves the security of supply on the grounds that cooperation on a European level increases the efficiency of solving a disruption of gas supply from non-OECD suppliers;
- it is not clear if gas companies would fully exploit the EC dimension in a gas crisis affecting several Member States;
- the measures involving EC cooperation would include interruptible contracts, production flexibility, trade of gas, and use of available storage at EC level, as well as linking the different EC sources of supply, these measures would be taken place in the normal commercial environment in which the gas industry functions;
- due to political strains that the measures might cause, a formulation of EC level emergency guidelines should be considered. (Commission of the EC, 1995b, 16-19.)

The Parliament (1996) gave a report on the Commission Communication, in which it approves the conclusions the Commission presented in the Communication, and proposes that a deeper analysis would be conducted on the role of the EU, the Member States and gas buyers and sellers in the security of supply matter. The Parliament then recognises the importance of the matter, but rather than encouraging other measures, it emphasises the efficiency of a true internal market for gas in Europe. In the Parliament’s opinion, this would ensure security of supply and securing consumers’ rights in best possible way. (European Parliament, 1996, 2-4.)

As it can be seen above, the issue was put on the EU agenda gradually. The Commission realised that security of supply is an issue that needed to be discussed and studied further. The finding of the Communication in 1995 about the usefulness of EC level coordination for the improvement of security of supply was important. Furthermore, the encouragement that the Commission received from the Parliament with regards to deepening the analysis on the matter, gave an additional reason to keep security of supply questions on the agenda. However, at this point neither the Parliament nor the Commission were ready to make official initiatives, because they both trusted the market to be sufficient to take care of any possible supply disruptions. Therefore, the emphasis was put on the opening of the gas market.

The opening happened officially in 1998 when a directive concerning common rules for the internal market in natural gas (OJ L 204, 21.7.1998) came into force after extensive negotiations between the Council and the Commission (Europolitics 22.10.1997). The directive was later replaced with another directive (OJ L 176, 15.7.2003) and completed finally in 2007, but the purpose stayed the same, to fully open up the national gas markets with the aim of meeting the objectives of service quality, universal service, consumer protection and security of supply. The directive guarantees that new suppliers can enter the market, and consumers are free to choose their gas supplier. Furthermore, the directive enables the Member States to impose public service obligations to guarantee the security of supply, regularity, quality, and price of the gas supply. This is because gas supply is considered as a public interest service which the citizens, in return of payment, have the right to access (EurActiv 26.11.2002). In each Member State, regulatory authorities are appointed with a task of monitoring non-discrimination, transparency and competition, and the tariffs and methods for calculating them. The Commission has then the role of monitoring the implementation of the process so that appropriate measures can be prepared ahead in the event of any supply problems. (OJ L 204, 21.7.1998, OJ L 176, 15.7.2003.)

Based on the content of the internal market directive, it is not surprising why the EU institutions put their emphasis on the functioning of the internal gas market. The very purpose of the directive is to protect the consumer and secure supply. The rationale behind the directive is very simple: in the case of a supply disruption in one Member State, the market mechanism would guarantee substitute supply from another part of the EU. This way, the EU gas market would become invulnerable and less dependent on external gas suppliers. However, in order to guarantee that a directive like this works in practice, infrastructure and other necessary conditions would have to function impeccably. As described in chapter 1.3., this means heavy investment in pipelines, interconnections, and

storage facilities, all of which are extremely expensive to build. Considering this, it is equally understandable why the EU institutions were willing to look into the security of supply matter while officially promoting the opening of the internal market.

Following the encouragement for conducting a deeper analysis, the Commission gave out a Communication in 1999, with the title “Security of gas supply” (COM(99)571 final). The main message of the Commission is that more effort is needed to manage gas supply, because of gas’ increasing share of the EU’s energy supply mix. However, in the Commission’s opinion this does not necessarily mean that rigid EU-wide security of supply criteria and mechanisms would be the most appropriate solution, since the fact remains that national gas markets have important different characteristics and, therefore, have different security of supply concerns. On the external dimension the Commission encourages the diversification of gas supply sources. It noted that some countries, such as Algeria, Ukraine and Russia have a critical role as gas suppliers and transit countries. Considering the potential challenges that these countries face in the future, the Commission thinks that political support and regional cooperation schemes should perhaps be arranged as a backup for market mechanism. (Europolitics, 17.11.1999.)

The Council delivered its conclusions on the Commission Communication after a Council meeting in 2000. The Council expresses its content with the fact that the Commission had examined the security of gas supply matter further and had delivered the Communication the previous year. The Council stresses “the importance of competition and liberalisation of markets for the security of energy supply” (Council of the European Union, 2000, 9). It also underlines that the EU gas industry should continue to play a crucial role in the overall security of gas supply of the EU, and that progressive completion of the single gas market should remain a strategic priority. However, in the Council’s opinion further cooperation is also needed. Cooperation between the EC and Member States, as well as relevant international institutions and the private sector would be beneficial. In order to mitigate both political and technical risks associated with future gas supplies, the Council encourages more cooperation between the EC and the most important external supplying and transit countries. In addition, the Council invites the EC, together with the Member States, to continue to play a key role in the matter. Finally, it invites the Commission to monitor and analyse the development of security of gas supply situation in close cooperation with the Member States and the European gas industry and to report regularly to the Council on its findings. (Council of the European Union, 2000, 9-11.)

As it can be seen, the Council's conclusions are strongly in line with the Commission's Communication. Both institutions, the Council and the Commission, staying consistent with their previous stances, want to rely on market liberalisation and market mechanisms. However, the Council can be said to be especially confident in market mechanisms' sufficiency. This is evident, because it does not make a single reference to supplementing the internal gas market with additional measures. Rather, it invites the Commission to monitor, analyse, and coordinate exchange of information and report to the Council on the situation. The Commission, on the other hand, mentions a vague possibility of "backing up the market mechanism" (Europolitics, 17.11.1999). Despite slight differences in the choice of words with regards to possible future measures, a strong consensus between the institutions still remained at this point. However, the Commission's Green Paper from the year 2000 finally broke the consensus.

5.1.2. Towards a European strategy for the security of energy supply

In 2000 the Commission published another Green Paper on the matter of security of energy supply (Commission of the EC, 2000). The Green Paper "Towards a European strategy for the security of energy supply" paints a somewhat different picture of the energy security situation in Europe than the Green Paper five years earlier. In the new Paper the Commission assesses security of all energy supply, and concludes that the situation and conditions in which energy policy in the EC has to operate in the 21st century have changed significantly. Three main changes that have taken place in the recent past are enlargement, climate change and liberalisation of energy markets. These changes have created new constraints and challenges for the governments, and the liberalisation of energy markets has meant that the governments can no longer directly manage their energy utilities. This means that the Member States are no longer governing their own stocks, planning their reserves or applying crisis mechanisms in a case of a supply disruption in a way they used to. As the roles of regulators and companies will become clearer, new crisis management systems may be developed. In fact, the Commission writes that efforts for this are already under way, and for gas a committee monitoring short and long term security of supply developments on EU level has recently been established. (Commission of the EC, 2000, 45-47.)

Considering natural gas in particular, the Green Paper states that its demand follows the general trend of all energy forms in the EU: a clear increase. This and the future enlargement to Eastern

Europe mean that EU's dependency on Russian gas will rise. Also, the price of natural gas has been predicted to rise by 20 per cent until the year 2010 (Commission of the EC, 2000, 21):

Under the joint effect of an emerging spot market in the European Union through the completion of the internal market and demand-side pressure compounded in particular by concern for global warming, changes can be expected to pricing rules (i.e. end to indexing of gas prices on oil prices), either in the standard manner of a competitive market reflecting production costs or through the formation of a "gas cartel". It is difficult to say how likely this is at the current time, which is why any structural trend of excessive price increases has to be prevented and abundant and diverse supplies guaranteed.

Another challenge that concerns natural gas like other energy sources is its transportation and transit routes. The increasing demand in gas supply puts pressure on the transit capacity. The Commission points out that the transportation of energy supply is crucial for energy security, and that transportation is a sum of many factors, such as the willingness of third countries to permit transit, financial and technical resources to maintain the existing routes and create new ones, and an international framework, which ensures stable conditions for long-term investment and trading. Here, the Commission calls for closer international cooperation, both between the EU and its suppliers and among suppliers and transit countries. (Commission of the EC, 2000, 48.)

The Communication is a clear break to earlier stances the Commission, or the other institutions, had. In the Commission's opinion many factors have changed and thus it is only appropriate to adjust to the new situation. In fact, after less than two years the Commission's new and more alarmed position resulted in a proposal for a directive concerning measures to safeguard security of natural gas supply (Commission of the EC, 2002). However, the Council and the Parliament did not change their stance along with the Commission. They remained to be advocates of the internal market with severe reservation towards extensive Community level coordination.

Also Eurogas, an organisation composed of natural gas companies, federations of natural gas companies, and international organizations representing the natural gas industry, emphasised rather the conclusions of the Commission Communication from 1999 than the findings of the Commission's Green Paper from 2000. In its opinion, the emphasis should be kept in "favouring greater trade and market-driven economic development" (Eurogas, 2001, 1). Eurogas recognises the need of further analysis and discussions, but wants to remind that the natural gas industry has kept an excellent record regarding uninterrupted supplies to its customers along the years, competitive pricing compared to other sources of energy, reduced price volatility for customers, and the lowest

GHG emissions compared to other fossil fuels (Eurogas, 2001, 2). Eurogas does not encourage “any direct intervention of national or international authorities on energy markets” (Eurogas, 2001, 3), and merely wants the EC to have an assisting role in maintaining the right investment and regulatory climate. (Eurogas, 2001, 1-3.) Eurogas repeats similar arguments a year later, just before the Commission published its proposal for the security of gas supply directive, and maintains that the authorities should offer a less interventionist approach to the security of supply matter (Europolitics 5.7.2002). Eurogas recognises that security of supply is a shared responsibility of all actors involved in the production and transport chain, and that there might be a role for a public policy framework when it comes to defining output standards. However, market participants have the highest incentive to guarantee security of supply as they have an economic interest in the matter. Therefore, Eurogas concludes that the responsibility of securing supply should be left primary to them. (Eurogas, 2002, 3.)

Finally, as the Council reflects the opinions of the Member States and operates according to their policy objectives, the main features of energy policies in the biggest Member States, France, Germany, and the United Kingdom, should be considered. France has always had a strong governmental leadership in energy matters. It is an energy importer due to its poor national energy resources, and therefore, security of supply matters have been a central concern in France. France has tried to widen its energy mix and has invested in nuclear energy in particular to secure its energy supply. (Matlary, 1997, 36-37.) In the early 21st century French energy policy relied on nuclear energy, a wide energy mix and bilateral agreements between other Member States, especially Germany, to manage its growing energy demand (Matlary, 1997, 82-85).

Germany, while being a leading proponent of European integration, has not advocated integration in the field of energy. Its governments have not supported energy market liberalisation or EU’s external energy relations, which can be considered some of the most central elements of a common EU energy policy (Duffield and Westphal, 2011, 183). On the part of natural gas, Germany’s natural gas sector has covered about 22 per cent of the country’s energy need since 1990s. Most of the gas is imported, and since the imports come mainly only from three countries, Russia, Norway and the Netherlands, they could not be easily replaced in the event of a supply disruption (Duffield and Westphal, 2011, 170). In 2000 Russian gas covered 45 per cent of German gas imports (IEA 2002, 76), which explains the close ties that the gas companies have with Russia. In fact, many German gas companies have long-term gas delivery contracts with Russia, and during the late

1990s and early 2000s government's external policy was characterised as a unilateral pursuit of national interest rather than multilateralism. (Duffield and Westphal, 2011, 179-181.)

The UK has always had a sceptical stance towards common EU policies. This has been also true in the field of energy, except with regards to the opening of the energy market (Europolitics 22.10.1997). The UK underwent a massive privatisation of its energy sector in the 1980s and ever since it has had a liberal disposition on matters of economic policy and energy policy. (McGowan 2011, 188-195) Therefore, the Commission's plan of liberalising the internal energy market has been supported by the UK. During the last decade the UK has turned from an energy producer to an energy importer (McGowan 2011, 189). However, in the end of 1990s the country still had an advantageous energy balance and hence, by the time of the Commission's proposal, the UK was mainly concerned of promoting national energy interest and opening of the energy market, rather than advocating an EC level energy security plans. Now, I will turn to the decision-making process of the directive.

5.2. Directive

As mentioned above, the legislation process of security of gas supply started officially on September 11th 2002 when the Commission published a proposal for a directive concerning measures to safeguard security of natural gas supply (Commission of the EC, 2002). As the decision-making in the EU is a progress proceeding in stages, I will proceed with this analysis along the main decision-making stages. In each stage the first four hypotheses presented in chapter 3.3. will guide the analysis. The main stages of the legislation process that I will base my analysis on are then:

- Proposal for a directive adopted by the Commission in 11.9.2002
- Opinion of the Parliament on the 1st reading 23.9.2003
- Discussions at the Council 8.12.2003
- Opinion of the Parliament on the 1st reading (renewed consultation) 20.4.2004
- Formal adoption by the Council 26.4.2004

5.2.1. Proposal for a directive

Despite general reservations, the proposal for a directive concerning measures to safeguard security of gas supply was published as a part of a Commission Communication (Commission of the EC, 2002) on the internal market energy with an objective of establishing coordinated measures to secure energy supply. The proposal for a directive is in line with the conclusions the Commission published on its Green Paper in 2000 (Europolitics, 6.9.2002). The main message of the Communication is that Community level measures are needed. On the part of natural gas, the reason for this is stated in the Communication as follows (Commission of the EC, 2002, 5):

[...] in the new regulatory environment for the internal gas market, which is characterised by a multitude of players and the unbundling of the activities of the integrated gas companies, security of supply can no longer be considered the responsibility of a single party. A new chain of responsibilities concerning security of supply and the planning of infrastructures between the public authorities and the various market players must therefore be established in order to guarantee certainty in this connection.

In addition, in the Commission's opinion, an internal market of energy is necessary but not sufficient means for securing energy supply. The Communication states (Commission of the EC, 2002, 5-6):

[...] it is not possible to construct an internal market in energy if this objective is not accompanied by harmonised rules on security of supplies. The power cuts which severely affected California in 2000 clearly bear witness to this. These cuts were due not to inadequate rules on security of supply, but to a process of electricity market liberalisation which was not accompanied by adequate rules to guarantee a sufficient security of supply level. In the normal competitive environment, the (short-term) priority of companies has been to maintain or increase their stake in the Californian electricity market. In doing this, they did not make the (medium or long-term) investments which would have been necessary to guarantee a sufficient supply for all consumers.

This argument, the need for more Community level coordination as result of the insufficiency of the internal energy market in securing supply, can be clearly seen in the final version of the proposal for a directive. It is this argument that gives the Commission a rationale for acquiring certain functions in its competence, or at least away from the competence of the Member States. The main content of the legislation proposal is (Commission of the EC, 2002):

- non-interruptible customers without fuel switching capabilities are protected by the Member States in case of disruption of the single largest source of gas supply during sixty days given

average weather conditions, or in the case of extremely cold temperatures during a period of three days statistically occurring every twenty years, or in a case of a cold winter statistically occurring every fifty years;

- the Member States may use instruments such as interruptible customers, gas storage, supply flexibility and spot markets to achieve the above mentioned security of supply standards, which shall be established by the Member States in a manner compatible with the objectives of the internal gas market including the harmonisation of the measures implementing the criteria;
- the Commission should closely monitor the situation and conditions, such as the degree of new gas supply import contracts from non-EU countries, the existence of adequate liquid gas supplies and transparent gas price references within the Community to underpin the stable long term gas supplies; the Commission may issue Recommendations on appropriate measures to be taken by Member States in this respect and require the Member States to take specified measures, if the measures taken in response of the Recommendations are inadequate;
- the Commission may issue Recommendations on appropriate measures to be taken by the Member States in the event of extraordinary gas supply situations; these measures include specific assistance, such as disruption release of gas stocks, diversion of gas supplies to affected areas, and reallocation of gas, to those Member States particularly effected by the gas supply; the Recommendations shall restrict competition as little as possible;
- a European Observation System, run by the Commission, shall provide technical assistance necessary;
- finally, the Member States will report to the Commission on the competitive impacts of the Directive implementation, the supply/demand balance on their territory, the level of expected future demand and available supplies, envisaged additional capacity under planning, the emergency instruments in place to cater for a sudden crisis in the market, level of stocks and measures taken in order to achieve the targets, and the extend of long-term contracts concluded by companies.

The functions the Commission wants to see delegated from the Member States' support Pollack's theory very well. Out of the four functions Pollack lists, monitoring compliance, incomplete contracting, adopting credible and expert regulation, and procedural agenda setting, the proposal includes three. The Commission wants to attain extensive monitoring responsibilities with regards

to monitoring the conditions of current situation as well as monitoring the implementation of the directive within different Member States. The Commission wishes also to be in charge of regulation as it suggests establishing a new institution, the European Observation System, to offer the Member States technical assistance. Moreover, to guarantee credible regulation, the Commission wants to be granted a right to issue recommendations to the Member States and to require them to take specified measures when necessary. Since the legal base of the proposal is Article 95 of the Treaty establishing the European Community (EC), which refers to the codecision procedure for single market legislation, also the procedural agenda setting would be in the competence of the Commission.

According to Pollack's theory, delegation of powers from a principal to an agent is different in each case, which means that the prevailing conditions play a role in the delegation decision. The conditions for a high level of discretion are, in this case, fulfilled according to the Commission's opinion. Of course, analysing the Commission's opinion on delegation is only speculation since it is the principle, in this case the Member States through the Council, who decides which level of discretion is given to the agents, the Commission and the Parliament. However, analysing the level of discretion the Commission thinks is needed can give us information about what kind of an opinion it has formed on the situation in general. In this case the Commission sees the situation to be highly uncertain with regards to future supply conditions. It writes that "the European Union is expected in the longer term to become increasingly dependent on gas imported from non-EU sources of supply" (Commission of the EC, 2002, 55). In addition, gas prices are increasing, the opening of the internal gas market makes the management of energy utilities harder to handle, and the future enlargement to Eastern Europe means that EU's dependency on Russian gas will rise. All of these reasons give the Commission a good justification to conclude that national emergency measures are not sufficient and that the level of uncertainty could be mitigated with Community level commitments.

5.2.2. Opinions of the Parliament and discussions at the Council

The Council and the Parliament gave their opinion on the Commission's proposal during the years 2003 and 2004. The two institutions disagreed with the Commission significantly on multiple parts and introduced several amendments to the proposal which indicates that they had a somewhat shared view with each other. However, the Council and the Parliament did not share their views

about everything. The most apparent difference between their opinions was about the legal basis of the proposed directive as the Parliament wanted to keep the legal base as the Commission proposed, Article 95 of the Treaty, but the Council decided to replace it with Article 100, which does not provide involvement of the Parliament. However, as will be shown later, the two institutions finally found an agreement on this matter.

In June 2003 the Council discussed the Commission's draft proposal and concluded that it does not share the Commission's view according to which the free market of energy is not sufficient means for securing energy supply. On the contrary, in the Council's view the main emphasis should, still, be put on completing the liberalisation of the internal gas market in order for the market forces to ensure "both the security of gas supply and a level of playing field regarding security of supply obligations" (Council of the European Union, 2003a, 4).

The Parliament agreed with the Council in this respect. In its position adopted at first reading in September 2003, the Parliament accepted amendments made by the Committee on Industry, External Trade, Research and Energy (European Parliament, 2003a). The rapporteur of the Committee, Peter Michael Mombaur, stated that he disagrees with the Commission's assumption of the inadequacy of the market and the Member States to guarantee security of gas supply. In his mind, the most suitable way of securing gas supply is to start with the gas companies' own responsibility to create precautionary measures. The Member States' job would be to make sure that a favourable climate is created and maintained for businesses to create new investments and, in consequence, precautions. Mombaur argues that the proposed directive aims, however, to the exact opposite. In his words: "The Commission's 'planned economy' approach [...] will tend to frighten off investment." (European Parliament, 2003b, 28). The rapporteur continues that after the responsibility of the gas companies the focus should be kept on the Member States and not to be put on intervention by the EU. In his mind, the combination of various instruments the Member States already use as precautionary measures based on their national circumstances are sufficient. Mombaur argues that not only the measures but also the standards of security of supply should be left to the Member States to determine: (European Parliament, 2003b, 29-30):

What *level* of security they [the Member States] are aiming to achieve by this [usage of precautionary measures], however, must also be left to the discretion of the Member States. This is a political decision, which, as we have seen, follows on from a cost-benefit analysis. The EU has neither a mandate to take such decision on behalf of all Member States, nor are such common standards sensible.

The rapporteur lays down a hierarchy according to which “an EU directive might make sense” (European Parliament, 2003b, 30). Within the hierarchy, the first measure for the Community is to compel the Member States to act according to their responsibility, which takes account of national circumstances. Second, in the case of a situation in which the gas companies are not able to prevent a distortion of the internal market, the EU law could be used to guarantee that the Member States take action. Lastly, the EU could give instructions to the Member States in serious and exceptional circumstances. (European Parliament, 2003b, 30).

Based on the Committee report, the Parliament ended up deleting many over-prescriptive points from the Commission’s proposal. These included points, such as requirements on gas storage and reporting, that, in the Parliament’s opinion, were already adequately dealt with in the directive of the internal gas market. The Parliament also significantly amended the definition for protected customers to mean simply “vulnerable customers in the light of their national circumstances” (European Parliament, 2003a, Art. 4(1)) as opposite to customers faced with specified weather conditions, a definition used in the Commission’s proposal. To the list of measures available to the Member States the Parliament added the measure of “diversification of gas supply sources, including the use of biogas” (European Parliament, 2003a, Art. 4(2e)), and deleted a reference on the harmonisation of implementing measures. Furthermore, the Parliament discarded the power of the Commission to issue recommendations to the Member States by arguing that national actions should be determined by national governments. However, the Parliament did leave room for some Community level measures, namely holding consultations with the Member States and requiring the Member States to “take special measures in order to support those Member States which are affected by the interruption of gas supply” (European Parliament, 2003a, Art. 8). In order to respect the subsidiary principle, these measures should only be actualised when the affected Member States ask for it or when the situation meets certain clearly defined circumstances. Also, appropriate compensation must be provided for any possible interference in property rights in such cases. In addition to the other deleted points, the Parliament deleted the article mentioning a European Observation System on the grounds that setting up a “system” does not belong under European law. (European Parliament, 2003b, 23.)

After considering the Parliament’s opinion the Council published a Presidency compromise concerning the Commission’s proposal (Council of the European Union, 2003b). In accordance with the Council’s earlier view the compromise had removed all of the harmonising provisions

endorsed by the Commission, and instead states that the means of achieving security of supply, including market players' responsibilities, security of supply standards, and the choice of instruments, is mainly left to the Member States. However, in order to find a balance between Community level actions and Member States' national measures, the compromise contains a three step approach mechanism, called a "solidarity mechanism", in the event of major supply disruption (EurActiv 16.12.2003). In this approach the first step is to let the industry react in the way they see as appropriate. After the industry measures, the Member States may intervene based on their nationally determined measures. Lastly, the Commission may provide assistance to the Member States, or submit proposals to the Council, in cooperation with a specific coordination organisation, a Gas Coordination Group, established by the Presidency compromise proposal. (Council of the European Union, 2003b, 1-2.)

In consequence of removing provisions for the harmonisation of measures and security standards, the Council decided to change the legal base of the directive. Originally, the Commission proposed the legal base to be Article 95 of the Treaty, referring to the codecision procedure, which can be used to eliminate obstacles hindering the functioning of the single market. In the Commission's opinion the proposed directive and the security of supply measures introduced in it are in general an integral part of the single market and necessary for the completion of it. Therefore, codecision for single market legislation is justified. The Council did not agree. In its opinion the functioning of the single market is adequately dealt with in the earlier gas directive, and hence, the primary purpose of this directive is to achieve "an adequate level of security of supply, the proper functioning of the internal market being clearly secondary" (Council of the European Union, 2003b, 1). The Council decided to choose Article 100 of the Treaty to substitute Article 95. Under this legal base the Council decides alone which special measures should be implemented in the event of severe difficulties in the supply of certain products. The procedure leaves the Parliament without actual involvement as the Council is obligated to merely inform the Parliament of its decision. (Europolitics 19.3.2004.)

At first, the Parliament opposed the change of the legal basis. It stated in its position adopted at first reading in September 2003 that the legal base proposed by the Commission should be maintained. The Parliament did not want to change the legal base even after the Committee rapporteur Mombaur raised his concerns about the appropriateness of the initial Article 95. This indicates that the Parliament did not want to give up its influence on the matter. However, the situation changed after the Council had voiced its will to change the legal basis and the Parliament was reconsulted.

This time, the Committee on Industry, External Trade, Research and Energy asked for an inquest from the Committee on Legal Affairs and the Internal Market, who delivered a very clear opinion according to which the legal basis should be changed into Article 100 of the Treaty, given the fact that the compromise text presented by the Presidency does no longer contain the harmonising provisions that were included in the Commission's initial proposal. The Committee President Giuseppe Gargani writes (European Parliament, 2004, 8-9):

It is clear from settled case law of the ECJ that the choice of the legal basis does not depend on the discretion of the Community legislature but must be based on objective elements which are amenable to judicial control. Among these elements are, in particular, the aim and the content of the legal act.

Europolitics (19.3.2004) writes that after receiving the above opinion and considering the Council's justification, the Parliament gave in and adopted the little that was left of the Commission's initial proposal (Presidency compromise) and the change of the legal base in April 2004. In its report the Industry Committee states (European Parliament, 2004, 7):

The EP may consider this article to be unwelcome for reasons of principle, but that is not the point. The only relevant question in this instance is what article constitutes the best basis for the text now to be adopted. A legal basis cannot be selected arbitrarily on political grounds.

As it can be seen, the Parliament's stance is very similar to the one adopted by the Committee on Legal Affairs and the Internal Market, as well as the opinion endorsed by the Council. In addition to the legal base issue, the Parliament voiced its content on the Council decision of abiding by the Parliaments' proposals and amendments, and adopted the Presidency compromise as a whole.

The Commission, however, did not give its approval to the several amendments made. In the Commission's opinion the adopted compromise constitutes a significant limitation of EC level competences, and therefore, the Commission maintains a general reservation towards it. Specific reservations were addressed to the decisions of changing the legal base of the directive and limiting the Commission's competence with regards to the crisis mechanism. However, despite the Commission's reservations towards the amended directive, the Unit Head for Energy Liberalisation at Directorate-General for Transport and Energy (DG TREN) Christopher Jones welcomed the adoption of it and insisted that the directive is not only an empty shell since the most important

principles of the initial Commission proposal have been retained, namely the maintaining of existing gas supply standards for gas companies. (Europolitics 1.4.2004.)

In the end, the result of the decision-making process of the security of supply directive was a conflict between the Commission on one side and the Council and the Parliament on the other. The two sides evaluated the situation very differently. Whereas the Commission saw uncertainty, the Council and the Parliament were very confident of all possible future scenarios and the proper handling of them. All three institutions agreed on the changed conditions for gas supply, but in the Council's and the Parliament's opinion the market mechanism and the directive for opening the internal gas market were enough to prepare for this change in conditions. As a result, the proposal ended up being heavily altered because, exactly as Pollack's theory assumes, a low level of uncertainty leads to a low level of credible commitments. When the high level of conflict between the institutions is added to the situation, it is not a surprise that the delegation of discretion from the principal to the agent ended up being very low. At this point it can be said that my second hypothesis holds: the conditions, or how actors perceive those conditions, do affect the level of discretion.

Many reasons can be found for the emergence of a conflict between the different actors. Some scholars, such as Sandholtz (1992, 18-19) suggest that the Member States seek coordination and direction from the Commission in a rapidly changing and highly technical policy environment. Others however, conclude exactly the opposite. Moravcsik (1999, 298-299) for example, argues that the Commission does not possess the bureaucratic and informational resources that the national governments have and, therefore, its contributions to intergovernmental negotiations are unnecessary and more costly than intergovernmental bargaining.

Another reason for the Commission's low influence is that the cost of negotiating an alternative policy was relatively low. As discussed earlier, many Member States had bilateral agreements with supply countries to secure supply. Several countries had also agreed on bilateral agreements to assist each other in an event of a supply disruption. Therefore, the cost of negotiating new agreements on the EC level was higher than relying on the existing intergovernmental contracts. In fact, the cost of negotiating new agreements would have been especially high because the Member States all had very different national circumstances with regards to energy supply, and therefore, sharing policy preferences was not likely.

Pollack (2003) addresses this problem and argues that the willingness of principals to delegate discretion to an agent is not only dependent on the conflict between principal and agent but also on conflicts among multiple principals. This is because controlling the agent in is considerably more difficult in a situation where the principals have different preferences regarding the future course of action. (Pollack, 2003, 32-33.) Member States of the EU had indeed very different policy preferences: Germany and Italy had independent bilateral contracts with Russia, France was investing in nuclear capacity, the UK relied on its own energy resources and nuclear power, Spain and Portugal being far from pipeline systems did not have an easy access on natural gas anyway, and Eastern European countries, who are extremely dependent on Russian gas, were not yet members of the EU. Thus, as a result of varying energy demands and mixes in the Member States, divergence in terms of availability of alternative routes for different Member States, different levels of self-sufficiency, and existing energy deals, the only thing that the Member States agreed on was that they disagree on common energy policy and specifically on the matter of security of supply. (Kusku, 2010, 155.)

The role that interest groups play in the process should not be forgotten either. According to Matlary (1997, 96) interest groups have a large role in the field of energy in Europe. In the field of natural gas, Matlary mentions Eurogas in particular and argues that such groups possess a significant amount of influence in framing policy proposals because they are often consulted on technical questions by those in the Commission who are responsible for drafting the initial legislative proposal. Furthermore, interest groups, such as Eurogas, are also powerful market actors, and hence their opinion is considered carefully. (Matlary, 1997, 96.)

Eurogas gave its opinion on the Commission's proposal before the Council or the Parliament had given out theirs. In its opinion Eurogas (2003, 2) argues that the Member States' increased dependence on natural gas contains no fundamental problem, and therefore, it does not share the Commission's reasoning behind the proposed directive. Eurogas believes that open markets will deliver greater security and efficiency of gas supplies. However, "the Commission's proposed new competence allowing them to intervene in the market is likely to distort incentives for market participants and would therefore diminish the effectiveness of the market in providing security of supply." (Eurogas, 2003, 3). Furthermore, Eurogas raises its doubt about the choice for the legal base of the proposed directive, Article 95 of the Treaty, and reminds that all security of supply measures will have costs attached, which should be considered in the directive. (Eurogas, 2003, 2-3.) It is clear that Eurogas' opinion is closely in line with the Council's and the Parliament's

opinions that were given out afterwards, which implies that Matlary's arguments about the influence of interest groups are accurate. However, in this case Eurogas was not able to exercise its influence over the Commission's proposal, but rather over the Council and the Parliament's amendments.

Eda Kusku (2010) shares Matlary's view about the strong influence of the interest groups in European energy policy. However, she views the situation as a liberal intergovernmentalist focusing therefore on the national level and maintaining that pressure from interest groups puts constraints on the policy choices of Member State governments. Drawing from the ideas of Moravcsik, she concludes that the cooperation between national politicians aims to guarantee the least costly supply to the domestic consumers and not the pursuit of geopolitical goals such as containment of an influential import country from controlling EU's energy markets. (Kusku, 2010, 156.) Pollack would call this "time inconsistency", which occurs when government's long-term policy objectives differ from its short-term policy. This difference prevents credible commitments because when facing a problem of time inconsistency principals have a rational incentive in the short run to renege on their long-term commitments. (Pollack, 2003, 30.) In this case cheap energy supply and gas industry's interests were chosen before geopolitical goals, exactly as Eurogas wanted.

To quickly sum up, it can be said that the second hypothesis holds. My third hypothesis, however, does not hold on part of the decision-making process of the directive. According to the third hypothesis the most supranationalist institutions, the Commission and the Parliament, both have pro-integrationist and competence-maximising preferences. Based on the decision-making process and the arguments the institutions made, only the Commission can be said to be pro-integrationist aiming at a higher level of competence for itself. This is clear based on the content of the directive the Commission proposed and also based on its opposition towards the Council's amendments and the change of the legal base. The Parliament, on the other hand, deleted many of the EC level competences from the proposal and wanted to decrease the Commission's influence on the security of supply matter. In addition, the Parliament agreed in the end to the change of the legal base. This is a clear indication that the Parliament is motivated by some other reasons than competence-maximising. In its own words, it wanted to find the best legal basis for the directive instead of selecting arbitrarily, on political grounds, or for reasons of principle.

The Parliament is different than other EU institutions when it comes to its operations and motives and it is, therefore, not a typical agent when compared to the Commission. The Parliament's main

functions include the power to amend and adopt EU legislation, monitoring the work of the other institutions of the EU, and the right to censure the Commission. Therefore, the Parliament is not looking for a power to exercise a certain function in a single legislative act to gain more discretion. Rather it aims at maximising its influence by enabling or disabling delegation to the Commission and monitoring the implementation measures that the Commission undertakes. Franchino (2007) argues that the discretion preferences of the Parliament are shaped by the environment in which it operates. In his study the main finding on part of the functioning of the Parliament is that its involvement in the EU legislative process tends to centralize powers. This is because the Parliament prefers delegation to the Commission over delegation to national bureaucracies in a situation where the Parliament and the Council have conflicting opinions. However, in a case where the Parliament and the Commission are not sharing similar views, the former has a tendency to tighten some procedural requirements for the latter. (Franchino, 2007, 285.) This was the case in the security of gas supply matter. The Parliament did not share the Commission's views and thus the procedural requirements of the directive were tightened.

Pollack (2003, 256), in fact, argues that the functions delegated to the Parliament do not support the predictions of the transaction-cost approach regarding the motives of delegating principals and the functions delegated by them to supranational agents. The functions delegated to the Parliament are not the same as the functions delegated to the Commission because the Parliament's legislative powers are primary decisional and not related to agenda-setting. Pollack explains that the repeated delegation of ever greater supervisory, budgetary and legislative powers that several consequent EU Treaties have granted to the Parliament has been justified with the "logic of appropriateness". Drawing from the ideas of March and Olsen (1989, 160-161), this means that the Member States, rather than aiming at reducing transaction-costs of cooperation, delegate to the Parliament for the reason of democratic legitimacy. The Parliament is the only directly elected EU institution and, therefore, it is appropriate and normatively desirable to delegate powers to it. However, Pollack adds that the "logic of appropriateness" is not the only motivation of the Member States as they calculate carefully when delegation to the Parliament is most advantageous, or least costly. As a result, "the delegation of legislative powers [to the Parliament] has proceeded on a case-by-case basis, reflecting the anticipated consequences of delegation in specific issue areas and the specific sensitivities of individual member governments." (Pollack, 2003, 258). So in the area of security of supply and in these conditions, where many Member States had specific national sensitivities, the anticipated consequences of delegation to the Parliament were considered likely to be costly, or at least not advantageous to the Member States. Hence, emphasis was not put on the normative

considerations of the “logic of appropriateness”. As a result the Parliament’s influence was reduced to the minimum.

5.2.3. Formal adoption and final legislative act

The final legislative act was published in the Official Journal of the European Union on the 29th of April 2004 (OJ L 127, 29.4.2004). The objective of the directive is to establish a common framework for transparent, solidarity-based, non-discriminatory security of supply policies that are consistent with the single gas market. The Member States are responsible for defining the policies within this framework. The main content of the directive is as follows:

- household customers are protected by the Member States in the event of a partial disruption of national gas supplies during a period to be determined by the Member States taking into account national circumstances, or during extremely cold temperatures, or during periods of exceptionally high gas demand during the coldest weather periods;
- the Member States may adopt and publish national emergency provisions, cooperate with another Member State by using that other Member States’ gas storage facilities to achieve security of supply standards, require the industry to establish minimum targets for future storage contribution, and extend the scope of targeted customers to small and mediums sized enterprises and other customers that are not able to switch from gas to other energy sources;
- on the basis of reports from the Member States, the Commission should monitor the situation and conditions, such as the sufficiency of long-term contracts for imports from third countries, adequate liquidity of gas supplies, the degree of interconnection of the internal market, and the capacity of storage facilities, concerning security of gas supply at Community level;
- a Gas Coordination Group, chaired by the Commission and composed of representatives from the Member States, industry representatives, and relevant consumer bodies, will facilitate the coordination of Community level measures in the event of a major supply disruption, as well as assist the coordination of measures taken at national level;
- if the measures taken at national level are inadequate, the Commission may propose the Council to consider further measures, however, any measures taken at Community level shall contain provisions of appropriate compensation;

- finally, the Member States will report to the Commission on the impact of the Directive, the storage capacity levels, the remaining duration of long-term gas supply contracts, and the framework the Member States have established to encourage new investment.

Comparing the proposal with the final legislative act helps to answer the first hypothesis as it illustrates the difference in the level of discretion that the Council wanted to delegate to the Community level. Starting with the function of “monitoring compliance”, the comparison shows that significant parts of the proposal have been changed. The Commission is still to monitor several aspects of supply conditions, but the main difference is that in the proposal the Commission was granted the power to issue recommendations based on the findings of the monitoring, whereas in the final act, recommendations are not mentioned. Article 6, paragraph 2 states (OJ L 127, 29.4.2004): “Where the Commission concludes that gas supplies in the Community will be insufficient to meet foreseeable gas demand in the long term, it may submit proposals in accordance with the Treaty.” This means that instead of issuing recommendations to a single Member State to improve a certain aspect of their gas supply condition, the Commission is merely allowed to make a proposal for a new Community level legal act. To clarify that the Commission’s monitoring competences have been reduced, also the description of monitoring the conditions “closely” has been removed.

On the part of the function of “adopting credible and expert regulation” the Council adopted nearly all the amendments the Parliament had suggested. The paragraph mentioning the European Observation System was deleted completely and the hierarchy for regulative measures were set very clearly. Article 9, paragraph 3 (OJ L 127, 29.4.2004) states that the measures taken by the gas industry should be the first response to a major supply disruption. Secondly, the Member States are to exercise the emergency measures they have determined to be necessary according to each Member State’s national conditions. Lastly, the Gas Coordination Group may provide guidance and assistance to those Member States particularly affected by a major supply disruption. Again, if the measures presented here are inadequate, the Commission is merely allowed to “submit a proposal to the Council regarding further necessary measures” (OJ L 127, 29.4.2004, Art. 9(5)).

As explained earlier the matter of “procedural agenda setting” was decided when the legal base was changed from Article 95 to Article 100 of the Treaty. In addition to the procedural agenda setting that Pollack uses, I will also consider the right to propose or initiate further action as a form of internal agenda-setting function of the directive and, therefore analyse it here. In the Parliament’s opinion the function of initiating further action should be reserved completely to the Member States

so that a crisis mechanism at European level comes into operation only in clearly defined cases and only when the Member States ask for it themselves (European Parliament, 2003a, Art. 8). The final legislative act is not as strict. It mentions that in a case of a major supply disruption “the Commission shall convene the [Gas Coordination] Group as soon as possible, at the request of a Member State or on its own initiative.” (OJ L 127, 29.4.2004, Art. 9(1)). In practice, this still does not leave the Commission much agenda-setting power, because the Gas Coordination Group is composed mainly of the representatives of Member States, who in the end make decisions. In addition, throughout the directive the emphasis is put on the measures taken by the Member States based on national conditions, not on a common Community level security of supply plan or criteria.

According to Pollack (2003, 25-26) the principle is motivated by some other concern, rather than reducing the transaction cost of cooperation, if it does not delegate the predicted functions mentioned above. I do not think this is the case here. Indeed, only a low level of discretion was delegated to the Commission, but this little delegation supports the hypothesis. The Council was looking to reduce transaction costs, but due to the conditions, low level of uncertainty and high level of conflicting opinions between the Commission and the Council and among different Member States in the Council, it also wanted to control the Commission extensively. This can be confirmed by analysing the part of the final legislative act that covers the procedural requirements constraining the Commission, as well as analysing the choice of mentioned instruments that are granted to the Commission through the act. In fact, many of these have been examined already. The procedural requirements constraining the Commission include submitting proposals in accordance with the Treaty in the case where the Commission thinks that further measures should be taken due to the results of monitoring, or due to the inadequate emergency measures taken at the national level. This means, as analysed earlier, that the Commission is not allowed to issue a recommendation to a single Member State to improve a certain aspect of its gas supply condition. Instead it has to propose another legal act. This is a strong restraining factor as EU law making is often slow and the influence of Commission’s agenda-setting power depends greatly on the legal base of the proposed legal act. In addition, the choice of instruments that the Commission is granted does not leave much of an actual choice to the Commission. Apart from proposing another legal act, an instrument the Commission can use anytime anyhow, the final legislative act merely allows the Commission to issue recommendations regarding future measures in an assessment on the effects of the directive that it is to write after *four* years of the directive’s entry into force (OJ L 127, 29.4.2004, Art. 6(3)). Furthermore, the Gas Coordination Group can be said to be more of a procedural requirement than an instrument. The Commission chairs the Group but the actual

deciding power is in the hands of its members, namely the representatives of the Member States and the industry.

Based on the above analysis, it can be concluded that the procedural requirements written in the final text of the directive were not minimal but rather extensive, and that the choice of mentioned instruments were, instead of being broad, very narrow. This confirms my statement, according to which the Council wanted to control the Commission extensively, and also answers my fourth hypothesis about the Member States' intentions and ability to control the Commission.

5.2.4. Domination by the principal

To sum up, the process started in mid-1990s when the matter of security of gas supply permanently entered the European political agenda. At first all the actors involved emphasised the role of market players in securing gas supply. The situation changed in 2000 when the Commission published a Green Paper called "Towards a European strategy for the security of energy supply", in which it addressed the changing conditions of European gas supplies. Two years afterwards, the Commission made a proposal for a directive concerning security of gas supply. The proposed directive was not well received among the other EU institutions, the Council or the Parliament, Member States or interest groups, namely Eurogas, and was therefore significantly amended under the Parliaments' and the Council's scrutiny. One of the biggest amendments was the change of the legal base from Article 95 of the Treaty to Article 100, which gives the Council the power to decide alone on necessary security of supply measures. The Commission did not approve the amendments made, but without the legal competence to reject the adoption the Commission could not prevent them, and in consequence, the directive was adopted on the 26th of April 2004.

On part of the directive, I have now answered four hypotheses that I formulated in chapter 3.3. I argue that even though only little was delegated from the principle to the agent, the little that was delegated supports my first hypothesis. The Council partly delegated the functions of monitoring compliance, adopting credible and expert regulation, and setting procedural agenda to the Commission in order to reduce transaction costs of cooperation. However, based on the assessment of the conditions for the delegation, the level of discretion that the Council was willing to give to the Commission ended up being very low. Therefore, my second hypothesis holds as well. The Council and the Parliament saw very little reason for uncertainty in their security of gas supply

situation and, hence, only very little commitment was assessed to be necessary. Due to the Commission's opposite assessment, the institutions ended up in a conflict situation. This enforced the Council's conclusion, and as a result, the Commission's level of discretion was significantly reduced.

The third of my hypotheses holds on the part of the Commission but not on the part of the Parliament. The Commission clearly operated to actualise its pro-integrationist and competence-maximising preferences. The Parliament, on the other hand, did the opposite by sharing views with the Council. The Parliament did not only promote less competence for the Commission, but also for itself when it approved the change of the legal base. Finally, on the part of the directive, the analysis of my fourth hypothesis confirms my earlier notion according to which the Member States felt the need to, and were able to, use extensive administrative procedures to control the Commission. This concerns also the Parliament as it lost all of its legal competence on the matter when the legal base of the directive was changed.

At this point it should be noted that even though Pollack uses his theory and hypotheses mainly to examine the executive politics of the EU, namely delegation via EC Treaties, I incorporate the same hypotheses to the analysis of delegation via secondary legislation. Franchino (2007, 14) writes about the process of legislative delegation as follows:

EU legislators (ministers of the Council and, where involved, members of the Parliament – MEPs) confer upon bureaucrats via secondary legislation according to the EU legislative procedures. The beneficiaries are the Commission, other EU-level agencies and national administrations. Control mechanisms are also set up in these circumstances to ensure faithful implementation.

To perceive the object of my analysis this way creates, however, a problem. In Franchino's description the Parliament is conceived more as a principal than an agent as it is a legislator who determines, in part, how much delegation the Commission or national administrations will gain through each adopted legal act. However, Franchino acknowledges that the Parliament is not always involved in the legislative process with the same level of legal competence and, hence, its influence on different legal acts varies. For this reason it is justified to treat the Parliament as an agent alongside the Commission, and give the Council and its Member States the role of a principle. This is not to say that the Parliament is an agent similar to the Commission. The two are different and this should be remembered when analysing their functioning.

I mentioned that normally the involvement of the Parliament centralises power to the EC. However, the discretion preferences of the Parliament are shaped by the conditions of the situation and, therefore, this time the conflicting views between the Parliament and the Commission resulted in the Parliament's tightening of the Commission's procedural requirements. However, this is not a sufficient reasoning for the Parliament's behaviour. To find out what really happened I would need more extensive material and perhaps conduct interviews with the rapporteur Mombaur or certain MEPs. Therefore, I can only speculate about the possible reasons for the Parliament's "unusual" behaviour. One possible explanation is that the national governments lobbied the MEPs to vote according to the national interest of each Member State, which was, as mentioned, to limit the delegation of competence to the EC level. As shown for example by Hix and Høyland (2011, 57) the national party delegations remain powerful within the European political groups. Also, as national parties control the selection of candidates in the elections, MEPs almost always vote with their national party (Hix, 2004, 219). Therefore, it is possible that the MEPs were affected by their national lobbyists. Furthermore, Varela (2009, 28) points out that the Parliament is an important channel for other lobbyists to access the decision-making process as well. Therefore, also Eurogas and other interests groups could have influenced the issue. The same applies to the rapporteur. Benedetto (2005, 85-86) argues that in order to get their reports adopted, the rapporteur has to closely consider the interests of the European and national parties, suggestions from lobbyist, and opinions of other committee members. This might have also played a part in rapporteur Mombaur's choice of action.

On part of the legal act debate, I illustrated that the Parliament's influence was reduced to a minimum because many Member States have specific national sensitivities concerning security of gas supply and, hence, the costs of involving the Parliament fully into the legislation process were considered higher than the benefits of the "logic of appropriateness". In fact, national sensitivities were one of the main reasons why the level of delegation was so low in the final legislative act of the directive. The Member States had significant differences in their national energy supply conditions and thus the cost of negotiating new agreements on the EC level would have been higher than relying on the existing intergovernmental contracts. As a result none of the multiple principals was willing to give up its competence. The interest groups contributed to this result by arguing that the status quo, i.e. trusting the market to secure gas supply, was the most effective way to proceed. In this case the short-term policy goals of the Member States, such as the maintenance of least costly supply for their domestic consumers, was preferred over possible long-term goals, such as the

containment of an influential import country from controlling the EU energy markets. All in all, it can be concluded that the Council was clearly the dominating actor in the decision-making process of the directive concerning security of gas supply. Even though it delegated some functions to the Commission, it also exercised extensive control mechanisms over it and the Parliament, and therefore, dictated the result of the decision-making process mainly on its own. Now, I will turn to the decision-making process of the regulation.

5.3. A need for a regulation

Despite the conflicting process that took place when the institutions and the Member States formulated the directive, it ended up being revised and changed into a regulation concerning measures to safeguard security of natural gas supply. This chapter will form a background for the reasons and motives that lead to the formulation of a new law, which was adopted on October 20th 2010. One of the main reasons for the revision were the Ukrainian-Russian gas disputes.

5.3.1. Gas disruption of 2006

In 2005 a gas dispute between the Russian energy company Gazprom and the Ukrainian state-owned energy company Naftogaz broke out and, as a result, Gazprom cut off gas supplies to Ukraine. The reason for the dispute started as a disagreement about gas prices. Until 2005 Russia had supplied Ukraine with relatively cheap gas but in 2005 Gazprom wanted to raise the price significantly to harmonize them with world prices. Ukraine agreed but maintained that higher prices would have to be phased in, rather than imposed at once. (The Guardian, 3.1.2006.) In addition, Russia accused Ukraine of stealing gas that had been deposited in Ukrainian storage reservoirs during the previous winter. The two gas companies started negotiations for resolving their disagreements and for reaching a new contract on gas prices. Unfortunately, the negotiations failed and in January 2006 Gazprom started to reduce the pressure in the pipelines from Russia to Ukraine. (Forbes.com 1.2.2006.) Since gas supplies from Russia through Ukrainian transit routes are central to several Member States, such as France, Poland and Italy, which all use Ukraine's pipeline, the situation strongly affected the EU. A preliminary agreement between Ukraine and Gazprom was settled three days after the cut-off started and the supply of natural gas was restored. The agreement was a relief for all parties involved but the dispute clearly showed the weaknesses of the European energy market. After a Gas Coordination Group meeting, arranged according to

Article 7 of the newly adopted directive, The EU's energy commissioner Andris Piebalgs and Austrian Energy Minister Martin Bartenstein both underlined that the EU must learn from the crisis and strengthen its energy cooperation. (BBC 4.1.2006, EurActiv.com 5.1.2006.)

In 2006 the Commission reacted to the situation by publishing the Green Paper “A European Strategy for Sustainable, Competitive and Secure Energy” (Commission of the EC, 2006). In the Green Paper the Commission concludes that in the face of the new energy realities facing Europe (Commission of the EC, 2006, 17):

[...] it is essential to act in an integrated way. Each Member State will make choices based on its own national preferences. However, in a world of global interdependence, energy policy necessarily has a European dimension.

Concrete proposals for needed measures, according to the paper, include completing the internal market, reviewing the existing Community legislation to ensure solidarity between the Member States with regards to security of supply , and putting energy policy objectives in an overall framework, namely in form of the first Strategic EU Energy Review (Commission of the EC, 2006, 18).

Short after the publication of the Green Paper, Eurogas reacted by voicing its view on the ongoing security of supply discussion (Eurogas, 2006). The organisation starts its report by recognising for the first time that the conditions of gas supply have changed. The biggest changes concern the supply structure and the prospects of global economic growth, which has lead to a growing demand of energy. Despite this observation, Eurogas nevertheless emphasises that a properly functioning gas market is the best way to secure the security of supply. Furthermore, it notes that the internal gas market does not only enhance the security of supply but is necessary for its attainment because maintaining the EU's attractiveness as an export partner in an intensified global competition for energy supplies requires policies that encourage investment and trust among different actors. To ensure the trust of business and supply partners “market participants need to have [...] confidence that a fair, clear, and stable allocation of risks and responsibilities has been established.” (Eurogas, 2006, 2). Eurogas notes that a regulatory framework is needed, in particular, to ensure the functioning of the gas market and ensuring investment. Any additional EC level solidarity measures are not mentioned. (Eurogas, 2006, 1-3.)

The Commission published its first Strategic EU Energy Review in 2007, a year after the Green Paper. The purpose was to create common energy policy targets for Europe, most importantly the target to reduce greenhouse gas emissions by 20%, to increase the share of renewable energy to 20%, and to improve energy efficiency by 20 % by the year 2020. (Commission of the EC, 2007.) To ensure the achievement of the EU's energy objectives, the Commission proposed the complementing second Strategic EU Energy Review “EU Energy Security and Solidarity Action Plan” (Commission of the EC, 2008b.) the following year, 2008. The formulation of this second Strategic EU Energy Review was encouraged by the Council, who had stated the same year that “Security of energy supply is a priority for the European Union. It involves the responsibility and solidarity of all the Member States.” (Council of the European Union, 2008, 7). Furthermore, the Council concluded that it wants to step up the work in progress and, therefore, invites the Commission to submit relevant proposals on several targets, one of which was listed as “develop crisis mechanisms to deal with temporary disruptions to supplies” (Council of the European Union, 2008, 7).

In addition to the second Strategic EU Energy Review, “EU Energy Security and Solidarity Action Plan”, the Commission started the process of submitting relevant initiatives for improving the security of energy supply, exactly as the Council had requested. The first of these initiatives was published as a Communication assessing the implementation of the directive concerning measures to safeguard security of natural gas supply (Commission of the EC, 2008a). The main message of the Communication is that the Community level mechanism in place is not sufficient (Commission of the EC, 2008a, 11):

The EU needs to take a step forward on security of gas supply and solidarity. While crises may be rare, they can have very high economic and social impacts. Therefore the EU needs to be prepared to tackle security of supply in an effective way. Today's Community mechanism – although fortunately not yet needed – is not sufficient to provide a timely response to a gas supply crisis which goes beyond the level that national measures can mitigate. Further, today's lack of transparency prevents the assessment of the real-time gas supply situation and potential responses within the EU. The Directive therefore needs to be revised along the lines proposed in this communication [...].

It can be clearly seen that the security of gas directive was going to be revised. At this point in November 2008, the main modifications that needed to take place in Commission's opinion included redefining the security of supply standards, introducing a regional level in the hierarchy of implementing security measures, increasing the reporting obligations of the Member States,

redefining Community level actions, and introducing a security of supply margin. Also, Community level actions should be extended so that they include a common declaration of an emergency situation, an allocation of available supplies and infrastructure capacity among the affected countries, co-ordinated dispatching, and an activation of emergency measures in unaffected or less affected states in order to increase the amount of gas available to the affected markets. (Commission of the EC, 2008a, 8-11.)

5.3.2. Gas disruption of 2009

Another gas disruption between Ukraine and Russia occurred when gas flows from Russia through Ukrainian gas pipelines were interrupted on January 1st 2009. Again, the dispute took place between the Russian energy company Gazprom and the Ukrainian state-owned energy company Naftogaz, and the dispute emerged as a result of failed negotiations over the price of gas. In addition to the price of gas, the two companies disagreed over the price of transiting gas through Ukraine to Europe as well as over backdated bills and late payments. (BBC News, 20.1.2009.) It has been reported that gas for Ukrainian consumption was halted on 1st of January, and by the night of 6th and 7th of January all supplies from Russia to the EU were cut. The cut-off lasted for 14 days until on the 20th of January gas started to flow again. (Commission of the EC, 2009a, 3-4.)

On the first day of interruption, Czech Prime Minister and the President of the Council Mirek Topolánek met with Russian and Ukrainian representatives, whereas Czech Deputy Prime Minister for European Affairs Alexandr Vondra held a meeting with Gazprom's deputy chairman Alexander Medvedev. On 8th of January, President of the Commission José Manuel Barroso met with the CEO of Gazprom Alexei Miller. The same day, Eurogas and Gas infrastructure Europe (GIE) identified experts to participate in a monitoring team that was accompanied by representatives from the Commission. (Commission of the EC, 2009a, 4.) The next day, 9th of January, a monitoring agreement between the EU, Ukraine and Russia was signed. This was a result of the Czech presidency's and the Commission's effort to facilitate an agreement with the two parties. (Europolitics, 9.1.2009.) The monitoring agreement, finally signed on 12th of January, provided for independent monitoring officials from all the involved actors to oversee the gas transit on Ukrainian and Russian territory. (Commission of the EC, 2009a, 4.) The Czech presidency believed that this implied that the gas would start to flow again (Reuters, 8.1.2009).

However, the gas disruption did not end despite the monitoring of the gas flow. Finally, effective results were gained in a high level summit in Moscow held from 17th to 19th of January. The negotiations were held between Russian Prime Minister Vladimir Putin and Ukrainian Prime Minister Yulia Timoshenko. (Reuters, 15.1.2009.) The EU was represented by Energy Commissioner Andris Piebalgs and Czech Energy Minister Martin Riman (BBC News, 15.1.2009). Russia invited the heads of the governments of every country buying or transporting its gas, but after Czech Republic urged the Member States not to attend, most of them stayed away so that the EU could speak with a unified voice at the summit (Reuters, 17.1.2009). On 18th of January, Putin and Timoshenko reached a political agreement, and the next day Gazprom and Naftogaz signed a new 10-year agreement on gas purchase and transit. The following day, the 20th of January, normal gas transit from Russia to Europe via Ukraine was resumed. (Commission of the EC, 2009a, 4.)

President of the European Commission José Manuel Barroso gave a speech in Brussels on the day the gas started to flow again. In his speech Barroso stressed the unified approach that the EU had in the negotiations and the strong role that the Commission had in finding the solution. Barroso also underlined that this incident should be learned from. The most important lesson in his mind was that the solidarity between the Member States worked well, but in order to guarantee that similar crisis will never repeat itself many things should be improved. One of these improvements is the “rapid agreement to changes in the Security of Gas Supply Directive”. Barroso states (2009, 3):

This painful episode is a sharp reminder that the EU needs to take energy security seriously. But we have also shown that Europe will do whatever it takes to ensure that our citizens are not left in the cold. Energy security begins at home.

In Barroso’s opinion the responsibility is clearly the EU’s and effective actions should be implemented immediately. The Parliament adopted a similar position in its plenary in the beginning of February 2009. According to it the MEPs want the Commission to propose a revision of the current security of supply directive by the end of 2009 as well as a revision of national and EU emergency action plans. The Parliament stresses multiple EU-level measures such as a common declaration of an emergency situation and a gas storage developed by the EU. (European Parliament, 2009, 1.)

5.4. Regulation

Just as Barroso had promised, the Commission published a proposal for a regulation concerning measures to safeguard security of natural gas supply and repealing Directive 2004/67/EC very soon after the crisis, on July 16th 2009 (Commission of the EC, 2009b). Again, the analysis will proceed along the main decision-making stages and in each stage the first four hypotheses presented in chapter 3 will guide the analysis. I will base my analysis on unofficial talks that were conducted between the institutions in addition to the following official decision-making stages of the regulation's legislation process:

- Proposal for a directive adopted by the Commission 16.7.2009
- Discussions at the Council 7.12.2009 and 31.5.2010
- Opinion of the Parliament on 1st reading 21.9.2010
- Formal adoption by the Council 20.10.2010

5.4.1. Proposal for a regulation

The Commission adopted a proposal for a regulation concerning measures to safeguard security of gas supply and repealing directive 2004/67/EC on 16th of July 2009. Alongside with the proposal the Commission published supplementary documents including an analysis of the January 2009 gas disruption and an impact assessment of possible policy options. These documents illustrate very well the reasoning behind the content of the Commission's proposal for a regulation, and therefore, I start this chapter by introducing these documents.

The first supplementary document "The January 2009 gas supply disruption to the EU: an assessment" (Commission of the EC, 2009a) summarises the events from the point of view of the EU and searches for general lessons from which the EU can learn. The Commission distinguishes four main lessons that should be noted. The first is that a similar disruption could happen again, either due to commercial reasons or due to accidents or technical problems. This fact vindicates the Commission's concerns and aspirations for a stronger EU energy security strategy. The second lesson is that there are several weaknesses in each stage of the current gas supply security, and therefore certain principles of EU energy policy, such as solidarity, should be strengthened. Third, the Commission notes that the 2009 disruption should be considered as a wake-up call to policy-

makers. Here the attention should be put especially to the acknowledgement of a growing dependence on gas in general and on a single supplier especially. The fourth lesson is that EU collaboration has clear benefits when handling crisis situations. (Commission of the EC, 2009a, 16-18.) These four points summarise well the main issues that were on the agenda after the 2009 disruption.

The second supplementary report, “Assessment report of directive 2004/67/EC on security of gas supply” (Commission of the EC, 2009c), analyses the functionality of the directive during the 2009 disruption. The main problems were matters that hindered the functioning of the internal gas market. One of these issues were national differences regarding the roles and responsibilities of market players in securing the gas supply. Even though these differences are understandable due to the differences between national gas markets, they may distort competition by burdening some market players more than others. In addition, some countries did not obligate the market players to cooperate with other countries’ market players, which further fragmented the internal gas market. (Commission of the EC, 2009c, 12-13.) Also, the second report states that the security of supply standards are set very differently in different Member States. These standards concern the definition of partial disruption and a standard for the national peak periods of gas consumption during extremely cold periods. Again, the reason are different national circumstances. Some Member States are more vulnerable to supply disruptions than others, and the weather conditions are clearly very different in different parts of Europe. Some Member States had not defined standards at all. This distorts the internal market. Also, vaguely defined standards complicate transposition and, in consequence, make national standards incomparable with each other. In the Commission’s opinion this hindered the creation of well a correlated security of supply framework. (Commission of the EC, 2009c, 18-19.)

There are also significant differences in the balance of various instruments, in the way instruments have been mentioned in the legislation, and in the scope of different instruments mentioned in the legislation. Based on these differences, the Commission notes that “the level playing field within the EU has not been reached.” (Commission of the EC, 2009c, 42). This conclusion applies also to the analysis of the national emergency measures that the Member States were to prepare and publish (OJ L 127, 29.4.2004, Art. 8(1), Art. 8(3)). These measures were not transposed by all of the Member States or they were transposed in very different ways. Some introduced “National Emergency Plans”, some developed an “emergency scale”. Other Member States defined additional prevention measures. To improve the security of supply framework the Commission states that a

European wide emergency scale should be developed. This requires further analyses of the best practices under national and regional circumstances in order to define which measures should be used in the prevention and emergency stages. (Commission of the EC, 2009c, 48-52.)

The third supplementary report published by the Commission, “Impact assessment” (2009d), aims at transforming improvement suggestions into concrete policy options. The report is conducted by the Commission’s Directorate-General for Transport and Energy (DG TREN) drawing from the results of a public consultation it conducted on basis of the 2008 Communication assessing the impacts of the 2004 directive (Commission of the EC, 2008a). An extensive list of important players participated in this public consultation: four Member States, three associations of energy regulators and individual regulators, an infrastructure operator, four suppliers, a trader, and two users. In addition, opinions of the members of the Gas Coordination Group were included to the report. These members consisted of Eurogas, The International Association of Oil & Gas producers (OGP), Gas Infrastructure Europe (GIE), the International Federation of Industrial Energy Consumers (IFIIEC), the European Consumers' Organisation (BEUC), and Eurelectric. (Commission of the EC, 2009d, 6.)

The report begins by defining the operational objectives that it aims to achieve. According to the Commission, these objectives have been identified based on a general goal of diminishing EU’s vulnerability to gas supply disruptions by improving the EU’s level of preparedness to handle such situations before a possible further crisis takes place (Commission of the EC, 2009d, 17). The first objective is the establishment of a well-functioning internal market with sufficient incentives for investments in infrastructure to achieve more flexibility for the market to mitigate most gas supply disruptions. The second is the establishment of effective cooperation involving all players at national, regional and EU level in dealing with a gas supply emergencies. (Commission of the EC, 2009d, 18.) Setting out the hierarchy this way indicates that the Commission wants to underline its emphasis on market over coordination.

The report introduces five possible options that can be chosen for future action and evaluates their ability to achieve the above mentioned policy objectives. The first of these is an option of maintaining the status quo. Choosing this would mean that the EU does not take any new action but continues on relying on the existing policy framework and the incentives already in place. These incentives include measures such as the 3rd internal energy market package, the European Economic Recovery Plan, a revision of the Council regulation on the notification of investment projects, and

the existing security of supply directive. The report states that these incentives might enable the achievement of the first objective, namely the establishment of a well-functioning internal gas market through improvements in infrastructure, transparency and cooperation. However, this policy option does not provide for a security of supply standard relating to infrastructure. Such a standard would create further incentives and guidance for the involved players to decide which investments make most sense and would help to identify how the costs should be allocated. (Commission of the EC, 2009d, 19-21.) This is important, because according to the report, lack of gas was not the problem in 2009, but inadequacies in gas transport (Commission of the EC, 2009d, 12). In addition, maintaining the status quo would not guarantee the second policy objective, the achievement of effective cooperation in the case of an emergency. The main problem with this objective is the confusion concerning timing and the incompatibility of national emergency plans. During the 2009 disruption no solidarity actions between Member States took place. Furthermore, some countries implemented national emergency measures that resulted in the prevention of potentially useful gas flows (Commission of the EC, 2009d, 12). Considering these facts, the report states that relying on the status quo would not deliver the identified objectives (Commission of the EC, 2009d, 22).

The second policy option for future action in the EU is to improve the enforcement and implementation of the existing security of supply directive. However, this policy option is quickly rejected due to the weaknesses of the current directive. The standards and requirements established are too weak, which makes strict enforcement impossible. Hence, the objectives of a well-functioning internal energy market, and effective cooperation in the event of an emergency, cannot be met. (Commission of the EC, 2009d, 22-24). In consequence, Commission's third policy option of relying on the voluntary measures of the industry has to be rejected as well. Clear standards and requirements are needed and effective cooperation making "free-riding" impossible cannot be guaranteed on a voluntary basis. Therefore, a binding instrument is needed. (Commission of the EC, 2009d, 24-25).

The Commission's fourth policy option, the revision of the existing directive, offers a binding instrument, because this option means that a new and adjusted directive would be introduced to improve the weaknesses of its predecessor. As the lack of a common EU-level security of supply standard was one of the main weaknesses of the existing directive, the Commission thinks that introducing a clear and precise standard is necessary. This does not mean that the flexibility stemming from the different national conditions is forgotten. According to the Commission, it rather means that credible commitments are guaranteed in order to ensure the Member States'

solidarity within the integrated gas market in case of another disruption. (Commission of the EC, 2009d, 25-26). The revision of the existing directive would deliver the identified objectives of a well-functioning internal market as well as an effective cooperation in dealing with gas supply emergencies. In Commission's opinion the greatest advantage of this approach is that it enables the Member States to use a whole range of security of supply measures according to their particular circumstances, while ensuring that the particularly risky aspects of infrastructure or gas supplies are discovered and addressed. (Commission of the EC, 2009d, 28). Another advantage is that introducing a stronger binding instrument would minimise additional costs of supply disruptions such as losses of income and jobs in the private sector. Also, securing the gas supply would reduce investment on back-up fuels, which are often environmentally harmful. The Commission notes that a new binding instrument would of course come at a cost. However, due to the flexibility, the long-term scope of the investment, and the overall cost-efficiency of preventive plans, the costs would be relatively low. (Commission of the EC, 2009d, 35-36.)

The last and fifth policy option of the Commission is to create a regulation on security of gas supply. Choosing this option would entail amending the existing directive the same way as outlined above. Only the term of the legal act would be changed from directive to regulation. The report examines the main differences of the two. Firstly, as a regulation is directly applied to national legislation, it offers greater clarity and less administrative burden. Secondly, a regulation is a stronger tool to ensure commitment for collective effort and is, therefore, better suited for satisfying the need for a level playing field in terms of obligations of different players. Thirdly, a regulation would be operational faster. (Commission of the EC, 2009d, 31-32). The Commission notes: "There is a real risk of repetition of gas supply disruptions such as in January 2009 in the short and medium term, so the sooner a clear EU framework is in place, the better." (Commission of the EC, 2009d, 31). Based on these three arguments the Commission concludes that a regulation offers advantages over a directive. Hence, in its opinion the last policy option is the most suited for future action. Eurogas (2009, 1-2), however did not agree with the Commission. In its opinion, the current directive should indeed be improved to some respect, but in general, the market driven response to the 2009 disruption worked well.

To sum up, the Commission published supplementary documents alongside the proposal for a new regulation. The main message of the first one is that a serious gas disruption is now a realistic scenario which should be taken seriously. The EU is increasingly dependent of imported gas, and the 2009 disruption demonstrated how rapidly a gas crisis can expand within the internal gas

market. Therefore, the events of January 2009 should be a wake-up call for all decision-makers around Europe. In the Commission's opinion the policy option of creating a new regulation is best suited for future action. A new regulation would have a positive effect on the functioning of the internal market as it would strengthen incentives for investment and create a level of playing field in terms of security of supply obligations. Most importantly, it would also be clear, effective and could be implemented fast.

Based on these conclusions the Commission published a proposal for a regulation concerning measures to safeguard security of gas supply and repealing Directive 2004/67/EC on 16th of July 2009. The main content of the proposal is as follows (Commission of the EC, 2009b):

- all household customers are protected customers and, in addition, the Member States may consider small and medium-sized enterprises and essential social services or district heating installations as protected customers;
- common standards at EU level are provided first, for infrastructure including a readiness to satisfy total gas demand during 60 days of exceptional high gas demand in the event of a disruption of the single largest infrastructure as well as the establishment of reverse flows in all cross border interconnections between EU countries, and second, for the supply for protected customers including secure supplies in the event of a seven day temperature peak and for at least 60 days of high demand;
- risk assessments considering the supply and infrastructure standards, all relevant national and regional circumstances, various scenarios of exceptionally high gas demand and supply disruption, and the interaction and correlation of risks between EU countries should be conducted; based on this risk assessment a preventive action plan containing the measures needed to remove or mitigate the risks identified, and an emergency plan containing the measures to remove or mitigate the impact of a gas supply disruption should be adopted in the Member States;
- the emergency plan shall build upon three main crisis levels, which are early warning level, alert level, and emergency level; the Commission may declare a Community emergency at the request of one Member State that has declared an emergency or when the EC loses more than 10 per cent of its daily gas import;
- a Gas Coordination Group, chaired by the Commission and composed of representatives from the Member States, the Agency for the Cooperation of Energy Regulators, the

European Network of Transmission System Operators (ENTSO) for gas, and representative bodies of the industry concerned and those of relevant customers, will facilitate the coordination of security of supply measures and assist the Commission in security of supply issues;

- finally, the natural gas undertakings should provide the Commission with information on the contracts concluded with suppliers from third countries, and the Member States with relevant information during an emergency; in the event of an EU or regional emergency, the Member States should provide the Commission with information about measures planned to be undertaken and already implemented to mitigate the emergency, and about the existence of inter-governmental agreements signed with non-EU countries.

Again, the functions that the Commission wants to see delegated from the Member States fits Pollack's theory well. The Commission wants to attain extensive monitoring responsibilities with regards to the conditions of current situations as well as to the Member States' and gas undertakings' actions during an emergency. To guarantee credible regulation, the Commission wants to be granted a right to require the Member States to take specified measures or change their actions when necessary. This is what the Commission proposed in 2002 with the directive, but with less convincing arguments. As for the procedural agenda setting, the Commission argues that the role of the EU in the decision-making process of a security of supply legislation should be strengthened. Therefore, the legal basis cannot remain Article 100 of the Treaty, which is the legal base of the excising directive. Instead, the Commission argues for Article 95 to be the legal base, exactly as it did five years earlier with the directive. This time the Commission has stronger arguments to back its opinion up (Commission of the EC, 2009e, 3):

The adoption of the 3rd internal energy market package will strengthen the market. In a situation in which national markets are being integrated, it will not be possible to consider security of supply primarily as a national concern. Consequently, the legal basis of the related EU legislation should no longer be disconnected from the internal market rules of the EU Treaty. Any proposal should – consistently with the legal basis for the internal energy market of which it is arguably an extension – be based on Article 95.

To back up its stance, the Commission emphasises the recent events as well as the insufficiency of a single Member State to handle a similar situation efficiently and without hampering the functioning of the internal market or the security of supply of other Member States. Furthermore, the Commission points out that in the field of electricity a similar instrument, directive 2005/89/EC (OJ L 33 4.2.2006), was adopted based on Article 95. The Commission also acknowledges that the

Lisbon Treaty (the Treaty on the Functioning of the European Union, TFEU) will anyhow strengthen the role of EU legislation in energy matters. (Commission of the EC, 2009e, 3).

The Commission was correct, because less than five months after it published its arguments for a stronger legal base, the Treaty of Lisbon came into force, and as a result, the legal base of the proposal was changed. For the first time, the topic of energy got its own chapter in an EU Treaty. In the chapter on energy Article 194(1b) of the Treaty of Lisbon states that EU policy should aim to ensure security of energy supply in the EU, and that the measures necessary to achieve this objective should be established in accordance to the ordinary legislative procedure, i.e. the codecision procedure. Therefore, according to EU legislation, the legal base of the new security of supply law is neither Article 100 nor 95 of the EC, but Article 194 of TFEU (Commission of the EC, 2009f, annex 1, 3). This means that the decision-making process of the new security of supply law will be executed according to the codecision procedure, and not according to the consultation procedure, which was the case five years earlier.

What should be noted is that the content of the Commission's proposal is not new, but the way it presents its arguments and the way it behaves has changed compared to the 2002 proposal for the directive. In 2002 it had a confident proposal but not much support behind it. Now the Commission has a confident proposal and it works actively to gain support for its stance (Europolitics, 16.7.2009). It conducted extensive supplementary reports to accompany its proposal, acquired very large group of participators for its public consultation, and made sure that the functioning of the market would be strongly emphasised in the new proposal. Furthermore, its demand for procedural agenda-setting power was more credible this time due to the upcoming signing of the Lisbon Treaty. All in all, it seems that this time the Commission was determined to avoid the events of the earlier decision-making process.

5.4.2. Opinion of the Parliament and discussions at the Council

After the Commission published its proposal, the decision-making process of the regulation proceeded according to the codecision procedure, which is presented in detail in chapter 2.1.2. The final decision was reached on first reading after only 15 months from the publication of the proposal, which may lead to the assumption that the process was fairly straightforward. However, several articles of the proposal raised discussions under the scrutiny of the Parliament and the

Council (Europolitics, 17.6.2009). Hence, the decision-making process was not as simple as it seemed at first glance.

Starting with the Parliament, it quickly became clear that it wanted to amend the Commission's proposal on certain parts (Europolitics 18.11.2009, 2.12.2009). In fact, the rapporteur of the Committee on Industry, Research and Energy (ITRE), Aleho Vidal-Quadras, explained that the proposal needs to be improved because in some points the Commission goes too far in seeking powers, but on other parts the proposal is not strong enough. In Vidal-Quadras' opinion there should be clear limits on how much the Member States or the Commission are allowed to interfere with the functioning of the market. The market should be the primary tool for managing security of supply while non-market measures should be the very last response. And even in an emergency, the Commission's powers should not be exaggerated. Therefore, the Committee suggests that the information the gas undertakings are required to release in an emergency should be first centralised on a national level, and only then transmitted to the Commission in aggregated form. (European Parliament, 2010, 66-68).

On the other hand, Vidal-Quadras argues that articles concerning the definition of protected customers or the triggering of an EU-level emergency are not comprehensive enough. The definition of protected customers should be clarified and, on that account, a clear list of criteria, which does not limit the inclusion of essential services, should be introduced. On the part of the emergency trigger, the rapporteur considers it to be too low. The Commission proposed that an EU-level emergency can be announced when 10 per cent of the overall gas imports fail. Instead of setting up an EU-wide percentage of disrupted gas flow, the Parliament suggests a regional definition and triggering of a gas supply emergency. (European Parliament, 2010, 66-68.) Despite these suggested amendments, rapporteur Vidal-Quadras nevertheless assures that the proposed regulation is in general welcomed, as it is "a piece of legislation that gives a true answer to a real problem that the Union is facing." (European Parliament, 2010, 65).

The Council's position can be described in the same way as the Parliament's stance. It welcomes the proposal in general, but remains to be critical on some points (Europolitics 7.12.2009). In fact, the Energy Council was divided on the issue. The Member States' representatives presented their opinions on the proposal in a debate on the 7th of December 2009. Several of them wanted to strengthen the role of the Member States in the handling of security of supply (Europolitics 17.2.2010). For example, The Dutch representative stated that the Commission has attained too

much responsibility on the issue in general. The German representative voiced its concern on the extensive solidarity among the Member States. According to the Germans, self protection is the best way to guarantee solidarity. Other representatives, such as those from Slovenia, Estonia and Lithuania, were a lot more supportive of the proposal. In their opinion the Commission should have a strong role regarding the security of supply legislation in order to establish EU level solidarity. (Europolitics 7.12.2009.)

As Europolitics (7.12.2009) points out, it seems that the countries best prepared for a gas supply disruption were the least willing to delegate powers to the Commission. France, for example, has for several decades striven to secure its energy supply by diversifying its energy mix. The French government chose nuclear power to do this and, as a result, the country has successfully decreased its dependence on energy imports. (Mérinet, 2011, 149-150.) Considering the decreased dependence on imported energy, the strong tradition of state intervention, and the energy companies' historic status in the country's energy politics, it is not a surprise that the French government had reservations towards the proposal.

The Germans had reservations towards the proposal as well but for a different reason, namely their overall strategy for energy security. The strategy consisted of the Schröder administration's efforts to help German energy companies become internationally competitive, and of using their strong personal ties with the Putin administration to promote German-Russian energy relations. Support for the Nord Stream pipeline project was perhaps the clearest evidence of the Schröder government's bilateral approach. The Merkel administration has been more sceptical towards Russia, but no concrete efforts to act less unilaterally have been made. Many German energy companies have gas supply contracts with Gazprom that extend beyond 2030, one of them, E.ON Ruhrgas, being the largest foreign shareholder in Gazprom. (Duffield and Westphal, 2011, 179-181.)

On the part of the traditionally EU sceptical UK, it can be said that it became keener on Union level cooperative strategies during the Blair and Brown Labour Party governments. This change happened due to the UK's growing dependency on imported energy and the opening of the energy market pursued by both the Commission and the British. (McGowan, 2011, 204, 206.) However, at the time of the proposal for the security of supply regulation the country was in the middle of an election campaign. Considering this, it is not irrational that in the end of 2009 the government representatives emphasised unilateralism. The Labour party representatives made it clear that the

Member States should be the primary decision-makers within the security of gas supply regulation and only after them the Commission comes. Therefore, also the UK joined the group of Member States who had reservations towards the proposal.

As mentioned, Member States with less extensive security of supply strategies were in favour of the Commission's proposal. Luxemburg's representative argued that a pipeline from France to Luxembourg would not make sense unless French solidarity in a crisis situation is guaranteed. Hence, binding obligations are needed. Ireland's representative agreed and emphasised the role of the Community. Luxembourg and Slovenia are known to lack the geological capacities for gas storage, and the new Member States, such as Estonia and Lithuania, are said to be especially vulnerable to gas disruptions due to their high dependency on Russian gas. Therefore, also these countries agreed with Luxembourg. (Europolitics 7.12.2009.)

Consequentially, the Council was divided between two conflicting groups of Member States, which in Pollack's terms can be described as a conflict between multiple principals (2003, 32-33). All of the Member States considered a new regulation to be necessary, but disagreement was generated around conflicting views about the level of discretion the Commission should be granted. In addition to the conflict between multiple principals, the decision-making process also entailed a conflict between a principal and an agent, namely the Council and the Parliament. The divided Council promoted more flexibility for the proposal, whereas the Parliament wanted to amend the proposal towards its preferences. As the decision-making process went along the rules of the codecision procedure, the Parliament had a legal right to make its opinion heard. In addition to this legal asset, the Parliament had another negotiation advantage: it did not have the same time pressure to get the regulation adopted on first reading as the Council had. Europolitics (17.3.2010) writes:

[...] the Spanish EU Presidency is still hoping for political agreement before July 2010. Rapporteur Vidal-Quadras appears less confident as to this date. "Parliament does not depend on the Presidency semester," he told Europolitics. "This is not a race. The important thing is that the legislation is good," he added. First-reading agreement is not a priority for the rapporteur.

The legal setting and the Parliament's time related negotiation advantage resulted in a negotiation where the Council and the Parliament were bargaining with trade-offs (Europolitics, 16.6.2010). The Presidency suggested that the Parliament would give up its amendments on the definition of the protected customers. If the Parliament agreed, the initial version would be adopted, and the Member

States were left the right to choose who or what they wanted to define as a protected customer. In return, the Parliament would succeed in its claim for a more significant European dimension and a greater role for the Commission. This compromise was reached (Europolitics, 30.6.2010) and the Parliaments' demands were incorporated into the regulation by giving the Commission the power to require amendments to the national Preventive Action Plans in case any of the Plans would endanger the security of supply of another Member State. (Council of the European Union, 2010, 2.)

According to Pollack, a decision-making process, which entails a conflict among multiple principals and between a principal and an agent, leads to a low level of discretion. This is what happened in the case of the directive. However, with the regulation the result was exactly the opposite: the Commission's powers were not reduced, but they remained substantial and were even extended in some respect as a result of the bargaining between the Council and the Parliament. An explanation for this can be found within the changed conditions under which the decision-making process took place. Firstly, this time none of the players was as confident of the future gas supply scenarios as they were when formulating the directive. Despite their reservations, even the Member States that were relatively well prepared for gas shortfalls considered themselves vulnerable in the event of another gas disruption as serious as the disruption of 2009. For example, the British Department of Energy and Climate Change published the following statement (2010, 5): "We therefore support the draft EU Regulation on Gas Security of Supply. This aims to improve EU resilience to future supply disruptions and to ensure that the market continues to function effectively in emergencies." The German Federal Minister of Economics and Technology Rainer Brüderle agreed (Federal Minister of Economics and Technology, 2010): "This Regulation will make a crucial contribution toward preventing and resolving potential gas supply crises in the future. The most recent conflict between Russia and Belarus makes clear how important it is to take preparatory action." Therefore, all the Member States, while emphasising national sovereignty, still agreed that some level of commitment was necessary.

Secondly, the legal conditions of the decision-making process had changed. In the case of the directive, the Council was legally able to make a decision according to its own preferences and, hence, disagreements with the Commission led to a low level of discretion and extensive controlling measures. Under the co-decision procedure, in contrast, it was not legally possible for the Council to ignore the opinions of the Commission and the Parliament. Therefore, as demonstrated for example by Tsebelis and Garrett (2000, 32) and Hix and Høyland (2011, 72-73), the Commission's

proposal carried more agenda-setting weight and the Parliament was able to bargain with the Council for trade-offs. As a result, the conflict between principal and agent led not to a one sided attempt by the principal to control its agents, but rather to multilateral negotiations for a compromise in which also the agents were able to sustain their demand for a higher level of discretion.

Thirdly, the conflict between multiple principals entailed a potential risk of free-riding, which the Member States who were relatively well prepared for future crisis tried to minimise (Europolitics 7.12.2009). Thus, rather than just trying to prevent the Commission from imposing EU-level solidarity commitments in general, the well prepared Member States wanted the Commission to impose commitments on every Member States' national energy policies in order to improve the security of supply in the poorly prepared Member States. These commitments included preventive measures and standards increasing the poorly prepared Member State's abilities to secure gas supplies. This can be clearly seen in Brüderle's statement emphasising the significance of German influence on the minimum standards for gas infrastructure included in the new regulation (Federal Minister of Economics and Technology, 2010). Minimising the risk of free-riding this way was especially cost efficient to the well prepared Member States because their national situation already met the suggested standards. In fact, according to Gatsios and Seabright (1989, 48) this is a natural way to make policies credible. Also, Pollack mentions this when he talks about national policies producing negative externalities. He states: "National regulation [...] is, in other words, a Prisoner's Dilemma in which no state can credibly commit itself in advance to the rigorous application of international regulations, and the result is regulatory failure." (Pollack, 2003, 24). Here, this notion applies especially to the poorly prepared Member States, and therefore, does not concern only a general need for credible commitments but also commitments that are needed because of a conflict between multiple principals.

To sum up at this point, my second hypothesis holds on the part of the regulation as the conditions under which it was formulated, namely high level of uncertainty, need for credible commitments, and high level of policy conflict, affected the final text of the regulation. The first two of the listed conditions affected the decision-making process as Pollack predicted: due to the 2009 gas disruption the level of uncertainty was high, which resulted in a high need for credible commitments and a high degree of discretion to agents. However, the third condition, a high level of policy conflict, certainly affected the process but not in the way suggested by Pollack's theory. The changed legal rules caused a high level of policy conflict between principals and agents which

resulted in a negotiation where the agents were able to bargain for more discretion for themselves. The high level of policy conflict among multiple principals, in turn, resulted in high level discretion to agents due to the potential risk of free-riding, which was considered more harmful than the cost of delegation. Therefore, the second hypothesis holds, but not entirely according to Pollack's theory.

Turning to my third hypothesis about the pro-integrationist and competence-maximising preferences of the Parliament, it is shown that finding answers is, once again, not simple here. However, the Commission is a clear case. It aimed at acquiring a high level of competence to itself and conducted extensive research to back up its ambitions. The Parliament, in turn, changed its behaviour during the course of the decision-making process. At the beginning, it argued that in some points the Commission goes too far in seeking powers, but in other parts the proposal is not strong enough. To correct this imbalance, the Parliament was ready to increase the Commission's discretion in some points, but also restrict it in others. This suggests that the Parliament was not acting entirely in a pro-integrationist manner. Nevertheless, as the decision-making process went along, the Parliament positioned itself clearly opposite to the Council making trade-offs with it to increase the powers of the Commission. This is a clear indicator that the Parliament had pro-integrationist preferences.

One possible explanation for the Parliament's "non-integrationist" behaviour regarding certain articles of the proposal in the beginning of the process could simply be technical considerations. Lobbying by the national governments and interest groups, such as in the case of the directive, can also explain the rapporteur's opinion to some extent. Whatever the reasons for the Parliament's and the rapporteur's behaviour were, they did not end up being significant in the course of the overall decision-making process. As the Parliament realised that the Council and the Member States wanted a fast first-reading agreement, it used its legal potential to pass the proposal to the second reading as a deterrent and a negotiation asset vis-à-vis the Council. This behaviour is considered more common for the Parliament. For example, Birchfield (2011, 244-257) points out that due to its newly obtained veto power which ensures the Parliament's opinion to be taken very seriously, it has acted in an increasingly independent way in energy legislation processes in order to shake off its previous role as the weak junior legislator.

5.4.3. Formal adoption and final legislative act

The final legislative act was published in the Official Journal of the European Union on the 12th of November 2010 (OJ L 295, 12.11.2010). The objective of the regulation is to establish a common framework, where natural gas undertakings, Member States, and the Commission share the responsibility for security of gas supply in a spirit of solidarity. The regulation also provides a mechanism for a coordinated response in the event of an emergency at national, regional and EU levels. The main content of the regulation is as follows (OJ L 295, 12.11.2010):

- all household customers are protected customers and, in addition, the Member States may consider small and medium-sized enterprises and essential social services or district heating installations as protected customers;
- common standards at EU level are provided first, for infrastructure including a readiness to satisfy total gas demand during a day of exceptional high gas demand in the event of a disruption of the single largest infrastructure as well as the establishment of reverse flows in all cross border interconnections between EU countries, and second, for the supply for protected customers including secure supplies in the event of a seven day temperature peak and for at least 30 days of high demand as well as in the case of an infrastructure disruption under normal winter conditions;
- risk assessments considering supply and infrastructure standards, all relevant national and regional circumstances, various scenarios of exceptionally high gas demand and supply disruptions, and the interaction and correlation of risks between EU countries should be conducted; based on the assessment a preventive action plan containing the measures needed to remove or mitigate the risks identified and an emergency plan containing the measures to remove or mitigate the impact of a gas supply disruption should be adopted in the Member States;
- the emergency plan shall build upon three main crisis levels, namely early warning level, alert level, and emergency level; the Commission may declare an EU or a regional emergency at the request of at least two Member States that have declared an emergency;
- a Gas Coordination Group chaired by the Commission and composed of representatives from the Member States, the Agency for the Cooperation of Energy Regulators, the European Network of Transmission System Operators (ENTSO) for gas, and representative bodies of the industry concerned and those of relevant customers, will facilitate the

coordination of security of supply measures and assist the Commission in security of supply issues;

- finally, the natural gas undertakings should provide the Member States with relevant information during an emergency; in the event of an EU or regional emergency, the Member States should provide the Commission with information received from the natural gas undertakings in aggregated form, as well as information about measures planned to be undertaken or already implemented to mitigate the emergency; the Commission should also be notified by the Member States of existing and new inter-governmental agreements signed with non-EU countries.

As the final legislative act is a result of negotiations between the Parliament and the Council, it does not reflect solely the Council's views. Therefore, the analysis about my first hypothesis cannot be based on an assumption according to which the final regulation would be a direct illustration of the Member States' willingness to delegate. However, the fact that the Council was willing to make compromises in order to reach a decision on the first reading indicates the Council's overall content with the final text. Considering this, the final text can cautiously be used as material when analysing the Member States' views about delegation and discretion.

Starting with the function of "monitoring compliance", the analysis shows that the Commission is granted a significant amount of monitoring responsibilities in the final act. According to Article 14 (OJ L 295, 12.11.2010), which was first suggested by the Parliament, the Commission shall execute "continuous monitoring of and reporting on, security of gas supply measures". These measures include the monitoring duties set out in a repealed directive concerning common rules for the internal market in natural gas (OJ L 211, 14.8.2009, Art. 5, 11, 52(2)) and the information provided in the risk assessments, Preventive Action Plans, and Emergency Plans required by the security of supply directive. However, as mentioned earlier, the Parliament wanted to amend the monitoring right of the Commission. The Council agreed with the Parliament and, therefore, the information that the gas undertakings are required to release in an emergency, should be first centralised on a national level, and only then forwarded to the Commission in aggregated form. This is a procedural requirement constraining the Commission's monitoring powers, yet not a very strong one, because it does not significantly hinder or reduce the Commission's monitoring powers. All in all, the final act grants the Commission very extensive monitoring responsibilities.

As also mentioned earlier, the function of “adopting credible and expert regulation” was a subject of bargaining between the Council and the Parliament. The Parliament wanted the Commission to have a more significant role in the regulation than preferred by the Council. As a compromise, the Parliament gave in with the definition of protected customers, and correspondingly, the Council agreed on more responsibilities for the Commission on regulating the Preventive Action Plans and Emergency Plans. Now, according to Article 4(6b), in addition to the right of the Commission to require the Member States to amend their Preventive Action Plans, it is also allowed to recommend *how* to amend them (OJ L 295, 12.11.2010). Furthermore, in Article 11(6) concerning the Union and regional level emergency response, the Commission is granted the power to request the Member States to take action or change their action to ensure compliance with the common requirements (OJ L 295, 12.11.2010, Art. 11(6)). The difference between Articles 4 and 11(6) is that in the former Member States are compelled to do what the Commission says even in case of disagreement, and therefore the Commission has the final word. However, in Article 11(6) the Member States have to offer reasoning for disagreeing with the Commission, but no such compulsion to act according to the Commission’s final will, as provided in Article 4, is mentioned. This is an existing but minor restriction of the Commission’s wide regulative powers.

Even though Article 11(6) does not grant the Commission the final word in terms of a regulative disagreement, other parts of the Article give the Commission extensive agenda setting, i.e. initiative, powers. At the request of a Member State, the Commission may declare a Union or regional level emergency as well as declare an end to one (OJ L 295, 12.11.2010, Art. 11(1)). It may also coordinate the action of Member States and convene a crisis management group. The Commission is to convene the Gas Coordination Group as well. Additionally, at the request of at least three Member States, it has the power to restrict the participation in the Gas Coordination Group, so that only the Member States get to participate (OJ L 295, 12.11.2010, Art. 11(2)). This measure would leave the representatives of the industry completely outside of the Group. To ensure that the Commission has sufficient involvement in regional emergencies, a new recital (37) was added to specify it. This was especially the Parliament’s concern, because, as mentioned earlier, in rapporteur Alejo Vidal-Quadras’ opinion it is crucial to have a regional trigger for a gas supply emergency in addition to national and Union level triggers. This way a situation which is not serious in all of Europe yet alarming in one region will not be ignored. (European Parliament, 2010, 66.) However, the Commission’s extensive initiative powers also contain a procedural restriction. According to Article 10(8) (OJ L 295, 12.11.2010) concerning the declaration of a national emergency the Commission is to verify whether an emergency declaration by a Member State is

justified. In a case where a Member State and the Commission disagree, the Member State in question merely has to offer reasoning for its decision. This means that, again, the Member States have the final word.

As an answer for my first hypothesis it can be summarized that very wide monitoring, regulative, and agenda-setting powers and a high level of discretion were delegated to the Commission through the final legislative act of the security of gas supply regulation. Therefore, it is very likely that the Council was trying to reduce transaction costs of cooperation, such as free-riding. The analysis above also shows that while the final text entails some procedural requirements for the Commission, that those restrictions are not very strict. This notion answers my fourth hypothesis. One of the restrictions is the procedure according to which in an emergency the Commission is to receive information from the gas undertakings in aggregated form. However, this amendment does not limit the Commission's monitoring responsibilities, since, in the end, a significant amount of information is given to the Commission, whether in aggregated form or otherwise. Articles 10(8) and 11(6), according to which a Member State has the final word in a situation where it disagrees with the Commission, are other procedural restrictions incorporated in the regulation. However, these restrictions are not very strong either because both Articles give the Commission the right to convene the Gas Coordination Group to consider the issue. Given the Gas Coordination Group's wide list of participators, the Member States have a strong incentive to comply with the Commission's requests in order to avoid a potentially shameful Group hearing.

5.4.4. Bargaining between the principals and the agents

In sum, the Ukrainian-Russian gas disputes triggered the process of formulating a regulation concerning measures to safeguard security of gas supply. Especially the dispute of 2009 demonstrated that there are several weaknesses in each stage of the current gas supply security and that EU collaboration has clear benefits in handling a crisis situation. Only six months after the dispute, the Commission published a proposal for a new security of gas supply regulation that would replace the old directive. The proposal was received cautiously by the Council and the Parliament and both institutions wanted to amend it in some respect. The Council was divided on the issue due to differences in the Member States' supply security regarding the level of preparedness. The situation resulted in a negotiation where the Council and the Parliament were bargaining with amendments. Despite reservations and divided opinions, the bargaining led to a

fairly quick result, and therefore the regulation was adopted on first reading under the codecision procedure on the 20th of October 2010.

In chapter 5.4. I have answered the first four of my hypotheses on the part of the regulation. I argue that very wide monitoring, regulative, and agenda-setting powers and a high level of discretion were delegated to the Commission by the Council in order to reduce the transaction costs of cooperation. Therefore, my first hypothesis holds. As a result of the 2009 gas disruption, the level of uncertainty was high, which resulted in a high need for credible commitments and a high degree of discretion to the agents. This suggests that the conditions of the decision-making process affected the delegation as Pollack theory predicts. However, the agents were able to bargain for more discretion to themselves due to the changed legal rules and due to the potential risk of free-riding that the multiple principals wanted to minimise. Therefore, contrary to Pollack's theory, the high level of policy conflict contributed to a high degree of discretion to agents. This is why my second hypothesis holds only partially according to Pollack's theory.

The third of my hypotheses holds completely on part of the Commission but only partially on part of the Parliament. The Commission clearly operated to actualise its pro-integrationist and competence-maximising preferences. The Parliament, however, changed its behaviour during the course of the decision-making process. At the beginning, the Parliament was ready to decrease the Commission's discretion in some aspect but as the decision-making process went along, it positioned itself clearly opposite of the Council trying to increase the powers of the Commission. As for my fourth hypothesis, I argue that the final text of the regulation does not entail strict procedural requirements for the Commission. Therefore, I conclude that the Member States did not feel the need to, or were able to, use extensive administrative procedures to control the Commission.

When comparing the results of the analysis covering the regulation to the results of the analysis covering the directive (see 5.2.4.) we see that the decision-making processes have similarities but also important differences. Firstly, the functions that were delegated to the Commission are similar. In both cases three of the four functions Pollack mentions were delegated. What is different is the scope of delegation resulting from the prevailing conditions. In the case of the directive, a low level of uncertainty and a high level of policy conflict led to a low level of discretion, whereas with the regulation, a high level of uncertainty and a high level of policy conflict resulted in a high level of discretion to the Commission. Among the similarities between the two decision-making processes

was the assumed behaviour of the agents. On the one hand, the Commission was consistently behaving according to Pollack's theory throughout the two processes. The Parliament on the other hand showed at times an "anti-integrationist" character. This nevertheless changed towards the end of the decision-making process of the regulation during which the Parliament showed a strong will for preference-maximising and further integration. One of the main differences of the two processes is the way the Council was able to use control mechanisms against the Commission. In the first process they were used extensively, while in the latter hardly any control mechanisms were used. This notion will be discussed further next, but based on the results presented so far, it can be concluded that the domination by the principal that occurred in the decision-making process of the directive changed into a more equal bargaining between the principals and the agents in the decision-making process of the regulation.

5.5. The impact of conditions

In chapter 3.3.2. I formulated a fifth hypothesis according to which the Member States were in a disadvantageous negotiating position compared to the Commission already in the beginning of the decision-making process of the regulation. The rationale behind my hypothesis is that in case the Member States were in a disadvantageous negotiation position due to the concern of being unprepared for another gas crisis, they would not be in a position to use all of their control mechanisms against the Commission, and consequently, the amount of procedural requirements in the final act of the regulation would be minimal. According to my analysis this is exactly what happened in the decision-making process of the regulation. The control procedures the Member States were able to include in the final text of the regulation were minimal, whereas the Commission was given a significant amount of powers. As mentioned, these powers included the right of the Commission to require the Member States to amend their Preventive Action Plans and the right to recommend how to amend them (OJ L 295, 12.11.2010). Also, the power to request the Member States to take action or change their action to ensure compliance with the common requirements was included in the regulation (OJ L 295, 12.11.2010, Art. 11(6)). This evidence suggests that also my fifth hypothesis holds.

Comparing the security of gas supply regulation to a similar directive concerning oil and petroleum products adopted a year earlier, confirms my conclusion. The directive imposing an obligation on

Member States to maintain minimum stocks of crude oil and/or petroleum products (OJ L 265, 9.10.2009) aims at:

[...] ensuring a high level of security of oil supply in the Community [...], maintaining minimum stocks of crude oil and/or petroleum products and putting in place the necessary procedural means to deal with a serious shortage (OJ L 265, 9.10.2009, Art. 1).

To achieve these aims the Commission proposed that in the event of an effective international decision to release stocks it should have “the right to require Member States to release some or all of their emergency stocks” (Commission of the EC, 2008c, 22). However, in the final legislative act the Commission has only the right to recommend releasing emergency stocks to the Member States (OJ L 265, 9.10.2009, Art. 20(3b)). In addition, in its proposal the Commission wanted to have the right to carry out inspections of emergency stocks in the Member States at any time it wished (Commission of the EC, 2008c, 20). This was not approved by the Member States and therefore, the Commission may merely carry out reviews to verify the Member States’ emergency preparedness. This may happen only in coordination with the Member States and may concern stockholding only if considered appropriate by the Commission. (OJ L 265, 9.10.2009, Art. 18(1).) These are significant changes to the legislation text and impose strong control mechanisms against the Commission. Therefore, it is easy to conclude that the Member States were able to use control the Commission comprehensively and, in consequence, were able to weaken the Commission’s powers in the final text of the directive (Europolitics, 16.12.2009). This means that unlike in the case of the security of gas supply regulation, the Member States were not in a disadvantageous negotiating position in relation to the Commission during the decision-making process of the directive imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products.

To understand the implications of this notion, it is important to analyse what the main differences between the decision-making processes of seemingly similar pieces of law were and why those differences resulted in different levels of discretion to the Commission’s powers. The most obvious answer is that the decisions were reached with different decision-making procedures: the gas regulation under the co-decision procedure and the oil stocks under the consultation procedure. This leads us to the final set of my hypotheses, namely the comparison of the Commission’s and Parliament’s influence under the consultation procedure to their influence under the co-decision procedure. According to my last hypothesis, the agenda-setting power of the Commission and the legislative power of the Parliament under the consultation procedure are very limited compared to

the powers they possess under the co-decision procedure (see 3.3.3). This is true based on the analysis I have presented on the part of the security of gas supply directive and regulation. The directive grants not only a low level of discretion to the Commission but also extensive administrative procedures to the Member States to control it. In contrast, the final text of the regulation does the opposite: high level of discretion to the Commission and only very weak control mechanisms. Therefore, it can be inferred that the last of my hypothesis holds.

This suggests that the main difference between the decision-making processes of the oil directive and the gas supply regulation must be the different decision-making procedures that were used. The answer to my last hypothesis states that the consultation procedure results in a low level of discretion to the Commission while the co-decision procedure leads to a higher level of discretion to the Commission. This notion is also in line with Pollack's view and with the general consensus in the literature. However, the difference in the Commission's level of discretion between the laws aiming at the security of supply of gas and the security of supply of oil cannot be understood solely on the basis of the different decision-making procedures. The main problem is the fact that the gas regulation was adopted on first reading. Adopting on first reading means that the Council valued a quick adoption of the regulation, even if it meant giving the Commission a high level of discretion, more than trying to limit the Commission's discretion and taking the process to second reading.

When trying to detect other differences than the decision-making procedure between the gas regulation and the oil directive, or between the gas directive and the gas regulation for that matter, one finds an additional difference in the prevailing conditions of the decision-making processes: the urgency caused by the gas disruption of 2009. Indeed, in its near past the European oil sector has not experienced a disruption that was as long and as tangible as the 2009 gas disruption. Also, the gas directive was formulated during a time before the most severe gas disruptions had taken place. Considering this, it is reasonable to argue that in addition to the effect of different decision-making procedures, the immediate conditions and recent events also affect the level of discretion the Commission is granted in the course of decision-making processes of the European Union. Surely, the gas market is different from the oil market and it is a rough simplification to compare the two this way. Nevertheless, the comparison helps us to realise how eagerly the Member States wanted the regulation to pass in order to have an alternative to continuing with the existing directive. The key here is not the generally agreed fact that due to the characters of the gas market, such as transportation needs and capital intensity, the gas market requires a much higher degree of coordination than the oil or coal markets, as Jonas Grätz (2011, 62) points out. The key is the

perception that the Member States had on this fact. In 2004 the Member States perceived the need for coordination differently than in 2010 and a very significant reason for this change was the urgency caused by the gas disruption of 2009.

Grätz (2011, 80) notes that the difficulty that the EU experiences with formulating a coherent approach toward Russia in energy policy is caused by the Member States' fundamentally differing perceptions and accompanying policy goals. By integrating energy sectors, older Member States, such as Germany, focused primarily on binding Russia closer to Germany and the EU, whereas the Commission and the smaller and new Member States put emphasis on external energy policy and security of supply by trying to decrease the influence of Russia to the European gas market. To solve this disagreement and to prevent further incoherence, Grätz calls for the Member States to actively pursue an internal consensus within the EU. Pierre Noël (2009, 26) also addresses the problem of foreign policy divisions rooted in the structure of the EU's gas relationship with Russia. In his opinion the solution is a fully integrated gas market. Regardless of which policy approach the EU chooses, it is nevertheless clear that consensus should be developed prior to major events, such as the 2009 disruption in gas supply. Incoherent and unpredictable decisions triggered by sudden events make it more challenging to guarantee the welfare of the Union in the long run.

6. Conclusion

In the beginning of this thesis I presented two research questions that were to be answered in a way that encompasses the multidimensionality of the topic of security of gas supply. The first one concerns the roles that the main EU institutions play in the decision-making process of the security of gas supply legislation. The second focuses on possible changes in those roles and the reasons for these changes. In the previous chapters of this thesis I have answered these questions by conducting a case study that theoretically draws upon Mark A. Pollack's (2003) version of the principal-agent theory.

Based on my analysis it is possible to conclude that the Council started as the dominating actor in the decision-making process of the directive, possessing the most influence on the conduct of the process and consequently, the resulting decisions. The Commission and the Parliament were left with the roles of a weak agenda-setter and a junior legislator. As the decision-making process proceeded to the regulation, the roles of the institutions changed. The Commission's agenda-setting behaviour became more assertive and it was able to achieve a larger number of goals than earlier. The Parliament's role changed from junior legislator to the Council's co-legislator as it was able to engage itself into a fairly equal bargaining with the Council. The Council, on its part, had to give up its dominant position and engage itself into a more balanced decision-making process with the other institutions forcing it to assess its preferences in a more critical way. In terms of a zero sum game, the Council lost influence in the course of the legislation process, whereas the Commission and the Parliament gained influence. These results support the general assumptions of the roles of the EU institutions in the energy decision-making of the Union.

The reasons behind the change in the roles of the institutions include the changing legal framework of the EU, namely the ratification of the Lisbon Treaty which gave the Commission and the Parliament more influence in the decision-making processes by extending the application of the co-decision procedure to decision-making on energy. Another reason behind the change was the gas disruption of 2009 which brought the matter of urgency into the equation as the Member States preferred a quick adoption of a new regulation to the option of continuing with the already existing directive.

Analysing energy policy in the EU is a difficult task. Andreas Pointvogl (2009, 5704) describes the challenge well by saying that on the one hand, all the players involved have a clear common policy goal, namely a sustainable, competitive and secure energy supply, but on the other hand all of them also behave strategically trying to benefit from the cooperation in a maximum way. This leaves a cleavage between the two objectives which is not easily analysable. Despite the clear challenges the topic presents us with, I argue that with rational institutionalism, in particular with Pollack's principal-agent theory, I have been successful in performing the task. The principle-agent theory's clear strength is the fact that it allows us to create clear hypotheses that are based on rational assumptions about the players' behaviour. With these clear hypotheses it becomes possible to evaluate the functioning of the supranational institutions without forgetting that the Member States remain to be the key players in many of the decision-making processes of the EU. This is important, because focusing our research only on either of the two, supranational institutions or the Member States, would hinder the discovery of many important insights in the development of the decision-making on energy policy. Therefore, finding the balance between the two subjects of research is most beneficial, and as mentioned, Pollack's theory has been helpful in doing so.

Of course, a weakness of the principle-agent theory, and many other theories, such as the constructivist theories, is that its hypotheses about delegation are difficult, or even impossible, to test. Therefore, the findings of any principal-agent analysis should always be treated with caution. In addition, it should be noted that even if Mark A. Pollack's principal-agent theory is a very useful analytical tool, it is only a tool that can explain so many insights. Many discoveries still have to be explained further with using ideas stemming from other decision-making scholars of the EU in order to gain a comprehensive understanding of the decision-making process of security of gas supply legislation. On the part of the material of my thesis, it is necessary to acknowledge that the analysis is based solely on documents and news articles found from online sources. As the EU has been active in improving its transparency in decision-making, most of the related documents are possible to find from its own portal. However, in order to determine whether the official documents reflect the intentions and motives of the key players, it would be preferable to conduct interviews with the officials. This would also contribute to a test of my results which is, as mentioned, a very difficult task. As conducting interviews was not possible for his thesis, this material-related limitation should also be acknowledged.

These limitations lead me to the consideration of possible subjects for future studies. Testing whether the results of this case study hold more generally in the energy decision-making of the EU

would minimise some of the methodological limitations. It could be extended to other directives and regulations in the field of gas, but also in the field of other energy sources and forms, such as oil, coal and electricity. In addition, interviewing the key officials to back up the results would be beneficial for the validity of the results. Apart from the methodological notions, the behaviour of the Parliament raises some questions that were not possible to answer in the scope of this study but should be assessed further. Here, I refer to the fact that the Parliament did not act in a pro-integrationist and competence maximising way during the decision-making process of the directive. A more minor, but still worth studying, observation concerns the Parliament's slightly anti-integrations behaviour in the beginning of the decision-making process of the regulation. Studying the Parliament's actions further would explain the motivations of the key actors in more detail and possibly offer some additional insights into the background forces that influence the decision-making processes of the EU. From a normative point of view, it would be beneficial to assess whether the decision-making processes of the security of gas supply directive and regulation fulfilled the conditions of a democratic decision-making. Here, the democratic deficit debate would most likely offer two different viewpoints. On one hand, the decision-making process of the directive can be argued to be more democratic as it was mainly conducted by the nationally elected governments of the Member States. On the other hand, the only directly elected body of the EU, the Parliament, had more influence in the decision-making process of the regulation and, therefore, the regulation can be argued to be a result of a more democratic decision-making process.

Finally, on the 7th of September 2011 the Commission published a new Communication on security of energy supply and international cooperation (Commission of the EC, 2011b). The main message of the communication is to propose concrete ways to extend energy cooperation beyond the mere physical security of imports in order to make the global energy market less vulnerable to supply shocks, disruptions, and external energy events. According to the Commission (2011b, 3),

The EU has shown that when it comes together it can achieve results which no Member State alone could reach. These strengths must be further exploited and transformed into a systematic approach. Further steps to enhance the coherence of the EU and Member States' action are urgently needed, not in the least because of the importance of energy in the EU's overall political and economic relations with a number of third countries.

Very recently, on the 16th of June 2012, the Parliament adopted a text supporting the Commission's position. In the Parliament's opinion, strong coordination between Member States' policies as well as joint action and solidarity in the field of external energy policy and energy security is needed

(European Parliament, 2012, 5). Based on these documents, it is clear that both the Commission and the Parliament have come to the same conclusion as this study regarding the significance of coherence in the external energy policy of the European Union. It is not clear, however, whether all the Member States have reached the same conclusion. While the first line of the North Stream pipeline, which is supported by the Member States emphasising a bilateral approach towards Russia, has been inaugurated, the Nabucco pipeline project, which is supported by the Member States that prefer a diversification of energy suppliers, continues to face ever greater difficulties. Hence, it seems that the answer to this question is unfortunately a negative one.

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