

'high politics' (i.e. the international context) and national considerations. All of these institutions act within their very own bounded rationalities, resulting in a complex multilevel interplay of different political logics.

Finally, one would be remiss to underestimate the impact that external events have had on the evolution of Europe's energy policy. Instability in the Middle East and North Africa, the growing importance of the Caspian Littoral and the Arctic Sea, increased international competition for oil and gas, and the deeply contentious international climate change negotiations had and will have wide-ranging effects on its pursuit of all three pillars of comprehensive energy security. The creation of an internal energy market, for example, is not only a question of sustainable energy supply at affordable prices but also a question of strategic security in case of energy shortages. The only way to counteract the risk of disruption to the flow of supplies in any part of the Union, or from any one energy corridor, is to have the ability to move energy across the Union unimpeded; and that will require large investments into cross-border infrastructure. Pollution is a negative externality of energy production, no matter what the source or location. Some sources are cleaner and some are cheaper, but neither are both, and location merely delays its effect. Therefore, all energy initiatives, whether internal or external, will need to be executed alongside sustainable environmental policies; and those policies have to make economic sense. Lastly, in terms of supply security, it stands to reason that a Union of 28 member states would be best served if it were to develop a common external energy policy. Such solidarity would maximize its pull as a consumer and minimize the centrifugal tensions that tear at the Union's cohesion, as well as reduce other risks associated with individual bilateral energy relations. However, despite the fact that such 'a spirit of solidarity' is in principle enshrined in primary law (Art. 194 TFEU), 'energy solidarity' among the 28 member states remains very much a work in progress.

## Chapter 4

### Who Does What? The Main Actors

This chapter examines the actors involved in EU energy policy-making and illustrates the interdependence between the major players in the policy process, including formal and informal actors. Who are these key actors? How do they relate to one another in energy policymaking, and what instruments are available to them? Due to the divergent degrees of Europeanization in the different areas of European energy policy, the potential to influence the decision-making process differs considerably between actors. Energy policies in the EU primarily remain the responsibility of the member states and are an essential element of domestic politics, not least because any domestic economy is dependent upon reasonably priced electricity for manufacturing and private consumers need affordable home heating as well as fuel for their cars. Thus, domestic lobbying groups in modern democracies try to exert as much pressure as legally and reasonably possible on their governments in order to ensure that the actions and policy choices of that government (internal and external) reflect their interests. Governments, in turn, attempt to realize domestic interests in international negotiations and, in so doing, attempt to mediate between different levels. Putnam describes this two-level game from the perspective of government leaders as follows (1988: 434):

Across the international table sit his foreign counterparts, and at his elbow sit diplomats and other international advisors. Around the domestic table behind him sit party and parliamentary figures, spokespersons for domestic agencies, representatives of key interest groups, and the leader's own political advisors.

Indeed, energy policy touches upon so many adjacent policy fields, from competition policy to industrial policy, environmental

sustainability, etc., that the space for supranational policymaking expands considerably. Meanwhile, the development of internal EU energy policies both affects and is affected by the global energy business. Thus, it behoves individual member states to maximize their influence on any matter that carries direct consequences for the external dimension.

Within the institutional arrangement of the EU, the member states have at least two main official opportunities to articulate their interests: the Council (e.g. Transport, Telecommunications and Energy Council (TTE)), also informally known as the ‘Council of Ministers’, and the European Council assembling the heads of state and governments. Since the Treaty of Lisbon (2007), the ordinary legislative procedure is applied to ever more policy areas, which also gives the European Parliament, representing EU citizens, a strong role in the policy process. Before taking a closer look at the European Council and the Council, and the role they play in EU energy policymaking, however, we must first focus on the European Commission. Not to be underestimated in the entire integration process is the Court of Justice of the European Union, which, tasked with the interpretation of EU law such that it is applied uniformly across the member states, was crucial in developing the EU’s internal energy market.

### **The European Commission**

The Commission is a supranational body established for acting independently from the member states in the interest of the entire Union. It is the only institution responsible for initiating EU law and then later ensuring its application by the member states. The Lisbon Treaty strengthened the Commission’s executive power, particularly in relation to day-to-day decisions (such as the delegation of powers by the Parliament and Council on a case-by-case basis to adopt quasi-legislative measures). Whenever the Council and the European Parliament pass legislation, it is the Commission’s bailiwick to survey whether and to what extent the member states correctly apply EU law.

As the EU’s executive branch, the Commission oversees multiple administrative divisions called Directorate-Generals (DGs), which are comparable to national ministerial portfolios. While the DGs work semi-autonomously, their legislative drafts must be agreed upon by the entire College of Commissioners. Frequent and regular

meetings between the DGs beforehand facilitate consensus-building at the level of Commissioners. Of greatest relevance to the EU’s energy policy are the respective DGs for Energy (ENER), Climate Action (CLIMA), Competition (COMP), Mobility and Transport (MOVE), Enterprise and Industry (ENTR), and Environment (ENV), a few of which are recent creations, established by the Barroso Commission (2010–2014) in 2010. Specifically, the DG for Energy and the DG for Mobility and Transport are the successors of the former DG for Energy and Transport, which prior to 2010 was responsible for all activities related to energy services and mobility. Similarly, the DG for Climate Action took over administration of climate-related topics that were previously the responsibility of the DG for the Environment. Despite the administrative separation, however, policy fields and issues continue to overlap. This is apparent, for example, when one thinks of the importance of fuel prices for logistics companies or the amount of greenhouse gas emissions by the transport sector.

The new European Commission (2014–2019), under the leadership of Jean-Claude Juncker, embarked on a significant restructuring of the Commission’s organization by introducing clusters or ‘project teams’, each headed by one of the vice-presidents. Maroš Šefčovič heads the team on ‘A Resilient Energy Union with a Forward Looking Climate Change Policy’. In his inaugural speech, Juncker listed the creation of an Energy Union amongst his top ten priorities (Juncker 2014). Pooling resources, combining infrastructures, and uniting negotiating power vis-à-vis third-party countries are the cornerstones of this new and arguably ambitious undertaking.

Insecurity resulting from Russia’s intervention in Ukraine forced the Commission to look beyond the implementation of existing legislation and once again turn its attention to energy security. The Commission ordered so-called gas stress tests in May 2014 (European Commission 2014), which led the Commission to issue a recommendation to the Council the following October (European Commission 2014r). The lessons learned were unambiguous. Without cooperation amongst the member states, a disruption of gas deliveries would potentially have disastrous effects, especially on the Eastern member states. The Commission also made it clear that it prefers a market-based approach. Non-market measures, such as the release of strategic stocks, forced fuels switching, and demand curtailment, should only kick in when the market fails.

Consequently, one of the most important actors is the DG for Competition, which plays a significant role in the internal market project. EU law authorizes the Commission to impose fines in case of violation against competition law (Art. 101ff. TFEU), giving the Commission considerable competences in this area. It is not surprising, therefore, that it continuously tries to strengthen the EU's role in energy policy through competition policy. For example, in 2009, the Commissioners imposed fines totalling €1,106,000,000 on three companies, Germany's E.ON AG and its subsidiary E.ON Ruhrgas AG, and on France's GDF Suez SA, arguing:

Ruhrgas AG (now E.ON Ruhrgas, part of the E.ON group) and Gaz de France (now part of GDF Suez) agreed in 1975, when they decided to jointly build the MEGAL pipeline across Germany to import Russian gas into Germany and France, not to sell gas transported over this pipeline in each other's home markets. They maintained the market-sharing agreement after European gas markets were liberalised, and only abandoned it definitely in 2005. These are the first Commission fines imposed for an antitrust infringement in the energy sector. (European Commission 2009)

In addition to its competences in competition policy, the Commission possesses further instruments to enforce compliance. For instance, according to Art. 258 TFEU, the Commission has the duty to ensure that the member states correctly apply EU law. In case a member state fails to comply with EU law, the Commission has the right to take appropriate measures to make the state fulfil its obligations. In the pre-litigation phase, known as 'infringement proceedings', the Commission prepares a letter of formal notice in which it requests that the member state explain the reasons for non-compliance, providing the opportunity to comply voluntarily within a given time frame. If member states continue to ignore their obligations under the treaties, the Commission has the discretionary power to refer a case to Court. However, the mere threat of infringement proceedings often serves to improve a member state's performance in applying EU law. As the Commission made clear in its first attempt to narrow down the concept of the Energy Union, it considers the strict implementation of the Third Energy Package the cornerstone of its endeavours.

### **The European Council**

Alongside the increased influence of the Parliament and its committees and the long-standing influence of the Council and its working parties, the role of the European Council has been strengthened in recent years, particularly in energy and climate change matters (Christoffersen 2009: 84). The European Council sets the EU's overall political directions and usually makes decisions unanimously. Therefore, it can be assumed that all member states support the adopted measures, which facilitates implementation at the national level. Nevertheless, the decisions reached are often based on a minimum consensus, because member states' interests diverge substantially with regard to EU energy policy in general, and particularly as far as the function of the European Union is concerned. For example, the member states agreed on the necessity to unbundle vertically integrated energy companies. However, concrete measures required to realize this objective continue to be subject to highly controversial discussions (Pollak et al. 2010).

The European Council's importance has risen dramatically over recent years in sync with EU-internal crises, such as the hard-hitting recession since 2008 and international crises ranging from the 2003 Iraq War to the annexation of the Crimea by the Russian Federation in 2014. However, while the EU's energy interests were clearly affected by all those crises, its policy responses were geared more towards general statements and declarations. Those responses mirror the divergent preferences of the member states. Given the contentious nature of external dimension issues, such as bilateral supply contracts, that directly influence the different security supply interests of the member states (i.e. the old problem of who supplies whom under which contractual terms), a unified position would be short of a miracle.

In April 2014, Donald Tusk, then prime minister of Poland, proposed an Energy Union in an article in the *Financial Times* (Tusk 2014). At the end of 2014, Tusk assumed the office of President of the European Council and is certainly one of the driving forces behind the idea of an Energy Union. Meeting in March 2015, the European Council came up with a vague agreement to establish an Energy Union (see European Council 2015), which once again committed the EU to build an affordable, secure, and sustainable energy market within the EU. Shortly thereafter, the Commission sent a Statement of Objections to Gazprom alleging that some of its

business practices in Central and Eastern European gas markets were in breach of EU antitrust rules, because they constituted an abuse of its dominant market position. Thus, it can be surmised that the European Council and the Commission share the same strategy: continue the integration of the European energy market, increase cross-border trade, and secure the compliance of Europe's energy acquis for all players.

### **The Council**

Within the institutional arrangement of the EU, the member states also have the opportunity to articulate their interest in the Council. The Council has a huge impact on the policy process, because it is the institution where the representatives of the member states meet regularly, and this is why it has been described as the EU's real 'decision-making centre' (Wessels 1991). The Council, in its ten different configurations, consists of the relevant ministers of the member states, who discuss the subjects that are on the EU's agenda. The frequency of the Council's meetings depends on the configuration (see Council configurations at <http://www.consilium.europa.eu>). While the ministers in the Foreign Affairs Council, dealing with the EU's external action, or the Ecofin Council, responsible for all economic and financial affairs, usually meet once a month, other issues require less frequency.

Energy issues are dealt with primarily in the Transport, Telecommunications and Energy Council (TTE), established in 2002, and meets approximately every two months. Consisting in its different configurations of the relevant member state ministers, it debates and, indeed, represents the EU's main goals in transport, telecommunications, and energy policy. These goals are explicitly defined as establishing 'modern, competitive and efficient markets and infrastructure, and to create trans-European transport, communications and energy networks' (Council 2015), which should contribute 'to the smooth operation of the internal market and to strengthening economic and social cohesion' (EP/Council 2010c). The TTE's bailiwick places it amidst all three dimensions of the energy policy. As far as its energy policy component is concerned, the Council promotes five goals: energy supply security for all EU consumers at affordable prices, energy efficiency, fair competition in the internal market, the peaceful use of nuclear energy, and environmental protection. One example of this is a recent directive adopted by the

Council that concerned environmental protection. This directive on the safety of offshore oil and gas operations (2013/30/EU) aimed at minimizing the consequences of accidents on the marine and coastal environment (EP/Council 2013). It lists safety standards' criteria for offshore oil and gas drilling, particularly in the light of the May 2010 Deepwater Horizon oil spill in the Gulf of Mexico, and sets rules whereby if offshore producers fail to apply the standards, no further licences will be issued, or worse, the company in question will face penalties ultimately resulting in the loss of their existing licences. The TTE adopted the act on 6 June 2013 after the European Parliament's first reading.

Before the TTE either discusses or decides upon matters on its agenda, proposals are run through preparatory bodies known as working parties (sometimes referred to as working groups). These committees 'may be set up, or with the approval of Coreper, with a view to carrying out certain preparatory work or studies defined in advance' (Council 2009b: 13).

Directive 2009/28/EC (Article 17(2)–(6)) set the criteria for biofuels (and bioliquids) in order to ensure sustainable production (European Commission 2012b). The sustainability criteria identified by the TTE were quite specific about emissions savings from the use of biofuels and bioliquids (35% to start with and 60% by January 2018), as well as putting a curb on what type of land could be used for biofuel crops; specifically noting that such fuels 'shall not be made from raw material obtained from land with high biodiversity value' (EP/Council 2009d). The European Council's Atomic Questions Group (AQG) set up another committee, the Working Party on Nuclear Safety (WPNS), at the end of 2000 to evaluate nuclear safety standards in candidate countries in the context of enlargement. That Committee made a 'technical evaluation of the information made available to date (1/05/02)' and found that the 'Candidates Countries are clearly committed to fulfil the recommendations set out in a report on nuclear safety (Council 2001), both for NPP and other types of installations' (Council 2002: 5). The cases above are indicative examples of how important the Council's committees are in terms of defining the technical details, targets, and wording of key energy legislation, a role that should not be underestimated in such a complex and diverse policy field.

Three other working parties bear mention here due to their noticeable influence or nominal ranking, if not lack of transparency. There are two important working parties responsible for financial

outlays: the Budget Committee, which approves financial allocations together with the EP, and the Working Party on Tax Questions, which decides on energy-related taxation. As influential as both are with regard to the traditional power of the purse and the always thorny tax question, there is one working party that can easily be considered the TTE's most important for energy matters: the High-level Working Party on Energy, which also appears under the simple name Working Party on Energy, depending logically on its configuration (Council 2014). Widely considered to be one of the most influential working groups, it is also one of the least documented energy specific, because its meetings are generally off the public's radar. It consists of national experts from related industries in the 28 member states, who represent their interests and prepare technical dossiers to the ministerial level, which then holds exclusive authority to make legally binding decisions. In early 2015, the Council embarked on a discussion of priorities for Europe's energy infrastructure, a move that was in line with the European Council's agreement on setting up an Energy Union and the Commission's recommendations after the gas stress tests.

### **The European Parliament**

The European Parliament's relevance in the decision-making process increased substantially following the 1993 introduction of the co-decision procedure (see Maastricht Treaty). The Lisbon Treaty subsequently solidified its role as a primary actor in EU energy policy by providing an upgraded version of the procedure, known as the *ordinary legislative procedure*, which gives the EP the same weight as the Council in the policy process. These changes have had a real impact on EU energy policy.

Most of the EU's daily work on energy policy is done in the Committees of the European Parliament (a complete list can be found on its website, [www.europarl.europa.eu](http://www.europarl.europa.eu)). The most decisive ones are the Committee on Foreign Affairs, the Committee on Industry, Research and Energy, and the Committee on Environment, Public Health and Food Safety, all of which are Standing Committees. Where necessary, committees must resolve differences before legislation can move forward, a representative feature of the EP's expanded role in EU energy policymaking. For example, in order to pass the legislation on measures to reduce CO<sub>2</sub> emissions from cars to a binding target of an average 130 g CO<sub>2</sub>/km by 2012,

as proposed by the Commission in December 2007 (European Commission 2007k), the Environment and Industry Committees had to overcome contrasting views before the European Parliament could agree on a common position. The debate was an old one. Passenger car emissions had been a subject of EU concern since 1995, when they were emitting 186 g CO<sub>2</sub>/km on average (European Commission 1995b). While the Industry Committee opted for less strict regulations for emission performance standards, the Environment Committee favoured a 120 g CO<sub>2</sub>/km target for passenger cars (ten Brink 2010). Ultimately, the European Parliament approved the text of the legislation, but the debate took almost a year (EP/Council 2009e).

Another case occurred in January 2014, when MEPs gave mixed responses to the Commission's proposals for measures on how to tackle climate change. Although the MEPs of the Environment and the Industry Committees in general 'backed a 40% cut in CO<sub>2</sub> emissions, a 30% target for renewable energy and a 40% target for energy efficiency for the period to 2030' (European Parliament 2014a), individual opinions on the effects of the proposals diverged. For example, the Chairman of the Environment Committee, Matthias Groote, said, 'Apart from the 40% greenhouse gas reduction goal, these targets still fall short of what is needed [...]' and the co-rapporteur for the Industry Committee, Konrad Szymanski, critically claimed that 'increasing the binding target for energy from renewables to 27% does not take into account the electricity price impact of this policy' (ibid: 1). Such lively debate at the Committee level is a common feature of energy policymaking in the EU, one that is indicative of the EP's growing importance in both formulating policy as well as providing the basis for sceptical oversight.

In addition to these standing committees, the EP on occasion sets up temporary committees. In March 2007, for example, it set up the Temporary Committee on Climate Change (TCCC) to develop scenarios on how to design the EU's future climate change policy and demonstrate the EP's seriousness about tackling the challenges imposed by global warming (European Parliament 2008). The TCCC initially had a one-year mandate, but in February 2008, its mandate was extended for another nine months.

Another type of relevant EP body is the parliamentary intergroup (PI), which constitutes an important, albeit informal, forum for exchanges between parliamentarians and civil society. The Conference of Presidents set the rules governing the establishment of

intergroups in 1999 (European Parliament 1999). Such bodies complement the work of committees. For example, the European Parliament Intergroup on Climate Change, Biodiversity and Sustainable Development provides a forum for the MEPs to discuss current energy policy and climate change developments and jointly develop strategies. Different political groups support the intergroups, which include members from all political colours and parliamentary committees. As parliamentary intergroups are not formal parliamentary bodies, positions issued by an intergroup do not express the opinion of the European Parliament. Indeed, according to the Rules of Procedure for the 7th parliamentary term (2009–2014), ‘such groupings may not engage in any activities which might result in confusion with the official activities of Parliament or of its bodies’ (European Parliament 2014: 28, Rule 32). For a complete list of current intergroups, see the EP’s website ([www.europarl.europa.eu](http://www.europarl.europa.eu)).

### **Court of Justice of the European Union**

At the EU level, the Court of Justice of the European Union (CJEU) is another decisive player in EU energy policy, particularly with regard to the establishment of the internal energy market. For example, in 1994, the CJEU defined electricity as a ‘good within the meaning of Article 30 of the Treaty’ (C-393/92) and, in so doing, enabled its integration into the internal market regime. The same applied to gas.

More recent cases concerning the internal market deal with Bulgaria’s violation of the gas transmission regulation (C-198/12), action brought by the Commission against Poland over the prohibited regulation of gas prices (C-36/14), as well as preliminary rulings over unilateral gas price adjustments in Germany (C-92/11; see also C-359/11 and C-400/11), and the unbundling of gas distribution system operators in the Netherlands (joint cases C-105/12 to C-107/12). The Court also delivered important controversial rulings concerning renewables, such as *Alands Vindkraft vs. Energimyndigheten* (C-573/12), which confirmed the right of the member states to subsidize renewable energy sources in accordance with national regulations. With this ruling, the Court allows 28 different subsidy schemes for renewables, which is in contention with the objective of a EU-wide integrated electricity market. However, current EU law justifies this restriction in the application

of the internal market rules because the EU has not yet harmonized national support schemes for green electricity, which results, for example, in green electricity producers in Germany being unable to receive subsidies for electricity they sell in France. This restricts one of the four fundamental freedoms of European integration, namely the free movement of goods. Other cases concern the energy performance of buildings, Directive 2002/91/EC (European Parliament and Council of the European Union 2002), (e.g. C-329/14 and C-302/14), energy labelling, Directive 2010/30/EU (e.g. C-319/13 and C-609/12), and the international application of the ETS (see Chapter 6, Section “Case study: The EU emissions trading regime”).

The CJEU is also involved in the interface between the state and the market (Schmidt 2003) where it deals with the question of the extent to which the member states are allowed to confer privileges to companies that provide services of general interest and, in this way, act beyond the limits of competition law (Weiß 2003). Contrasting views exist on this point because the guidelines in the TFEU (Article 106, Paragraph 2) are rather vaguely formulated. This latter point is of special importance for the Commission, which seeks to minimize the regulatory competences of the member states while the member states tend to apply a broad interpretation of EU law.

One might think that the CJEU and Commission are natural allies. However, while the CJEU initially supported the Commission on many issues, the Court is increasingly granting the member states more rights when it comes to the provision of common goods, particularly since the 1990s. This tendency is reflected in its *PreussenElektra* judgment of 13 March 2001 (C-379/98) concerning the compatibility of the German support scheme for national renewable energy. However, the Court issued a somewhat contradictory decision a little over a week later (21 March 2013) on a case concerning the transparency of gas price increases for consumers. In this case, the CJEU decided that it was up to the court at the national level to determine in each individual case whether the contractual terms used by a company (Germany’s RWE in this case) comply with the generally acknowledged requirements of good faith, balance, and transparency. The consumer association for North Rhine-Westphalia (*Verbraucherzentrale Nordrhein-Westfalen*) challenged the use of an allegedly unfair term in contracts with special consumers, by which the RWE reserved the right to unilaterally adjust gas prices. Based on its contractual terms, RWE

increased those prices on four occasions between July 2003 and October 2005. In its decision, the Court found ‘that the EU legislature recognised that, in the context of contracts of indefinite duration such as contracts for the supply of gas, the supplying undertaking has a legitimate interest in altering the charges for its service’ and ‘points out that ultimately it is not for it but for the national court to determine in each individual case whether that is so’. (Court of Justice of the European Union 2013: 2).

### **Transnational NGOs, lobby groups, and informal fora**

Another body of actors play a less formal, but no less important, role in developing and implementing EU energy policy. These include transnational non-governmental actors (TNGOs), peak environmental and economic associations (and lobby groups), and informal fora, each of which provide a bottom-up means for EU stakeholders to frame and influence policy debates and outcomes.

Transnational (often EU-wide) non-governmental actors influence the policy process not only after the Commission presents a proposal for further discussion but also, and most importantly, during the implementation phase. Here one has to differentiate between the largest and best financed groups, such as the large environmental and economic associations and those that are rather fragmented and less equipped with financial and human resources. Furthermore, many well-resourced, multinational companies have established their own office in Brussels, which is often done concurrent to membership in various associations and, thus, allows direct participation in the daily activities of EU policymaking, ensuring that their specific views are taken into account in an efficient and timely manner.

Interest groups can pursue different strategies to influence decision-makers depending on the amount of capital they can invest in lobbying. For example, large companies are usually members of sectoral, national, and European associations, which serves to fulfil two distinct functions. First, associations educate their members by monitoring the (legislative) developments at the EU level and communicating their findings to their members. Second, associations lobby policymakers in the interests of their constituencies by submitting positions summarizing their members’ common views and/or articulating their positions in personal meetings with the

representatives of the EU institutions. Highlighting common interests, giving recommendations for further action, and following a long line of well-practised traditions, they are often successful.

The biofuels sector provides a good example of non-governmental influence in EU energy policy. Associations and companies representing the industry’s interests were very active in lobbying the Commission’s October 2012 draft law on the future of first-generation biofuels (European Commission 2012b). The fuels involved were often criticized for being pollution-intensive and for displacing food crops in developing countries, including sugar cane and corn ethanol, and oilseed rape and palm oil biodiesel, among others. This problem is also known as indirect land-use change (ILUC), which can be understood as the net carbon loss from the clearance of forests and grasslands for necessary new food production as a result of biofuel cultivation. Already in 2008, the International Energy Agency (IEA) raised concerns regarding the implications of the production of these biofuels for the environment and malnutrition in developing countries. Accordingly, ethanol and biodiesel production were assumed to have negative impacts on food security and food prices, scarce water resources, deforestation, and biodiversity (IEA 2008: 6). In an attempt to overcome the opposition against them, the biofuels industry at one point sent ‘three mails an hour, many containing catastrophic warnings’ in order to make sure that the Commission took their interests into account (Euractiv 2013). While under the email barrage, the Commission began considering the production of second-generation biofuels, thinking that their development would be more promising, if not less problematic, even though it is generally considered unlikely that second-generation biofuels will be produced commercially before 2015 (e.g. those derived from cellulosic materials such as biomass to liquid (BtL) and cellulosic ethanol (IEA 2008: 33)). In the end, the EU imposed a 5% cap on the amount of first-generation biofuels in the EU’s 2020 transport mix and imposed a 60% greenhouse gas-saving threshold starting in July 2014, but did not include feedstock-specific values – a small, but important victory for the industry.

In order to make the European decision-making process more transparent with regard to the actors who are influencing the EU institutions and the particular interests they pursue, various attempts have been made to set up lobbying registers. In 2001, the Commission issued a White Paper on European governance that

emphasized a number of core principles as essential for more democratic governance. In it, the Commission wrote:

Roles in the legislative and executive processes need to be clearer. Each of the EU Institutions must explain and take responsibility for what it does in Europe. But there is also a need for greater clarity and responsibility from Member States and all those involved in developing and implementing EU policy at whatever level. (European Commission 2001b: 10)

The European Parliament and the European Commission established a transparency register in 2011 that lists organizations and self-employed individuals engaged in EU policymaking and policy implementation (EP/European Commission 2011). In May 2015, it listed 7,295 registrants (EP/European Commission 2015). By registering, organizations and individuals indicate that they are interested in contributing to the EU decision-making process and, thereby, follow a certain code of conduct (EP/European Commission 2014).

Companies and associations often coordinate their action with others and form coalitions in order to benefit from synergy effects. In so doing, they also follow the advice of the European Parliament to 'Work with others – look for allies!' This recommendation was clearly expressed in a document published on lobbying tactics at the EU level with the argument that 'officials, parliamentarians and Members of the Economic and Social Committee and Committee of the Regions get very frustrated when more than one pressure group says more or less the same thing but in different words', efforts that lead 'to horrible confusion' (European Parliament 2003: 22).

When actors do decide to coordinate their activities and cooperate, these coalitions can be of an informal, semiformal or formal nature (Kreutler 2014). Informal coalitions are usually based on common short-term interests and aim at influencing the political decision on a specific policy issue. For example, European associations representing the aviation industry created several informal ad-hoc coalitions in response to attempts to include aviation in the EU-ETS. Importantly, it is often the case that such coalitions, which usually publish joint position papers or reports, neither have a name or letterhead, nor a spokesperson or an administrative body to coordinate the work between their members.

Semiformal coalitions form to influence multiple political decisions on different topics. In contrast to informal arrangements,

such a coalition has a name that emphasizes its members' common concerns, but no common administrative body. An example of this is the Alliance of Energy Intensive Industries – the name, of course, implying a certain degree of formality. Nevertheless, this particular coalition neither set up a website nor designed a specific letterhead, lacked an administrative body to coordinate the work between its members, and did not identify a spokesperson that is allowed to speak on its behalf. Indeed, the Alliance of Energy Intensive Industries cannot even be found in the aforementioned transparency register. Working on an 'apparent-as-needed' basis, the coalition seems to form in various constellations at various points in time, based on the policy under discussion, such as during the political negotiations about the EU-ETS or the creation of an internal energy market (European Alliance of Energy Intensive Industries 2004, 2006, 2007).

In contrast to their informal and semiformal siblings, formal coalitions are characterized by their formal structures, most notably an established administrative body to coordinate the joint efforts of its members. Formal coalitions are not merely based on specific short- or long-term interests. Its members frequently share and support a common set of norms and thus collaborate on a broader norm-based agenda. A good example is Green 10, a formal coalition of ten large European environmental NGOs including, among others, Greenpeace and International Friends of Nature (IFN), that has actively and successfully cooperated over years on issues as diverse as the inclusion of the aviation industry in the EU-ETS (Green 10 2005: 1), emissions from light duty vehicles (Green 10 2007), and the European Commission's general performance in meeting environmental challenges (Green 10 2009). Logically, such coalitions usually have a profile in the transparency register.

### **National regulatory authorities**

At the national level, national regulatory authorities constitute another group of important actors in EU energy policy. National regulatory authorities (NRAs) are public bodies that are independent of both industry and government, have statutory authority under EU law, and operate in every member state. As NRAs are responsible for implementing rules for their respective energy markets in line with EU regulations, this particular group of actors plays an essential role with regard to the EU's internal energy market.



EU law obliges the member states to establish independent national regulatory bodies (NRAs) in order to ensure fair competition within the market (Pollak et al. 2010). Early rules on NRAs set out in the first two legislative packages of 1996/98 and 2003 were quite vague concerning structure and responsibilities and, thus, there were large differences between their competences and levels of cooperation. The third legislative package of 2009, though, corrected these problems and strengthened cooperation between them. The Commission had established the European Regulators' Group for Electricity and Gas (ERGEG) in 2003 to advise it on internal energy market issues (European Commission 2003). This was then succeeded by the Agency for the Cooperation of Energy Regulators (ACER) in July 2011, as part of the operationalization of the third legislative package (2009), in order to further coordinate and intensify the dialogue between the national bodies and overcome divergent positions between the stakeholders, which impede the integration of the markets. ACER emphasizes some of these challenges vis-à-vis the internal energy market by noting:

The EU aims to fully integrate national energy markets by 2014, to give consumers and businesses more and better products and services, more competition, and more secure supplies. Progress has already been made: consumers can switch suppliers for gas and electricity, and suppliers must provide clear explanations of terms and conditions. Work still to be done includes aligning national market and network operation rules for gas and electricity as well as making cross-border investment in energy infrastructure easier. (ACER 2014)

Like the ERGEG before it, ACER advises the Commission on internal energy market issues, but has permanent staff and experts seconded by national regulatory authorities for energy, which was something the ERGEG lacked. Similar to its predecessor, however, it has a Board of Regulators, consisting of senior representatives of each NRA plus one non-voting representative of the European Commission. Observers regularly join their meetings, including the heads of NRAs from candidate countries as well as those from countries belonging to the European Economic Area (EEA).

The structure and functions of ACER overlap with those of the Council of European Energy Regulators (CEER), and the two share similar objectives. However, ACER is a formal EU agency funded

by the EU, whereas the CEER is organized on the basis of voluntary cooperation between national regulatory authorities. The latter, which positions itself as the voice of Europe's national regulators of electricity and gas at EU and international level, aims to facilitate 'the creation of a single, competitive, efficient and sustainable EU internal energy market that works in the public interest' (CEER 2014).

Two additional, although less formal, fora for information exchange require mentioning. The first is the Electricity Regulatory Forum (also known as the Florence Forum) and the second is the Madrid Forum on Gas. The former was established in 1998 to facilitate the discussions on the internal electricity market. Its participants range from member-state governments, national regulatory authorities, and representatives from the Commission, to TSOs, electricity traders, consumers, network users, and power exchanges (Florence Forum 2015). As of 2013, the forum was focusing on questions about the cross-border trade of electricity. The Gas Regulatory Forum (Madrid Forum) was initiated in 1999 to serve as a platform for information exchange concerning the gas market. Similar to the developments in the Florence Forum, the Madrid Forum was addressing the cross-border trade of gas in late 2013. In its conclusions of October 2013, the forum emphasized the critical role of gas in the light of current decarbonization tendencies and recognized 'the difficulties to deliver the expected benefits in current market conditions and inter-fuel competition dynamics' (Madrid Forum 2013: 1).

### **Case study: The EU's eco-design directive**

The preceding discussion provided an overview of the main actors and actor-types active within the EU's energy policymaking process. Member-state governments directly affect policy through the Council, in its various configurations, and the European Council. European citizens are represented through the European Parliament. Embodying the collective interests of the Union, the Commission is the sole initiator of any legislation, and the Court of Justice of the European Union, through its decisions and rulings, acts to ensure the integrity of the Union's legal principles. On the surface, most EU policymaking appears to be an output of their interaction. Yet, much more is happening beneath the surface; not only in terms of the roles played by industry associations and other special interest

groups but also within and between the Council configurations and Directorate-Generals of the Commission.

Understood in all its complexity, the interaction within and between the EU's core policymaking institutions and other interest-focused players at the national and European levels is just as important in shaping policy outcomes as the ordinary legislative procedure. One good example of this process is the almost two-decade long pursuit and refinement of the EU's eco-design directive. That directive aimed at reducing the environmental impact and energy consumption of energy-using products, including electrical appliances, throughout their entire life cycle (EP/Council 2005a) and later all energy-related products (EP/Council 2009j).

Examining the EU's eco-design directive in general, and its original focus on light bulbs in particular, provides a good example of the complex set of actors and interactions involved in the EU's energy policymaking process. Examining it also allows us to see how simplistic notions about energy savings can drive policies and cause policymakers to expend a great deal of political capital on matters that have a lesser impact than expected. Indeed, the Commission's expectations concerning the potential energy savings due to the new light bulb regime may prove to be overly optimistic. Past experience shows that higher energy efficiency does not necessarily lead to energy savings, but rather tends to increase consumption, since higher efficiency impacts the price inversely (i.e. the more efficient an appliance or process, the cheaper it is to use). As we tend to use more of a good or service the cheaper it is, we can observe the paradox effect of falling energy prices leading to more energy consumption, not less – a fact first discovered by W.S. Jevons (2008: 75) in the nineteenth century. This has proven to be a recurring problem in the realm of oil consumption, as increased fuel efficiency standards have offset higher oil prices, leaving overall fuel consumption stable. Nevertheless, lighting accounts for circa 20% of global electrical energy generation (European Commission 2006b), and according to scientific studies referred to in the EU's energy efficiency action plan, high-efficiency LED technology 'could by 2015 save 30% of today's consumption for general lighting and 50% by 2025' (European Commission 2006b). It is no mystery then that EU politicians are attracted by the idea that one could enhance all three pillars of comprehensive energy security by reducing consumption through increased efficiency of electrical appliances.

By the early 2000s, years of economic growth noticeably raised the living standards of millions of Europeans, and the concomitant increase in the use of electrical appliances was taking up a growing share of overall energy consumption. Recognizing the growing problem and seeing an opportunity to reel in runaway growth in electricity demand, the Commission moved beyond the well-known labelling (and grading) of electrical appliances, originally set up in the 1990s, and set its sights on increasing overall energy by removing the least efficient products from the market, focusing specifically on lamps.

The resulting eco-design directive of 2005 was controversial before and after its passing. Due to the diverse set of interests that were affected, EU policymakers compromised, allowing self-imposed measures by the respective industries, which in turn sparked harsh criticism from various stakeholders, one of whom called it 'an invitation to cheat' (Euractiv 2005). Faced with implementation problems, the Commission added two additional regulations in early 2009, establishing a gradual timetable for the phaseout of specific light bulbs (e.g. conventional incandescent and halogen bulbs) from the market by late 2012 (European Commission 2009, 2009b-c), later postponed to September 2018 (European Commission 2015). Since then, the Commission has passed no less than 13 different directives to implement the eco-design directive, covering a wide range of products from dishwashers to water heaters and dryers, and in 2010, the EU passed an updated directive (2010/30/EC) on energy labelling and its implementation measures (EP/Council 2010).

The number of actors involved in formulating the original directive is indicative of the complex and integrative nature of the process. Within the Commission, both the DG Energy and DG Enterprise and Industry played important roles because each oversaw a different set of related products. The initial thrust in the 1990s on energy efficiency in private households, industry, and the service sectors came from DG Energy. The formal proposal for a directive to establish eco-design requirements for energy-using products, particularly lamps, came from DG Enterprise and Industry (European Commission 2003a). Two Council configurations, in the form of Transport Telecommunications and Energy on one hand and Competitiveness on the other, also played key roles. The common position it adopted in 2004 set the basis for the EP's response.

Within the European Parliament, the Associated Committee for Environment, Public Health, and Food Safety (ALDE) played a

vital role, leading the way as MEPs called for much stronger measures than proposed by the Commission and approved by the Council. It identified the action required on implementation, design requirements, and market surveillance, adopting 78 amendments in the first reading, a third of which the Commission accepted. During the second reading, ALDE called for the reintroduction of some of those amendments that were originally rejected, a call supported by the Environment Committee (European Parliament 2005). In the end, however, they had to capitulate on many accounts. For a complete account of the legislative actions leading up to the eco-design directive, see the procedure file of the European Parliament's Legislative Observatory (European Parliament 2005a).

All three EU institutions consulted related NGOs, lobby groups, and informal fora across the entire process and received strong responses in favour or against the legislation by different constituencies. NGOs such as the European Environmental Bureau, the World Wide Fund for Nature (WWF), and Greenpeace raised serious objections to the voluntary nature of the original proposal. Conversely, European industry associations such as the European Lamp Companies Federation and the Federation of National Manufacturers Associations for Luminaires and Electrotechnical Components for Luminaires lauded its flexibility (Euractiv 2005).

The passing and implementing of the eco-design directive was one rife with competing interests that struggled to find a balance between competition and the environment. Its case reveals the complexity and depth of the EU's policymaking process. Unfortunately, the jury is still out on its effectiveness. Despite the new regulations, annual household electricity consumption across the EU28 actually increased between 2005 (the year that the eco-design directive was passed) and 2012, although this was noticeably less than the 32% increase observed between 1990 and 2005 (Eurostat 2014o) and the 10% increase that occurred between 2002 and 2012 (Eurostat 2014p). In early 2014, the Commission was still consulting a wide and expanding range of stakeholders about the application of the directive.

### **Concluding remarks**

This chapter explains how various interdependent actors are involved in the development of all three dimensions of EU energy policy. We can identify a series of EU institutional actors, including

supranational institutions such as the Commission, the European Parliament, the Council of the European Union, and the Court of Justice of the European Union (CJEU). We can also identify permanent and temporary preparatory bodies, such as working parties and parliamentary intergroups, and important informal, semiformal, and formal transnational coalitions of non-governmental actors, as well as formal and informal fora and networks. As demonstrated in the discussion of the EU's eco-design directive, beyond the default roster of institutional actors, a changing subset of others, from NGOs and companies to groups of politicians, participate with varying degrees of success depending on the subject matter.

The impact of any of these actors on the outcome of the policy process depends on the level and frequency of their access to decision-makers. Indeed, access is a precondition for influence. Once access is gained, successfully influencing policymakers depends on the extent to which those decision-makers are receptive to specific positions and ideas. Moreover, receptiveness by policymakers is often limited because the EU's institutions do not have the time or human resources to adopt them all. Non-governmental actors in the EU are aware of this and, consequently, place a great deal of emphasis on finding the right venues (i.e. the most receptive) to pursue their interests (Baumgartner and Jones 1991, Princen and Kerremans 2008). Still, an actor's access to these venues does not necessarily equate to its ability to change a policy outcome according to its preferences. Decision-making remains a continually flowing process. As such, it is difficult to say at which point in time, and for what reason, policymakers have taken into account certain concerns or changed their minds, even for decision-makers.