The Governance of EU Energy and Climate Policy in the New Intergovernmentalism Era: Lessons from the Clean Energy for all Europeans Package

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Abstract

The Clean Energy for all Europeans (CEP) package introduced a new governance framework for EU energy and climate policy, marking a shift from top-down technocratic planning and accountability between the European Commission and Member States, to a new relationship based on cooperation and negotiation through integrated National Energy and Climate Plans. The negotiations and outcomes of the package have shown the reluctance of EU countries to increase the level of supranational authority over electricity market design and security of supply. The ambitiousness of the 2030 targets for renewable energy and energy efficiency have also revealed the role of the European Parliament as a climate champion within the EU. The in-depth analysis of the eight directives and regulations and the package as a whole was based on extensive primary research collected in the form of elite semi-structured interviews, making a significant empirical contribution to the academic literature on EU energy and climate policy. The theoretical contribution of this thesis consists of testing the ability of new intergovernmentalism to explain the recent efforts to unify the different strands of EU energy policy under the Energy Union. The findings indicate that while new intergovernmentalism offers some valuable theoretical insights, it ultimately fails to provide a comprehensive and accurate account of the changes brought by the CEP. This thesis suggests that theoretical revision using some alternative concepts, such as that of purposeful opportunism when describing the behaviour of the European Commission, could provide more compelling explanations, but it ultimately argues against the utility of attempts to relaunch theory crafting on European integration, recommending instead a focus on narrower, yet more accurate interpretations. The thesis concludes by highlighting the relevance of its findings for more recent developments such as the European Green Deal, the Fit for 55 package, the Recovery and Resilience Facility, and REPowerEU.

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Author’s Declaration

I declare that this thesis is a presentation of original work and I am the sole author. This work has not previously been presented for an award at this, or any other, University. All sources are acknowledged as References.

1. Introduction

1.1 Context

The purpose of this thesis is to analyse the developments of the European Union (EU) energy and climate policy achieved through the proposal, negotiation, and adoption of the Clean Energy for all Europeans Package (CEP). As part of the Energy Union project, the package consists of eight directives and regulations that brought fundamental changes to the governance of EU climate objectives and reinforced the mechanisms of national control and authority over certain aspects of EU energy policy. In this context, this thesis seeks to analyse why these changes occurred, how they affect the inter-institutional balance and capacity for energy and climate governance at EU-level, and whether these shifts are part of a new period of European integration, as explained by the new intergovernmentalism theory (Bickerton et al., 2015a; 2015b). Given the current negotiations on revising key files on EU energy and climate policy through the 'Fit-for-55' package, the analysis conducted in this thesis can offer valuable insights relevant for the current negotiations.

The CEP was designed to implement the vision of the Energy Union, a highly ambitious EU project which has been deemed "the most significant policy idea that seeks to reform European energy governance, policy and regional cooperation" (Szulecki et al., 2016: 548). Following decades of fragmented evolution through three distinct pillars (the internal energy market, security of supply, and climate change), the Energy Union, represented the most concrete attempt to unify EU energy and climate policy and to reconcile the tensions between national sovereignty and supranational authority in the area (Szulecki et al., 2015: 14). Initially proposed by then Polish prime minister Donald Tusk in 2014, the project was reshaped and launched a few months later by the former president of the European Commission, Jean-Claude Juncker. The project was given a more overtly climate focus and became one of the core priorities of what was considered the first "political" European Commission, given the selection procedure which influenced the appointment of Juncker as president (Nugent and Rhinard, 2019).

The CEP was released by the European Commission (henceforth also the Commission) in 2016 (European Commission, 2016a). The legislative proposals were based on the mandate given by EU heads of state in the European Council conclusions from 2014, which demanded concrete changes to the EU's energy and climate policies to collectively reach a reduction of at least 40% in Greenhouse gas (GHG) emissions by 2030. This would be partly achieved through new EU targets of at least 27% for renewable energy consumed in the EU and improvements of energy efficiency (European Council, 2014: 5). A key difference compared to the existing framework at the time was that all Member States (MS) would contribute to this goal by "balancing considerations of fairness and solidarity" (European

Council, 2014: 1). What this meant in practice was that the compliance mechanism for reaching these renewed objectives would no longer rely on legally binding targets at national level but rather on collective EU efforts. A reliable and transparent governance system would therefore be created to simultaneously provide "the necessary flexibility for Member States and fully respecting their freedom to determine their energy mix" (European Council, 2014: 9). Lastly, the European Council also decided by consensus that further legislation would need to be passed to ensure fully functioning and connected internal electricity markets.[1] The Commission built on these conclusions and introduced additional legislative revisions and generally heightened the level of climate ambition.

The initial political momentum for the Energy Union and the CEP can be traced back to the European Council meeting in Hampton Court in 2005, when a decision for the establishment of a common European energy policy was made (Biesenbender, 2015: 22). Energy policy later became an official area of EU competence, after its introduction in the Lisbon Treaty in 2007. While EU legislation concerning energy matters had been produced in the past, it was based on instruments related to the EU's existing competences, such as competition and environmental policy (Buchan, 2010: 360). Consequently, the EU energy policy framework did not historically evolve as a unitary and cohesive policy area.

The Lisbon Treaty set the legal basis of the EU policymaking process in the field of energy, establishing the "shared ownership" between MS and EU institutions (Braun, 2011: 2). As energy would fall under the Community method of decision-making, this increased the role of the Commission in setting the agenda through the exclusive right of legislative proposal and placed the European Parliament (EP) on equal footing with the Council of the EU (henceforth the Council) as co-legislator.[2] This was followed by a period of increased supranational authority over EU energy policy, a trend which some have claimed to have been reversed with the CEP (Solorio and Bocquillon, 2017; Herranz-Surrallés et al., 2020; Solorio and Jörgens, 2021). According to those views, this reversal was most apparent in the case of renewable energy (Bocquillon and Maltby, 2020), but MS contestation of EU supranational authority has also become more visible on energy efficiency (Dupont, 2020).

According to the Governance Regulation, part of the CEP, the main framework for reaching the collective EU targets would be the integrated National Energy and Climate Plans (NECPs), in which governments have to outline their main energy and climate objectives, alongside the measures that will be used to implement them. In this setting, the Commission is responsible for ensuring that the plans are sufficient for achieving the EU collective targets, but it has no coercive enforcement tools at its

[1] The revision of the EU Emissions Trading Scheme to reflect the higher GHG emissions reduction objectives was also agreed, though this directive, alongside the Effort Sharing Regulation and the Land Use, Land Use Change and Forestry Regulation were revised separately from CEP. The renegotiation of security of supply of gas regulation was also kept separate. The reasons are outlined in Chapter 4.

[2] The Community method is explained in more detail in section 3.2.

disposal, being only capable to issue recommendations. Therefore, this new framework has been labelled as an instrument of "harder soft governance" by some researchers (Schoenefeld and Jordan, 2020: 774), portrayed as representative of a wider trend in European integration of "continuous blurring between hard and soft" governance (Graziano and Halperson, 2016: 5). On the surface-level, the new governance framework appears to soften the way renewable targets are implemented, but the extent to which this is true remains to be seen.

Therefore, this fundamental shift raises some important questions such as: why did this paradigmatic shift occur; how do these changes affect the EU inter-institutional balance; does this new framework represent an effective governance arrangement; how do these developments compare to the changes made by the CEP to the electricity market design? Section 1.4 of this chapter outlines more clearly the research questions that this thesis is seeking to answer.

Before discussing the general theoretical framework and contribution of this thesis, a few mentions need to be made about the term governance, which is used repeatedly throughout this thesis. Governance has been the "keyword" of the Energy Union, referring not just to the formal institutional mechanisms, but also to the informal cooperation across policymaking levels (Szulecki, 2016: 543). While there are many definitions of the concept, in this thesis 'governance' refers to the "forms of interaction between actors who have conflicting objectives, but who are sufficiently independent of each other so that neither can impose a solution to the other and yet sufficiently interdependent so that both would lose if no solution is found" (Schmitter in Ringel and Knodt, 2018: 211).

1.2 Theoretical framework

Besides the empirical contribution that this thesis seeks to make to the academic literature on EU energy and climate policy, it also engages in an attempt to test a relatively novel theory of European integration against the developments of the CEP. The theory of new intergovernmentalism revolves around the observation that since the Maastricht Treaty of 1992, while there have been "no signs of integration fatigue" (Puetter, 2014: 1) and a "seemingly unrelenting expansion" in the scope of the EU competences, this has not been matched by simultaneous changes in the EU constitutional features that would grant further powers to supranational institutions such as the Commission (Bickerton et al., 2015a: 703). Therefore, a veritable "integration paradox" occurs (Puetter, 2014: 4). While MS appear to be willing to expand the areas covered by European integration, they are increasingly reluctant to do so by empowering supranational institutions. MS may occasionally transfer sovereignty to the EU-level, but only under the condition that they would have ultimate control over the decision-making process

(Fabbrini, 2013: 2). National governments have therefore come up with novel means of integrating new policy areas, without having to expand the prerogatives of the Commission (Puetter, 2012: 161).

According to new intergovernmentalism, the focus is now placed on policy deliberation and consensus-seeking within the European Council and the Council, institutions that are inherently intergovernmental in their architecture (Bickerton et al., 2015a; 2015b). Deliberation is understood as the "processes involving reasoned argumentation about policy options" (Puetter, 2012: 165), while consensus represents the preferred decision-making method (Bickerton et al., 2015a: 704). This focus on deliberation is based on the idea that it is increasingly difficult for countries to constantly legitimise EU competences at the domestic level, in the context of a generalised distrust in the EU among European citizens (Bickerton et al., 2015c). Within this setting, the Commission is "not hard-wired to seek an ever-closer union" (Bickerton et al., 2015a: 712). Instead, it is more likely to engage in "strategic entrepreneurship", supporting the deliberative processes and stepping back when faced with a hostile environment (Bickerton et al., 2015b: 31). With a less important role of the Commission, issues of domestic preference formation have effectively become stand-alone inputs in the European integration process, as well as in the day-to-day policymaking activities of the EU (Bickerton et al., 2015a: 714).

Upon superficial inspection, the changes of the CEP appear to fit well with the dynamics explained by the new intergovernmentalism theory of European integration. Cooperation between MS on energy matters at the EU-level is increasing, yet governments have a clear preference for maintaining a high level of control through the Council and the European Council (Bocquillon and Maltby, 2020: 39). European energy policy in the post-Maastricht era, and especially the changes in the governance framework brought by the CEP, reveal two contrasting trends: an ongoing reluctance of MS to transfer competences to the supranational institutions and a growing awareness that increased coordination on energy and climate issues has become necessary.

Previous research shows that day-to-day policymaking in the EU is heavily influenced by MS inputs, as deliberations and consensus have indeed become the guiding norms of the political and governance processes, while the Commission is less hard-wired for seeking an ever-closer Union (Thaler, 2016: 572). These dynamics may have emerged in the aftermath of the economic and financial crisis, as "the contestation of EU authority came fundamentally from concerns with high electricity prices, costly infrastructure investments and the competitiveness of domestic industries" (Solorio and Jörgens, 2020: 88), potentially changing the preference of MS regarding supranational authority on EU energy policy. Upon closer inspection, however, the reality appears to be far more complex. Bocquillon and Maltby (2020) directly challenge the ability of new intergovernmentalism to adequately explains the new governance framework introduced through the CEP, which according to them is explained by the unclear boundaries of energy policy and the unstable and contested distribution of authority. The

findings of this thesis will show that new intergovernmentalism, while offering some useful insights, ultimately fails to explain the recent developments in EU energy and climate policy.

New intergovernmentalism itself has been the object of significant debate and has been criticised for its explanatory abilities (Schimmelfenning, 2015: 727). Consequently, this study goes beyond mere theory testing, providing alternative theoretical explanations. As one of the main failures of new intergovernmentalism comes from its inability to deal with the role of EU institutions and non-state actors more generally, this thesis also looks at concepts and variables from a plethora of other theoretical frameworks, such as institutionalism, neo-functionalism, multi-level governance, new supranationalism and new parliamentarism. The purpose is to provide a clear understanding of the changes and decision-making process on the CEP, by also looking at the preference formation and interests of the Commission, the extent of the influence of the EP, the role of EU agencies, non-governmental, and private actors. Indeed, the Commission appears to have acted more like a purposeful opportunist (Camisão and Guimarães, 2017; Cram 1993; Nugent and Rhinard, 2016), making creative use of its powers, "softening up" the ground in advance (Lindberg and Scheingold, 1970), "politicising" or "depoliticising" issues in order to pursue political or apolitical routes in the policy process (Vahl, 1997). Instead of merely waiting for "windows of opportunity", it actually facilitates their appearance (Cram, 1994). Such alternative theoretical explanations are explored in more detail in Chapter 2.

All in all, as new intergovernmentalism represents a relatively novel theory of European integration, comprehensive studies using this framework to explain the developments of the EU's energy policy are sparse. Therefore, this thesis can contribute to filling an important gap in the academic literature. While the founders of new intergovernmentalism (Bickerton et al., 2015a; 2015b) have provided a set of hypotheses for testing the theory, few studies have so far engaged with them more systematically. Chapter 2 operationalises the main hypotheses of new intergovernmentalism and develops alternative hypotheses based on competing theoretical frameworks.

1.3 Why energy (and climate) policy?

Energy policy is a particularly interesting case study for new intergovernmentalism, as it showcases the "protracted struggle over competences between the supranational institutions, Member States, and energy companies driven by business interests" (Schubert et al., 2016: 85). Thus, the interplay between the EU's supranational and intergovernmental institutions in the field of energy policy is highly relevant for investigating new intergovernmentalism's core claims about the role of deliberation and consensus as the basis for policymaking in the EU on one hand, and the increasing scepticism among MS to further empower the Commission (Bickerton et al., 2015a) on the other hand. Energy policy is considered a

"hybrid area" (Herranz-Surrallés et al., 2020), sitting at the junction between new and old policy areas of the EU, showing a unique overlap between intergovernmentalism and supranationalism (Nitoiu, 2015: 547).

Energy policy has itself represented something of a paradox for European integration. Energy has been one of the few policy areas that have been part of the integration process since the founding of the EU (Eckert, 2016: 503). However, its evolution has stalled for decades, becoming considered "the most spectacular failure of the process of integration" (George, 1991: 116). The history of the development of the field is mostly about overcoming the high reluctance that national governments have shown towards integrating their domestic energy policies. The effect of this unwillingness was reinforced by the barriers associated with the highly different structure of the energy markets and policy frameworks across European countries (Spaak, 1973: 35). This led to divergent preferences between MSs about the direction in which EU energy policy should be heading. The conflict between the interests of different MS is multifaceted, having both internal and external dimensions (Schubert et al., 2016: 15). On one hand energy policy has been viewed as a matter of provision of public services in the form of affordable gas and electricity to citizens, while on the other hand energy lies in the crucial arena of international politics when it comes to ensuring the security of supply and mitigating climate change. Moreover, by the very nature of the field, unilateral decisions taken by one country have profound implications for its neighbours and the EU as a whole. Therefore, energy policy represents a unique mix of internal and external politics.

While Member States have traditionally dominated this field when it comes to decision-making, more recently, some scholars have pointed to a "hesitant supranational turn" in the energy policymaking process of the EU over the past two decades (Wettestad et al., 2012). Officially becoming an area of EU competences after the Treaty of Lisbon, it has since developed into "a fully-fledged policy field" (Tosun et al., 2015: 5). The unconventional development of this policy area is particularly interesting for testing the dynamics of new intergovernmentalism, as "EU energy and climate policy comprises a variety of policy modes including intergovernmental, supranational as well as new or experimentalist forms of decision-making" (Slominski, 2016: 344).

New intergovernmentalists themselves state that some of the most interesting areas to test their theory on exhibit a mix of Community method competences and intergovernmental policymaking (Bickerton et al., 2015d: 317). While in the older policy areas the Community method is deeply rooted, the newer policy areas are dominated by intergovernmental forms of cooperation. However, it is unlikely that even the older policy areas have not been touched by the political economy shifts of the post-Maastricht era (Bickerton et al., 2015d: 316-317). This is why there have already been some attempts to use new

intergovernmentalism to explain key developments in EU energy policy, with varying degree of success (Thaler, 2016; Boquillon and Maltby, 2019).

Therefore, energy policy has long "occupied a remote place in the European integration literature", in part because of its enduring state-centric policymaking and its inability to develop into a "fully fledged and coherent Common Energy Policy" (Solorio, 2011: 396). However, the convoluted history of the integration of EU energy policy makes it particularly puzzling, as it has both been part of the 'nucleus' of European integration, but "there have also been entire decades of missed opportunities to shift towards the supranational level" (Eckert, 2016: 503). The recent alleged reversal in supranational authority over EU energy and climate governance, makes the CEP an even more puzzling case study.

Throughout this thesis, the term energy policy refers to "all forms of intervention in the production, distribution and consumption of all energy sources" (Pointvogl, 2009: 5705). Other researchers have also noted the "unclear" boundaries of EU energy policy, which often overlap with those of climate policy (Bocquillon and Maltby, 2020: 40). Therefore, the terms 'energy policy' and 'energy and climate policy' are used largely interchangeably in this thesis. It should be noted however, that EU climate policy also covers areas not directly linked to the energy field, such as the regulation of GHG emissions stemming from land use, agriculture, or forestry. Thus, the term 'energy and climate policy' when used in this thesis only refers to the elements of EU climate policy that directly touch on energy consumption. More details about the climate dimension of EU energy policy and its overlaps with EU environmental policies are given in Chapter 3.

1.4 Research questions

Based on all these considerations, the main research questions of this thesis can be summarised as follows:

Q1: How has the Clean Energy for all Europeans Package changed the governance of EU energy and climate policy?

Q1a: What were the main drivers of these changes?

Q1b: How have these changes affected the inter-institutional balance at the EU-level?

Q2: Can the theory of new intergovernmentalism explain the policy and institutional outcomes of the Clean Energy for all Europeans Package?

Q2a: Are alternative explanations more suitable for explaining these outcomes?

Q2b: Can new intergovernmentalism be revised to increase its explanatory power, without fundamentally affecting its inner coherence?

Based on the findings of this thesis, the CEP represents a unique attempt to simultaneously revise legislation related to all the three main pillars of EU energy policy, but given the historic fragmentation of this field, the results were highly diverse. The electricity market design has suffered only minor modifications, while the governance framework for implementing the EU's climate objectives has seen a substantial transformation away from legally binding renewable targets at national level, to a new system that relies on planning and reporting, which has the Commission as its political centrepiece. MS exerted close control over legislation on the internal energy market and security of supply, which they perceived as more important to their national interests. Meanwhile, the Commission and the EP had an influential role in increasing the overall level of climate ambition of the package.

New intergovernmentalism offered multiple valuable insights for understanding recent developments in EU energy and climate policy, but it ultimately failed to provide a sufficiently comprehensive and accurate account of the policy and institutional outcomes of the CEP. Alternative theoretical explanations can increase the explanatory power, but they cannot be used to revise new intergovernmentalism in a way that allows the theory to remain internally consistent and coherent with its state-centric analytical approach. Therefore, this thesis argues against the utility of attempts to relaunch theory crafting on European integration, recommending instead a focus on narrower, yet more accurate explanations of recent EU developments, which could be partly derived from key insights of new intergovernmentalism.

1.5 Methodology and research design

This section explains the research design and methodology that will be used for answering the research questions of this thesis. The research design represents a plan of "how we expect to use our evidence to make inferences" (King et al., 1994: 118). It has the key role of providing "the framework for the collection and analysis of data according to the priorities set by the researcher" (Burnham, 2004: 30).

This thesis starts from the main hypotheses of new intergovernmentalism (Bickerton et al., 2015a; 2015b), which it seeks to better operationalise. Given the fact that the original framing of the six main hypotheses of new intergovernmentalism makes them difficult to test, a new set of secondary hypotheses is developed, in a way that does not alter the core aspects of the theory. Moreover, to provide

a more comprehensive theoretical toolkit for explaining the adoption and implications that the CEP has for EU energy policy, another set of alternative hypotheses is created, derived from competing theoretical frameworks. Chapter 2 explains the highly diverse variables that the thesis analyses, offering more concrete operationalisations and theoretical expectations, where possible.

The validity of the hypotheses is then tested empirically through an in-depth analysis of the CEP. While the greater historical context of EU energy policy is also discussed, the main timeframe of the analysis is 2014-2019, a period in which the main political objectives of the legislative reforms were outlined, the package was designed and proposed, the files were negotiated, and the legislative acts were finally adopted and published in the Official Journal of the European Union.

The policymaking dynamics were different in each of the eight files, but a general division appears to emerge between two parts of the package, with direct implications on the validity of the hypotheses of new intergovernmentalism. Consequently, for the empirical analysis, the directives and regulations are grouped into two distinct analytical categories: (1) the Energy and Climate Governance (ECG) files, consisting of the Regulation on the Governance of the Energy Union, the recast Renewable Energy Directive, the revised Energy Efficiency Directive and the revised Energy Performance in Buildings Directive, and (2) the New Electricity Market Design (NEMD) files, consisting of the recast Electricity Directive, the recast Electricity Regulation, the Risk-preparedness Regulation and the ACER Regulation.

The methodology relies mainly on a qualitative approach informed by extensive documentary analysis triangulated with primary data and secondary sources. Qualitative approaches gather "information in depth but from a relatively small number of cases" (Burnham et al., 2004: 31). The focus on a single legislative package could be considered an instance of an intensive case study analysis, which have proven "indispensable" in EU studies given their ability to reveal the causal chain between variables (Haverland, 2008: 68).

The sources of data include secondary literature, primary official documents, news articles, memos, and reports from private and non-governmental actors. In qualitative research designs, each data source contributes to the general picture (Bryman et al., 2008). Relying on multiple sources of data can constitute a guarantee of accuracy and can increase the credibility of the evidence presented. The CEP alone amounts to more than 4,500 pages of legislation and annexes, giving ample details relevant for this analysis. Documentary analysis can be used for any document by "bureaucracy, whether public or private, national or global" (Burnham et al., 2004: 168). However, official statements and documents are insufficient for fully revealing the strategies used by different actors during EU-level negotiations (Pointvogl, 2009: 5704). This is why this analysis is also informed from a plethora of publications by European institutions, national authorities, EU and national agencies, transnational organisations,

environmental NGOs, industrial position papers, think tank policy briefs and reports, academic articles, news articles, and opinion pieces. The wide range of publications analysed offers access to competing perspectives, unique insights, and even divergent interpretations to those of public authorities and official communication channels.

The empirical analysis mainly relies on extensive primary data collected in the form of semi-structured elite interviews. Nine out of ten social science research designs use interviews in their various forms (King, 2004). Interviews help fill in data gaps and other limitations of official documents (Tansey, 2007). They are also an often-used tool in EU studies, given that this form of primary data collection enables "the examination of issues connected to decision-makers' perceptions, a task significantly limited when fully relying only on other types of data, such as official documents or statistics" (Misik, 2016: 70). Moreover, elite interviews can be particularly helpful for providing information on the relationships between actors (Morris, 2009), but they can also prove challenging and require a good level of flexibility and adaptability from the researcher (Lilleker, 2003). The amount of detail and flexibility offered by semi-structured interviews has been shown to be particularly useful for studying EU processes, in which it is generally difficult "to disentangle policy contributions and determine with precision which institution(s) and actor(s) did what and, in so far as they did do something, the extent to which they did it on their own volition and in an autonomous manner" (Nugent and Rhinard, 2016: 1203).

The questions used for participants were amended as the data collection process progressed, focusing on increasingly narrower issues relevant to this thesis. This allowed for the gathering of details usually not included in secondary sources. The limited information in media coverage has been shown to be particularly problematic for EU studies, as press articles tend to predominantly focus on the positions that large Member States adopt during EU-level negotiations (Brutschin, 2015: 197).

While in general "20-30 interviews might be a reasonable target for a project in which elite interviewing was the principal method" (Burnham et al., 2004: 208), the empirical analysis of this thesis is informed by 35 interviews collected over a period of six-months during a research trip in Brussels, hosted by the Centre for European Policy Studies (CEPS). The list of participants includes officials from the Commission, EP, Council of the EU, Permanent Representations to the EU, European industrial associations, environmental NGOs, and journalists. Participants were initially contacted via email, building on the stakeholder network of CEPS, or approached directly at various conferences and events in Brussels. The list of participants was expanded by 'snowballing' on the recommendations from interviewees. Participants were selected based on their position and institutional affiliation, in view of polling multiple perspectives from all levels of the policymaking process. Even if efforts were made to maintain a balance between the different types of institutions and organisations, there may have been a

certain degree of self-selection bias, as some people may be more inclined to participate in interviews than others based on their position and role during the negotiations. A full list of participants can be found in the Annex.

The researcher received ethical clearance from the University of York for conducting these interviews. Some of the discussions were recorded and later transcribed, when given permission by the participant. When a participant requested to not record the interview, extensive notes were taken. Each interviewee was offered the possibility of anonymity and to review interview notes. All interviews were conducted in English. The storage of the collected data was carried in accordance with the ethics guidelines of the University of York and with full compliance to the GDPR provisions. The project and its methodology have received the ethics approval from the Economics, Law, Management, Politics and Sociology (ELMPS) Ethics Committee of the university on the 5th of July, 2018. All research was conducted in accordance with the University of York's Code of Practice and Principles of Good Ethical Governance.

For any research design it is important to also acknowledge the inherent methodological limitations. In qualitative approaches, greater "emphasis on depth is at the expense of being able to make generalizations about the phenomenon as a whole" (Burnham, 2004: 31). Therefore, this thesis does not claim that its results are universally representative for all aspects of EU energy and climate policy or European integration, as it is difficult to make generalisations from interviews, given limitations such as subjective perspectivism (Sinopoli, 1994). The limited timeframe of this analysis further contributes to these limitations regarding the generalisations that can be made based on qualitative research designs.

The option of a quantitative methodology was considered for this thesis, either by itself or triangulated with the qualitative analysis. There are important quantitative studies on energy integration in the EU, using for example multi-level logit models with random intercepts (Tosun and Mišić, 2020). However, these are based on imperfect proxies and rely on big assumptions, which ultimately do not allow reaching the level of detail necessary when analysing such an empirically complex case study of EU legislation as that of this thesis. Therefore, in-depth case studies on specific policy discussions are particularly suitable for producing analysis with high empirical relevance (Schmidt, 1996: 5). The rich primary data collected for this thesis offers a comprehensive and accurate picture of the events that are analysed, representing one of the key contributions made to the academic literature.

What could be more problematic is extrapolating theoretical conclusions from such a case- and sectoral-specific approach, which has been a long-standing problem in the field of European integration (Schmidt, 1996: 5). This is why particular attention is given in Chapter 2 on how to best operationalise the theoretical framework for a qualitative research design. Nonetheless, the main theoretical contribution is related to theory testing, and not theoretical revision or building. The analysis highlights

the most useful concepts in the academic literature that can explain the developments related to the CEP.

A quantitative approach, which would have allowed for more insightful theoretical revisions, is more appropriate for research designs with longer timeframes that that of this thesis. The study can, however, corroborate the results of this thesis qualitative analysis with the results of relevant quantitative studies conducted by other researchers, in order to check for consistency and provide more in-depth explanations of their results.

1.6 Overview of the structure of the thesis

This thesis is structured in eight chapters, including the introduction. Having established the context, the empirical setting, the theoretical framework, as well as the methodology, this final section of the introduction gives an overview of the remaining chapters.

The aim of Chapter 2 is to set the theoretical framing of the thesis and to locate it within the academic literature. It begins by looking the traditional theories of European integration such as intergovernmentalism, neo-functionalism, and liberal intergovernmentalism, as well the institutionalist and governance turns in EU studies, before introducing the main theoretical framework of the thesis: new intergovernmentalism. The chapter explores the main concepts and parameters of this theory. It then presents the six hypotheses formulated by Bickerton et al. (2015a; 2015b) and operationalises them by deriving sets of secondary hypotheses which are better designed for empirical testing. As the objective of this thesis is not only to test new intergovernmentalism, but to also offer a credible explanation of the changes brought by the CEP to EU energy and climate policy, an additional set of alternative hypotheses is developed for testing competing ideas about the dynamics of European integration, derived mostly from theories such as new supranationalism and new parliamentarism.

Chapter 3 explains the reason why EU energy and climate policy represents a particularly puzzling area of study and a suitable case study for new intergovernmentalism, highlighting the contribution that the thesis makes to the existing academic research on this topic. The chapter then explores the historical development of EU energy policy by first focusing on the significance that treaty changes had for integration in this area. It then provides a summary of the main legislative developments that have occurred in each of the three pillars of EU energy policy: the internal energy market, security of supply, and climate change. The chapter highlights the fragmented nature of EU energy policy and some key interpretations from the academic literature for these developments. The final section of the chapter

looks at the attempts that have been made to unify this historically fragmented area of EU activity into a common EU energy policy.

Chapter 4 begins by looking at arguably the most concrete and comprehensive attempt so far to create a common EU energy and climate policy – the Energy Union. The chapter makes an incursion into the political context and the main vision of this project, before engaging in the main empirical analysis of the thesis. Therefore, the following section examines the emergence of the CEP as the main instrument for implementing the objectives of the Energy Union. It analyses the general framing and design of the package to highlight one of the principal strategies employed by the 'first political Commission' for advancing the EU energy and climate agenda. Given some key differences between the directives and regulations, the CEP is split into two halves for analytical purposes. The chapter analyses the main differences between the two bundles of legislative acts, highlighting the different dynamics in European integration that they exhibit.

Chapter 5 analyses in turn each of the Energy and Climate Governance (ECG) files. First, it looks at the Governance of the Energy Union Regulation, which establishes the new framework that will be used by MS for implementing climate objectives. Second, the Renewable Energy Directive (RED II) sets the binding EU-level target of 32% renewable energy by 2030, alongside sectoral sub-targets for the transport sector and for biofuels and guidelines on national support schemes for renewable energy and inter-state cooperation on joint renewable projects. Third, the Energy Efficiency Directive (EED) establishes a 32.5% headline EU target for energy efficiency by 2030, the mechanism for mandatory annual energy savings that governments need to achieve, as well as some general provisions on measures for alleviating energy poverty and vulnerable consumers. Fourth, the Energy Performance in Buildings Directive (EPBD) sets construction standards for new buildings, boosts the renovation rate of the EU's existing building stock, and requires MS to submit long-term renovation strategies. The chapter highlights the interinstitutional dynamics between the EU institutions, showing the strategic entrepreneurship of the Commission, the impact that the EP had on increasing the overall level of climate ambition, and the reluctance of the Council towards increasing the supranational authority over national energy and climate policies.

Chapter 6 analyses the New Electricity Market Design (NEMD) files. First, it assesses the Electricity Directive, which revises some of the provisions of the third energy package, detailing the conditions in which MS are allowed to regulate retail prices and guaranteeing grid access for household consumers that produce renewable electricity on site. Second, the Electricity Regulation establishes the roles of the main electricity market participants, restricts the utilisation of capacity mechanisms for remunerating coal-fired power plants, sets the rules for designing electricity bidding zones, and revises the procedures for regional cooperation between transmission system operators. Third, the Risk Preparedness

Regulation introduces the procedures and responsibilities for preventing and managing short-term shortages of electricity supply. Fourth, the ACER Regulation defines the role of the EU agency that coordinates national regulatory agencies, as well as its internal institutional architecture. The chapter shows how MS are significantly more resistant towards transferring authority to the supranational level over issues they perceive to be of strategic importance, such as control over their electricity markets and energy security. It offers an example of how the EP and Commission can be effectively side-lined by negotiations centred on intergovernmental deliberation and consensus-seeking.

Chapter 7 discusses the results of the empirical analysis and its implications for the theoretical framework of this thesis. It starts by evaluating the validity of all secondary and alternative hypotheses developed in Chapter 2, revealing the mixed results for new intergovernmentalism. Once each hypothesis is assessed, the chapter explores the wider implications that the findings have for the theory of new intergovernmentalism, questioning the general utility of such grand theories of European integration that attempt to offer all-encompassing explanations of the EU. The chapter highlights which aspects of new intergovernmentalism may be useful for further research and which require revision. The last section of the chapter discusses the broader implications of the findings for EU energy and climate policy, exploring the changes in the overall governance framework brought by the CEP.

Finally, Chapter 8 summarises the findings of the thesis, giving answers to the main research questions set in the Introduction. It also highlights the potential shortcomings of the analysis and proposes some other potential further areas of research. The results presented in this thesis may be particularly relevant for the more recent developments in EU energy and climate policy, through the European Green Deal and the Fit for 55 Package, as well as the plans proposed by the European Commission for reducing EU dependence on fossil fuel imports, in the wake of the Russian invasion of Ukraine.

2. Theories of European integration and new intergovernmentalism

2.1 Chapter overview

European integration theories seek to explain how the European Union functions, as well as how and why it evolves. While the debates between neo-functionalism and intergovernmentalism have historically dominated the field, over the past two decades newer theories and approaches have emerged, making European integration a "booming field" for European studies, international relations, and political science (Diez and Wiener, 2009: 1).

This chapter begins by exploring the emergence of European integration theories, looking in part at the grand theories that have laid the foundations of this academic field, such as intergovernmentalism, neo-functionalism, and liberal intergovernmentalism. However, these traditional frameworks have come to be increasingly contested for their inability to explain key aspects related to the evolution of the European Union.

Therefore, this chapter then explains the "institutionalist" and "governance" turns in EU studies, which have shifted the focus from trying to elaborate overarching theories explaining the fundamentals of European integration, to more applied concepts which can offer unique insights on the development of different EU policy areas. The section explores some of the different concepts and variables that are studied by approaches such as rational choice institutionalism, sociological institutionalism, multi-level governance, and experimentalist governance.

The chapter then moves to explain the basics of new intergovernmentalism (Bickerton et al., 2015a; 2015b), which uses some of the key insights from institutionalist and governance studies to attempt a reinvigoration of European integration theories, by proposing a novel framework. The section explains the origins of new intergovernmentalism stemming from empirical observations about the EU's expanding deliberative practices and increasing level of intergovernmental control. The principal paradox that the theory of new intergovernmentalism attempts to resolve is the fact that, since the Maastricht Treaty of 1992, while there appears to be "no signs of integration fatigue" (Puetter, 2014: 1), the "unrelenting expansion" of the EU has occurred without the further empowerment of supranational institutions, such as the Commission. The section explains the premises of new intergovernmentalism, while also exploring alternative explanations for the post-Maastricht developments offered by new supranationalism or new parliamentarism.

When laying the theoretical foundation of new intergovernmentalism, Bickerton et al. (2015a; 2015b) also presented six hypotheses summing up their vision on the mechanics of European integration after 1992. However, these hypotheses have been criticised for being "unconditional, weak or hard to test"

(Schimmelfenning, 2015: 728). Therefore, this chapter then explores each of these hypotheses, breaking down their key concepts and operationalising them in a way that allows empirical testing. New sets of secondary hypotheses are developed for the first four hypotheses of new intergovernmentalism. As hypotheses 5 and 6 are particularly difficult to test and only offer limited explanatory insights, they are not operationalised in the same manner. Instead, their basic premises and applicability to the case study of this thesis will be discussed more broadly in Chapter 7 of this thesis.

As a key objective of this thesis is not only to test the ability of new intergovernmentalism, but to offer a credible explanation for how the changes to EU energy policy brought about by the CEP were adopted, this section also develops alternative hypotheses to those of new intergovernmentalism. These are derived from the competing theoretical approaches explored in the previous sections of this chapter. Following the empirical analysis in Chapters 4, 5, and 6, the validity of these two sets of hypotheses is assessed in Chapter 7.

2.2 The grand theories of European integration: neofunctionalism and intergovernmentalism

The EU can be considered a "sui generis" organisation based on the uniquely different mix of various governance modes and hierarchical structures and networks (Ringel and Knodt, 2018: 211). This is why an entire research field was developed for understanding the process of European integration. According to Andersen and Sitter (2015: 330), European integration theories have generally sought to tackle four fundamental questions about European integration: "what should it cover, how do states give their assent, how much power should the Commission have and what competences should be left at the state level in integrated policy area?".

The first grand theory of European integration emerged from the works of Ernst Haas (1961), who looked at how the spill-over effect led to deeper integration within the European Community. The neofunctionalist theory was mainly designed to account for the incipient phase of European integration, by analysing "how the deliberate merger of economic activity in particular economic sectors across borders could generate wider economic integration" (Rosamond, 2000: 2). Neofunctionalism sought to explain the initial integration of the energy sector through the formation of the European Coal and Steel Community and Euratom, and how these developments would lead to the expansion of European integration to other policy areas. The basic idea was that "[c]onverging economic goals embedded in the bureaucratic, pluralistic, and industrial life of modern Europe" led to integration (Haas, 1968: xix). Through the effect of spill-over, European integration becomes an unstoppable force that would eventually cover all aspects of policymaking. While the integration process started in the technical

realms of "low politics", it would eventually spill-over into the domain of "high politics" (Rosamond, 2000: 51). When it comes to who is the main driver of European integration, neofunctionalism looked at "multiple, diverse, and changing actors" who interact both domestically and internationally (Niemann and Schmitter, 2009: 47). While Haas' work evolved into the first grand theory of European integration, the developments of the EU in the 1960s and 1970s, such as the Luxembourg Crisis (1965) and the creation of the European Council (1974), led to an increasingly important role played by the MS as the main drivers of the EU (Pollack, 2010: 19). This required alternative explanations of the European integration process. Therefore, neofunctionalism slowly started losing traction, first to intergovernmentalism and later to its more refined version, liberal intergovernmentalism.

Originating in the international relations stream of thought, intergovernmentalism adopts numerous ideas from the theory of realism, mainly stressing the importance of Member States and their interactions at the international stage. The centrality that intergovernmentalism gives to national executives comes in strong contrast with the neofunctionalists who focus on supranational institutions such as the Commission, besides national and transnational interests (Rosamond, 2000: 2). One of the main proponents of intergovernmentalism, Hoffmann (1964), rejected many of the ideas of Haas. While he did not fully deny the relevance of the central concept of the spill-over effect, Hoffman believed that its impact on the process of European integration had been overstated in the neofunctionalist literature. For Hoffmann, it was the distinction between high and low politics that was a crucial driving force. This distinction is based on the interactions between countries within these categories: in the realm of low politics states engage in cooperative activities, while in the domain of high politics, states are unwilling to cede their sovereignty, resisting any spill-over effect (Rosamond, 2000: 79). Another important idea put forward by intergovernmentalism was that of the two-level game, one played at the international stage and another at the domestic level. This was a key idea which brought the study of domestic preferences formation under the spotlight of European integration studies (Bulmer, 1983). According to this idea, the preferences of MS are first developed based on domestic politics and other national considerations, which are later negotiated with other MS at the EU level.

These ideas were further developed and refined by Andrew Moravcsik (1993), who integrated the ideas of liberal institutionalism into those of intergovernmentalism to provide one of the most successful theories of European integration to date in terms of lasting influence on the field. Expanding on the concept of a two-level game, the theory of liberal intergovernmentalism looks at the formation of preferences at the domestic level of the MS and how these preferences later interact at the EU level. The theory is heavily influenced by rational choice ideas of MS behaviour, assuming that national executives undergo cost and benefit analyses in order to establish whether they should further the interdependence between themselves through more integration (Moravcsik, 1993: 480). Meanwhile, the preferences of MS are largely based on "concrete economic interests rather than other general concerns"

(Moravcsik and Schimmelfenning, 2009: 70). As it will be explained later in this section, this is fundamentally different from the assumptions made by new intergovernmentalism about the process of preference formation at the domestic level.

When it comes to the European institutions, for liberal intergovernmentalism the main role that international organisations have is to facilitate the interactions between Member States and to reduce the transaction costs associated with international negotiations (Moravcsik, 1993: 507). In other words, the EU merely represents a platform where it is most convenient for countries to negotiate. Assuming this minimal role for supranational institutions, liberal intergovernmentalism explains policy outcomes as the result of the asymmetrical bargaining power and distribution of information between MS (Leuffen et al., 2013: 45). As national preferences rarely converge, European integration becomes an outcome of an intergovernmental bargaining process, where more powerful countries have a stronger influence on the results. Liberal intergovernmentalism quickly acquired the status of a "baseline theory" of European integration (Moravcsik and Schimmelfenning, 2009: 67) and even regional integration more broadly.

In fact, one of the most important studies on the development of the EU energy policy was conducted using liberal intergovernmentalism. In the seminal work of Matlary (1997), energy policy proved to be an ideal case study for testing the theory. This was mainly because it represents a "field of major and persistent conflict of interest between the Commission, member governments, and interest groups" (Matlary, 1997: 1). In his analysis, Matlary used Putnam's (1988) two-level game model to explain how governments play games at both the domestic and international levels. According to this model, governments are "rational and instrumental actors" whose interests are "discernible and determined prior to negotiations" (Matlary, 1997: 3). The findings of his work indicate that MS preferences and interest groups had a decisive role in the development of the EU's internal energy market.

For example, when it comes to the domestic preference formation in countries such as France and Germany, the gas transmission companies in particular had a very significant impact on the position governments had during negotiations, given their key role in the national economies. Simultaneously, at the EU level, the major energy companies and their federations (Europa for oil, Eurogas for gas, Foratom for nuclear, CEPCEO for coal and Eurelectric for electricity) also represented highly active actors with a strong influence on decision-making. These pan-European federations benefit from great human resources and expertise, which they use to participate in all the stages of the policy-making process. Nonetheless, according to Matlary (1997: 97), their impact on the development of the internal energy market has been somewhat overstated in the literature.

The study concludes that energy has become an increasingly integrated policy area of the EU, especially with the development of the internal market for gas and electricity, but its evolution has been uneven, largely given the enabling or disabling impact of MS. However, at the same time, the Commission's

ability to define the agenda and to create links between formal and informal policy areas has turned into a central piece of the institutional design in the EU energy policymaking process (Matlary, 1997: 13). Consequently, the results of Matlary's analysis question the general validity of a purely state-centric model, which appears to fail to account for the agency and influence of European institutions, in particular the Commission. In addition, MS preferences could not be fully explained solely based on economic considerations. When it comes to the internal energy market, domestic energy sector interests seem to correspond to a country's position at the EU level. However, when it comes to the idea of building a genuine EU common energy policy, it appears that the position of governments in EU-level negotiations is better explained by a mixture of domestic concerns regarding legitimacy and also export interests (Matlary, 1997: 95). These are very intriguing findings which partly motivate the choice to also test alternative hypotheses besides those of new intergovernmentalism.

2.3 The institutionalist and governance turns in European integration

Over the past two decades, an 'institutionalist turn' has been observed in European studies (Hix and Goetz, 2000: 18). The increasing popularity of institutionalist theories among European integration scholars, has produced novel theoretical frameworks such as rational choice institutionalism, sociological institutionalism, and historical institutionalism. New institutionalism is built around the rather vague claim that 'institutions matter' (Rosamond, 2000: 113). In other words, the institutional setup of the EU has direct relevance for the policy and political outcomes of the decision-making process. Basically, institutions act "as intervening variables between actor preferences and policy outputs" (Rosamond, 2000: 114). Context is also highly important, as different EU policy areas have different constellations of institutions and MS interests (Szulecki et al., 2016: 550).

However, while all these frameworks focus on the role of institutions in the European integration process, the three main new institutionalist theories analyse rather different explanatory variables. For rational choice institutionalism, institutions lead to 'structure-induced-equilibrium' (Pollack, 2010). The focus is mainly on formal institutions, which are designed to "impose obligations on self-interested political actors" (Rosamond, 2000: 115). Such studies look at how institutions are important for avoiding stalemate and facilitating interaction (Schneider and Cederman, 1994). In addition, this theory also focuses on the role of veto players in determining the outcomes of integration (Tsebelis, 2002). While rational choice institutionalism relies on a "logic of consequentialism", sociological institutionalism relies on a "logic of appropriateness" (Borzel and Risse, 2003: 58-59). Sociological institutionalism focuses mainly on norms and socialisation as processes that shape MS preferences and behaviour. Therefore, the more informal institutions created through the repeated interaction between

countries have a significant impact on how the decision-making process evolves. Lastly, historical institutionalism uses a wider understanding of institutions, looking at both formal and informal means of interaction between actors (Hall, 1986). This theory analyses the impact that institutional choices have on political outcomes in the long run (Rosamond, 2000: 200). Historical institutionalists look at phenomena such as feedback effects, lock-ins and path-dependence in order to understand the historical trajectory of an EU deeply influenced by the design of its institutions (Pollack, 2009: 136). Applications of these theories in the energy field have mainly looked at the role of the Commission for creating a favourable environment for further integration (Pollak and Slominski, 2011; Schmidt, 2001).

Another significant "turn" in European studies has been that of governance approaches. It has been argued that the traditional theories of European integration, focusing mainly on the "constitutional equilibrium between intergovernmental and supranational institutions" have proven unable to deal with the repeated crises that have affected the EU over the past two decades (Börzel, 2018: 3). As a result, the late 1990s and early 2000s witnessed a shift in interest from European integration theories to approaches focused on governance (Wessels, 2005). This was a result of the "deepening and widening" European integration, as well as the need to account for increasingly heterogenous mechanisms of decision-making (Andersen and Sitter, 2015: 322).

Multi-level governance approaches have become popular especially since the Maastricht Treaty (Stephenson, 2013: 817), being highly influential in sectoral studies (Schmidt, 1996: 9). According to this framework, the state-centricity of European integration theories is less relevant for studies on concrete policymaking instances, being better suited for studying grand bargaining events such as treaty change (Cram, 1994: 197). National governments are becoming less influential in a system dominated by supranational and subnational actors (Pollack, 2005: 3567). Instead, a governance approaches analyse multiple actors and networks at various levels of decision-making (Héritier et al., 1994). As it is "clear" that the EU is best characterised by "multilevel activity", multi-level governance acknowledges the importance of both national and supranational levels, in addition to subnational actors (Peters and Pierre, 2009: 96). Therefore, power is shared between multiple levels in the governance structure, moving away from purely state-centric models (Rosamond, 2000: 201). Moreover, governance has also become a key tool for legitimisation processes for both the EU and the national governments (Peters and Pierre, 2009: 96). Eikeland's (2011) study of the internal energy market provides evidence for the applicability of this theoretical framework in EU energy policy.

Another governance framework that has been applied to energy policy is based on distinguishing on different modes of governance, with first order governance being about the day-to-day policy process, second order governance referring to the structural and institutional setting, while third order governance, or meta-governance referring to the normative dimension that shapes the entire governance

process (Eckert, 2016: 505; Börzel, 2010). "[E]xperimentalist governance" which seeks to understand the new modus operandi of the EU has also been applied to research on EU energy policy (see Sabel and Zeitlin, 2010; Rangoni, 2019). While it acknowledges the presence of EU policymaking features such as deliberation, informal negotiations and multi-level decision-making, experimentalist governance highlights an "underlying architecture of public rulemaking in the EU" and its effect on governance outcomes (Rangoni, 2019: 2). The design of EU's experimentalist architecture starts from jointly agreed framework goals between MS and EU institutions, which are implemented through different approaches by lower regulatory levels, approaches which are then periodically revised following a process of peer review (Rangoni, 2019: 3). This interpretation of the EU policymaking design comes in contrast with more hierarchical understandings of the process. However, Rangoni's (2019) analysis of the governance of EU energy regulation shows that both an experimentalist and hierarchical approach can explain policy outcomes, stressing the importance of looking beyond mere institutional design for more accurately understanding EU policymaking.

Given the success of these new approaches, the traditional grand theories of European integration have started being questioned for their explanatory relevance not just for sectoral developments, but even for EU constitutional changes. The main critique was that the unique historical background applicable to the main empirical focus of those theories, treaty change, made it difficult to make generalisations (Schmidt, 1996: 11). As a result, the use of European integration theories had come under decline.

2.4 The theory of new intergovernmentalism

The discipline of theorising European integration would re-emerge under the "spotlight" of academic research after the turn of the millennia (Bulmer and Joseph, 2016: 726). This development opened up new avenues of research, using evolving and less rigid concepts for understanding the evolution of the EU in general or at sectoral level. These theoretical shifts have also come as a response to the significant changes in the way the European integration project has evolved since the Maastricht Treaty of 1992. Part of this new wave, new intergovernmentalism emerged as a new theory of European integration combining elements of the 'grand' theories of the past with more recent concepts and variables that could potentially offer a more comprehensive and holistic framework for understanding the dynamics and the development of the EU since the Maastricht Treaty.

While claiming a similar statute as the previously dominant theories of European integration, such as neo-functionalism (Haas, 1958), intergovernmentalism (Hoffmann, 1995) and liberal intergovernmentalism (Moravcsik, 1993), there is a fundamental difference when it comes to new intergovernmentalism. The theory seeks to move away from the general understanding of the process

of European integration as the transfer of policy-making powers from the national to the supranational level. While the traditional theoretical accounts differ in their explanations for the reasons behind European integration, they assume a common outcome of further integration: increasing the powers of supranational institutions. However, according to new intergovernmentalism, European integration has captured a new meaning since the Maastricht Treaty. This new period requires not only a reinterpretation of the dynamics that have generated change at the European level, but also a re-evaluation of the outcomes of European integration. These observations do not, however, necessarily point to a slowdown in integration, but rather to a new logic which cannot be accurately explained by traditional theories.

Indeed, since 1992 there have been "no signs of integration fatigue" (Puetter, 2014: 1), with EU activity now covering new areas such as security and defence, justice and home affairs, and even economic and social policy, while its membership having nearly doubled with the recent enlargement rounds. However, this "seemingly unrelenting expansion" in the scope of the EU has not been matched by simultaneous changes in the constitutional features that would grant further powers to the main supranational bodies, the Commission, and the Court of Justice (Bickerton et al., 2015a: 703). Therefore, a veritable "integration paradox" occurs (Puetter, 2014: 4). While MS appear to be willing to expand the areas covered by EU integration, they are increasingly reluctant to do so by empowering supranational institutions. This represents the most significant change in the logic of European integration compared to the past.

However, portraying the post-Maastricht era in a unitary manner can be problematic. Some argue that this period does indeed contain significant intergovernmental elements, yet it is impossible to perfectly categorise as such. Fabbrini (2013) argues that the Maastricht Treaty of 1992 constitutionally institutionalised two distinct logics of decision-making at EU level: one intergovernmental and one supranational. The only condition under which MS allowed for the erosion of their sovereignty was the condition that they would have ultimate control on the decision-making process (Fabbrini, 2013: 2). Therefore, there is a double-problem that new intergovernmentalism needs to explain. Why was the pre-Maastricht period different and is it possible to describe the post-Maastricht period as purely intergovernmental?

Bickerton et al. (2015c) explain that examples of the new intergovernmentalist logic in the pre-Maastricht era do exist, but those are merely isolated events. It is only after 1992 that this logic has become institutionalised. Since Maastricht, while the EU has expanded dramatically in terms of membership and policy areas covered, the constitutional framework has remained unchanged (Bickerton et al., 2015a: 703). The Maastricht Treaty is taken as a starting point because from that moment onwards, the expansion in the reach of EU activity occurred through different legal methods

than the expansion of the traditional Community method (Bickerton et al., 2015a: 705). New intergovernmentalists further add that this is not a mere "temporal deviation", but a new phase in European integration.

In an era of ever-increasing interconnectivity between MS, national governments have come up with novel means of integrating new policy areas, without having to expand the prerogatives of the Commission (Puetter, 2012: 161). Instead, the focus is now placed on policy deliberation within the European Council and the Council, institutions that are inherently intergovernmental in their architecture. In addition, policies are developed and implemented through new means of interstate cooperation such as the Lisbon Process and the Open Method of Coordination (OMC). When it comes to the Commission, in all new policy areas that fall within the scope of EU competences, the supranational institution's power "is either formally or de facto limited, or does not exist at all" (Puetter, 2014: 1). While new intergovernmentalism does not deny the ambitiousness of the Commission, in this new post-Maastricht era it no longer represents the "engine of integration" (Peterson, 2015: 186). Therefore, not only do MS avoid further empowering the supranational body, but the Commission has also adopted a relatively passive and permissive stance towards this.

As this does not appear to be a mere temporary deviation, but a lasting phase of European integration (Bickerton et al., 2015a: 705), a revision of the traditional integration theories was necessary according to these observations. Moreover, by claiming that traditional integration theories fail to account for the more recent dynamics of the EU, new intergovernmentalism seeks to provide an explanation of this new logic of European integration in the post-Maastricht Treaty era, not just from the standpoint of big moments in European integration such as treaty change, but also applicable the day-to-day policymaking activities of the EU.

2.5 A deliberative turn in European integration studies?

New intergovernmentalism goes beyond traditional intergovernmentalist frameworks, by also incorporating in their framework the implications of the general lack of legitimacy and distrust in the EU among European populations (Bickerton et al., 2015c). Perhaps the most fundamental observation of this new theory is that in the post-Maastricht setting, deliberation and consensus have become central to the EU's day-to-day increasingly decentralised decision-making processes (Puetter, 2012: 162). This is a direct response of national actors to the above-mentioned issues. Deliberation is understood as the "processes involving reasoned argumentation about policy options" (Puetter, 2012: 165), while consensus represents the preferred decision-making process (Bickerton et al., 2015a: 704). A key observation that needs to be reiterated is that this observation, as well as most of the dynamics captured

by new intergovernmentalism, are expected to be visible in all policymaking processes at EU-level, and not just to the large changes of European treaties, which tended to be more of the focus of traditional theories of European integration.

This focus on deliberation is based on the idea that it is increasingly difficult for countries to constantly legitimise EU competences at the national level (Puetter, 2012: 163). Consequently, the EU's intergovernmental bodies emerged as the main arenas for governance in the EU, with the European Council and the Council of the EU becoming the powerhouses for policymaking especially in the new areas covered by EU competences. In turn, these developments have a significant impact on the *modus operandi* of EU intergovernmental institutions. Practices based on deliberation and coordination have altered the decision-making practices of the EU's intergovernmental bodies, whose members have not only been meeting more frequently, but have also done this increasingly often in informal types of gatherings (Puetter, 2014: 34).

The attention that new intergovernmentalism gives to deliberation represents and attempt to incorporate some of the developments in the literature on European integration over the past two decades, especially regarding what some have called the "deliberative turn" in European integration studies (Neyer, 2006). In the past, deliberation used to be a "hallmark of supranationalism, being something that eluded the intergovernmentalist schools of thought" (Bickerton at al., 2015a: 704). Consequently, Puetter (2012: 163) suggested that the concept of intergovernmentalism needed to be properly revisited by taking into consideration these developments. Therefore, Bickerton, Hudson, and Puetter's theory comes as a response to this call (2015a; 2015b), expanding on Puetter's (2012) theory of "deliberative intergovernmentalism", which was an early attempt to explore how intergovernmentalist theories could better account for these widespread deliberative practices.

A good point of comparison is the way the concept is used by "deliberative supranationalism" (Joerges and Neyer, 1997; Jeorges, 2001). While deliberative supranationalism explains how the deliberative processes are meant to consolidate the legitimacy of the traditional EU legislative decision-making process, deliberative intergovernmentalism explains that deliberation becomes a necessary precondition for fruitful coordination between MS (Puetter, 2012: 164). There are some important shared ideas between these two theories. One of them is that deliberation and consensus can and do increase the legitimacy of the EU processes. This is particularly important in the context of a perceived lack of representativeness, which national delegates are taking into account more than they did in the past. It has become difficult for national delegates to muster enough authority to deliberate in the name of their people, an issue which consequently raises questions of legitimacy and authority (Neyer, 2006: 784).

Both theories come as new interpretations of an older concept in the academic literature. The term "deliberative" originates in democratic theories (Habermas, 1995) and was introduced to EU studies by

Eriksen (2000). Therefore, deliberative approaches derive from a body of "normative and positive political theory highlighting the contributions of argumentative interaction for the coherence of policy, its social acceptance and its normative acceptability" (Neyer, 2006: 779). The normative basis of the concept of deliberation comes from the idea that "important political decisions, whether individual or collective, ought to emerge from careful and informed judgement, rather than […] capricious choice or unelected deference to prevailing opinion" (King, 2003: 25).

However, unlike most of the "deliberative" democratic theories, deliberative intergovernmentalism and new intergovernmentalism do not view this concept in a normative way (Puetter, 2012; Puetter, 2016). It is simply used as a tool for analysis. Deliberation is operationalised as an umbrella term for processes involving reasoned argumentation about policy options. Nonetheless, new intergovernmentalism is still linked in some ways to the normative reflections about legitimacy and the justification of EU policies after the Maastricht Treaty. With increasing populism and decreasing trust in politicians, it is more difficult for governmental actors to behave in a representative way and to motivate to domestic publics the transfer of power to the EU level. The traditional "hard-bargaining" as understood by traditional intergovernmentalism can be problematic because it means that participants need to engage in strategies such as give-and-take, pork-barrelling or logrolling, which can often be counterproductive for reaching an agreement (Eriksen, 2000: 60). A decision-making process based on deliberation and consensus comes as a solution to this problem (Eriksen, 2000: 58). While in a consensus-seeking setting no actor fully achieves their exact preferences, the outcome still ultimately reflects a solution that all parties can give their consent to.

Alternative explanations of the post-Maastricht period

Before looking at how the claims of new intergovernmentalism may be tested empirically, it is important to note that alternative theoretical accounts also seek to explain the change in the modus operandi of European integration since the Maastricht Treaty. This thesis also engages with such different approaches, as the purpose is not just to test new intergovernmentalism, but to find the most appropriate explanations for the recent changes to EU energy policy.

Lacking the same theoretical cohesion of new intergovernmentalism, new supranationalism and new parliamentarism are umbrella terms used for some alternative such approaches. Compared to new intergovernmentalism, which argues that the more active involvement of MS has side-lined old supranational institutions, new supranationalism (see Bauer and Becker, 2014; Epstein and Rhodes, 2016) views this new era of European integration as a period in which institutions such as the Commission and the European Central Bank have an "unprecedented autonomy of action" and

"discretion in applying the rules" (Schmidt, 2016: 4). They explain that this expansion in supranational authority is a result of the need of governments to secure the enforcement of the policies and modes of governance they have created, albeit as a result of intergovernmental deliberations. While seemingly contradictory, the explanations of these two competing theories can be true simultaneously: MS are more involved in the decision-making process both through the Council and especially through the increased activity of the European Council, while supranational bodies have also gained new competences which allows them to pursue their aims through novel methods (Schmidt, 2016: 4).

Nonetheless, both new intergovernmentalism and new supranationalism, as well as older theoretical approaches, share a general dismissal of the role that the EP plays (Schmidt, 2018: 1544). As a response, theoretical accounts that could be referred to as new parliamentarism underpin both older ideas that the role of the EP has been vastly increased through the decision procedure, with newer ideas that its recent empowerment goes beyond legal institutional powers, as the institution has *de facto* evolved into a crucial arena for the development of ideas and discursive persuasion about the role and development of the EU and its policies (Schmidt, 2018: 1552). These post-Maastricht developments are researched in a rich academic literature (see Fasone, 2014; Héritier et al., 2016 Hix and Hoyland, 2013), seeking to show that, while the EP has less formal coercive power than both supranational and intergovernmental actors, "it has wielded increasing institutional power, if only informally, by tactically using its legislative competences, as well as ideational power, in particular by becoming the 'go-to' body for legitimacy" (Schmidt, 2018: 1553). In the post-Maastricht era, as stated by new intergovernmentalists as well, issues of legitimacy have become key determining factors for domestic preference formation. This is increasingly recognised even by more traditional theories such as liberal intergovernmentalism (Schimmelfennig, 2015a; Tsebelis, 2016). Therefore, it is not difficult to understand why some scholars have criticised both new intergovernmentalism and new supranationalism for underplaying the influence of the EU's most representative institution, which can represent an important source of legitimacy for EU action.

2.6 The six hypotheses of new intergovernmentalism

Bickerton et al. (2015a; 2015b) have provided six main hypotheses for their theory. They are meant to highlight the key phenomena behind the "concrete institutional choices by states and supranational actors" in the post-Maastricht era (Bickerton et al., 2015b: 28). Before discussing them individually, it is important to mention that these hypotheses have been criticised for being "unconditional, weak or hard to test", some of them being nearly impossible to falsify (Schimmelfenning, 2015b: 728).

According to Schimmelfenning (2015b: 728), the so-called "testable hypotheses" of new intergovernmentalism are better described as assumptions, lacking empirical observation.

Indeed, it appears that the use of the terminology of hypothesis by intergovernmentalists is incorrect, as they rather present a set of theoretical claims or expectations. While hypotheses are generally derived from theories, they should also "describe how an independent variable is expected to affect some dependent variable or variables", alongside clear conceptual and operational definitions of the variables (Strangor, 2015: 59). Brady and Collier (2010: 280) define a hypothesis in causal analysis as "a conjecture about the relationship between one or more independent variables and a dependent variable". Based on such a definition, the theoretical claims of new intergovernmentalism should not be referred to as hypotheses. However, Brady and Collier (2010: 280) also give a broader definition of a hypothesis as a "tentative answer to a research question", which is the way in which Bickerton et al. (2015b: 711) claim to use the term, despite also erroneously claiming their hypotheses to be "testable". In a different iteration of the theory, they claim that their so-called hypotheses "are open to empirical testing, however such testing is defined" (Bickerton et al., 2015a: 28).

They motivate this methodological ambiguity as "conscious choice", designed specifically to not shift the attention of subsequent studies to just methodological considerations and to avoid "methodological dogmatism" (Bickerton et al., 2015c: 731-734). Therefore, according to the authors, they represent a useful "starting point for further empirical investigation" (Bickerton et al., 2015b: 731). Bickerton et al. (2015c: 734) dismiss Schimmelfenning's critique as a manifestation of "a long tradition in EU studies of crying foul over methodology in debates between competing theoretical perspectives".

However, as it will be seen in the next section, most of the new intergovernmentalist hypotheses do not abide to a strict definition of the term, while some are difficult to test in the form presented by the authors. Nonetheless, this thesis will still use term hypothesis, as this is how Bickerton et al. (2015a, 2015b) decided to break down their theory into smaller theoretical claims. Given that this thesis aims to test the adequacy of new intergovernmentalism to explain recent empirical developments, an accurate portrayal of the theory should be used. These theoretical claims are similarly referred to as hypotheses in other academic research that has been conducted for testing new intergovernmentalism (see Baird, 2017, Thaler, 2016).

The openness and unclear operationalisation of new intergovernmentalism's hypotheses, however, means that Bickerton et al. (2015a) do not provide any methodological or ontological perspective as to how the hypotheses should be studied and tested. This poses a serious challenge for this project. It is of paramount importance to choose an analytical approach in order not to alter the ideas that Bickerton et al. (2015a) sought to explain. Thus, the purpose of this section is twofold: (1) to understand and operationalise the hypotheses in a way that does not alter the core ideas proposed by new

intergovernmentalism but which makes them testable; and (2) to formulate alternative hypotheses drawing from the European integration academic literature, such as new supranationalism, new parliamentarism, and others.

To operationalise the new intergovernmentalist theory, this chapter analyses in turn the hypotheses proposed by Bickerton et al. (2015), exploring the literature they are based on and then attempts to reformulate them in more testable formats. For this, secondary hypotheses more suitable for empirical testing are derived from the original hypotheses proposed by the authors of new intergovernmentalism. As previous research points to a potential failure of new intergovernmentalism to explain recent changes in the energy and climate sectors (Bocquillon and Maltby, 2020), it is possible that the empirical evidence tested in this thesis will also point to similar conclusions. Nonetheless, a simple confirmation or rejection of the theory is insufficient for providing an answer to the research questions of this thesis.

Consequently, in an attempt to obtain a comprehensive explanation of the CEP, alternative hypotheses are formulated based on concepts and theoretical accounts that could provide complementary ideas to those of new intergovernmentalism. The goal therefore is to analyse whether new intergovernmentalism can be revised or adapted in a manner that is internally consistent and reconcilable with its core ideas. This could also be seen as an answer to calls such as that of Hooghe and Marks that even divergent theories of European integration "should be mined for conflicting hypotheses that can be systematically tested against each other" (2019: 1128). Alternative explanations can help answer both the first research question of this thesis, especially regarding the main drivers behind the changes in EU energy and climate governance introduced through the CEP, as well as the second research question regarding the existence of potentially more suitable explanations than those offered by new intergovernmentalism.

The formulation and testing of alternative hypotheses are key as part of a theory-refining process that new intergovernmentalism still needs to undergo before becoming a more established theory of European integration. Bickerton et al. themselves admit that they have merely "set out conceptual building blocks for further theory-refinement and testing" (2015b: 711) and that the "six hypotheses are tentative, but they can and, it is hoped, will serve as a focal point for further research in the area" (2015c: 731). Therefore, the simultaneous testing of a set of alternative hypotheses in this thesis is essential for understanding whether new intergovernmentalism can be further refined to improve its explanatory power through a process of "constructive criticism" (Bickerton et al., 2015a: 45). The alternative hypotheses elaborated and tested in this thesis also serve as further clarifications of some of the theoretical expectations of new intergovernmentalism or provide nuance to the original hypotheses.

Based on the analysis of the two sets of hypotheses that are developed in this chapter, the discussion chapter explores based on the findings of this thesis what aspects of new intergovernmentalism would

need to be revised in order to offer a comprehensive and more widely applicable explanation of the process of European integration in the area of energy and climate policy.

Hypothesis 1

''Deliberation and consensus have become the main practices of day-to-day decision making at all levels in the EU'' (Bickerton et al., 2015a; 2015b)

The first hypothesis states that deliberation and consensus have become the main practices for policymaking at all decision levels in the EU. While deliberation is not new to EU policymaking, new intergovernmentalists explain that it is now being used for achieving collective decisions, as the realm of EU politics is no longer dominated by traditional hard bargaining activities between states (Bickerton et al., 2015b: 30). Therefore, deliberation has become a widely used tool, decoupled from the older logic of European integration, being embedded in the day-to-day policymaking processes of the EU. The empirical evidence for increasingly institutionalised forms of deliberation is expected to be found in the functioning of the European institutions with an intergovernmental structure (Bickerton et al., 2015a: 712). Therefore, this phenomenon can mainly be tested by looking at the EU's two main intergovernmental bodies: the European Council and the Council of the EU. The European Council, according to new intergovernmentalism, has become a veritable EU executive, with significant agenda making and monitoring powers, while the Council represents the key decision-maker when it comes to policy content. These two institutions foster deliberation and consensus between MS, both when it comes to important constitutional decisions on EU integration, but also in the more mundane, day-to-day activities of the EU. Thus, the empirical expectation of new intergovernmentalism is to find evidence for the institutionalisation of deliberation and consensus-based decision-making. While countries may still occasionally use veto threats, these are rarely used and widely condemned (Bickerton et al., 2015a: 712).

While deliberation and consensus have traditionally been associated more with the idea of supranational consensus-building and therefore the supranationalist school of thought (e.g. (Joerges and Neyer, 1997; Jeorges, 2001), new intergovernmentalists argue that these dynamics are now also prevalent among the intergovernmental bodies (Bickerton et al., 2015a: 711), reflecting the decentralised nature of decision-making in the EU. This should not be interpreted in a way that implies that no other competing modes of interaction are to be found among EU actors (Puetter, 2012: 165). However, as opposed to the two-level logic of liberal intergovernmentalism, "decision-makers insulate themselves more strongly from domestic processes involving partisan and interest group pressure" (Puetter, 2012: 165). Therefore, the deliberative practices they frequently engage in contribute to the policy outcome. Moreover,

deliberative processes can even alter the preferences of the actors and create more fertile grounds for satisfactory collective decision-making (Eriksen, 2000: 60). This comes in direct contrast with more traditional theories of intergovernmentalism, which assume that national preferences are already firmly established by the time they are negotiated between MS representatives at EU-level.

Neyer (2006: 785) points that while actors are still generally self-interested, deliberation creates the social norm that makes it difficult for representatives to take positions that "cannot be justified in terms of benefit to the group". Therefore, deliberation narrows down the policy options to include only those that are in line with the "general interest" of all actors involved in the decision-making process (2006: 78). Some scholars do not expect deliberation to occur in all policy areas. Neyer (2006: 786) makes the distinction between regulatory and redistributive policies. According to this distinction, deliberative practices are more likely to occur in regulatory areas, where a desirable outcome is beneficial to all, while redistributive policies are more accurately portrayed as a zero-sum game, in which both winners and losers are produced.

A recurring object of empirical study for deliberative theorists has been that of comitology. This provides an example of deliberative style EU regulatory policymaking, where the participants in negotiations are representatives of governments and who mostly reach decisions through deliberation and consensus (Joerges and Neyer, 1997: 609). This can be observed in the hundreds of committees that function within the Council and are responsible for the implementation of decisions exercising extensive freedom of discretion (Eriksen, 2000: 60). They are particularly important to understand, as the decisions made in these committees are binding for MS. Comitology emerged as a response to the needs of efficiency and legitimacy of the EU decision-making process (Eriksen and Fossum, 2002: 407). These committees ultimately represent epistemic communities and satisfy the criteria of deliberative democratic theory for "strong publics": meeting places for joint decision-making, deliberative style interaction with some level of representation of the parties involved (Eriksen and Fossum, 2002: 407). Therefore, it is not difficult to understand why they have become crucial parts of the EU policy-making process.

Traditional intergovernmentalism looks at the distribution of power in these committees to understand the outcomes of interaction. However, studies of comitology that focus on deliberation show that this may not be that relevant, as most decisions need to be backed up by scientific evidence rather than MS preferences alone in order to be adopted in such committees (Jeorges and Neyer, 1997: 616). Consequently, this also means that the relative power of national actors can be influenced by the quality of the information they possess, and not simply by their bargaining power. As most governments rely on domestic firms for the provision of this information, "their ability to present convincing arguments

is likely to depend on the degree to which domestic industry is interested in a certain regulatory outcome" (Jeorges and Neyer, 1997: 617).

Another important observation is the increased presence of informal forums which become part of the day-to-day routine of the EU decision-making process (Puetter, 2012: 166), in parallel to the formal meetings between MS representatives in intergovernmental fora. A revealing example of this phenomenon is that of the Eurogroup's informal working methods, which have become a crucial arena for reaching the necessary agreement for the Council's decisions (Puetter, 2004). Research on the Eurogroup shows that policymakers generally prefer informal, face-to-face, confidential routines through which new members are socialised into the decision-making procedures (Bickerton et al., 2015b: 30). New intergovernmentalism acknowledges this sentiment, arguing that rather than merely debating within Council meetings prior to a vote in the Council, MS representatives will engage one another in informal setups which bear a significant impact on the outcome of negotiations. This not only changes the arena where negotiations are held, but it also has the repercussions of diminishing the influence of MS that are not part of the Eurogroup (and therefore do not get to meet in these informal meetings that precede official meetings) over Council decisions. The observation that new intergovernmentalism also applies to daily policy making is key, as most EU affairs are "actually conducted in 'day-to-day politics' rather than 'grand bargains'" (Falkner, 2011: 5).

Another implication of these observations is that MS are effectively responsible for the policymaking process and its results, so they seek to find more efficient ways of reaching consensus. Even in the areas of the Community method, where Qualified Majority Voting (QMV) is the basis of decision-making, there is still an emphasis on "apparent consensus" among the participants (Novak, 2013). Therefore, decision-making is not only expected to be based on deliberative and consensus-seeking practices, but there is also an empirical expectation to find proof of increasingly institutionalised mechanisms for these types of interaction that diminish the use of veto votes and encourage the passage of decisions in unanimity.

The secondary hypotheses derived from H1 are:

H_{1a}: Most decisions are expected to be taken by consensus in the Council of the EU.

H_{1b}: Most decisions are expected to be agreed upon in more 'informal' settings before the formal vote in the Council of the EU.

H_{1c}: Member States are not expected to present positions that cannot be justified in terms of benefit to the group.

Alternative hypotheses for H_1: looking beyond vote-counts and apparent consensus

The impact of the deliberative practices in the intergovernmental fora can be seen in policy outcomes. For instance, when considering a large sample of legislative acts to understand the bargaining success of different MS, Arregui and Thomson (2009) found no clear "winners and losers". This may be a result of the culture of consensus and deliberation that has been developing within the Council, an institution whose reputation for avoiding vetoes and marginal vote counts is acknowledged in the literature (Hayes-Renshaw et al., 2006; Koning and Junge, 2009; Smeets, 2016). Nonetheless, this (perceived) consensus needs to be critically analysed to understand if it represents genuine unanimity between MS reached through sustained deliberation, or whether the voting results are actually not a good indicator of the style and process of negotiation that has in fact occurred between MS.

Studies of Council deliberations reveal a more complicated picture, especially when the issue at stake has a high salience for domestic public opinion (Hobolt and Wratil, 2020). MS representatives are also capable of acting in a way that is not intended to foster consensus, but rather in a manner that highlights national interest. This has become more visible with the introduction of video-streaming of Council deliberations and discussions (Wratil and Hobolt, 2019). Dehousse et al. (2014: 842) also argue that in comitology committees, for example, the fact that Commission proposals are usually ratified does not necessarily mean that they are not contested. One way to better understand the underlying dynamics of contestation is to analyse dissent, in the form of negative votes.

Even such an approach, however, does not reveal the full picture, as unanimity may simply represent an outcome of a negotiated compromise between negotiators (Dehousse et al., 2014: 846), which will be "repaid" in the negotiations of another legislative file at a later stage. Moreover, the reached consensus may also hide the interests of the large MS, such as Germany or France, which have been shown to be more unwilling to make generous concessions compared to smaller countries (Naurin, 2015: 726). The power asymmetry, especially when it comes to administrative capacity to deal with policy proposals, may create practical limitations to preference formation and bargaining for some MS. Given the limited time constraints, it is not always possible for all MS to develop clear preferences and therefore negotiators have a sizeable margin of discretion in their mandates from national governments (Dehousse et al., 2014: 845). Such MS would subsequently be more likely to compromise.

In order to pursue a critical analysis of the (perceived) consensus in the Council, this thesis also tests an alternative hypothesis which expects that, if unanimity is reached, it does not necessarily reflect an actual consensus. This can be better understood by investigating both the type of positions that MS

adopt for approaching the negotiations (see H1c) and the intermediary votes that the Council takes at different stages of the decision-making process (i.e. after the 1st and 2nd reading).

Regarding the secondary hypothesis H1b, there seems to be empirical evidence to support the claim that many decisions are de facto reached in informal settings, rather than in the formal meetings of the Council before an official vote. So much so that ministers do not always participate in the meetings of the Councils, contrary to common expectations, potentially reflecting the fact that they attach a lower political value to these formal meetings (Grøn and Salomonsen, 2015). Given that the validation or negation of this hypothesis already covers all possible settings in which a decision of the Council may be reached (either informally before the meeting, or through formal deliberations at the negotiation table), no alternative hypothesis needs to be formulated.

Regarding the types of positions that MS formulate during Council deliberations, there is empirical evidence showing that "strong norms of appropriateness guide internal Council negotiations", as "unwarranted obstructioning [sic] is deemed inappropriate and therefore costly in the long run" (Smeets, 2016: 36). In this context, it is important to reflect on how the relative voting power of MS (i.e. how many votes an individual MS has when voting on decisions that require QMV) affects the position its delegates take. While studies of highly salient or controversial topics seem to find no meaningful relationship between voting power and bargaining success, this relationship may become more relevant for proposals that are more common to the "day-to-day decision-making in Brussels" (Warntjen, 2017: 684). The question then is whether a more "strong-handed" approach by a larger country that also potentially prevents the achievement of unanimity - therefore resulting in negative votes from some MS - represents a failure of deliberation. It is important to understand in this context if the negative vote represents a form of dissent to the inclination of larger MS to present positions that are against the benefit of the group.

Therefore, the alternative hypotheses to be tested are:

Alternative H_{1a}: If unanimity is reached on the final vote for a legislative act, it does not necessarily reflect an actual consensus between Member States.

Alternative H_{1c}: Smaller Member States use negative votes as a form of dissent against the pursuit by larger Member States of positions that are not seen as benefiting the group.

Hypothesis 2

''The EU's supranational bodies are not hard-wired to seek an ever-closer union'' (Bickerton et al., 2015a; 2015b)

The second hypothesis of new intergovernmentalism argues that the EU's supranational institutions "are not hard-wired to seek an ever-closer union" (Bickerton et al., 2015a: 712). In other words, the Commission does not pursue "the further acquisition of autonomous decision-making powers" for itself (Thaler, 2016: 572). This view stands at odds with many of the traditional theories on European integration. The idea that further integration equates to further empowerment of supranational bodies originates with neo-functionalist theoretical accounts, but it also resonates with classical and liberal intergovernmentalist theories.

Moravcsik (1999) sees the Commission as a supranational entrepreneur that mobilises information and ideas in order to support further integration. This strategy nonetheless achieves limited success given the predominance of interstate bargaining in the decision-making process. According to him, supranational intervention by the Commission is "generally late, redundant, futile, and sometimes even counterproductive" (1999: 269-270). This concept stems from the well-documented EU research on the Commission engaging in policy entrepreneurship (Copeland and James, 2014; Steinbach and Knill, 2017). According to new intergovernmentalism, in the post-Maastricht Treaty era, the Commission no longer focuses its attention on pushing for a centralised EU decision-making system and does not behave as a resource-maximising bureaucracy (Bickerton et al., 2015a: 712). Moreover, the Commission is likely to engage in "strategic entrepreneurship", supporting the deliberative processes and stepping back when faced with a hostile environment (Bickerton et al., 2015b: 31).

Therefore, institutions like the Commission or the Court of Justice of the European Union (CJEU) do not oppose the decentralised mode of policymaking. Rather than opposing them, the supranational institutions are complicit with these new practices (Bickerton et al., 2015a: 712). Thus, the empirical expectations are that in the post-Maastricht era, there has been no notable push from the Commission for its further empowerment. This preference for intergovernmental modes of cooperation may also be a result of the new practice of choosing presidents from the ranks of former heads of state (see Bürgin, 2018a, 2018b). As shown in a study by Hix et al. (2006), the same principles are expected to also be observed in the behaviour of the CJEU and the EP.

Diving deeper into this logic of the new intergovernmentalism theory, the apparent decline of the Commission is revealed by the fact that, since the Maastricht Treaty, its authority has been increasingly questioned by MS, with the EU's executive de facto embracing this trend of eroding authority. While disputed by some, the claims of the decline of the Commission have reverberated throughout the

academic literature studying the EU (Majone, 2014; Rasmussen et al., 2013; Wallace and Reh, 2015). Nonetheless, it is important to note that the phenomenon observed by new intergovernmentalism does not automatically deny that the Commission can have meaningful influence in the policymaking process. In fact, by maintaining a close cooperation with the European Council, the Commission can preserve a significant degree of policy initiative capacity which it would otherwise lack (Thaler 2016: 582). This influence relies on this collaboration with the European Council, with more limited independent input expected from the supranational institution, beyond the formal or informal mandate it is given in the conclusions of summits between European leaders.

The analysis of this hypothesis would therefore require an in-depth assessment of the behaviour of the Commission and the strategies it has used for influencing the policymaking process. Something that is unclear from the explanations of new intergovernmentalism about the Commission's behaviour is exactly how influential this institution is expected to be both during the negotiation and the implementation processes of the EU's policies. A particularly interesting insight about the Commission's behaviour when it comes to the expansion of the EU's energy policy has been its strategic partnership with countries such as the UK, which was exploited to obtain critical negotiation partners in the Council (Ciambra and Solorio, 2015). Nonetheless, according to new intergovernmentalism, by acting as a "strategic entrepreneur", the Commission will only engage when the context is already favourable, generally steering clear of integrationist initiatives opposed by governments (Hodson, 2013: 303). According to this logic, the conclusions of the European Council reached through deliberations and consensus are essential for legitimising the Commission legislative proposals, even if it is only the latter that has the legal right of policy initiation (Nugent and Rhinard, 2016: 1201). This is why some researchers have also stated that the Commission's legislative agenda-setting monopoly may be overstated (Wonka, 2008: 1159). Such views tend to put a higher emphasis on structure than on agency for the Commission (Hodson, 2013: 302).

Two secondary hypotheses are therefore derived for testing H2:

H_{2a}: The European Commission does not seek to further expand its powers.

H_{2b}: The European Commission only seeks to influence the decision-making process when it has a strategic advantage.

Alternative hypotheses for H_2: "Strategic entrepreneur" or "Purposeful opportunist"?

The role of the Commission is a topic of active debate in the academic literature, as there are multiple interpretations of its activity. In a study on increasing supranationalism in EU energy policy, Maltby (2013: 437) enumerates six main ways through which the supranational institutions attempt to generate policy change: "(1) legitimacy through building on pre-existing norms of policy-making; (2) expertise and knowledge based authority; (3) continuous advocacy; (4) alliances and interaction with member states, (5) selling the solution during the policy window opened by the crisis, and (6) contributing towards the social construction of a narrative regarding a problem, and an intersubjective understanding of a (supranational) solution". This constitutes an interpretation of the Commission's activities that exceeds the expectations of new intergovernmentalism.

Given the prominence of competing interpretations, as an alternative to the assumptions of new intergovernmentalism, this thesis also tests the idea that the Commission acted more as a "purposeful opportunist" (Camisão and Guimarães, 2017; Cram 1993; Nugent and Rhinard, 2016), rather than a "strategic entrepreneur". While new intergovernmentalism views the Commission as a passive actor that merely awaits for opportunities that match its preferences, an alternative explanation is that it in fact acts as a "purposeful opportunist", making more creative use of its powers, "softening up" the ground in advance (Lindberg and Scheingold, 1970), "politicising" or "depoliticising" issues in order to pursue political or apolitical routes in the policy process (Vahl, 1997). According to this alternative understanding, the Commission does not passively wait for the emergence of "windows of opportunity", but it actively seeks to facilitate their appearance (Cram, 1994).

The concept of "purposeful opportunism" can be largely identified with the new supranationalism theoretical framework (Hanck, 2018: 1). It should be noted that new supranationalism is not a consolidated theoretical framework, but rather a set of reactions to the claims made by new intergovernmentalism. Therefore, lacking a fully compressive theoretical foundation, it is important to provide a precise definition of the concept and of the empirical expectations for the behaviour and influence of the Commission. A purposeful opportunist is understood as "an organisation which has a notion of its overall objectives and aims but is quite flexible as to the means of achieving them" (Cram, 1994: 210). Two aspects of this definition need to be further discussed: the idea of overall objectives and aims of the Commission and that of the "flexible means" for pursuing them.

Regarding its overall objectives and aims, the Commission pursues, like most bureaucracies according to supranationalist theories, an expansion of its powers – many of its efforts can be understood as an attempt to "expand gradually the scope of the Union competence without alienating national governments or powerful sectoral interests" (Cram, 1994: 199). In the case of this thesis, this observation needs to be intrinsically linked to the agenda pursued by the Commission through the

introduction of the new governance framework for EU energy and climate policy and whether it actually represents a decline in its powers or not. It appears that, more generally, exaggerations tend to be made about the level of loss of power of the Commission. In fact, despite an apparent decline of its more traditional toolkit for influencing policy, it may have actually gained influence and new prerogatives through the new forms of EU cooperation, (Nugent and Rhinard, 2016: 1199). Simultaneously, far from being neutral, the Commission pushes for different regulatory policies in line with its agenda (Arregui, 2016).

The Commission may also be interested in self-legitimisation, especially after the introduction of the Spitzenkandidaten procedure (Dinan, 2016). This is particularly relevant for the Juncker Commission (Hanck, 2018) which led to a "presidentialisation" of the institution (Kassim, 2013). Crucially, this means that the Commission represents more than a bureaucracy, being capable of playing a more political role (Nigent and Rhinard, 2019: 203). This trend has two implications. First, especially in light of the Spitzenkandidaten procedure, the Commission has developed a very close relationship with the EP (Dinan, 2016: 112). The expectation is that the Commission uses the EP as a strategic ally, adopting a very pragmatic approach for both pursuing its preferences and increasing its legitimacy (Rosén, 2016: 41). Second, acting in a more political fashion also increases the need for its own institutional legitimisation. In contrast to more traditional views of the Commission as a pursuer of mainly an expert-based depoliticised route to gain attention for policy issues and the credibility to deal with them (Haverland et al. 2018: 327), the Commission may actually seek political legitimacy for its proposals.

In reality, however, the European Council conclusions may provide much of this legitimisation (Nugent and Rhinard, 2016). The Commission has some constraints as it "cannot act without regard to the preferences of the member governments, they can operate creatively within the constraints of those preferences to act autonomously, avoiding sanctions from-and setting the agenda for-the member governments in the Council" (Pollack, 1997). Nonetheless, while dependent on this form of legitimation for its proposals, the Commission also uses the mistrust between MS to present itself as an honest broker (Dehousse, 2016).

The second aspect of the concept of a "purposeful opportunist" refers to the flexibility in the means used to achieve objectives (Hank, 2018; Rauhut, 2015). The main powers of the Commission stem from both formal and informal agenda-setting capabilities (Pollack, 1997). Indeed, the Commission faces constraints in exercising these powers, but while it "cannot act without regard to the preferences of the member governments, [it] can operate creatively within the constraints of those preferences to act autonomously, avoiding sanctions from-and setting the agenda for-the member governments in the Council" (Pollack, 1997). The Commission therefore does not attempt to redraw jurisdictional boundaries when it knows it has little chances of success (Alexandrova, 2017).

The "power of the pen" should also not be trivialised, especially as it gives the Commission the significant advantage of being the first to officially frame a policy proposal (Nugent and Rhinard, 2016; Hartlapp et al., 2014). The Commission makes use of both its information advantage and its position in the negotiations process, paving the way for its preferred course of action. This supranational "activism" ensures that it is prepared and can quickly intervene when opportunity arises, having significant power to decide on phrasing and timing of proposals (Cram, 1994: 198).

The control over phrasing and timing also allows an "opportunistic" Commission to prepare the ground in advance for future regulatory action (Cram 1993: 135). The Commission, making full and creative use of its powers, enables the emergence of "windows of opportunity", by creating "precedent and competence" (Spicker, 1991: 9), even if this ability can be limited by the salience of an issue (Camisão and Guimarães, 2017: 223). It can then attempt to "politicise" or "depoliticise" issues, depending on the desired level of salience. Pursuing a politicised approach can turn an issue highly salient, attracting significant attention at the domestic level and potentially exerting influence over national decision makers, while a depoliticised route can confer a highly technical interpretation of an issue, attracting less public attention.

However, the mismanagement of these strategies can actually lead to counter-productive results for the Commission. Consequently, the Commission does not always engage actively with an issue, therefore avoiding open confrontation (Camisão and Guimarães, 2017; Cram, 1999). Nonetheless, as previously mentioned, it may still pursue some issues that cannot gain traction, as part of a strategy of establishing a precedent upon which it can further build in the future (Hanck, 2018: 5). Crises can also confer salience to an issue. This can be particularly interesting to investigate in a policy environment such as that described by new intergovernmentalism, which is dominated by a constant state of crisis (as discussed later in the chapter). This could widen the toolkit of the Commission, allowing it to engage with the windows of opportunity presented by a real or perceived state of crisis, as was the case with the Eurozone crisis (Copeland and James, 2014).

The applicability of the concept of purposeful opportunism does appear to vary between different presidents of the Commission. For example, the Barosso Commission has been argued to have acted with more caution than the Juncker Commission, "avoiding engaging in integrationist initiatives" (Hodson, 2013: 303). Hank suggests that this is the result of the presidentialisation of the Commission, rather than the structural reasons invoked by new intergovernmentalism (2018: 1).

Given the empirical focus of this thesis on the CEP, a further concept is added as a potential strategy employed by a Commission acting as a "purposeful opportunist" - that of policy packaging. The majority of academic studies focus on change of individual policies, seldom employing a more holistic approach to policy change (Schaffrin et al. 2014: 861). In reality, however, policies are packaged into

"bundles" or "portfolios", using tactics such as *layering* of policies over old ones, *drifting*, by maintaining the policy elements despite a changed environment, or *conversion*, by holding elements of the existing policy architecture in place to assist the accomplishment of novel goals, deliberately seeking to make use of "synergetic relationships" between different policies (Howlett and Rayner, 2013: 177). Nonetheless, "[assessing] policy designs and the extent to which policymaking can be considered to embody an intentional design logic begins with the recognition that in many circumstances there is no doubt that in many cases policymaking is driven by situational logics and opportunism rather than careful deliberation and assessment" (Howlett and Rayner, 2013: 171). Such approaches can in fact lead to inconsistencies, conflicting policies, and unintended consequences (Flues et al. 2014). In the context of the empirical focus of this thesis, the tactics of policy packaging are combined with the aforementioned ideas of the Commission's key ability to set the content and timing of policy proposals and how these can be combined as a more holistic strategy.

As an alternative hypothesis for H_{2a}, this thesis also tests whether the Commission pursues further integration at EU-level, even if it does not necessarily lead to its own empowerment, as an expansion of the flexibility that the Commission may have for pursuing its interests (understood here as increased integration in EU energy and climate policy). Alternative H_{2b} then tests whether the Commission acted more like a purposeful opportunist, rather than a strategic entrepreneur. Given the at times subtle differences between the concepts of "strategic entrepreneur" and "purposeful opportunist", Table 1 provides a summary clarifying the differences between the two.

Table 1: European Commission as a Strategic Entrepreneur or a Purposeful Opportunist

	Strategic Entrepreneur	**Purposeful Opportunist**
Aims and Objectives	Does not seek to increase its powers or pursue an "ever closer Union".	Seeks to increase its prerogatives and the level of integration at EU level more generally.
Strategy for pursuing its interests	Uses the European Council deliberations as a legitimising factor for its proposals and supports intergovernmental solutions.	Makes creative use of its both formal and informal powers, softening the ground in advance and setting the most favourable scene for the pursuit of its objectives.
Usage of 'windows of opportunity' and member state preferences	Waits for the emergence of a window of opportunity that aligns with its preferences, avoiding confrontation with MS.	Facilitates the emergence of windows of opportunity and seeks to influence MS preferences through politicisation or depoliticisation of issues.

Source: own compilation based on definition by Hodson (2013) and Hanck (2018)

Alternative H_{2a}: The European Commission pursues further integration at the EU level, even if it does lead to its further empowerment.

Alternative H_{2b}: The European Commission seeks to create strategic advantage to influence the decision-making process, rather than merely waiting for windows of opportunity.

Hypothesis 3

''When a transfer of powers to the supranational level occurs, it is done through the creation and empowerment of de novo bodies / When delegation occurs, governments and traditional supranational actors support the creation and empowerment of de novo institutions'' (Bickerton et al., 2015a; 2015b)

The third hypothesis states that, while MS have generally resisted further delegation of authority to the EU, in the cases when supranational transfer of powers did occur, the mechanism was the "creation and empowerment of de novo bodies" (Bickerton et al., 2015a: 713). In a context of rising distrust among European publics, national governments can no longer legitimise domestically the expansion of powers of the Commission or CJEU, so they prefer the creation of novel agencies to manage the expanded areas of integration (Puetter, 2012: 163). These constitute "newly created institutions that often enjoy considerable autonomy by way of executive or legislative power and have a degree of control over their own resources" (Bickerton et al., 2015a: 706). Moreover, the de novo bodies are not supranational in the traditional sense, as they have very issue-specific mandates and they have a strong intergovernmental structure within their governance architecture (Bickerton et al., 2015a: 714). The issue-specific nature of their mandates is thus designed to prevent the spill-over of their activity in other related policy areas, thus containing the supranational empowerment as narrowly as possible.

This form of supranational empowerment is advantageous from a new intergovernmentalist perspective, as it avoids adding prerogatives for the Commission, which shows a higher risk of creeping expansion of supranational authority (Scipioni, 2018: 770). Moreover, the Commission has also taken a pragmatic view when it comes to the creation of these new institutions and does not oppose their development (Peterson, 2015: 186). In other words, the Commission has become complicit in the formation and empowerment of these new structures that are designed to limit its expansion of supranational powers.

However, Schimmelfennig (2015: 724) accuses new intergovernmentalists of making an "atheoretical distinction" between supranational bodies such as the Commission and the CJEU on one hand, and the de novo bodies such as the European Central Bank, the European Stability Mechanism, and External

Action Service, on the other hand. He claims that these "new" institutions share much of the autonomy of the more traditional supranational institutions and he also points out that all these new institutions showcase both supranational and intergovernmental elements, rendering the dichotomy described by new intergovernmentalists "useless". Bickerton et al. (2015c) respond to this critique by explaining that all the "de novo" institutions have highly diverse institutional designs but are ultimately all very different from the Commission. One of the crucial differences is their institutional design, which often showcases strong intergovernmental components. These new agencies enjoy a great deal of autonomy, have some control over their own resources and, more importantly, they all contain mechanisms of national representation as part of their governance structure (Bickerton et al., 2015a: 714). Previous research on EMEA, the European pharmaceutical agency, shows that operations of EU agencies run even their day-to-day operations under close oversight from MS (Gehring and Krapohl, 2007: 222). The design of these agencies is not built on functional considerations, but rather in a way that can mitigate distributional conflicts between MS and limit the powers of EU supranational institutions (Kelemen and Tarrant, 2011: 922).

Not only has the Commission been complicit in their creation, but, crucially, most of the agencies fulfil functions that could have been covered by the Commission (Bickerton et al., 2015a: 714). This is based on the realisation that political opposition "to anything approximating a European 'superstate' has blocked the creation of a large, unified executive bureaucracy in Brussels" (Kelemen and Tarrant, 2011: 922). Some even suggest that these institutions can resist further centralisation and supranationalisation (Boeger and Corkin, 2017).

An analysis of this hypothesis necessitates detailed empirical research (Bulmer, 2015: 299) and an investigation of the institutional design and development of the new agencies that have been created or empowered. It would also require an analysis of the behaviour of the Commission regarding their creation, including an investigation of what motives the Commission had for not seeking to obtain the respective new roles for itself. Therefore, the secondary hypotheses of H3 are:

H_{3a}: When a supranational transfer of powers occurs, it is done to 'de novo' bodies.

H_{3b}: The European Commission accepts the creation and empowerment of the 'de novo' institutions.

H_{3c}: The 'de novo' bodies have distinct intergovernmental elements that differentiate them from the institutional architecture of the European Commission.

Alternative hypothesis for H3: Agents of intergovernmental or supranational governance?

In light of the criticism formulated against new intergovernmentalism on this topic, it is important to understand the wider academic debate on the emergence, role, and governance of de novo bodies. Indeed, there seems to be a consensus that the EU increasingly relies on "decentralised agencies to implement important transnational regulation" (Wood, 2018: 404). Agencies have demonstrably become an integral part of EU activity, ensuring the consistent implementation of EU regulatory policies (Rittberger and Wonka, 2012: 3). Some researchers have even referred to an "agency fever" sweeping through different EU policy sectors in recent years (Busuioc et al., 2012). Moreover, the academic literature on the topic does seem to suggest that this trend of "agencification" represents some sort of compromise between MS reluctant to further empower the Commission and the functional need for ensuring the implementation of regulatory measures in a coherent and consistent manner throughout the EU, in a way that also allows MS to maintain control over the processes (Egeberg and Trondal, 2017: 675). The timing of this boom coincides with the post-Maastricht period of European integration, as explained by new intergovernmentalism.

Nonetheless, when it comes to the interpretation of the meaning of this phenomenon, there is no emergent consensus. A "transnational image" of agencies portrays them as institutions with a life of their own, "floating-in-between" the levels of governance of the EU and whose day-to-day work is more about information sharing and transfer rather than implementing rigid regulatory frameworks (Egeberg and Trondal, 2017: 677). Meanwhile, a "supranational" view portrays the empowerment and activity of agencies as largely equivalent to that resulting from the empowerment of a more traditional supranational body, such as the Commission (Egeberg and Trondal, 2017: 677). This view seems to be supported by the observed expansion of the role of agencies in the EU over the past decade. The "de novo" agencies have moved past merely implementing pre-established regulatory policies, becoming additionally capable of adopting individual decisions, guidelines and even opinions on the activity of subordinate national agencies (Egenberg and Trondal, 2011).

In a survey of EU agencies, Buess (2015) showed that all but one of the analysed agencies, the European Railway Agency, fail to meet clear criteria for vertical accountability from MS. Wood's paper (2018) mapping EU agencies based on their entrepreneurial strategies demonstrates that agencies might also not be as passive as the theory of new intergovernmentalism would suggest. Some EU agencies lack hard tools to enforce the implementation of regulation, so they need to make more creative use of their powers (Busuioc, 2013). These empirical findings offer a contrasting image to that of new intergovernmentalism, which portrays agencies as rather "static" entities, restrained to performing only a narrow array of tasks (Scipioni, 2015: 769).

As there seems to be a consensus about the expansion of agencies across EU policy sectors, no alternative hypothesis will be formulated to the first secondary hypothesis discussed in this section. However, given the presence of multiple interpretations of the meaning, role, and chain of accountability of these de novo bodies, alternative hypotheses are formulated for the other two secondary hypotheses.

The first alternative hypothesis is thus based on the role and relationship that the Commission has to the de novo bodies. Far from passively accepting the empowerment of a different supranational entity in its stead, over which there is also significant intergovernmental control, the Commission plays an active role in shaping both the creation and governance of de novo bodies. Thus, according to other competing views, the Commission "eager to defend its turf" has agreed with this new trend of establishing a plethora of new agencies, but only in the cases when "this strategy promised to enhance the Commission's own objectives" (Ritterberg and Wonka, 2011: 782). This was particularly true in areas in which the Commission saw limited opportunities for expanding its powers, so the establishment of agencies would represent a compromise through which it could enlarge its sphere of policy influence through alternative mechanisms (Thatcher, 2011). Even in sectors where the Commission had long-established prerogatives, the introduction of new agencies does not seem to have eroded its authority (Scipioni, 2018). On the contrary, accepting the introduction of de novo institutions represents a strategic move for the Commission aimed at expanding its own reach by establishing some forms of control over the activities and mandates of these agencies (Thatcher, 2011). Therefore, the Commission has turned into a genuine driver of the phenomenon of EU "agencification2 (Egeberg et al. 2015: 625).

The Commission further established itself as a key component and partner in the networks within which agencies operate, actively promoting its own agenda through networks of EU institutions over which it has a considerable degree of control. In fact, numerous agencies have corresponding "parent departments" in the Commission's Directorate Generals (DGs), as it may even be the case that "EU agencies seem to work more or less as integral parts of their respective commission DG" (Egenberg and Trondal, 2017: 682). Consequently, there may be empirical evidence that points to the conclusion that the delegation of power to agencies "does not necessarily occur in opposition to the Commission, but rather it can take place in parallel to the continued growth of the Commission's competencies" (Scipioni, 2018: 769). Such findings are thus contradictory to the ideas of new intergovernmentalism. Furthermore, some researchers even go as far as to suggest that while some EU agencies may be capable of acting independently from the will of MS, it is more difficult for agencies to distance themselves from the influence of the Commission (Egeberg and Trondal, 2011: 868). Given the superior organisational resources of the Commission, the activity of the de novo bodies can often depend on its knowledge and involvement.

The second alternative hypothesis is concerned with the institutional design of the de novo bodies and the question of whether internal governance architecture enables an intergovernmental control over the activities of EU agencies. Within the management board, governments secure their control over agencies by imposing strong national representation through delegates that pursue a clear mandate received from national ministries (Egeberg and Trondal, 2017: 676). The numerical domination of national delegates thus enables an institutionally designed intergovernmental control over the activities of the institutions (Kelemen and Tarrant, 2011). These boards play a key role in managing the inner working, finances, and overall organisation of the de novo bodies (Johannessen, 2015).

Nonetheless, the extent to which the design of management boards is truly impactful on the decisions and actions of EU agencies represents a matter of active debate in the academic literature. While national delegates indeed dominate the management boards of these agencies, that may not necessarily imply that they simply act as promoters of domestic national interests, especially given that the chain of domestic accountability is not always clear (Egeberg and Trondal, 2017: 677). For example, Buess shows that delegates often act more independently and they are less accountable to home governments than suggested by an intergovernmental stream of thought (2015: 106). Moreover, their overall significance within the EU institutions may also be overstated. Busuioc and Groenleer (2012) cite the large number of members and the infrequent scheduling of meetings as factors that dilute the level of actual influence that these management boards have. An analysis of five agencies by Busuioc (2012) further highlights the significant power weaknesses for ensuring accountability between delegates and their respective MS, as well as the ineffectiveness of managing boards in steering the activity of the de novo bodies.

This view does not deny the importance of management boards for the day-to-day activities of EU agencies, but it highlights that the level of influence may often be overstated. Moreover, it is important to note that the Commission is also usually represented in the management board of these agencies (Egeberg and Trondal, 2011: 882). As the Commission is the only EU institution that disposes of the necessary administrative capacity for monitoring agency activity, it often acts as a “parent organization” (Egeberg et al., 2015: 610). When looking at the institutional architecture of the de novo bodies it is important to also understand that the position of director can also have a determinant role. The role and actions of the director are therefore another important aspect that requires careful consideration, especially when the director is able to act independently from the managing board. There is in fact research that seems to suggest that management boards often fail to hold accountable the directors of EU agencies, thus failing in their supervisory mandate (Busuioc, 2012: 734).

Therefore, the alternative hypotheses are:

Alternative H_{3b}: The European Commission supports the creation and empowerment of the 'de novo' institutions as a means to expand its influence over some policy areas.

Alternative H_{3c}: The institutional architecture of the 'de novo' bodies does not necessarily ensure full intergovernmental control over their activity.

Hypothesis 4

''Issues of domestic preference formation have become stand-alone inputs in the European integration process'' (Bickerton et al., 2015a; 2015b)

The fourth hypothesis stipulates that issues of domestic preference formation have become stand-alone inputs in the European integration process (Bickerton et al., 2015a: 714). In other words, MS have a significant amount of control over EU affairs and especially over the constitutional and legislative outcomes at EU-level. This is aligned with the new intergovernmentalism claims regarding the role of the Commission and the inter-institutional balance at EU-level. Not only is the Commission expected not to seek its further empowerment and to support the formation of the de novo supranational bodies, but new intergovernmentalism also assumes that the preferences and inputs of the Commission are not determinant factors for the process of integration. The decision-making process and the policy outcomes should then reflect an intergovernmental logic of European integration and governance, especially in the newer areas of EU activity. Therefore, actors such as the EP, the CJEU, EU agencies or other non-state actors, may have some relevance in the European integration process, as well as the more day-to-day activity, but they only bear marginal influence compared to the preferences of the MS pursued through the Council and the European Council.

Regarding the preferences that MS have and pursue, there is rich literature seeking to explain the mechanisms behind preference formation (Matilla, 2004; Aspinwall, 2002; Koenig-Aschibugy, 2004). While there is no standard definition for national preferences, they can broadly be defined as "the attitudes of governments towards EU issues" (Mišík, 2015: 198). New intergovernmentalists criticise liberal intergovernmentalist accounts of preference formation as "ahistorical and surprisingly apolitical" (Bickerton et al., 2015b: 33). Inspired from Putnam's two-level game model (1988), liberal intergovernmentalism argues that governments play games at both domestic and international levels (Matlary, 1997: 1). Thus, domestic preferences are formed at the national level, mainly influenced by economic considerations. A two-stage liberal intergovernmentalist system assumes that pre-established

domestic preferences are then negotiated through interstate bargaining at the EU level, mainly in the European Council and the Council (Naurin, 2018: 1526). Similar to the claims of new intergovernmentalist about the importance of intergovernmental dynamics having spread to the day-to-day EU policymaking, liberal intergovernmentalists have also supported the idea that the dynamics they describe apply "far beyond treaty-amending decisions, well into the realm of everyday EU decision-making" (Moravcsik and Schimmelfenning, 2009: 74).

Meanwhile, the new intergovernmentalist approach represents a clear break from the logic of preference formation of liberal intergovernmentalism, deemed unnecessarily reductive and, while sectoral economic interests undoubtedly influence the overall preference of governments during negotiations, the role of domestic politics needs to be understood in a far broader manner than this (Bickerton et al. 2015b). Therefore, the expectation is that empirical evidence should show that domestic politics matter far beyond the assumptions made by liberal intergovernmentalism. Besides the sectoral economic interests, national policy preferences more importantly reflect the domestic political context, concerns about legitimacy, as well as ideology. When accounting for the formation of domestic preferences, one needs to also highlight the role played by issues such as the dissatisfaction of citizens with politics. Thus, national preferences are based on considerations of representation and legitimacy, as researchers should also reflect on ruling ideologies, incumbent governments, contestation of government, state-society relations, etc. This is an observation also shared by post-functionalism, which also sustains that domestic politics and EU outcomes are "tightly coupled" (Hooghe and Marks, 2008: 21).

New intergovernmentalists incorporate in their theory the rich literature on distrust in the political system, which is linked to the wider issue of legitimacy problems of the EU. Bickerton et al. (2015a; 2015b) argue that we are witnessing the end of the permissive consensus era and that the different political economy of the post-Maastricht era has drastically changed the role played by domestic preferences in the EU decision-making process. In order to increase the legitimacy of both the EU and the national representatives during negotiations, governments have to take into consideration general public concerns about representation, legitimacy and the organisation and articulation of interest (Bickerton et al., 2015a: 715). The populism and anti-European rhetoric that governments face at home are expected to be a crucial informer of the position of the representatives in negotiations. It would subsequently also be reflected in policy outcomes and modes of governance of different EU areas, indicating the reluctance towards the further empowerment of supranational bodies. Consequently, as the dynamics of preference formation change at the domestic level, so will the EU's policy-making dynamics. This is expected to be visible in the functioning of the European Council, the Council, and potentially the EP through the behaviour of parliamentarians in a way that reflects national preferences.

Thus, the empirical analysis of this hypothesis is expected to reveal a different logic of preference formation from that suggested by liberal intergovernmentalism. Internal political conflicts and the consequences of what is perceived as a dysfunctional representative system are expected to have a highly visible impact on the preferences brought to intergovernmental fora. In this context, "EU legitimacy is primarily dependent on member states' willingness to confer legitimacy to the collective decision-making of the EU" (Murray and Longo, 2018: 412).

An important factor that explains the high degree of influence that MS have on European integration is the expansion of the European Council's role, which has become the de-facto agenda setter for EU policy. Thus, the European Council has evolved into a "political executive" institution in its own right, increasingly active in the day-to-day policymaking of the EU and not just in matters of key constitutional decisions regarding European integration (Puetter and Fabbrini, 2016: 633). Carammia et al. (2016) show that the European Council has increased its agenda management capacity, to be able to both focus on "hot topics", especially during crisis situations, and to engage in routine monitoring over a range of topics in order to track their development. Support and promotion of a certain topic in the European Council becomes a prerequisite for establishing it as a priority on the policy agenda, the institution having transformed into an "essential locus of power" (De Schoutheete, 2012: 53). This seems to be supported by empirical analyses of the evolving European Council agenda (Imbrogno, 2016). In the post-Maastricht era, this development is particularly visible in areas such as economic governance, foreign and security policy, or social and employment policy (Maricut, 2016: 541). Moreover, Bressanelli and Chelotti (2016) show that the European Council is also increasingly able to wield influence over the agenda and legislative process in areas where decision-making is not dominated by intergovernmental fora, but which fall under the more supranational Community method.

The influence of MS is also exerted through the Council, which seems to have a strong grip on the agenda. Häge (2017: 695) argues that the incumbent presiding MS in the Council has significant leverage in mobilising political attention and in de-emphasising policy issues at the EU-level based on its own priorities. This should not be mistaken for an expectation for full control of the agenda, as there still exist constraints associated with inherited agendas and the occurrence of external events. Rather, the European Council and the Council should be seen as the main agenda-setters in the EU, in addition to bearing significant influence over the decision-making process itself.

Thus, the secondary hypotheses of H4 are:

H_{4a}: The Member States preferences are the most relevant inputs that determine the further integration of a policy sector.

H_{4b}: Issues of legitimacy and domestic political conflict are expected to be more important in determining the Member State preferences than sectoral economic interests.

Alternative hypotheses for H4: the role of the European Parliament and non-state actors

While H4a clearly reflects the idea that national preferences are the most important inputs for the development of a policy sector, it is necessary to understand the extent to which these preferences and the agenda they set actually translate into integration and policy outcomes. Studies of bargaining satisfaction that measure the distance between a MS' policy preference and the outcome of a decision in the Council show a mixed picture (Arregui, 2016). A key determining factor of the outcomes of negotiations has arguably been the level of involvement and relative influence of the Commission and the EP in the respective policy area. For example, even in an area from which it is marginalised by the institutional architecture, such as the realm of financial issues, the Commission appears to play a central role in shaping the outcome of a policy, while on regulatory issues, the level of satisfaction of a MS is higher if their position is closer to that of the Commission and/or the EP (Arregui, 2016: 1120). This could indicate that factors other than MS preferences and intergovernmental deliberations need to be considered for better understanding the mechanisms behind EU affairs. Therefore, this thesis will also test alternative hypotheses regarding the importance of other institutions and actors.

The second hypothesis of new intergovernmentalism and the respective alternatives already cover the role and motivations of the Commission. Therefore, this section will further bring into discussion another EU institution whose relevance is rather underestimated by new intergovernmentalism, the EP. The legislative body of the EU has witnessed a substantial expansion in its role since the introduction of the co-decision procedure with the Lisbon Treaty, described by some as one of the "most spectacular constitutional developments in the union's lifetime" (Roederer-Rynning and Greenwood, 2017: 736). Some researchers have presented extensive accounts about the "coming of age of the European Parliament" (Costa, 2017). These changes have set the EP on a virtually equivalent footing with the Council over decisions that follow the ordinary legislative procedure, applicable to the majority of EU legislation (Burns et al., 2013). For this reason, some have even portrayed the EP as the "big winner" of the Lisbon Treaty (Hosli et al., 2013: 1123).

Nonetheless, new intergovernmentalism as well as alternative supranationalist theories of European integration tend to underplay the role of this institution (Schmidt, 2016: 6). Criticism has been directed at such theories for failing to grasp the expansion in both formal and informal processes of the EP (Héritier et al., 2016; Hix and Hoyland, 2013; Nugent and Rhinard, 2016). In response, without overplaying the importance of these institutions, scholars under the umbrella of "new parliamentarism"

have called for an update of European integration theories to better acknowledge this increased role of the EP, which is especially visible in the trilogue part of the co-decision procedure (Schmidt, 2018: 1545). The existence of this last stage in the decision-making process not only gives the EP access to the negotiation table with the Council, which is also attended by the Commission, but it also shapes the strategies that all these EU institutions must adopt in order to pursue their interest successfully during the decision-making process. Besides, the EP has also recently become more relevant in areas dominated by intergovernmental methods of decision-making, such as the Economic and Monetary Union (Fromage, 2018).

Part of the reason behind these developments may be the fact that the institution represents an answer to the issue of legitimacy (Fromage and van den Brink, 2018), also highlighted by new intergovernmentalism. Indeed, some studies show that there is a chain of accountability between members of the EP and their constituents (though not as clear as for national parliamentarians), which makes members of the European Parliament (MEPs) more accountable to their electorate (Page, 2016).

The inner institutional process of the EP has also become an important aspect influencing policy outcomes. The members of the committee to which a legislative act is assigned can significantly influence the content of a legislative file through the introduction of amendments. The most important role is perhaps played by the rapporteur, the MEP that represents a committee in the negotiations (Roederer-Rynning and Greenwood, 2017: 750). The input of these actors has turned the institution into a veritable "environmental champion" (Burns, 2019), usually showcasing a higher ambition than the Commission or the councils and exerting a "positive" influence on environmental and climate issues (Burns, 2012). Moreover, Green MEPs are often in power brokering positions in committees that work on environmental issues (Bomber and Carter, 2006).

This may be a signal that MEPs have a different accountability chain to the domestic level than that of representatives in the Council. There is an observable link between MEPs and their national electorates (Braun et al., 2019), even though it is likely weaker than what can be observed with MS representatives in the European Council or the Council. This has increasingly been the case since the sixth European Parliament introduced rules to only hold roll call votes for the final votes on legislation (Hug, 2016: 213). Roll call votes have also allowed researchers to study the link between the MEPs and their respective MS, showing an increasing trend of national "disloyalty" (Koop et al., 2018). It is then important to also analyse whether representatives voted on European party lines, rather than based on national affiliation.

Deliberative practices can also be observed in the EP, especially within committees (Ozcurumez and Hoxha, 2015), where work is highly inclusive and instances of exclusion are more the result of self-marginalisation, as can be the case with Eurosceptic MEPs (Hage and Ringe, 2019). Meanwhile, the

evolution of the EP's own bureaucracy through its Secretariat has increased the access to expertise of MEPs, which in turn strengthened their negotiation results in trilogue processes (Bürgin, 2019: 187). The EP has also been shown to seek to increase its own power, both in relation to the Council and the Commission (Wiesner, 2018). Nonetheless, there are limitations on the influence of the EP. For example, there is evidence that once deals are reached in the Council, the EP is unlikely to be able to make major modifications to a legislative act (Arregui, 2016: 1120). In order to better understand these dynamics, this thesis will also test an alternative hypothesis concerning the level of influence that the EP bears on policymaking and integration outcomes.

In addition, given the overarching implications for the EU economy as a whole, the sectors of energy and climate policy are rich in terms of stakeholders and actors involved. Importantly, such actors are highly active in Brussels, seeking to influence policy directly at the EU rather than national level. Therefore, in an attempt to obtain a more holistic perspective on the changes brought by the CEP, this thesis will also formulate an alternative hypothesis to that of new intergovernmentalism by reflecting on the role of other non-state actors.

Observing this potential gap in the theory, Baird (2017) attempted to expand the hypotheses of new intergovernmentalism by taking into account the influence of non-state actors. The level of activity of such actors in Brussels seems to be a key development observable in the post-Maastricht Treaty era largely ignored by new intergovernmentalism. A reformulation of the 4th hypothesis according to Baird is: "Transnational private actors attempt to intervene in procedure as well as outputs and may side-step problems with domestic preference formation through multi-level games" (2017: 1196). This is an important observation about the means through which non-state actors may attempt to participate in the policy process, but it says little about the amount of influence such actors actually have. While the fact that they attempt to intervene should be relatively easy to observe, it would be more difficult to establish a direct causal link between these attempts and actual decision-making results.

The degree of influence can depend on both the topic at stake and on the level of governance at which lobbying activities are concentrated. For instance, lobbying is prevalent in the comitology system (Nørgaard et al., 2014). As the Council and the EP have increasingly delegated decision-making powers to the Commission, so has the level of activity of non-state actors increased in this area. The Lisbon Treaty created a distinction between implementing acts, which follow the more traditional comitology procedures of the Commission, and delegated acts, over which the Council and the EP have a veto power but are not consulted for a formal vote (Siderus and Brandsma, 2016: 1265). In the comitology process policy specialists delegated by MS would form committees that debate and vote on Commission executive acts, usually required for the implementation or further clarification of a recently adopted legislative file. Since the introduction of delegated acts with the Lisbon Treaty, national civil servants

are only consulted in “expert groups”, having no voting rights (Siderus and Brandsma, 2016: 1265). This gives more leeway to the Commission in choosing which input is more valuable, irrespective of MS preferences. Subsequently, this could give non-state actors an avenue to pursue their interests directly at the EU-level, circumventing the inputs and preferences of MS.

Regarding the areas over which such actors have most influence, an interesting finding of research on lobbying activity in Brussels is that they are most successful when “the lobbyist’s policy position enjoys popular endorsement within media debates and when the lobbyist engages in a coalition with other organized interests” (De Bruycker and Beyers, 2019: 57). Therefore, even for such actors, legitimation and public perception are important. Moreover, both private actors and civil society organisations can become agents of public opinion through public outreach and campaigning. This in turn might have a limiting impact on the positions that MS may take, especially when their preferences are unaligned with public opinion. Non-state actors can thus capitalise on such disconnects. Based on their position relative to the general public position, lobbyists may rely on either internal activities, directly targeting the policymaking process, or external activities, trying to mobilise public perception, in order to increase their chances of success (De Bruycker and Beyers, 2019: 72).

The level to which the positions of MS can be constrained is not fully clear, however. Bojovic et al.’s (2019) study on the reform of the European Stability Mechanism, shows that national representatives indeed exhibit concerns about public opinion contrary to their preferences, yet it is difficult to discern if this had an actual impact on voting. Even on salient and sensitive issues such as immigration, research seems to indicate that MS preferences during negotiations in the Council are not mainly determined by domestic public opinion (Arregui and Creighton, 2018). This appears to be even more visible for policies that are highly technical in nature, over which citizens would find it difficult to formulate a strong political opinion, so a connection between public sentiment and national preferences is more difficult to establish (Arregui and Creighton, 2018: 1324). In such cases, “governmental preference formation appears to be insulated from potentially important non-executive actors” (Bojovic et al., 2019: 13). This seems to confirm the new intergovernmentalist expectation that non-state actors have little influence on MS preferences. However, this does not necessarily imply that they cannot affect outcomes through different avenues. It might just signal that lobbying efforts are more successful if focused on other EU institutions than the Council.

Transgovernmental networks of regulatory agencies can also contribute to filling the “regulatory gap” in some policy areas where MS have been reluctant to empower the supranational level (Börzel, 2016). It is common practice for EU technical standards to be drafted by industry, while NGOs are actively involved in reviewing proposed legislation (Dehousse, 2016: 22). In many areas, including energy, they are integral parts of the policy development process, even if only informally.

In order to better understand this issue, an additional alternative hypothesis to H4a is formulated regarding the influence of other non-state actors than the Commission or the EP. As H4b already stakes new intergovernmentalism against a competing view, namely liberal intergovernmentalism, no additional alternative hypothesis is needed there.

Therefore, the alternative hypotheses are:

Alternative H_{4a}: The European Parliament significantly influences policy outcomes.

Alternative H_{4ab}: Other non-state actors can alter decision-making outcomes irrespective of their influence on Member States preferences.

Hypothesis 5

''The differences between high and low politics have become blurred'' (Bickerton et al., 2015a; 2015b)

The fifth hypothesis states that it is increasingly difficult to differentiate between high and low politics. Issues can reach the agenda either "from above" through the high politics route of the European Council, or "from below" through the low politics route of Commission expert groups (Princen and Rhinard, 2006: 1119). The main distinction is the first route is mainly political, while the second is more technocratic. For Hoffmann (1995), the understanding of the high/low politics distinction is a fundamental trade-off between national survival and participation in European integration. Therefore, it is expected to find only very rare empirical examples of governments isolating themselves or threatening to withdraw themselves from the European integration process as a whole or to fully isolate a domain from EU influence (Bickerton et al., 2015b: 34). At the same time, MS are eager to closely monitor the EU decision-making process and are wary of the independent powers of traditional supranational actors. One of the reasons for this is that it is increasingly hard to tell what constitutes an issue of heightened national concern and what may be considered a purely technocratic issue which could be left to expert decision-making.

New intergovernmentalists propose an analysis of this hypothesis based on the concept of salience, as developed by Hoffman (1995). However, the empirical expectation is to find a different logic from that originally proposed by Hoffmann, as it is currently impossible to extract a single and coherent narrative about the national interest. This does not mean that there no longer exists a distinction between high and low politics, but the logic of interaction between MS and the way positions are formed has changed.

However, the value of this hypothesis for this project is questionable. First, the hypothesis appears to be more of a criticism of Hoffman's distinction between high and low politics than a well-developed explanation of policymaking at national and EU levels. Hoffman's ideas have already been heavily criticised in the academic literature and even Hoffman appears to admit that this distinction may not be as clear-cut and helpful as he had previously believed. Second, as this thesis does not employ a cross sectoral analysis, it would be difficult to draw the necessary distinctions with other areas of EU policy in order to understand the validity of this claim. Therefore, while Chapter 7 offers some comments on this hypothesis, the difficulty of operationalising it makes it impossible to analyse in a systematic fashion similar to the previous four hypotheses.

Hypothesis 6

''The EU is in a constant state of disequilibrium'' (Bickerton et al., 2015a; 2015b)

The final hypothesis states that the EU is in a constant state of disequilibrium, highlighting the instability of social, economic, and political developments of the EU and its MS in the post-Maastricht era (Bickerton et al., 2015b: 36). A direct consequence has been that this growing fragmentation of societal interests led to a decoupling of policymaking from national politics, which creates the situation in which national elites can be at odds with the wishes of their domestic populations (Bickerton et al., 2015a: 716). According to new intergovernmentalists, the economic crisis was not just a phase, but an event that revealed some of the problems that exist at the very core of the Union. Therefore, the EU must be studied from the perspective of disequilibrium (Bickerton et al., 2015a: 716). This approach breaks with the more traditional scholarly preference for analysing stability and continuity. The state of disequilibrium encapsulates the tension between governments and their own societies.

There is a rich literature on the effect of crisis on policymaking in the EU (Graziano and Halpern, 2016). Crises can be defined as "periods of disorder in the seemingly normal development of human affairs, along with widespread questioning or discrediting of established policies, practices, and institutions. Consequently, crises are frequently cited as essential causal drivers for major or non-incremental policy change" (Nohrstedt and Weible, 2010: 1). This may affect not just the behaviour of MS, who tend to take over, but also the Commission, which maintains a key role as a provider of information (Bauer and Becker, 2014). Others argue, however, that the Commission is disempowered during crises (Da Conceição-Heldt, 2016). Saurruger (2014) offers an ample analysis of Europeanisation in times of crisis, explaining how a better integration of concepts such as timing, salience, politicisation in times of crises can offer additional insights for researchers. It is concepts like this that new intergovernmentalist believe should be taken into account when analysing an EU that is in a constant

state of disequilibrium. However, many of these concepts are already analysed in this thesis as part of the previous hypotheses. It encapsulates for example many of the themes covered by the 4th hypothesis related to the problems of legitimacy that MS and the EU face.

Moreover, this is a highly problematic hypothesis, as its formulation makes it very difficult to refute it (Bulmer, 2015: 301). Given these problems and the fact that this hypothesis speaks more about the European integration process as a whole rather than about a specific policy sector, it will not be analysed by this project beyond a short discussion on the impact that crises have on EU policymaking in Chapter 7 and 8. The CEP has also not been marked by any major crisis and the short timeframe of this analysis does not allow for a comparative assessment of crisis-logic in EU energy policy making.

2.7 Conclusion

This chapter explored the academic literature in the field of EU studies, particularly that on European integration, with the purpose of setting the general theoretical framework of this thesis and establishing the research contribution that is made to the existing body of research. The chapter offered an overview of the grand theories of European integration, which have come under increasing contestation over the past decades. As a result, new frameworks for understanding the EU have emerged, with institutionalist and governance accounts being some of the most notable. These approaches have changed the general framing of the research conducted on the EU, by focusing on the issues such as the formal and informal institutional arrangements between actors and concrete policymaking practices established at different levels. These frameworks have also contributed to shift in EU studies from researching the main constitutional dynamics of the EU and the grand directions of European integration, to more policy-oriented analyses, offering clearer explanations of the policymaking practices and outcomes in various areas of EU competence.

Within this new setting, new intergovernmentalism represents an attempt to revive European integration theories, by combining the key insights from institutionalist and governance studies through a novel theoretical framework. Building on observations regarding the increasing intergovernmental control exerted by MS over the EU competences that have continued expanding in new policy areas, Bickerton et al. (2015a; 2015b) outlined six hypotheses for explaining the mechanism of European integration since 1992. As the original framing of these hypotheses made them difficult to test empirically, this chapter sought to better operationalise them by developing new sets of secondary hypotheses. Moreover, to provide a more comprehensive theoretical toolkit for explaining the adoption and implications that the CEP has for EU energy policy, this chapter also created another set of alternative hypotheses, derived from competing theoretical accounts.

The first hypothesis of new intergovernmentalism focuses on the deliberative and consensus-seeking practices that have come to dominate decision-making in the EU. The theoretical expectations are that most decisions are taken by consensus within the Council, that negotiations take place in both formal and informal settings, and that MS do not present positions that cannot be justified in terms of benefit to the group. The first set of alternative hypotheses are that unanimous votes taken in the Council do not necessarily reflect actual consensus between countries and that in cases when votes are not decided through unanimity, smaller MS use negative votes as a form of dissent.

The second hypothesis stipulates that EU supranational institutions, such as the Commission, do not automatically seek the expansion in scope of European integration, nor do they seek to further expand their powers. The Commission is only expected to attempt to influence the decision-making process when it senses a strategic advantage. Meanwhile, the second set of alternative hypotheses test whether the Commission does pursue an expansion in its power and whether it seeks to create strategic advantage to influence the policy process, rather than merely waiting for windows of opportunity. The key question of this hypothesis is whether the Commission acts as a strategic entrepreneur or a purposeful opportunist.

The third hypothesis of new intergovernmentalism expects that when supranational transfer of powers does occur in the EU, it is done to newly established institutions, which have distinct intergovernmental control built into their institutional architecture. Moreover, the Commission is expected to accept the creation of these new bodies, as well as their empowerment in its stead. The third set of alternative hypotheses test whether the Commission agrees to the establishment of de novo bodies as a means to expand its own influence over some policy areas and if the institutional architecture of these new institutions truly ensures intergovernmental control over their activity.

The fourth hypothesis sustains that the European integration process is driven chiefly by MS preferences, which are formed domestically based on concerns regarding legitimacy rather than sectoral economic interests. Alternative hypotheses are formulated for testing the level of influence that the EP has over legislative outcomes, as well as the impact of other non-state actors active in the EU policymaking process.

The fifth hypothesis stipulates that high and low politics are no longer clearly separated in EU decision-making processes, with institutions such as the European Council getting more actively involved in the day-to-day activities of the EU and the technical aspects of EU policy. This hypothesis will not be tested in a similar manner to the first four, but it is discussed in Chapter 7.

The sixth hypothesis states that the EU is in a constant state of disequilibrium, generated by recurrent crises, which have direct consequences for the *modus operandi* of the EU. Similar to the fifth

hypotheses, given the difficulties to test it, this hypothesis is only discussed in broader terms in Chapter 7.

Before commencing the empirical analysis of Chapters 4, 5, and 6, the next chapter explores the historical development of EU energy policy and some of the academic research explaining its evolution. While this chapter outlined the theoretical foundation of this thesis and the contribution made to European integration theories, the next chapter locates this thesis within the academic literature on EU energy policy.

3. Energy policy in the European Union

3.1 Chapter Overview

As explained in the introduction, the purpose of this thesis is twofold – to test the explanatory ability of new intergovernmentalism, but also to understand the changes that have occurred in EU energy policy with the introduction, negotiation, and adoption of the CEP. Having laid the theoretical foundation in the previous chapter, the focus now moves to EU energy policy and its evolution.

This chapter begins by explaining the reasoning behind the focus on energy policy, exploring the puzzling development of this area, and highlighting the contribution that this thesis makes to the academic literature on EU energy policy. It also provides an explanation of why energy policy, generally considered a hybrid area of EU integration, is particularly suitable for testing new intergovernmentalism. While energy concerns were part of the European project from its very foundation, a legislative boom only really occurred starting in the late 1980s, with the most notable developments after the turn of the millennia. Therefore, this period roughly corresponds to the post-Maastricht era described by new intergovernmentalism.

To better understand the origins and overall development of EU energy and climate policy, this chapter then frames the historical context, first explaining the significance that EU treaties have had on the evolution of this field. However, with energy policy only having entered EU primary legislation in 2007, focusing merely on EU energy competencies established through its treaties only offers an incomplete picture. Therefore, this chapter also provides an overview of the expansion of the EU's energy policy through secondary legislation adopted as part of its three main pillars: the internal energy market, security of supply, and climate change. Each of these three areas are discussed in part, explaining their individual dynamics and the progress they have seen over the past few decades. The section also highlights how the fragmented evolution of EU energy policy has led, at times, to contradictory results and priorities. These sections do not merely offer a historical account, but also explore some of the main research that has been conducted for explaining the transformation of the EU's energy policies.

The final section of the chapter explores the attempts that have been made to unify this historically fragmented area of EU activity into a common EU energy policy. This was a process strongly opposed by some MS throughout the decades, given how authority over energy matters has been considered a key aspect of national sovereignty. However, based to a great extent on the relentless efforts of the Commission, significant strides have been made for bringing a more coherent EU approach to energy policy.

3.2 What makes EU energy (and climate) policy unique?

Energy policy represents a particularly relevant case study for testing new intergovernmentalism, given both its unlikely and unconventional development and the strategic role that MS attribute to it. In fact, the history of the evolution of the field is mostly about overcoming the high reluctance that national governments have shown towards integrating their domestic energy policies. The effect of this unwillingness was reinforced by the barriers associated with the highly different structure of the energy markets and policy frameworks across European countries (Spaak, 1973: 35). This led to divergent preferences between governments about the direction in which EU energy policy should be heading. The conflict between the interests of different countries is multifaceted, having both internal and external dimensions (Schubert et al., 2016: 15). On one hand energy policy has been viewed as a matter of provision of public services in the form of affordable gas and electricity to citizens, while on the other hand energy lies in the crucial arena of international politics when it comes to ensuring the security of supply. Moreover, by the very nature of the field, unilateral decisions taken by one country have profound implications on its neighbours and the EU as a whole. Therefore, energy policy represents a unique mix of internal and external politics.

In order to ensure the provision of energy as a public service, European countries have traditionally used nationalised vertically integrated companies that have been closely controlled by the government. This logic came into conflict with the Commission's later liberalisation agenda, which clashed with the interests of these national champions. As national governments were highly protective of their national energy companies, moving away from entrenched state protectionism required a major attitude shift (Dinan, 2010: 467). What makes it even more interesting for researchers is the fact that the energy policy field is thought to be particularly affected by veto players, given the enshrined interests of lobbies, consumers, and politicians (Schubert et al., 2016: 85).

Interestingly, the way energy policy has been conceived in the EU has been fluid over the decades, as a consequence of the shifting modus operandi and priorities of the MS and the European institutions. More recently, while MS have indeed generally become more wary of delegating any further powers to the supranational level of the EU, both state and institutional actors called for the establishment of an Energy Union that would become the cornerstone of a comprehensive European energy policy (Schubert et al., 2016: 85).

Energy policy has only entered the EU's primary law after the Lisbon Treaty, even if it has been at the core of the European project ever since its inception. While EU legislation concerning energy matters has also been produced in the past, it had to be done based on instruments related to the EU's existing competences, such as competition and environmental policy (Buchan, 2010: 360). The Lisbon Treaty

sets the legal basis of the EU policy-making process in the field of energy, granting "shared ownership" of this policy area between the MS and the EU institutions (Braun, 2011: 2). This led to a larger role for the Commission in the agenda-setting and implementation phases, streamlining energy policy as an area governed through the Community method. The EP has also become a full-rights co-legislator in this process. EU energy policy shows a unique mix of Community method integration and intergovernmental oversight and political leadership (Thaler, 2016: 572). Many of the recent transformations of this policy field that have been achieved through EU legislation occurred after the European Council meeting in Hampton Court in 2005, when a decision was made for the establishment of a common European energy policy (Biesenbender, 2015: 22). Therefore, energy policy is also a "newcomer to the vast field of study focusing on EU policymaking" (Szulecki et al., 2016: 499). Therefore, this thesis makes an empirical and theoretical contribution to this now booming field of EU studies on energy and climate.

Thus, despite having been part of the EU since the beginning, EU energy policy has only expanded into a proper EU area over the past two to three decades. The unconventional development of this area of EU integration is particularly interesting for testing the dynamics of new intergovernmentalism, as "EU energy and climate policy comprises a variety of policy modes including intergovernmental, supranational as well as new or experimentalist forms of decision-making" (Slominski, 2016: 344). It was considered by researchers to exhibit "strong integration dynamics", despite the multiple crises of the past two decades and the fact that it represents a "hybrid area" of EU integration (Herranz-Surrallés et al., 2020: 1). This hybrid nature makes it particularly relevant for testing new intergovernmentalism. Energy sits at the junction of multiple policy domains, representing a critical case study for analysing the "transformation of authority patterns in the EU" (Herranz-Surrallés et al., 2020: 2). Moreover, new intergovernmentalists themselves state that some of the most interesting areas to use for testing their theory are rely on a mix of Community method competences and intergovernmental policymaking (Bickerton et al., 2015d: 317). While in the older policy areas, the Community method is deeply rooted, the newer policy areas are dominated by intergovernmental forms of cooperation. However, it is unlikely that even the older policy areas have not been touched by the political economy shifts of the post-Maastricht era (Bickerton et al., 2015d: 316-317). This is why there have already been attempts to use new intergovernmentalism to explain key developments in EU energy policy (Thaler, 2016; Bocquillon and Maltby, 2019).

The past two decades have seen some fundamental shifts in the way EU energy policy is governed. The gas crises of the 2000s exposed the need for cross-border cooperation to ensure security of supplies, the increased salience of climate change required a strong coordinated action to both reduce emissions and negotiate international agreements, while concerns of affordability and competitiveness increased pressures for the finalisation of the internal energy market liberalisation process. Herranz-Surrallés et

al. argue that all these developments led to a "supranational turn" in EU energy policy (2020: 3). Yet, this supranationalisation has started being increasingly contested as MS have become increasingly reluctant about both ceding any further sovereignty and have even come to question the desirability of the level of integration that has already been reached. This reinforces even more the idea that energy policy seemingly exhibits the ideal formula of underlying dynamics for applying a new intergovernmentalist framework.

On the other hand, while there are intrinsically unique features about energy policy, a similar thing could be said about most of the EU's policy areas. Therefore, it is worth also exploring whether the analysis of energy policy could lead to conclusions applicable to similar 'types' of EU policies. Attempts to categorise policies by types have been made ever since the beginning of the EU. Lowi's (1964) distinction between regulatory, redistributive, and distributive may be particularly relevant for EU energy and climate policy and for the differentiated development of its different strands. Pollack (1994: 95) explains the main differences between the three categories as follows: (1) regulatory policies are the result of functional spill-overs and Commission political entrepreneurship, bringing winners and losers in direct confrontation in group conflict, (2) redistributive policies are the result of intergovernmental bargaining, showing open conflict between winners and losers, and (3) distributive policies are entirely the result of Commission entrepreneurship and do not have specific winners and losers.

Regulatory policymaking is technical in nature and usually leads to loss of MS autonomy, which are expected to resist further integration not necessarily based on policy content, but rather on the fear of creating a precedent for supranational authority (Pollack, 1994: 110). Domestic companies tend to be most affected, but MS consent to regulatory policymaking if it is necessary for market functioning. Such policies do not have EU budgetary implications and are generally passed through the Community method.

Redistributive policies are the least conceptually complex and involve redistribution of resources, being mostly decided at the highest level in the European Council through intergovernmental bargaining and unanimous voting (Pollack, 1994: 111). They are by definition zero-sum games, putting net contributors in direct opposition to net beneficiaries. Redistributive policies are usually agreed upon in larger intergovernmental negotiations, with net contributors agreeing to transfer resources in exchange for market or monetary integration (Pollack, 1994: 111).

Distributive policies similarly involve the allocation of resources, the only difference being that contributors expect to receive approximately the same they have put in (Pollack, 1994: 112). They involve no major transfer of resources, so they are consequently bound to intra-sectoral decision-making, usually in the Council and the EP. The line between redistributive and distributive policies can

be blurred (Pollack, 1994: 112). In distributive policy areas, like taxation, employment, or economic governance, MS have proven particularly resistant to increase the supranational powers or centralisation (Börzel, 2016: 15).

As it will be shown in the next sections, energy policy development categorises it as mostly regulatory policy, with many of the elements described by Pollack (1994) being highly relevant. However, MS persistence in minimising the transfer of authority to the supranational level has been fiercer than in other policy areas that arguably fall under a similar category, such as telecommunications or environmental protection. This makes the dynamics behind EU energy policy even more puzzling. An explanation could be the great strategic interest that MS usually place on this area. Given its interdependence with most sectors of the national economy (Pollack, 2011: 94). It is a policy area full of intense political and public debate, including on economic, environmental, security and even social issues (Tosun et al., 2015: 5). In the post Maastricht era, policy areas such as economic governance, foreign and security, and social policy have witnessed increased coordination at EU-level, yet none are governed through the Community method, unlike the older EU policy areas such as competition, trade or consumer protection, which developed before 1992 (Maricut, 2016: 541). According to Neyer (2006: 786), deliberative practices as opposed to more traditional bargaining are also to be expected to occur more often in regulatory policy areas, making energy policy a particularly relevant sector for testing new intergovernmentalism.

As mentioned in the introduction, due to the blurry lines between energy and other policies of the EU, the use of the term ‘energy and climate policy’ needs to be clarified. ‘Energy policy’ and ‘energy and climate policy’ are used largely interchangeably in this thesis, given the plethora of energy legislation that has been developed for addressing climate change and decreasing the sector’s GHG emissions. While EU climate policy covers a broader range of activities and economic sector, when referred to together with energy policy in this thesis, it is only the energy-related directives and regulations that are being referred two. The intertwined development between energy and climate policy in the EU, as well as their significant overlap, is explained extensively in the following sections.

The next section tries to untangle some of the dynamics of the evolution of EU energy policy, while also offering some of the most relevant explanations for these developments that can be found in the academic literature.

3.2 The evolution of EU energy policy

As mentioned in the previous section, while energy has been at the core of the original treaties of the EU, not much progress has been achieved until the 2000s (Mišík, 2015: 206). The founding treaties of the European Union, the European Coal and Steel Community (ECSC) and European Atomic Energy Community (Euratom) are both closely linked to the energy sector, but this has not led to supranational integration at EU-level (Slominski, 2016: 344). Creating a common EU energy policy has long been an objective of the Commission, which ever since its first guidelines for a Community Energy Policy in 1968 outlined the objective of ensuring "first and foremost security of supply at prices which are relatively stable and as low as possible" (European Commission, 1968: 7). However, the emergence of supranational governance in EU energy policy is a more recent development (Eckert, 2016: 502). Without a clear mandate offered through primary law to legislate in the energy area, the institutional dimension failed to develop until the mid-1980s (Biesenbender, 2015: 22).

EU energy policy evolved through both treaty primary law and EU regulations and directives. These are discussed in part in the following sections, beginning with the former. EU primary law refers to the main treaties that form of the constitutional foundation of the EU, establishing the institutional architecture and general governance process of EU activity. Therefore, this section first explains the evolution of EU energy policy throughout the main treaties of the EU, to then focus on the progress achieved through EU regulations and directives.

Energy policy in EU Treaties

The Treaty establishing the European Coal and Steel Community of 1951, also called the Treaty of Paris, was the foundational moment for EU energy policy (Matláry, 1997). It created a common market on coal and steel, but it did not do the same for the electricity and gas markets. The Intergovernmental Committee established by the Messina Conference of 1956 stated in its "Spaak Report" that electricity and gas were not compatible with liberalisation (Eckert, 2016: 508). The report did, however, call for the creation of the Euratom.

The Treaty establishing the European Atomic Energy Community of 1957, created a framework for sharing knowledge and resources on nuclear energy with the purpose of setting standards and regulating risk, but this did not necessarily happen through increased supranational competencies, as MS continued to exercise control over competencies of energy and military importance (Barnes, 2008:11). Over the years, however, the Euratom Treaty allowed the Commission to gain knowledge and develop expertise on nuclear energy (Black, 1997:179). The treaty still exists today, while the ECSC was terminated in

2002 (Eckert, 2016: 508). Also from 1957, the Treaty establishing the European Economic Community (EEC), commonly known as the Treaty of Rome, established the Council of the EU as the primary decision-maker. The European Parliamentary Assembly was only granted an advisory role in this process.

The Single European Act of 1986 established the Single European Market and expanded EU competence to environmental policy. This opened up the possibility to adopt energy-related policy through two policy areas that were now integrated at EU-level: competition and environmental policies (Eckert, 2016: 508). As a result, there was an immediate expansion in EU energy-related legislation, which was now concentrated around issues of competitiveness rather than security of supply (Herweg, 2015: 93).

The Treaty on the European Union (TEU) of 1992, more commonly known as the Maastricht Treaty, gave the EP equal footing in the co-decision process under the Community method. In contrast with the intergovernmental method where decisions are taken unanimously by MS, under the Community method (also referred to as the Ordinary Legislative Procedure), a legislative initiative in the form of a regulation, directive or decision that can be introduced solely by the Commission, is passed if voted with a qualified majority vote in the Council and a majority in the EP (Ponzano, 2011). After assessing the proposal in parallel in a first stage, the EP is the first to vote via simple majority on amendments, normally based on a report by one of its committees. The Council can either accept the EP's position or it can agree on a different position which it sends back to the EP for a second reading and a repeat of the process (European Parliament, 2022). The EP may reject or amend the Council's position with an absolute majority. If the Council does not accept the EP's amendments after the second reading, a Conciliation Committee is created between the two institutions to reach a common position, which is then approved by qualified majority in the Council and simple majority in the EP following a third reading (European Parliament, 2022).

This system has been criticised for "being lengthy and subject to gridlock" (European Parliament, 2021: 1). As a solution, the so-called "trilogues" represent informal meetings for speeding up the process of reaching an agreement between co-legislators. Mandated by the plenary, the EP's lead committee on the file can enter such interinstitutional negotiations between the Commission, the Council and the EP (European Parliament, 2021). The Commission acts as a facilitator, as it does not have a say in the formal decision-making process after it introduces a legislative proposal. Trilogues can be organised at any reading in the legislative procedure. The agreements reached through trilogues are technically only informal and need to be approved through voting by the co-legislators. Besides giving the Commission a monopoly on initiating legislation, this procedure has also placed the EP on equal footing with the Council in the decision-making process.

The TEU also expanded the EU competence over Trans-European Networks (TENs) (Eckert, 2016: 509). Nonetheless, efforts to include a chapter on energy were ultimately unsuccessful (Thaler, 2016: 573). While a joint proposal on the negotiations of the treaty by French and German heads of state, Kohl and Mitterand, included among its objectives the extension of EU competences on energy policy, most of the attention was focused on the monetary and political unions (Baun, 1995: 619). At the time, negotiations on the advancement of single market for energy were stuck, as "major electric and gas utilities were opposed to […] third party access" and countries such as Germany were still very protective of their domestic subsidies for coal (Surrey, 1992: 216). The more consequential change was the modification of the co-decision procedure which significantly altered the inter-institutional balance and bargaining power, while also paving the way for increased specialisation of MEPs based on the work they conducted in the committee system (Biesenbender, 2015: 35). The new co-decision procedure not only consolidated the Commission's role to propose legislation, but it also allowed the EP to engage in more direct bargaining with the Council in the "conciliation committee" (Pollack, 1997: 123). However, this did not apply to all EU policy areas, with the Common Foreign and Security Policy (CFSP) and Justice and Home Affairs (JHA) not being included under the Community Method and therefore functioning through unanimous decision by MS.

The Treaty of Amsterdam (1997) expanded the legal status of environmental policy and introduced the principle that environmental legislation needs to be developed in coordination with the other policy areas it affects (Tosun and Solorio, 2011: 4). This opened the way for increased harmonisation of energy and environmental legislation. The treaty also simplified the co-decision procedure and gave the EP the ability to approve or reject the Commission President, which led to an increasing politicisation of the EU's primary supranational institution.

The Treaty of Nice of 2001 amended the EU institutional structure to accommodate the new waves of enlargement. 2004 saw the accession to the EU of ten Central and Eastern European (CEE) countries: Cyprus, Czechia, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia. Bulgaria and Romania joined the EU three years later in 2007. This expansion in EU membership was decisive for the evolution of EU energy policy, especially in bringing energy security at the forefront of the agenda (Mišík, 2015: 206). This was mostly the result of the high level of exposure and dependence that these countries had on imports of Russian gas. The change in dynamics caused by the accession of CEE MS is discussed in greater detail in section on security of supply, as well as in Chapter 7.

The Treaty of Lisbon of 2007 has been deemed the moment that "broke down the barriers that hindered action by Brussels" for EU energy policy (Solorio, 2011: 397). No previous attempt to include energy in primary legislation was successful. The closest was the Constitutional Treaty of 2004, which failed to be ratified by MS and never came into force (Haghighi, 2008). The Treaty of Lisbon picked up on

many of the themes of the Constitutional Treaty and successfully established energy policy as an official EU area. Before that, energy legislation was passed through EU competences in other areas (Delvaux and Guimaraes-Purokoski, 2008). The Treaty of Lisbon also revised the name of the Treaty of Rome to the Treaty on the Functioning of the European Union (TFEU), which together TEU, create the constitutional basis of the EU.

The new Article 4 of TFEU established EU competences in the area of energy, covered by co-decision (with the exemption of legislation involving taxes) between the Council and the EP. The latter has been often called the "big winner" of the Lisbon Treaty (Hosli et al., 2013: 1123). The treaty also reformed comitology and introduced delegated acts, which the Commission can issue for facilitating the implementation of regulations and directives. Moreover, Article 194 of the Treaty of Lisbon states that the EU is responsible for ensuring a functional energy market, security of supply, to promote energy savings and renewable energy sources, as well as to promote the further interconnection between national networks, however, while not affecting the right of individual MS to choose how they supply their energy and what energy sources are used. Slominski (2016: 345) argues that this encapsulates the competing logics of EU energy policy – there is a clear increase in supranational activity, but MS maintain a strong grip over their energy systems. Also worth mentioning is the "solidarity clause" established in Article 122 of the Treaty of Lisbon, which required MS to cooperate in case of disruptions in energy supplies.

While the evolution of EU treaties had a determinant role on the evolution of EU energy policy, most of its development occurred through regulations and directives, especially given the lack of formal EU competences before the Treaty of Lisbon, which did not prevent "creeping" EU competences (Pollack, 1994). The next three sections review how energy policy evolved over the past decades through three distinct pillars: the internal energy market for gas and electricity, climate change and security of supply.

Table 2: Significance of EU treaties for the evolution of energy policy

Treaty	Year	Significance
Treaty of Paris (ECSC)	1951	Established the European Coal and Steel Community, marking the beginning of the European Union
Treaties of Rome (EEC/TFEU)	1957	Launched Euratom and established the Council of the EU as the principal decision-maker on EU legislation
Single European Act (SEA)	1986	Introduced EU supranational competences on competition and environmental policy
Treaty of Maastricht (TEU)	1992	Expanded the role of the European Parliament in the co-decision process under the Community method

Treaty of Nice	2001	Paved the way for the enlargement of the EU through the accession of countries from Central and Eastern Europe
Treaty of Lisbon	2007	First EU treaty to establish formal EU competences in the area of energy policy, now falling under the Community method

Source: own compilation

The internal energy market

Electricity and gas markets were traditionally organised on national lines with very limited supranational oversight, but this started changing in the 1990s with the slow liberalisation of the sector (Eberlein, 2008: 75). The realisation of the internal energy market can be truly considered as the "turning point" for EU energy policy (Matláry, 1997: 19). The ambitious objective of establishing a functioning internal energy market for gas and electricity was achieved through multiple policy instruments including the promotion of common market principles, programmes of liberalisation and deregulation, building energy networks and infrastructure, and the harmonisation of taxes and subsidies (Schubert et al., 2016: 18). Much of the driving force behind the three liberalisation packages of EU energy markets was generated by the "relentless" Commission, which made creative use of all its formal and informal tools (Pollack, 2011: 93). The supranational institution used both means of "negative integration", such as the use of competition law to push liberalisation without needing MS approval, as well as of "positive integration", which involved pushing for changes in EU regulations and directives (Pollack, 2011: 95).

Liberalisation and increased competitiveness at the EU level have long represented the Commission's main goal for the European energy markets. The reasons why the Commission has chosen competitiveness as one of the most important features of the EU's energy policy is that EU markets are vulnerable to volatility in international markets, there is an unsustainable reliance on a small number of external suppliers of gas and oil, and vertically integrated national companies tend to behave in monopolistic or oligopolistic ways because of their very design (Schubert et al., 2016: 20). Increased competitiveness was viewed as a potential overarching solution to these problems. In addition, the intended benefits of liberalisation also include a better investment environment, lower prices for consumers, and higher efficiency. However, the agenda of the Commission has been constantly blocked by MS (Herweg, 2015: 88).

Liberalisation was "problematic and contested" from the onset, giving the divergent MS interests and the strategic importance of energy markets, making the progress achieved in this policy area even more

remarkable (Pollack, 2011: 92). The liberalisation of the internal energy market posed a significant puzzle for MS. On one hand, they supported further liberalisation, seeing the potential economic advantages of such a move, while on the other hand they were highly reluctant to cede control over national energy policies (Matlary, 1997: 21). Liberalised markets function on the basis of price formation through competitive bidding for quantities of energy sold, as opposed to a centralised system where producers are compensated based on their levelised cost of electricity (Jacobs, 2015: 110). The more dynamic nature of this market design increases risks for power producers, which explains the resistance from large companies that had been operating as virtual monopolies.

The divergent preferences of national governments have also often led to stalemate in negotiations. The last two decades have seen a deregulation conflict between the British "laissez-faire", the German "geordneter Markt", and the French "dirigisme" (Matlary, 1997: 46). These fundamental differences between MS have created a difficult setting for achieving consensus on what a true internal energy market should look like. Lacking consensus, progress was slow. It is in this environment that the Commission pursued policies that sought to harmonise indirect taxation, ensure transparency of prices and investments, create a competitive environment for public procurement, allow for third party access to electricity and gas distribution infrastructure, integrate the electricity and gas grids at the EU level and restructure and phase out state aid for the coal industry.

Before the SEA, supranational governance in energy policy had been effectively "ring fenced" (Andersen and Sitter, 2015: 319). The idea of an internal energy market based on deregulation and open access to electricity and gas supplies emerged in the late 1980s, but progress continued to be slow due to MS hesitancy (Mišík, 2015: 206). The first concrete steps were realised through the 1986 resolution of the Council, which highlighted the need for the better integration of the EU energy markets and the beneficial impact this would have on energy security, affordability, and competitiveness (Schmidt, 1996: 18). Following this resolution and shortly after SEA, the Commission published a strategy paper on "The Internal Energy Market" (European Commission, 1988), followed by a legislative package in 1989 on the transmission of gas and electricity (Eckert, 2016: 508). The first directives adopted in the area of the internal energy market (90/377/EC; 90/547/EC; 91/296/EC) focused on transparency issues were riddled with "lengthy and controversial" debates (Pollack, 2011: 96). While MS exercised tight control over the decision-making process, these legislative acts laid the initial groundwork through which the Commission pursued its vision for liberalisation, which required the breakup of natural monopolies in energy production, transmission, distribution, and supply to final consumers (Brutschin, 2015: 189). To achieve this, the Commission has historically pursued creative ways for identifying the windows of opportunity and even staking MS against each other. For example, the introduction of these first Commission proposals for legislation on the internal energy market was aided by France, which

filed a complaint on German subsidies for coal that were distorting the electricity market and harmed French competitiveness (Schmidt, 1996: 11).

While it became clear that EU internal market provisions would eventually be extended to the gas markets, this was a very painstaking process, as only the United Kingdom supported this at the beginning the Commission's vision (Andersen and Sitter, 2015: 324). On the more extreme side, proposals for liberalisations were strongly opposed especially by actors from the gas industry, some of which viewed this process "as the equivalent of the end of civilization" (Stern, 1998: 91). This fierce resistance by incumbent industries was reflected in reluctance by MS. Nonetheless, a relentless Commission continued maintaining the issues related to gas markets liberalisation on the EU agenda (Andersen and Sitter, 2015: 326). A new opportunity emerged with the completion of the single market in the early 1990s, after the entry into force of the SEA (Slominski, 2016). The following period witnessed an "eminent" role for the use of competition policy, which became the key driver behind the liberalisation of EU energy markets (Eckert, 2016: 510). The liberalisation efforts culminated with the three liberalisation packages of the internal energy market.

The first energy package consisted of a new electricity directive (96/92/EC) in 1996, followed by an equivalent gas directive (98/30/EC) in 1998. These directives required the legal unbundling of accounts, which meant that the transmission system operators (TSOs) had to keep their accounts separate from those of the energy producers. Consumers would also be granted the liberty of choosing between suppliers. Nonetheless, these measures did not provide sufficient details about how alternative suppliers would gain access to the power lines and gas grids (Eikeland, 2008: 12). In the end, these provisions were seen as acceptable by MS, after intense and prolonged deliberations (Andersen and Sitter, 2015: 326).

The adoption of this first energy package is considered an "example of an activist Commission pushing the limits" of the restraints that had been put by MS on supranational governance in the energy sector (Andersen and Siter, 2015: 327). Nonetheless, national governments managed to retain significant leeway over controlling the regulatory agencies and the ownership of networks (Eckert, 2016: 509). France in particular sought to block full liberalisation, idea which at the time was supported especially by the UK and Portugal, hoping to protect the monopoly over its electricity sector held by Electricité de France (EDF) (Schmidt, 1996: 21). EDF was the largest electricity exporter in the EU and, given its focus on nuclear energy, required long-term planning and visibility, which was threatened by liberalisation. Resistance from France and Germany defending their national vertically integrated champions was even fiercer in the case of gas markets, resulting in "lighter" liberalisation measures being adopted (Pollack, 201: 96). In fact, there was such intense opposition from these two countries that the initial proposal on the gas directive had to be completely redrafted (Herweg, 2015: 99).

In the end, the MS managed to significantly water down the Commission's proposals. In fact, the first energy package saw the largest differences between the initial proposals and the final versions of the adopted legislation of any of the three packages (Brutschin, 2015: 191). Nonetheless, the fact that the directives were successfully adopted despite resistance form virtually all veto players was impressive (Herweg, 2015: 89). The first energy package set the general objectives for the following stages of liberalisation and truly marked the beginning of the integration of the EU energy markets (Levi-Faur, 2004; Jakobsen, 2010).

Still, the directives ultimately failed to deliver the desired results (Haber, 2018: 311), leading to the adoption of a second energy package in 2003, consisting of directives on electricity (2003/54/EC) and gas (2003/55/EC). The process started after a European Council decision in this regard at its meeting in Lisbon in 2000. The second energy package updated the regulatory instruments established in the first package, but it fell short of requiring full unbundling, again as a result of French and German resistance (Brutschin, 2015: 191). The directives required the unbundling of accounts of transmission and distribution networks and energy production, meaning that they could not be simultaneously operated by the same owner (Buchan, 2010: 361). The directives also obliged MS to allow third party access to the transmission and distribution networks at the same tariff as for domestic companies, without discrimination. They introduced obligations for guaranteeing the independence of the national regulatory agencies (NRAs) and regulated access to electricity networks (Eckert, 2016: 509). The activity of these regulators would start to be coordinated through the European Regulators' Group for Electricity and Gas (ERGEG). The second package also paved the way to the proper liberalisation of the retail market (Pollitt, 2009).

As the details on implementation were rather vague, the directives were complemented by a regulation (2003/1228/EC) establishing more concrete rules. Among them, TSOs had to be compensated for their services by all market participants with non-discriminatory and transparent tariffs. Allocation for resolving network congestion could not lead to discrimination against third parties, all market participants had to publish data, and the same operation standards for transmission networks would apply across the EU.

Nonetheless, even after these additional measures, a Commission's report revealed that the gas and electricity markets had not been fully liberalised, and the lack of access to the distribution infrastructure was an impediment to genuine market competition (European Commission, 2007). The 18-months investigation revealed improper implementation of the legislation, illegal price-fixing, and abuse of dominant market position (Pollack, 2011: 96). Vertically integrated companies, that owned the capacities for production, transport, and distribution of energy, still represented barriers to entry for new companies, either domestic or from other MS (Pollack, 2011: 103). The Commission found that

countries such as Spain, Greece, Portugal, and Ireland had only superficially implemented the directives. A principal cause for this was the apparent preferential access that network operators were giving to their own affiliates, as management and investment decisions were largely based on the interests of parent companies (Eikeland, 2008: 14). The resulting price differences between countries led to minimal cross-border trade and national markets remained largely dominated by incumbent monopolistic companies (Schubert et al., 2016: 152).

Given the "underwhelming" results revealed by this energy sector review conducted by the Commission's DG for Transport and Energy (DG TREN),[3] a third package was proposed in 2007 (Pollitt, 2009: 25). Once again, the negotiations have shown how an autonomous Commission has been pushing for its agenda despite facing MS opposition. The large-scale inquiry by DG Competition (DG COMP) in the build up to the legislative proposals had a "strong signalling effect in the area of ownership unbundling" (Eckert, 2016: 510). The Commission pursued high-case investigations in France, Germany, and Italy, applying anti-trust legislation and imposing high financial penalties on large energy companies (Pollack, 2011: 97). However, given DG COMP's limited administrative capacity constraining its pursuit of multiple individual competition law cases, its preferred approach was to focus on fewer high-profile and highly visible cases in order to create precedents (Eckert, 2016: 510). This proved a powerful tool, as even the threat of anti-trust lawsuits was sufficient to determine both French company EDF and German company EnBW to open up markets and establish independent regulators before any further legislation was adopted (Pollack, 2011: 97). These actions were enabled by the "commitment procedure" established under competition law, that was designed as a tool to alleviate some of the bureaucratic pressures on the Commission and to accelerate competition cases (Pollack, 2011: 97).

The third energy package was eventually adopted in 2009, consisting of an electricity directive (2009/72/EC) and a gas directive (2009/73/EC). The third this package introduced the first explicit formal link between competition policy and energy market legislation (Eberlein, 2012; Eikeland, 2011). During the negotiation process, the Commission firmly pushed for mandatory ownership unbundling, but this was not acceptable to most MS (Wettestad et al., 2012: 74), which were still reluctant to give up control on regulating their energy systems, often citing security concerns (Bjørnebye, 2006: 33). Regardless, the need for cooperation on technical standards and issues required deepening integration (Eckert, 2016). TSOs collaborated before this became an EU-level required obligation, dating back to the 50s, so the transition was not difficult (Herranz-Surrallés et al., 2021). However, the different national designs for TSO ownership and varying levels of independence created market distortions (Meleitou et al., 2018). In the end, three forms of ownership unbundling and TSO design were allowed,

[3] DG TREN was split in 2010 between DG Energy and DG Mobility and Transport.

as explained by Herranz-Surrallés et al., (2021). The Independent System Operator (ISO) model required the separation of the ownership and operation of the transmission grid. The Independent Transmission Operator (ITO) model allowed TSOs to remain vertically integrated but were obliged to prove organisational separation. Finally, the full ownership unbundling (OU), the ownership of the TSO is transferred to a new entity entirely.

Throughout the negotiations, France and Germany, pressured by national champions such as E.ON, EDF, and RWE, resisted full ownership unbundling (Pollack, 2011: 103). This is why, as a counter measure, DG COMP pursued two high-profile anti-trust investigations against E.ON and RWE right in the midst of these legislative negotiations (Pollack, 2011: 105). By launching an infringement procedure against the German giant E.ON, whose owner was an opponent of the proposal, the Commission sought to influence the preferences of the German government and its negotiation positions. The positions of companies such as France's EDF and Germany's E.ON were believed to have a crucial impact on the preferences of the two governments (Euractiv, 2011). In order to avoid antitrust fines on competition grounds worth billions of euros, E.ON struck a deal with the Commission in 2008, renouncing some of its initial opposition (The Economist, 2008). The Commission also simultaneously mobilised the German Steel Industry Association, a supporter of its proposals, in order to gather even more domestic support (Eikeland, 2011: 253). Some have argued that the Commission's engagement with industrial actors and environmental NGOs was particularly important for the successful adoption of the third energy package (Fiedler, 2015: 7). Therefore, there is little surprise that some have taken the Commission's actions as clear evidence of "stronger supranational governance in EU energy matters" (Eikeland, 2011: 243). It needs to also be mentioned, however, that the ability of the Commission to instrumentalise competitions policy relied on a cooperative CJEU to actually follow through with trials (Pollack, 2011: 97).

Another key aspect of the third energy package that merits mentioning is the introduction of the "(Anti-) Gazprom clause" for the gas market, following a strong push from CEE MS, especially Poland (Brutschin, 2015: 191). This clause requires the Commission to be consulted for any acquisition contract with third countries, increasing its authority over energy contracts. This represented an instance when some MS pushed for stronger supranational supervision based on concerns related to security of supply.

The third energy package also created two new EU bodies. The first is a tans-European organisation bringing together 43 TSOs across 36 countries, the European Network of Transmission System Operators for Electricity (ENTSO-E), established in 2009. The second is the Agency for the Cooperation of Energy Regulators (ACER), also established in 2009, replacing ERGEG as the trans-European agency of national regulators. The Commission had initially sought to give ENTSO-E a stronger role, while proposing a "strikingly weak" role for ERGEG, but this was changed by MS in the

final compromise through the establishment of ACER as agency responsible for regulatory oversight. The choice to empower the TSOs and ENTSO-E to develop technical codes was another preferred choice of MS, in opposition to the view of the EP that championed for ACER to be in charge (Herranz-Surrallés et al., 2021).

MS resistance further continued after the adoption of the package, as the actual implementation has been deemed a "disappointment" (Brutschin, 2015: 187). Countries such as Romania, Bulgaria, and Greece have been very slow to transpose legislation and even when they did, it failed to break down monopolistic behaviour of national majors in both electricity and gas markets (Cătuţi et al., 2020). The liberalisation process of the retail markets was even more problematic, and many NRAs are not genuinely independent.

As shown throughout this section, the Commission played a crucial role in the liberalisation of EU energy markets, making creative and strategic use of its powers. While the objectives and the relentlessness of the Commission are clear, it is important to not overstate its ability to influence change. MS remained principal drivers of the EU internal market and the legislative outcomes reflect interstate negotiation and bargaining, at least as much as they reflect the active involvement of the Commission. The Commission had to either find allies in the European Council and the Council or to follow the position of key countries. Ciambra and Solorio's study (2015) shows how the pace of the energy market liberalisation coincided with the United Kingdom's position on the matter. Thus, the UK became a supporter of this policy once it had itself undergone a wave of privatisation and liberalisation measures under Prime Minister Margaret Thatcher. The British government became the discursive leader of energy market liberalisation in the European intergovernmental forums, and the three energy packages would not have come to fruition without the UK's support. Therefore, Ciambra and Solorio's study concludes that "[f]or EU energy policy to play the Commission's tune, it has to go at a British tempo" (2015: 161).

While the foundations for an EU energy policy have been laid through the realisation of the internal energy market, much of the momentum for the further integration over the past two decades can be attributed to the increased salience of issues of security of supply and climate change mitigation (Eckert, 2016: 503). These are discussed in turn in the next two sections.

Security of supply

While the development of the internal energy market for gas and electricity has mainly been internally driven by MS and EU institutions, the other two dimensions of energy policy have been more heavily

influenced by external factors and events. Given the import dependence of most EU countries when it comes to oil and gas, the development of the security of supply area of EU energy policy has often represented a response to international events outside the direct control of MS. Consequently, the main objective of related EU policy has been to reduce the dependence on imports, which has often created "vulnerabilities to external supply shocks, disruptions, price swings, and political agendas, all of which negatively affect solidarity among Member States and economic prosperity within them" (Schubert et al., 2016: 18). Concerns regarding security of supplies had been considered one of the key drivers of EU energy policy, especially over the past decade, but what makes this area particularly interesting is that it can be considered both a driver of further integration and a reason for MS resistance against pooling sovereignty (Judge and Maltby, 2017: 179). The lack of supranational powers in the area has also often been touted as a key reason behind the underwhelming expansion of this policy field (Thaler, 2016: 574).

At the time of the Treaty of Rome, which came shortly after the 1956 Suez crisis, MS were weary to transfer any tangible authority to the newly established Commission, especially in what was perceived to be a sensitive issue of national sovereignty (Andersen and Sitter, 2015: 323). During the oil crises in the 1970s, MS pursued unilateral responses rather than entrusting the EU-level by pooling sovereignty (Belyi, 2008). At the time, EU governments decided against relying "on the Community to enter into negotiations with third country producers of energy" (Haghighi, 2008: 478). However, some progress was made, as the Commission had at least become an active participant in the conversation, albeit not a central one (McGowan, 1990: 247).

MS not only pursued bilateral agreements for dealing with the oil crisis, but have also joined, with the exception of France, the newly established International Energy Programme of the Organisation of Economic Coordination and Development (OECD) (Black, 1977: 190). The International Energy Agency (IEA) was created as an autonomous organisation for coordinating actions for securing the supply of oil (Eckert, 2016: 508). This happened despite the fact that the EU already had legislation on emergency oil stocks since the 1960s. Such examples are why security of supply has come to be considered the "weakest strand" of EU energy policy (Tosun and Solorio, 2011: 4).

Despite such setbacks, the Commission sought to keep security of supply on the EU agenda. For example, in its 2000 Green Paper, it presented a highly pessimistic outlook for the EU's energy supply, forecasting that imports would represent as much as 70% of the energy mix by 2030, while the EU could become completely unable to alter the global trends in international energy markets (European Commission, 2000). The Commission's suggested approach to these vulnerabilities has been that of a common EU-wide effort to increase security of supply. One of its proposed ideas was for it to be granted veto power by MS over any new long-term contract for bilateral energy supply with an external provider

(further discussed in Chapter 7). Nonetheless, as it was expected, EU countries have been highly reluctant to further empower the supranational level on such a sensitive issue.

The issue of EU energy security gained more salience after the enlargement rounds of 2004 and 2007, given the high import dependency that most CEE countries had in relation to the Russian Federation (Buchan, 205: 359). The Commission recognised the energy security concerns of the new MS in its 2006 green paper, calling for the EU "to speak with the same voice" on energy matters (European Commission, 2006: 14). Its approach was rejected by the Council later the same year (Mayer, 2008). Nonetheless, this signalled a clear interest from the Commission to expand both the EU's and its own prerogatives in foreign energy policy (Mišík, 2015: 207). The Ukrainian gas crisis of 2009, when Russia ceased gas supplies over a dispute on transport tariffs, gave the Commission's ambitions additional momentum, after gas deliveries gas delivery interruptions affected 17 European countries for 11 days (Mišík, 2015: 207). The Commission renewed its push for "an adequate response at the EU-level" (European Commission, 2009) but once again this was met with minimal support from most MS.

Facing such adversity, the Commission started pushing for an alternative understanding of how to achieve energy security, by supporting energy markets liberalisation and competition as a means to increase system resilience and avoid risks of disruptions in deliveries (Proedrou, 2012; Judge and Maltby, 2017). This view was acknowledged by the European Council in 2007, after the publication of its Action Plan for an Energy Policy in Europe which stated that "a substantive development of energy efficiency and of renewable energies will enhance energy security, curb the projected rise in energy prices and reduce greenhouse gases emissions" (European Council, 2007: 20). The multi-faceted nature of energy security is also reflected in the academic literature, which has expanded to now analyse the "four As of energy security: availability, affordability, accessibility, and acceptability" (Cherp and Jewell, 2014: 416).

Regardless of MS resistance, the Commission still managed to give itself a seat at the table. Maltby's (2013) study shows how the Commission, aiming to decrease European energy import dependence, has successfully managed to make the matter of security of supply of gas "increasingly supranational". By employing Kingdon's (1995) multiple streams theory, Maltby showed that the Commission built networks of experts and stakeholders in order to obtain the necessary knowledge and technical information to further its agenda. Therefore, by acting as a supranational policy entrepreneur, the Commission sought to influence policy by using its expertise, by engaging in constant advocacy, and by building networks that support its initiatives (Maltby, 2013: 437). In other words, the Commission attempted to make itself indispensable on matter of energy security by "providing expertise, advocacy and leadership" (Maltby, 2013: 436).

All in all, mainly by exploiting its prerogatives in the fields of environmental protection and competition policy, the Commission has established itself a key actor capable of shaping policy outcomes by building networks and engaging in discourse framing. Nonetheless, progress in this field has been significantly more underwhelming than in the other areas of EU energy policy. To this day the EU's reliance on external energy supplies still represents "a serious risk to its domestic economic and social welfare" (Schubert et al., 2016: 22). This is the reason why such issues have been traditionally treated as matters of high politics, especially as governments' legitimacy can be negatively affected if they fail to ensure stable supplies to their citizens and industries. These risks are exacerbated by the political disputes in countries such as Russia, Ukraine, Algeria, or Nigeria. The recent invasion of Ukraine by Russia has exposed even more the consequences of high reliance of hydrocarbon imports. This has conversely brought into debate an alternative approach for pursuing EU energy security – the complete elimination of the use of fossil fuels through a highly ambitious EU climate policy.

Climate change

Environmental policy has been a key factor of influence and an enabler for "institutionalizing energy policy at the level of the European Union" (Tosun and Solorio, 2011: 1). In fact, most legislation related to EU energy policy has been adopted through environmental policy competences (Solorio, 2011). Especially since the 2000s, the Commission was granted greater institutional powers over environmental matters compared to other areas of EU energy policy (Kuzemko, 2014: 68). Moreover, these competences resulted in higher influence the other energy policy matters. While climate change is a key dimension of EU energy policy, it also represents an area of EU integration in itself, having been governed through the Community method long before energy policy entered EU primary law. This is partly why the EU's climate legislation has evolved faster and is considered to have more clout at EU level than to energy-related matters.

The EU's ambition to reduce GHG emissions and to build a sustainable industrial and economic environment is the result of a mix of internal and external considerations (Schubert et al., 2016: 18). As the negative externalities associated with climate change are transnational in nature, internal policy decisions are insufficient for correcting them. Therefore, the EU has sought a leadership role on the international stage when it comes to setting standards and negotiating international agreements for combating climate change. For this endeavour, the EU used its vast experience in environmental policy, not only including climate change considerations in international trade agreements, but also taking a lead-by-example position on the international stage.

The EU's environmental acquis started developing in response to the increasing concern for such issues in Europe in the 70s (Solorio, 2011: 401). Nonetheless, environmental policy only officially became a part of EU competences after its inclusion in primary legislation through SEA in 1986. Article 6 of Maastricht Treaty of 1992 furthered the integration environmental protection by requiring its harmonisation with the implementation of all the EU's policies and activities. The Commission introduced the first climate package in the build up to the Rio Earth Summit in 1992 that established the United Nations Framework Convention on Climate Change (UNFCCC), proposing legislation regarding renewable energy, energy efficiency, and energy taxation (Solorio, 2011: 402). As shown by Collier (1997), the ambitiousness of the package was drastically decreased by the Council, especially regarding energy taxation and a common regulatory framework for electricity produced from renewable sources.

Later pushes for the further integration of climate policy also occurred in the build-up of international climate conferences, such as the yearly Conference of the Parties (COP) under the UNFCCC framework, or to demonstrate the commitment to international climate change mitigation efforts. For instance, the climate strategies presented by the Commission in 2005 were meant to show the EU commitment to meet the Kyoto agreement through concrete actions (Piebalgs, 2009: 2). The need to implement the Kyoto Protocol obligations also prompted the Commission to propose the establishment of a cap-and-trade emissions trading scheme, which is discussed in greater detail bellow.

Following the 2007 Action Plan of the European Council for establishing an energy policy for Europe, the Commission launched the following year the 20-20-20 targets, portraying climate change as an "opportunity" for the EU (European Commission, 2008). The European Council gave the mandate to the President Barrosso's Commission to propose ambitious legislative revisions in the energy sector. The political momentum for this proposal originated all the way back to the 2005 Hampton Court informal European Council during the British presidency (Bocquillon and Dobbels, 2014: 30). The Commission presented in 2008 its proposals for reducing GHG emissions by 20%, adopting a binding renewable target of 20% and an indicative 20% target for improvements in energy efficiency compared to a baseline modelled on a business-as-usual scenario (Buchan, 2009: 14). The binding targets for the share of renewables established through the Renewable Energy Directive represented an impressive feat, given the historical resistance that MS had shown against any sort of supranational interference with their domestic energy mixes (Schubert et al., 2016: 21). It has been argued that the level of ambition would not have been possible without the backing of the Germany Council presidency at the time of the release of the Commission's proposal (Wurzel, 2010: 467). The timing was also tight, as the Commission tried to publish its proposal to influence climate negotiations for a new international agreement (Bocquillon and Dobbels, 2014: 31). All in all, the EU appears to have a "new and more

vigorous climate and energy policy" following the adoption of the 2009 package (Wettestad et al., 2012: 72).

The Energy and Climate Package in 2009 also contained a revision of the Emissions Trading Scheme (ETS) and the Effort Sharing Decision (Solorio, 2011). A distinction needs to be made here between the main instruments that the EU has been using to achieve its climate objectives - the ETS and renewable energy targets. The first has a direct impact by setting a limit on total CO_2 emissions and establishing a cap-and-trade scheme that obliges polluters in the industrial and power sectors to purchase and later surrender an emissions certificate (EUA) for each tonne of CO_2 they emit. It therefore acts as an instrument for addressing market failure, by internalising the negative externalities of GHG emissions. The ETS was initially set up through Directive 2003/97/EC, which established a pilot project for the EU's carbon market between 2005 and 2007, followed by a fully functioning EUA trading phase between 2008 and 2012. During these two phases, MS were allowed to handle the allocation of "free" certificates to local companies, with the Commission having been effectively side-lined in this incipient phase (Wettestad et al., 2012: 73).

This changed with the 2009 package, which included Directive 2009/29/EC revising the EU ETS for the 2013-2020 trading period, through the introduction of an EU-wide cap. National shares of allowances were centralised and a fixed linear reduction factor was introduced for achieving a 21% GHG emissions reduction by 2030 in the power and industrial sectors. In this new setting the Commission evolved into "the main overseer and designer" and the system became highly centralised (Wettestad et al., 2012: 73-74). The MS also agreed to an Effort Sharing Decision which covers the sectors not included in the ETS and binds countries to reduce emissions in the buildings and transport sectors.

Meanwhile, renewable energy targets represent the other principal instrument that the EU has been using for decreasing its GHG emissions. In the 1990s, the Commission stated its support for a common European framework for supporting renewable energy sources, seeking to establish quota obligations as the preferred support mechanism for renewable energy, in order to eliminate the wide variation among national support schemes. This initiative was blocked by the EP and countries such as Germany and Spain (Jacobs, 2015: 117). Germany's resistance was explained by their preference to protect its own support scheme for renewable energy, fearing a watering down of their highly ambitious legislation at the time (Cox and Dekanozishvili, 2015: 167). Germany favoured the Feed-in-Tariff (FiT) support schemes, which were already generously supporting renewable technologies in the country (Cox and Dekanozishvili, 2015: 177).

The first renewable energy directive (2001/77/EC) introduced an EU-level non-binding target for producing 12% of electricity from renewable energy sources by 2010, which do not emit CO_2 emissions

and could therefore partly displace more polluting power production capacities that contributed to climate change. However, "little progress was made in terms of 'greening' the European energy policy at this stage" (Eckert, 2016: 509). The directive was revised (Directive 2009/28/EC) as part of the 2009 package, demanding MS to also develop national action plans outlining how they would reach 20% renewable energy by 2020. Governments would also have to submit progress reports, with the Commission responsible for pooling the results and assessing whether the EU as a whole was on track to meet its objective. An attempt to create a pan-European mechanism for trading Guarantees of Origin (GOs) of renewable energy was not included in the final version of the directive, not only as a result of MS opposition, but also because of significant internal fragmentation within the Commission between DG Environment (DG ENV), DG COMP, and DG TREN, all with different visions of such a scheme (Jacobs, 2015: 120). This measure was also opposed by countries such as Germany, which did not want to alter their national support schemes (Cox and Dekanozishvili, 2015: 177).

As shown by Wettestad et al. (2013), the revision of the renewable energy framework only saw a lighter increase in supranationalism, especially compared to the revision of the ETS, which effectively became a scheme chiefly governed by the Commission. This distinction is important and is most likely explained by the higher degree of sovereignty that MS have over deciding their energy mix, right clearly established in Article 194 of the Lisbon Treaty. However, renewable targets are decided at EU-level. Wettestad et al. (2013: 75) argue that this differentiated outcome shows that MS perceived integration through the ETS as more acceptable, having faced pressure from domestic publics to adopt legislation for lowering GHG emissions. As it will be shown later in this thesis, this distinction between these two instruments still persists, with the Commission having separated the ETS revisions from the other legislative files, including the renewable energy directive, when it kickstarted the negotiations for a new GHG emissions target for 2030 (see Chapter 4). This is mostly motivated by the different mechanisms though which climate policies are implemented – environmental policy relies more on a "command-and-control" logic, while energy policy is usually governed through "softer" means (Tosun and Solorio, 2011: 1).

Another more "energy-related" policy of EU climate efforts that needs to be discussed is energy efficiency, which has materialised in legislation on labelling domestic appliances, energy performance standards for buildings, and energy efficiency targets (Tosun and Solorio, 2011: 2). Energy efficiency entered the EU agenda during the 1970s oil crisis as a potential response to energy security concerns by reducing demand for oil through energy savings (Dupont, 2020: 99). However, some of the first more concrete legislative proposal only emerged in the 1980s and 1990s. The European Council decided in 1986 to set an energy savings target of -20% by 1995 compared to 1985. The SAVE Directive (93/76/EEC) was passed in 1993. It took almost another decade for first performance in buildings directive (EPBD) to be adopted in 2002. However, the supranational authority over energy efficiency

policies has been constantly contested by MS, which was reflected in a poor implementation track record (Dupont, 2020).

In the 2000s, energy efficiency was reframed by the Commission as a policy for reducing GHG emissions, hence contributing to the implementation of international climate agreements. The climate focus was made clear in the EPBD, the first legislative act to be adopted in this new era. At the time, both the Council and the EP raised questions regarding the utility of such a directive, the feasibility of its implementation, as well as about associated costs (Dupont, 2020: 100). The legislation was significantly weakened during the negotiations progress, only applying to major buildings renovations in its final form. Given this watered-down form, it was of little surprise that the directive did little to actually improve energy performance of EU buildings in practice (Henningsen in Dupont, 2020).

The main energy efficiency files (Directive 2009/125/EC on the Ecodesign of products, Directive 2010/31/EU on EPBD, and Directive 2021/27/EU on energy efficiency) were later revised as part of the 20-20-20 targets package. This led to an expansion in scope of the energy efficiency measures and achieved generally higher levels of climate ambition, especially given the involvement of the EP, which started acting as a counterbalance to MS resistance (Dupont, 2020: 101). This resulted in tighter timelines for increasing the energy performance of the EU buildings stock, for example. However, contrary to the negotiating position of the EP, the compromise on the Energy Efficiency Directive (EED) only included indicative and not national energy efficiency targets. The renovation target of 3% per annum proposed by the EP was only applied in the end to public buildings, but MS did have to start elaborating renovation plans for the entire building stock. Increased EU competencies and higher ambition levels have been contested by MS throughout the process (Dupont, 2020: 102).

Similar to the case of renewable energy, the governance of energy efficiency at EU level has been highly intergovernmental in nature, initially based on the Open Method of Coordination (OMC) and national self-reporting (Ringel and Knodt, 2018: 211). Interestingly, formal coordination on EED and EPBD was established through a forum of informal coordination for Concerted Actions, where MS and Commission representatives meet biannually to discuss implementation status and engage in peer learning (Ringel and Knodt, 2018: 211). Following their success, Concerted Actions were also organised for renewable energy.

The 2020 climate and energy objectives were later included in the Commission's 2010 strategy for smart, sustainable, and inclusive growth (European Commission 2010), integrating them in other areas of EU policy. This is important, as the relationship between EU climate policy and other areas of integration has been constantly evolving, with climate policy even becoming the centrepiece of all sorts of legislative revisions across EU sectors, especially after the introduction of the European Green Deal and the climate neutrality objective, which are further discussed in Chapter 8.

Nonetheless, these developments did not occur without setbacks. The Commission's 2011 roadmap for moving to a competitive low carbon economy in 2050 was blocked in the Environmental Council due to lack of consensus, following Polish objections (Skovgaard, 2013: 1142). While the accession of new MS from CEE catalysed the policy development in the security of supply area, the same cannot be said for climate change, where new MS have generally confronted Western countries on GHG emission reduction targets and policies (Ringel and Knodt, 2018: 210). Countries such as Germany and Denmark have traditionally been at the forefront of climate ambitions, while most resistance originated from the Visegrad 4 countries (Poland, Slovakia, Czechia, and Hungary), Romania, and Bulgaria.

When it comes to explaining the evolution of the climate change policy agenda at the EU-level, studies such as Wettestad et al.'s (2012) found that a blend of theoretical perspectives appears to be most suitable. According to their findings, MS play a central role, while supranational delegation of powers only happening when governments believe it is in their interest to do so and there is inter-state consensus (Wettestad et al., 2012: 82). Countries such as Germany have been highly active in seeking to set the EU agenda according to their preferences. Germany has the ambition of becoming a leader on the international stage of climate change by constructing a unified European voice which it could control (Cox, 2015: 171). At the same time, however, the Commission has shown significant autonomy in pushing for its preferred EU-level solutions. Consequently, the objectives of the European institutions and MS have occasionally clashed. Interestingly, an important support factor behind the EU's ambitious approach to climate policy comes from citizens and public opinion (Nitoiu, 2015: 535), much more so than for the other pillars of EU energy policy.

3.3 Towards a common EU energy policy

The twin EU objectives of affordable prices and energy security were completed in the past two decades with increasingly larger concerns regarding climate change mitigation (Judge and Maltby, 2017: 187). However, despite these decades-long efforts, the EU's energy policies "often tend to be rather vague and diffuse" (Schubert et al., 2016: 12). As it has been shown in the last three sections, EU energy policy has evolved along three main pillars, each with their own dynamics and pace (Thaler, 2016: 572). In practice this means that the EU has not had a unified energy policy, but rather multiple, which have at times been at odds with one another and even created contradictions (Kuzemko, 2014; Buchan, 2013; Froggatt et al., 2013). For example, the commitment to create an environment that fosters competitiveness in the internal energy market can be considered inconsistent with the support measures for meeting GHG emission reduction ambitions (Schubert et al., 2016: 20; Jacobs, 2015: 109). While on one hand, the EU champions a market-driven and liberalised energy sector, it simultaneously

acknowledges the need for interventionist measures for increasing the price-competitiveness of new renewable technologies, which has historically required strong state support.

Another interesting aspect of the policy architecture of the EU is that the climate policies may seem to be at times doubled by energy policy. For example, the EU ETS places a hard cap on emissions in the electricity sector. However, the Renewable Energy Directive also sets targets for renewable electricity production, which in turn drive the decarbonisation of the power sector. Similarly, the EPBD sets renovation standards and requirements for the EU's building sector, whose decarbonisation is also covered by the Effort Sharing Regulation, part of the EU's climate acquis. These potential tensions are further discussed in Chapter 8, when looking at the most recent EU policy developments.

Thaler (2016) argues that the increased intergovernmental dynamics that can be witnessed in EU energy policy are in fact a direct result of the need to overcome the contradictions and tensions that have emerged between the three energy policy pillars. This is why, even after decades-long developments, energy policy is still considered to be the realm of national prerogatives and national control (Szulecki et al., 2016: 549). Previous research on new intergovernmentalism and the post-Maastricht developments of EU energy policy point to the expanding role of the European Council, which serves as a forum of debate between the complex and diverse MS preferences (Thaler, 2016: 571). Governments are pressed by opposed pressures domestically - the business community that generally tends to favour liberalisation and the unions and companies enjoying monopolistic positions, that tend to oppose it (Schmidt, 1996: 28). National monopolies are insufficiently flexible to turn large legislative changes in their favour and tend to prefer the status quo. This explains, for example, the historic French reluctance towards liberalisation. Meanwhile, the Commission has constantly sought to exploit all three energy areas simultaneously, in order to further European integration and perhaps expand its political influence (Tosun and Solorio, 2011: 3).

The struggle to produce a common EU energy policy is not new, being one of the main objectives of the European Coal and Steel Community. At origin, the EU was an attempt to integrate the energy policies of the founding countries with the purpose of producing the necessary steel and coal for rebuilding Europe in the aftermath of World War II. While talks about a common energy policy originate from that period, they remained merely empty words for decades, not backed up by concrete policy outputs.

The first credible attempt to establish a common EU energy policy was only made in the mid-2000s, after decades of stagnation or fragmented evolution. The decisive informal Hampton Court Summit in 2005 outlined the plans for both fully liberalising EU energy markets and for creating a common energy policy that would also cover security of supply and climate change (Slominski, 2016: 344). Tony Blair, the British prime minister at the time, was one of the main supporters of an integrated EU energy policy

that could improve competitiveness and reduce prices (Blair, 2005). The Commission, which had long awaited a moment to establish a common EU energy policy, released a Green Paper in 2006 containing a roadmap for simultaneously achieving the three main policy goals of sustainability, competitiveness, and security of supply (European Commission, 2006).

According to the logic of this document, a functioning energy market with genuine competitiveness would reduce prices for consumers, the reduction of GHG emission and promotion of renewable energy would provide sustainable means for producing affordable energy, while secure supplies would shield MS from external interference in price stability and would provide sufficient energy to EU citizens and industries (Schubert et al., 2016: 20). The next steps were taken in 2007, when the European Council established the creation of a unified EU energy policy as a "milestone" and "springboard for further action" (European Council, 2007:13). This promised to overcome the existing tensions and occasional contradictions between the three dimensions of EU energy policy (Solorio and Morata, 2012:3). However, while the EU had been praised for being one of the first entities to bring energy and climate policies together in a holistic approach as part of the 2009 package, expectations about actual implementation remained uncertain (Toke and Vezigiannidou, 2013).

This would change with the introduction of the Energy Union project and the CEP, both representing concrete measures to build a common EU energy and climate policy. These two initiatives are analysed in detail in the next chapter.

3.4 Conclusion

This chapter explained the historical evolution of EU energy policy, with the purpose of both setting the empirical context for the analysis of this thesis, as well as for locating the research conducted here within the broader academic literature on EU energy and climate policy. The chapter first explored the puzzling nature of this EU policy area, which has been at the core of the European project from the very beginning, yet it did not see any meaningful integration for the first three decades of its existence. MS have long had divergent opinions regarding the desirable direction for EU energy policy and have also been historically protective of their energy sectors, blocking the expansion of supranational authority in this area. However, with time, cooperation between countries on energy matters has expanded, leading to a patchwork of intergovernmental and supranational arrangements in what became a hybrid area of European integration (Herranz-Surrallés et al., 2020: 1). Based on these considerations, energy policy represents a particularly suitable empirical test for the theoretical claims of new intergovernmentalism. Given the often-blurred lines between energy and climate policies, the term EU energy and climate policy is often used interchangeably with EU energy policy throughout this thesis.

As a matter of fact, climate policy has come to supersede many of the current discussions in the energy sector in recent years, as further discussed in Chapter 8.

This chapter then gave an overview of the main changes in primary law that have affected the development of EU energy and climate policy throughout the decades. The Single European Act was among the most consequential, for enabling the adoption of energy-related EU legislation through competition and environmental policies. The Maastricht Treaty revised the interinstitutional architecture of the decision-making process, by giving the EP more meaningful influence in areas covered by the Community method, which did not, however, technically cover energy policy at the time. It was only in the Treaty of Lisbon when the EU gained official competences over energy matters.

The field of EU energy policy owes much of its development to the adoption of a plethora of regulations and directives, which led to the expansion in EU competences in three distinct areas: the internal energy market for gas and electricity, security of supply, and climate change. The chapter discussed in part the evolution in each of these three pillars of EU energy policy.

Policies related to the internal energy market have mainly consisted of repeated efforts to liberalise and integrate the electricity and natural gas markets, which have traditionally been organised along national lines. Vertically integrated state-owned companies have traditionally functioned as natural monopolies within national borders, ensuring the supply of energy to citizens as a matter of public service. However, with the realisation of the single European market, the Commission started engaging in relentless efforts to liberalise electricity and gas markets, which materialised in three energy packages. The liberalisation measures consisted of the unbundling of the assets owned by utility companies, in order to open up transport and distribution networks to third party companies, while also allowing for the free flow of energy between MS. The UK has been one of the main supporters of these efforts, while France and Germany have generally resisted any supranational EU influence over their energy markets. While EU energy markets have still not achieved full liberalisation, much of the advancements in this area can be attributed to the creative strategies employed by the Commission, both through legislation related to competition policy and through the pursuit of antitrust procedures against large energy companies.

Security of supply represents the most underdeveloped area of EU energy policy, given the high level of importance that MS have given to national ownership of decision-making on energy security. Faced with supply crises during the 1970s, MS preferred to pursue bilateral or alternative multilateral arrangements for overcoming difficulties, rather than pooling sovereignty and allowing more EU supranational authority. The dynamics changed with the accession to the EU of countries from CEE, which suffered from high import dependency of hydrocarbons from the Russian Federation. Galvanised by external events such as the Ukrainian gas crisis of 2009, the Commission pushed for increased EU

cooperation on ensuring security of energy supply. While some minor progress was made, overall, there has been an underwhelming expansion in supranational powers in this area (Thaler, 2016: 574).

Table 3: Stages of EU energy policy integration

Stage	**Key developments**
I (1951-1957)	Pioneering inter-state cooperation through the ECSC and Euratom, but with limited integration of energy policies
II (1958-1985)	Long period of stagnation and Member State reluctance towards European solutions
III (1987-2002)	Creation of the internal energy market and revival of EU energy policy
IV (2003-2016)	Consolidation of the EU internal energy market and policy diversification to climate change and energy security
V (2016-present)	The Energy Union

Source: Own compilation based on Eckert (2016)

The same cannot be said about climate change, which has become one of the most active areas of European integration. In the context of the global efforts to mitigate climate change through the reduction of GHG emissions, the EU has pursued a position of international leadership on this issue. Enabled by the ability to legislate on environmental aspects, the Commission with the support of ambitious MS has successfully pushed for increased EU competences for regulating GHG emissions, promoting renewable energy, and increasing the efficiency of energy use. Given the fact that the Treaty of Lisbon allows MS to make sovereign choices regarding their own energy mixes, climate policies such as the EU ETS have seen a higher level of supranationalisation than the policies aiming to increase the share of renewable energy use across EU countries.

To overcome the fragmented evolution of this policy area and the tensions between the three pillars, there have been some more recent efforts to establish a common EU energy policy. While this has long been an objective of the Commission, the renewed political momentum for the creation of such a unified policy can be owed to the infamous 2005 informal European Council Summit in Hampton Court. Nonetheless, the most concrete proposal for a common EU energy policy was made through the launch of the Energy Union, which is discussed in the next chapter.

Based on the events described in this chapter, Eckert's (2016) breaks down the evolution of EU energy policy into four phases, as shown in the table above. It can be argued that the launch of the Energy Union represents an event of such importance, that it opened a fifth phase of EU energy and policy climate integration.

4. The Energy Union and the Clean Energy for all Europeans Package

4.1 Chapter overview

This chapter begins the empirical analysis of the extensive primary and secondary data processed for this thesis, by looking the Energy Union and the Clean Energy for all Europeans Package. The first section focuses on the launch of the Energy Union project, the most concrete attempt so far to unify EU energy and climate policy in a single unified framework. This is done by discussing the political context from which it emerged, elaborating on the role played by the European Council and the Commission. The section also looks at the main objectives of this project, before moving to an analysis of the legislative measures that have been proposed and adopted for the implementation of the Energy Union vision.

Therefore, the chapter then analyses the emergence of the CEP, focusing on its main provisions and overall structure. Chapters 5 and 6 discuss in detail each of the eight legislative files of the package, but their individual analysis only provides an incomplete picture. This is why this chapter also looks at the package as a whole, to show the "packaging" strategy employed by the Commission in choosing which legislative proposals to include. Focusing on the general design and framework of the package represents an important contribution of this thesis, as most research conducted so far has mainly analysed one or several legislative files in isolation (see for example Bocquillon and Maltby, 2020; Solorio and Jörgens, 2020; Dupont 2020). This section also explains the strategy used by the "first political Commission" for pursuing its EU energy and climate objectives through this package in its entirety.

The final section of the chapter groups the eight legislative files in two categories. The main differences between the Energy and Climate Governance files (Regulation on the Governance of the Energy Union, Renewable Energy Directive, Energy Efficiency Directive, and Energy Performance in Buildings Directive) and the New Electricity Market Design files (Electricity Directive, Electricity Regulation, Risk Preparedness Regulation and ACER Regulation), reflect the different power dynamics between EU institutions, divergent MS preferences, and different outcomes in terms of level of integration and transfer of supranational authority. Interestingly, the negotiations for all files reveal contestation of EU authority by MS in contrast with a highly committed Commission, which had varying degrees of success, in part determined by the level of support that its proposals received from the EP.

4.2 The Energy Union

The Energy Union is a highly ambitious project that has been deemed "the most significant policy idea that seeks to reform European energy governance, policy and regional cooperation" (Szulecki et al., 2016: 548). It represents the most concrete and comprehensive attempt to produce a common EU energy policy, making it particularly relevant for testing theories of European integration. The project attempts to reform how energy policy is governed at EU-level, even potentially offering a solution to "the major paradox of EU energy policy – the tension between national sovereignty over the energy sector and a community perspective based on solidarity, cooperation and scale" (Szulecki et al., 2016: 548-9). Given its significance, it is important to understand the context from which it emerged, its main architects and designers, as well as the measures pursued for its implementation.

While generally considered a Commission initiative, the debates surrounding the Energy Union kicked off in March 2014 with the presentation of Donald Tusk's, Poland's prime minister at the time, six key policy proposals at the European Council meeting on establishing a new EU energy and climate framework for 2030. It needs to be mentioned, that the proposals made by Tusk were very natural gas-centric, being constructed around the need for ensuring the security of gas supplies (Szulecki et al., 2016: 552). The issue of affordability was only treated as a matter related to the existing gas delivery contracts. When it comes to climate change, Tusk even framed environmental protection in contradiction to economic efficiency, effectively marginalising its significance (Szulecki et al., 2016: 552). This approach was generally well received, being seen as a revival of the energy security agenda in wake of the Russian-created gas crisis in Ukraine. It was also portrayed as an attempt by the European Council to control the agenda-setting in EU energy policy. However, this was not necessarily the case. As shown with much of the development of EU energy policy in the previous chapter, the European Council was dependent on technical expertise provided by the Commission (Thaler, 2016: 579). The Commission's bureaucracy helped draft many of the priorities discussed by EU heads of state in intergovernmental formal and informal meetings.

The general paradigm shifted somewhat following the takeover of the agenda by the freshly appointed president of the Commission, Jean-Claude Juncker, who turned this project into one of his key priorities during his 2014-2019 presidency. While starting from the same basis as Tusk, Juncker's vision placed higher importance of the development of renewable energy sources as a means to both put downward pressure on electricity prices and to increase security of energy supplies. Juncker's stated ambition was for the EU "to become the world number one in renewable energies" (Juncker, 2014). He charged Miguel Arias Cañete, his appointed Commissioner for Energy and Climate and Maroš Šefčovič, his incoming vice-president for the Energy Union, with bringing "a resilient Energy Union, with a forward-looking climate change policy" (Szulecki et al., 2016: 423). The fact that a vice-president has been

appointed to implement the Energy Union was meant to clearly establish the importance that this project would play during Juncker's term as president of the Commission. The political backing for Juncker's vision was ensured through the European Council 2014 summit, when MS leaders agreed on the 2030 EU climate and energy framework, which included a new "reliable and transparent governance system" (European Council, 2014: 9), a revision of the EU's GHG emissions reduction target to at least 40% by 2030 compared to 1990 levels, an increase in the renewable energy target to 27%, and a higher energy efficiency objective. The stated purpose of the agreement was that of creating a more secure, sustainable, and competitive energy sector in the EU.

Following up on these high-level political conclusions, the Commission published its Energy Union Strategy in 2015. The strategy recognised from the very beginning the "fundamental transformation of Europe's energy system" that would be required for creating "a resilient Energy Union with an ambitious climate policy at its core is to give EU consumers - households and businesses - secure, sustainable, competitive and affordable energy" (European Commission, 2015a: 2). The vision also highlighted the intrinsic interdependence between MS in ensuring energy security, the need for integrated European energy markets, and the importance of EU-level cooperation for lower carbon emissions. Touching on all three areas of EU energy policy, the Energy Union thus established the ever-deeper cooperation between MS as the principal means for achieving the project's policy objectives. These objectives are summed up in the Energy Union's "five mutually-reinforcing and closely interrelated dimensions designed to bring greater energy security, sustainability and competitiveness: (1) energy security, solidarity and trust; (2) a fully integrated European energy market; (3) energy efficiency contributing to moderation of demand; (4) decarbonising the economy, and (5) research, innovation and competitiveness" (European Commission, 2015a: 4). These proposals were considered highly ambitious, especially for introducing the notion of "freedom of movement of energy" and a definitive objective of moving away from an economy heavily reliant on fossil fuels (Szulecki et al., 2016: 553).

To follow up on the progress of its stated objectives, the Commission started publishing regular updates of the "State of the Energy Union", offering an assessment of the collective progress made by all MS, as well as proposing solutions for addressing any shortcomings. The first such report was published in 2015 (see European Commission, 2015b), with the sixth and latest having been released in October 2020. Thus, the Commission not only developed its own vision for a common EU energy policy (albeit with MS backing in the European Council), but also a mechanism for setting benchmarks and evaluating the entire EU progress towards meeting the main goals of the Energy Union. The climate change focus of the project was also the clear result of Juncker's reinterpretation of Tusk's 2014 vision, bringing environmental concerns at the core of what became the Energy Union. By building on the political

momentum created in 2014, the Commission therefore sensed the opportunity to pursue one its main long-term visions on decarbonising EU energy production and consumption.

However, this has not been a straight-forward process, as the European Council reverted some of the Commission's reinterpretation of the main objectives. In the European Council meeting of 2015, now President of the European Council Donald Tusk, re-established the centrality of energy security in the Energy Union. This was done through a dilution of the focus on climate. A telling example is that the summit conclusions did not even mention once energy efficiency, a key part of the Commission's "efficiency first" approach. At the time, Tusk was seen as having "reclaimed" ownership of the agenda of the Energy Union (Energy Post, 2015). The entire back-and-forth between the two institutions was considered a prime case of the "competitive cooperation" between the European Council and the Commission, term coined by Bocquillon and Dobbels (2014). Moreover, by clearly appealing to security concerns and portraying energy risks as existential threats to MS, Tusk appears to have retaken a "high politics route" (Tosun et al., 2015: 7). As it will be seen in the following section on the CEP, when it came to actually implementing the Energy Union vision through concrete directives and regulations, the focus shifted back to the realm of low politics.

On the surface, the Energy Union benefits from EU-wide support and can represent a unique opportunity to finally build a genuine common European energy policy (Szulecki et al., 2015: 14). However, this highly ambitious project must simultaneously meet its goals and be sensitive to the heterogeneity of national energy sectors and the general preference of MS to maintain substantial autonomy over the decision-making process in their energy sectors. This can be particularly problematic in the area of external energy supplies, where research indicates that support for a more comprehensive Energy Union has been motivated by the national decision-makers' perception of a country's ability to cope with the challenges of energy security by itself (Misik, 2016: 68). Given the prioritisation that MS give to security of supply, some of the Commission's climate ambitions regarding the Energy Union have been somewhat side-lined.

The conflicting perspectives between the European Council and the Commission over setting the agenda and the implementation goals of the Energy Union, make this project particularly relevant for testing the hypotheses of new intergovernmentalism. Besides, the Energy Union is a particularly relevant empirical test for the theoretical framework of this thesis, given contested intergovernmentalist and supernationalist elements that can be seen in its governance mechanism (Szulecki et al., 2016: 548). The debates resulting from the launch of this project have permeated into the most fundamental issues of national sovereignty staked against supranational empowerment, bringing together discussions ranging from affordability to security, the elimination of fossil fuels and the promotion of renewable energy sources, and spanning over multiple timeframes, from 2030 to 2050 (Szulecki et al., 2016: 552).

From the standpoint of agenda-setting, the Commission has been far more decisive than new intergovernmentalist expectations. While MS proved reluctant to cede control of the agenda, the Commission did manage to maintain a strong climate focus, while also pursuing revisions of both internal energy market and security of supply legislation. Ultimately, the Energy Union indeed represents the culmination of the European Commission's efforts to create a unified EU energy policy, as opposed to the fragmentation that dominated much of its history (Szulecki and Westphal, 2014). However, there were concerns that the project would amount to no more than "an empty box" (Szulecki et al. 2016: 548).

These concerns were dispelled when the Commission proposed in November 2016 a new package of legislative files, the Clean Energy for All European Package, with the purpose of facilitating the energy transition envisioned by the Energy Union project (European Commission, 2016a). Intense negotiations followed, revealing complex dynamics between MS, the EP, the Commission, as well as a plethora of other non-state actors such as EU agencies, environmental NGOs, and industrial associations. The legislative files cover a broad range of topics, including improving the energy efficiency standards, solidifying the EU's leadership role in renewable energy, and further empowering the consumers in the electricity market. The package therefore covers all the three main pillars of EU energy policy: the internal energy market, climate change, and security of supply.

4.3 The Clean Energy for all Europeans Package

At the European Council meeting of October 2014 mentioned in the previous section, the EU heads of state endorsed a number of concrete changes to be made to the energy and climate policies, including a collective EU target of at least 40% reduction in GHG emissions by 2030 compared to 1990, a goal to which all MS would contribute by "balancing considerations of fairness and solidarity" (European Council, 2014: 1). Moreover, it was agreed that new EU targets of at least 27% by 2030 should be established for renewable energy consumed in the EU, and improvements of energy efficiency (European Council, 2014: 5). This represented a significant increase in ambition compared to the existing 20-20-20 targets for 2020 for GHG emissions, renewable energy, and energy efficiency. However, the revised legislation would only pursue the desired emissions reductions through indicative national targets, unlike the previous binding targets (i.e. that could be enforced through infringement procedures).

In order to accomplish these new objectives, a reliable and transparent governance system would be created at the EU level, which could simultaneously provide "the necessary flexibility for Member States and fully respecting their freedom to determine their energy mix" (European Council, 2014: 9).

This new governance system for the Energy Union proposed by the Commission was poised to "redefine European energy and climate governance" (Ringel and Knodt, 2018: 209). Lastly, the heads of EU countries also decided by consensus that further legislation needs to be passed in order to ensure a fully functioning and connected internal energy markets.

Using this political mandate given by the European Council, the Commission put forward a package proposal on 30 November 2016, consisting of eight files covering multiple aspects of EU energy policy, including governance, energy efficiency, renewable energy, and the internal electricity market. The way in which the Commission designed its package proposal raises three key aspects that need to be discussed in more detail: (1) the amount of original input from the Commission in the proposals; (2) the packaging strategy used to influence the decision-making process, and (3) the political nature of the Commission's proposals.

First, the content of the legislative proposals was derived from a set of conclusions of the European Council that were only five pages long (European Council, 2014), which merely established some general guidelines that the Commission had to follow when elaborating the individual policy proposal. Therefore, the Commission did get a political mandate for this package, but it had to expand some very succinct conclusions into fully fledged policy proposals (Interview 1). Technically, the Commission has the sole right of initiation, so it was not bound by the European Council conclusions. However, in order to have a realistic chance to pass its proposals, the Commission must take into account the mandate given by MS (Interview 4). While informally bound by these European Council conclusions, the Commission used its exclusive policy initiation prerogative to exceed its initial mandate, by proposing for negotiation a number of measures that were not recommended by MS.

In some cases, as it was the recast ACER regulation or the introduction of electromobility obligations in new buildings, the Commission decided unilaterally to propose new legislation. However, it was not merely "shooting in the dark", as Commission officials had gained information informally regarding MS general preferences and stances towards the main issues (Interview 10). The only file for which the Commission had more detailed guidelines was that of the Governance of the Energy Union, for which the Energy Council released a set of conclusions on 26 November 2015 (Council of the European Union, 2015). Even for this file, the Commission had flexibility in designing the governance process, for example, when establishing the templates that governments would have to follow when elaborating National Energy and Climate Plans (NECP). As it will be shown in the next chapter, the templates of the NECP represent a key element of the new governance structure. All in all, many of the Commission proposals ended up being highly consequential for the final version all legislative files. A telling example was the inability of the European Council to anticipate the new role that Commission obtained

at the end of the Governance of the Energy Union negotiations, which is significantly more meaningful that the intergovernmental institution would have desired (Interview 26).

In the case of other legislative initiatives such as the Renewable Energy Directive or the Energy Efficiency Directive, the Commission had significant independent input adding some specific policy measures. As it will be explained in the next chapter, through the Council, some of the MS expressed their strong disagreement with many proposals linked to these directives, accusing the Commission of having exceeded its mandate. Once brought to the negotiation table, some measures proposed by the Commission were very difficult to immediately dismiss, especially if they were also supported by the EP. Even the proposals that did not have a clear backing ITRE or ENVI Committee members were sometimes maintained on table as a bargaining chip for the EP rapporteurs to be used during the trilogue negotiations.

Second, the bundling of these relatively different and complex files into one package was a strategic decision of the Commission. "[P]ackage-deals" have a long history in pushing forward EU energy and climate integration (Scharpf, 1988). The overlap between the legislative files can create both unintended consequences of policy interaction and lead to inconsistencies (Flues et al., 2014). However, policy packaging is a deliberate strategy to "exploit synergistic relationships between multiple policy instruments" and can "promote enhanced policy integration" (Howlett and Rayner, 2013: 178). In this case, this is very clearly the Commission acting strategically (Interview 7).

In the conclusions of the European Council from October 2014, the EU heads of state mandated the Commission to also elaborate proposals for the reform of the EU ETS Directive and for the improvement of security of supply planning for natural gas. However, these legislative proposals were developed by the Commission as standalone negotiation files. The Commission kept the issue of security of supply of natural gas out of the package because it believed it had a better chance to receive a mandate to negotiate gas contracts on behalf of the entire EU if this file was discussed independently. For the ETS and the ESR, the Commission already had significant supranational authority and did not want to compromise any of its existing prerogatives over these climate policies (Interview 15). The decision to compile the remainder of the directives and regulations into the CEP created strategic advantages for the Commission coming into the negotiations.

The size of this "jumbo package" tested the capacity limits of Permanent Representations to digest legislative proposals (Interview 9). This forced numerous players to prioritise a limited number of topics, which affected the quality of the negotiations and the final results (Interview 10). Environmental NGOs were faced with the same capacity challenges (Interview 33). Managing the content and timing of all the legislative proposals enabled the Commission to be better prepared on all files than any other negotiations partner. Simultaneously, the Commission organised technical working groups for

coordinating the debate on all aspects of the package, in order to not allow room for much bilateral negotiation to be carried in its absence (Interview 10). Therefore, it tried to shut down as much as possible the informal channels usually used by MS representatives.

The timing of the proposal put further constraints on the co-legislators and their ability to control all files under negotiation. The Council came under a lot of pressure to finish all files before the end of the term of the EP at the end of 2018, which altered the nature of the negotiations, reducing the usual time for deliberations (Interview 28). Similar pressure was also faced by the Bulgarian Presidency, given a so-called "EU presidency Stockholm Syndrome" that a national delegation needs to close all legislative packages to be considered successful (Interview 26). As a result of the quantity and complexity of the files, there was insufficient time for governments to give precise mandates for negotiation to their Permanent Representations for all files. This was especially the case for smaller MS with lower administrative capacity. This resulted in some very unusual circumstances, in which representatives would have to contact the national ministries during the negotiations to ask for their preferences on specific issues. In turn, this led to difficulties in reaching consensus in the Council, which in turn gave the EP a strategic advantage during the negotiations (Interview 10).

There were also, however, some miscalculations in the Commission's strategy, as a result of some unforeseen circumstances. For example, the Commission timed the package in such a way that the General Approach of the Council on the proposal for a New Electricity Market Design would coincide with the UK's presidency (Interview 26). The British Government had been a long-time ally of the Commission when it came to issues related to the internal market for gas and electricity. However, following the Brexit vote to leave the EU, the British Government decided not to fulfil its presidency obligations and passed on the rotating presidency. The British delegation was also very absent in the negotiations, which affected the Commission's plan even more (Interview 26).

Third, the organisation of the package was a reflection of the different style of agenda-setting under the Juncker Presidency (Interview 7). Having been labelled the "first political Commission", as a result of the influence of the Spitzenkandidaten system in choosing the president of the Commission, Juncker decided to give the entire package a "political spin" (Interview 7). The Spitzenkandidaten process is an informal procedure for appointing the lead candidate for the presidency of the Commission from European political party nominees that engage in campaigning prior to the EP elections (EPRS, 2019). The system is meant to function similarly to the appointment of a prime minister in parliamentary democracy, therefore seeking to increase the political legitimacy of the EU executive. While not endorsed by the European Council, which has the legal competence to appoint the Commission president, five of the European political parties nominated representatives for taking part in this process in 2014. Jean-Claude Juncker was the candidate of the party winning the most seats, the European

People's Party (EPP). The European Council ended up appointing Juncker by qualified majority, with only the UK and Hungary opposing it. While the degree to which the Spitzenkandidaten process influenced the European Council is questionable, there have been palpable consequences of this political process for the vision and proposal behind the Energy Union. It appears indeed that there have been two main sources of the proposals in the package – the first is the already discussed European Council 2014 conclusions, the other being Juncker's Spitzenkandidaten political campaign on a platform that strongly featured energy (Interview 7). This constitutes different agenda-setting dynamics that had been the case in the past.

According to one of the interviewees, President Juncker, who was actively involved in the design of the CEP, desired to portray the idea that the package was created "for the people", which would not be "left at the mercy of the market" by the EU (Interview 7). In practice, this also meant that he wanted to ensure that the social consequences of energy prices were addressed through legislation. This can be seen most clearly in the provision regarding consumer protection of the Electricity Directive. Moreover, the European Political Strategy Centre (EPSC), an in-house think tank established by President Juncker for conducting research relevant to his agenda, was tasked with giving the package an explicitly political narrative.

The content and phrasing of the package of "putting the consumer at the centre of the electricity market" therefore reflected the legitimacy concerns of the Commission. This is may have been an attempt to address the EU's "communicative deficit", by trying to bring legislation closer to EU citizens (Olson and Hammargård, 2016). Interestingly for new intergovernmentalism, it seems that the preference formation at the level of the Commission followed similar lines to that of MS, being strongly influenced by legitimacy concerns, even without a genuine domestic public from which it seeks to derive its accountability.

4.4 The two parts of the Clean Energy for all Europeans Package

While the dynamics of the decision-making process were different in each of the eight files, a general division appears to emerge between two parts of the package, with direct implications on the validity of the hypotheses of new intergovernmentalism. On one hand, the files on governance, renewable energy, and energy efficiency reflect MS preferences regarding further EU integration on climate policies and reveal their concerns about legitimacy to domestic voters. The unfolding negotiations of these files were largely determined by the difference of preferences between the Council of the EU and the EU's supranational bodies, the Commission, and the EP. On the other hand, the new electricity market design files reveal wider differences of opinion between the MS, whose preferences seem to

primarily reflect economic considerations and protectionist attitudes for their domestic energy markets. For this latter half of the package, the outcome of the negotiations has also been dictated to a greater extent by compromises reached between MS, with a less significant input from supranational institutions.

Consequently, a decision has been made for the purposes of this thesis to group the directives and regulations into two distinct analytical categories: the first category of Energy and Climate Governance (ECG) files consists of the Regulation on the Governance of the Energy Union, the recast Renewable Energy Directive, the revised Energy Efficiency Directive and the revised Energy Performance in Buildings Directive; the second category New Electricity Market Design (NEMD) files is made up of: the recast Electricity Directive, the recast Electricity Regulation, the Risk-preparedness Regulation and the ACER Regulation. These also match the informal bundles in which the files were actually negotiated, with almost all of the files in the first category adopted December 2018 (the Energy Performance in Buildings Directive was settled earlier in June 2018) and all of the files in the second category adopted in June 2019. The differences between the two parts, further explained below, highlight the inherent conflict within the package: the Energy and Climate Governance files push for a new form of supranational authority, while the New Electricity Market Design represents a step back from more integration and liberalisation and a relative retreat "inwards" by MS (Interview 10).

This division allows for a more nuanced analysis and offers a more refined understanding of the different mechanisms at stake in the negotiations and the outcome of this package. While the division between the two parts is not perfectly clear-cut (different aspects such as energy poverty or integration of renewable energy sources were discussed across files), there are a number of significant differences between the two analytical categories, which motivate the division of the package for the purpose of testing new intergovernmentalism.

First, the most active negotiations on the ECG files took place mostly between the Council and the EP in the trilogue process, with a focus on the degree of further integration of the energy sector and the level of ambition when choosing climate targets. Meanwhile, the negotiations on the NEMD files mainly followed the difference of preferences between MS, which behaved in a protectionist manner towards their energy sectors, with the most active formal and informal negotiations unravelling around the meetings of the Council. Therefore, the ECG files negotiations revealed domestic legitimacy concerns about further empowering the EU's supranational bodies, while the NEMD files reflected the economic considerations behind the national preferences of governments. This is not to say that there was no strife on the ECG files between MS. However, the ambitious negotiation position and higher level of involvement of the EP led to a different dynamic compared to the files on the NEMD. This may be partly because of the more obvious climate focus of the first half of the package, which attracted

higher attention from the generally more ambitious and environmentally-minded EP. Meanwhile, the electricity market design and the security of supply issues, more prevalent in the second half of the package, represent areas of EU energy policy more closely guarded by MS, where domestic preferences tend to be more clearly defined. Electricity market design was considered "a matter of life and death" for some governments (Interview 18), while the governance files involve more indirect implications for national economies and domestic economic actors (Interview 32).

Table 4: Key dates for the legislative files of the Clean Energy for all Europeans Package

	European Commission proposal	**Council and European Parliament agreement**	**Official publication**
Energy and Climate Governance files			
Governance of the Energy Union Regulation (EU) 2018/1999	30/11/2016	20/06/2018	21/12/2018
Renewable Energy Directive (EU) 2018/2001	30/11/2016	14/06/2018	21/12/2018
Energy Efficiency Directive (EU) 2018/2002	30/11/2016	19/06/2018	21/12/2018
Energy Performance in Buildings Directive (EU) 2018/844	30/11/2016	19/12/2017	19/06/2018
New electricity market design files			
Electricity Directive (EU) 2019/944	30/11/2016	18/12/2018	14/06/2019
Electricity Regulation (EU) 2019/943	30/11/2016	18/12/2018	14/06/2019
Risk Preparedness Regulation (EU) 2019/941	30/11/2016	22/11/2018	14/06/2019
ACER Regulation (EU) 2019/942	30/11/2016	11/12/2018	14/06/2019

Source: Own compilation

Another important difference was that MEPs followed EU political party lines when voting on the ECG files and national lines when voting on the NEMD files (Interview 18). Again, this reflects the higher prioritisation that governments placed on the reform of the electricity market, mobilising support through all their EU-level representatives, including MEPs. This is mostly because of the perceived importance that utility companies have domestically. For example, in France EDF is instrumental for the interest that the government has in maintaining prices for consumers affordable, even if this is based on practices that come in conflict with the principles of the internal EU electricity market (Interview 2, 18). Maintaining regulated prices became a key issue of legitimacy for the French government, as the Gilets Jaunes protests against high petrol prices were violently unfolding domestically, contributing to the fears of multiple MS (Interview 18). This is why for some national representatives, "it was literally a matter of life and death, as billions of euros were at stake" (Interview 18). Because of these high stakes, there a general feeling among officials that that "if a large Member State does not want something to happen, it does not happen" (Interview 2). At the same time, the Commission was also perceived as cautious around the NEMD files, "always driving with the hand-brake on, afraid to not provoke any Member State" (Interview 9).

Second, no negative votes in the Council were recorded on the final vote on the NEMD files (which were far more problematic during the negotiations within the Council), while ECG files had several negative votes from some smaller MS (See the vote count in Table 6). This reflected the more active deliberations between countries on the NEMD files, as a lot of the attention in the Council was focused on the reform of the EU electricity market design and the security of supply implications of risk-preparedness regulation. The more intense deliberations appear to have been more conducive to reaching intergovernmental consensus. Consequently, when it came to negotiating with the EP, the Council was more united than it had been on ECG files. This was also reflected in the outcome of the negotiation between the two co-legislators. MS reluctant to higher climate ambitions adopted mainly "foot-dragging tactics" on these files, while pursuing more 'aggressive' positions on the electricity market design (Interview 8). The differentiated tactics were also visible for the EP, that sided with and at times exceeded the ambition levels of the Commission on the ECG files.

Third, the national elections had a significant, yet differentiated impact on the negotiations. The changes of government in Spain and Italy had a greater impact on the ECG files. This could be explained by the fact that the priorities of the governments changed in regard to climate ambitions, given the electoral platforms of the winning political parties, the social democrats in Spain and the Five Star Movement in Italy (see PSOE, 2016; Movimento5Stelle, 2018). Meanwhile, the domestic economic priorities relevant for the NEMD discussions remained the same, being based on the interests of the same incumbent companies. Domestic politics also had strong implications on the French delegates. While it was already explained above how the level of priority that France placed on NEMD files was fuelled

by domestic protests and riots regarding energy prices, the French representatives in the Council also shifted their position on the ECG files at some point during the negotiations. This happened in the aftermath of domestic backlash about the unambitious attitude the French delegation adopted at the EU-level from the standpoint of climate change mitigation (Interview 3). This event is analysed in greater detail in Chapter 5.

Fourth, the level of involvement of non-state actors also differed between the two sets of legislative files. Environmental NGOs were naturally more involved in the ECG files, while the energy companies and industrial associations focused most of their lobbying efforts on the NEMD files (Interview 26). Given the large number of legislative acts and contentious issues that had to be negotiated in the CEP, all non-state actors had to "pick their fights" and focus more intensively on topics where they perceived a higher possibility to be more influential or on issues that were closer to their core interests. This created an uneven level of influence for environmental groups in the ECG files and for private actors on the NEMD files, actors which usually act as a counter-balance to one another in EU energy policy negotiations. This discrepancy was further exacerbated by the fact that more progressive MEPs were offered rapporteur positions in the ECG files, while more conservative MEPs received the lead in the NEMD files. Naturally, most of the efforts of environmental NGOs were focused on rapporteurs such as Claude Turmes from the Greens, perceived as more receptive to their messages (Interview 9), while industrial actors lobbied the more business-friendly EPP.

4.5 Conclusion

This chapter looked at the introduction of the Energy Union, as the most ambitious attempt at unifying EU energy and climate policy and to reconcile the tensions between national sovereignty over the energy sector and EU-level cooperation on the internal energy market, energy security, and climate change (Szulecki et al., 2016). Such a project was first proposed by Polish prime minister Donald Tusk in 2014, who hoped that an integrated approach on an energy and climate framework for 2030 could be leveraged for increasing the security of supply of natural gas, in the wake of the gas crisis in Ukraine. During his candidacy for the presidency of the Commission, Jean-Claude Juncker rebranded this idea as a project with a higher focus on climate policy. Once appointed to this new role, the Commission officially launched the Energy Union as one of its key priorities, a project which would simultaneously seek closer cooperation on energy security, energy market integration, energy efficiency, energy transition, and research and innovation. The Commission also set up a benchmarking framework for assessing progress on all these dimensions.

To implement the objectives of the Energy Union, the Commission released in 2016 its proposal for the Clean Energy for All Europeans Package, consisting of eight legislative files. The initial proposals were based on the mandate given by EU heads of state in the European Council conclusions from 2014 for making concrete changes to the EU's energy and climate policies that could collectively reach a reduction of at least 40% in GHG emissions by 2030. However, the Commission expanded on the European Council conclusions, by introducing additional legislative revisions, such as those under the recast ACER regulation, or higher ambitions, as was the case for the Energy Efficiency Directive and the Energy Performance in Buildings Directive. The governance mechanism it proposed for coordinating national efforts on climate objectives respected the wish of the European Council of not having binding national targets but required a previously unforeseen degree of planning and reporting that had to be submitted to the Commission.

The overall framing of the package was also part of a strategy deployed by the Commission for influencing negotiations. On one hand, bundling together such a large number of legislative amendments put significant stress on the administrative capacity of many MS, which forced prioritisation and horse-trading. On the other hand, the choice of the files what were included was also intentional, as proposals regarding security supply for gas and the ETS were kept separate to maximise the Commission's oversight over these negotiations. President Juncker also added a distinctly political spin to the package, nominally placing EU citizens at the centre of the amendments, in an attempt to legitimise in front of the European publics the increased supranational integration on energy and climate policy.

The chapter also explained the rationale behind splitting the analysis of the individual legislative files in two halves, which roughly correspond do the bundles in which they were negotiated between EU institutions. The dynamics of the Energy and Climate Governance files were dominated by a highly ambitious Commission, backed by the EP in many of its proposals, while MS representatives have based, at least in part, their preferences on concerns regarding domestic politics. Meanwhile, the MS were more determined not to cede authority to the supranational level during the negotiations of the New Electricity Market Design files, where the interest of domestic companies and the will to protect household consumers from fluctuating energy prices were highly determinant for the outcome of the negotiations. MEPs often voted on NEMD files based on national, rather than party lines, while the Council approved the final agreement on each of the files unanimously (with a few abstentions), as opposed to the ECG files, where the occasional negative vote was recorded especially from smaller MS.

The process of the CEP was completed in June 2019 with the publication of the last legislative acts in the Official Journal of the European Union. Therefore, it still represents a relatively new development. Interview data was collected during the last stages and after the negotiations, allowing for a more

complete and accurate understanding of the issues at stake. The negotiations of the more recent “Fit for 55” package are still ongoing, with the Council and the EP still not having agreed on common positions for many files. Chapter 8 discusses some key elements of this new package in order to draw parallels and explain the relevance of the analysis of this thesis for ongoing events.

5. Energy and Climate Governance files

5.1 Chapter overview

This chapter analyses the first half of the Clean Energy for All Europeans Package, the Energy and Governance files. These are the Regulation on the Governance of the Energy Union, the Renewable Energy Directive, the Energy Efficiency Directive, and the Energy Performance in Buildings Directive, which collectively establish the measures through which EU countries will decarbonise their energy sectors. The files are discussed in individual sections, each focusing on the main content of the files, the changes made to the previous versions of the legislation, the inter-institutional dynamics, and the outcome of the negotiations.

First, the Governance Regulation established the new framework through which the main objectives of the Energy Union are to be implemented. Each national government must elaborate and submit a National Energy and Climate Plan summarising their intended climate ambitions and the measures that will be pursued for achieving them. The Commission is responsible for reviewing these documents and for providing feedback, as well as for ensuring that the collective efforts are sufficient for achieving the EU-level targets for GHG emissions reduction, renewable energy consumption, and energy efficiency.

Second, the Renewable Energy Directive sets the 32% EU-level target for renewable energy by 2030 and the sub-targets for the transport sector and renewable fuels. The directive offers guidelines on national support schemes for renewable energy and inter-state cooperation on joint renewable projects.

Third, the Energy Efficiency Directive establishes the 32.5% headline EU target for energy efficiency by 2030, as well as the mechanism for the annual energy savings obligations that MS need to achieve. The directive eliminates previous loopholes regarding double accounting and introduces energy poverty provisions for protecting vulnerable consumers.

Fourth, the Energy Performance in Buildings Directive is aimed at boosting the renovation rate of the EU's building stock and sets construction standards for the energy consumption of newly constructed buildings. The directive also obliges governments to submit long-term renovation standards and sets minimum obligations for charging infrastructure for electric vehicles in buildings.

5.2 Governance of the Energy Union Regulation (2018/1999)

One of the major changes brought by the CEP is the new governance system that will be used for implementing the Energy Union. The governance regulation has been described as "a pure product of the Energy Union: it brings together climate and energy policies while focusing on the quality of the transition" (Genard, 2017). The new procedure simplifies the planning, reporting, and monitoring that governments have to do on energy and climate. These obligations have previously been distributed among a number of different mechanisms and instruments, which led to duplication and excessive administrative burden. The regulation streamlines all such obligations. In addition, all planning and reporting requirements that were expiring in 2020 and 2021 have been updated for another decade.

Crucially, the main purpose for the introduction of this novel governance system was to enforce the European Council's desire to no longer impose binding national targets for renewable energy and for energy efficiency (Interview 16). Therefore, the regulation marks a shift from top-down technocratic planning and accountability between the Commission and MS, to a new relationship based on cooperation and bilateral negotiation (Interview 3). It also shows how the high-level mandate offered by the European Council ultimately resulted in a new governance architecture at the EU-level, which, at least on the surface, allows for more national ownership over the design of concrete measures for the implementation of the collective EU ambitions.

According to the regulation, this new framework involves the Commission, mainly DG Energy (DG ENER) and DG Climate Action (DG CLIMA), cooperating with governments to ensure the fulfilment of the EU climate targets. Each MS is required to produce an integrated NECP, which covers a 10-year period and must be updated once by 30 June 2024. Governments will also have to release progress reports, with the first one scheduled for 2023. The strategies must be redacted according to a binding template. Moreover, MS are also obliged to take into account the long-term 2050 perspective when elaborating their plans. Ringel and Knodt (2018: 213) sum up the main NECP components according to the Commission guidelines: (1) an overview of how the NECP was developed and how stakeholders were consulted, (2) a description of national objectives, targets, and contributions to each of the five dimension of the Energy Union, (3) a list of domestic measures for reaching these objective, (4) an assessment of each of the five dimensions of the Energy Union at national level, alongside projections of how likely the objectives are to be met, and (5) foreseen impact of the planned measures.

Once submitted in draft form, NECPs are evaluated by the Commission for their adequacy and conformity with the rules laid out in the regulation. The Commission is responsible for ensuring that the national plans are consistent with the EU long-term commitments and that their cumulative impact is sufficient for meeting the collective targets. Draft NECPs are negotiated between the individual MS

and the Commission, which is mandated to issue non-binding recommendations for each plan. A looser procedure applies for long-term strategies, in which governments have to outline their GHG emissions reduction pathways by 2050.

Therefore, the Governance Regulation marks a fundamental shift in the way in which the energy and climate policies are managed at both national and EU levels, changing the relationship between national governments and the Commission. While the Commission is still responsible for monitoring the progress, under the new format, its role will be more political, as it will have to engage in direct negotiations with MS, rather than relying on an infringement-based procedure. Under this framework there is also more room for cooperation between countries, which can comment on each other's NECPs. While this new governance system remains to prove effective during the implementation phase, some believe that the framework creates "a strong role to the European Commission, it had never had" (Contexte, 2019a). This idea is assessed in more detail in Chapter 7, but for the purposes of this chapter, it remains undeniable that the nature of the relationship between the Commission and the MS was transformed as a result of the introduction of the Governance Regulation.

During the negotiations, the Commission tried to ensure a decisive position for itself in the implementation of the NECPs. In fact, the Commission appears to have made negotiation calculations even before releasing its first policy proposal, anticipating the way the debate would unfold between the co-legislators (Interview 4). The Commission proposed that it should be granted a more integrated role in the elaboration and implementation of national strategies based on an impact assessment (European Commission, 2016a) and a fitness check (European Commission, 2016b) it had itself conducted. The legislative proposal also conferred on the Commission the power of adopting delegated acts in case it signals that additional measures need to be taken by MS to meet the collective targets (European Commission, 2016f). Throughout the process it proved to be a very capable communicator and negotiator (Interview 3).

In the EP, the file was assigned jointly to the Committee on Industry, Transport and Research (ITRE) and the Committee on Environment, Public Health and Food Safety (ENVI). The nominated rapporteurs, Claude Turmes and Michel Rivasi, were both members of the Greens/EFA Alliance. The importance and high profile of this file was proven by the more than 1,700 amendments filed in the EP (Euractiv, 2017b). The agreed upon amendments proposed more ambitious targets and introduced longer-term climate and energy strategies in the framework, simultaneously pushing for a more active involvement for the Commission. In the end, the EP was considered "unusually influential" in the outcome of the negotiations (Interview 4). This was also a case which proved the importance that the lead rapporteur can have in the negotiations process, given the decisive role of Claude Turmes in the outcome of the negotiations (Interview 2).

The Council adopted a general approach in December 2017 (Council of the European Union, 2017e). It established once again that the monitoring of progress would be done by the Commission politically through negotiations and that MS would have flexibility in how to contribute to the collective EU targets. Among the most important factors for determining the outcome of the deliberations in the Council appears to have been the change of government in Spain and Italy on one hand[4], and the shift in position of France (Interviews 2,3). The latter case also reveals some interesting dynamics for the theory of new intergovernmentalism, especially when it comes to issues of domestic preference formation and legitimacy concerns.

In an informal paper addressed to the Council in 2017, the French delegates completely rejected any new role for the Commission in this new governance structure (Council of the EU, 2017). This position reflected a long-standing French strategy to avoid the creation of any additional EU-level mechanisms, especially if they double or mimic the already existing national instruments (Interview 2). The French position was presented in and informal paper which stated that the Commission should only provide recommendations once national plans were ready, without following the structured process envisaged in the initial proposal. In addition, governments would no longer be obliged to formally respond to the Commission's recommendations, nor have to provide rigid implementation timetables for gap-filling measures.

As the NECPs have the role of monitoring the progress of GHG emissions reductions and increases in the share of renewable energy sources in the energy mix, this position was assimilated domestically as an opposition to ambitious EU energy and climate goals, especially after the informal statement of the French delegation leaked to the press. This led to an immediate backlash. Green MEP Yannick Jadot wrote a letter in response to this leak, accusing the French government of being duplicitous (Jadot, 2017). President Emmanuel Macron was presented as a figure who "talks big" on climate change domestically, but when it came to action, he acted contrary to his stated positions. France was not only lagging behind on meeting its 2020 renewable targets, but the government was also "demolishing European renewable energy ambitions" (Jadot, 2017). This was further picked up by several media outlets and political commentators (Mediapart, 2017; Causer, 2017), creating a hostile environment towards the government and the En Marche party. Previous research on energy policy highlights the role that media can have as a source of support during climate-related negotiations (Nitoiu, 2015).

Following this domestic backlash, based on calculations of legitimacy concerns (Interview 3), the French government underwent a complete change of position in the Council. France immediately adopted a more progressive stance on the benchmarks and involvement of the Commission in the implementation of the Governance Regulation (Euractiv, 2017c), also supporting a net-zero target for

[4] This is discussed at greater length in the section on the Renewable Energy Directive.

2050 (Euractiv, 2018a). This was doubled by actions on the domestic scene, where the French Environmental Minister Nicolas Hulot unveiled ambitious plans for reaching carbon neutrality in France by 2050 and for ending the sale of fossil fuel cars by 2040 (Euractiv, 2017a). This shows the close connection between MS preferences and domestic legitimacy concerns, while also showing the particular interest of the French public on climate matters.

The new Regulation on the Governance of the Energy Union entered into force on 24 December 2018, after it was voted with unanimity in the Council (no abstentions) (Council of the European Union, 2018a) and adopted by the EP on 13 November 2018 (475/100/33) (European Parliament, 2018a). A number of key contentious issues dominated the negotiations, which are now discussed in part.

The powers of the Commission in the new governance framework

While the NECPs outline how each MS intends to contribute to the collective EU targets, in lack of binding national targets, questions arose about what would happen if cumulative national progress would not add up to the collective targets. According to the final text of the Governance Regulation, the Commission can "take action at Union level" if this may be the case. Nonetheless, it remains relatively unclear what this could actually entail in practice.

What is clear however, is that the Commission introduced this provision in its legislative proposal and placed high priority from the beginning on securing the NECP framework it had designed, because it arguably gave it a "greater role and a key position to evaluate and manage how the collective targets are met" (Interview 3). Part of the reason why the Commission desired this leadership role was based on concerns about its own portrayal among European voters (Interview 7). The Commission's leadership wanted to appear capable of implementing ambitious climate goals, to communicate that its initiatives represent the interests of European citizens in the energy transition, and to portray itself as a climate leader in its new "political" role (Interview 7). The Commission claimed "Better Regulation" would be ensured through the new NECPs and the streamlining in reporting, but MS accused that the final version of the regulation actually increases reporting obligations and gives the Commission significantly more monitoring authority than they would have preferred (Bocquillon and Maltby, 2020: 49). Some feared that the new framework significantly increased the Commission's oversight powers, especially over smaller MS (Interview 10). The idea of political rather than legal targets was also deemed a "smart strategy" that the Commission would likely leverage in the future to engage in direct negotiations with governments (Interview 16) from a position it has sought throughout the decision-making process (Schoenefeld and Knodt, 2021: 60).

The EP supported a larger role for the EU's executive, even more so than the Commission itself. Some MEPs complained that "the European Parliament could not fight the Commission's battle in its stead" (Interview 18). This is because throughout the package, MEPs sought to secure as much supranational authority over the implementation of climate ambitions as possible. The EP was also instrumental in including in the regulation an annex with a formula for calculating the indicative national renewable targets, which governments would be expected to include in their NECP (Bocquillon and Maltby, 2020: 49).

When it comes to the Council, the NECP discussion put MS in an "awkward position" from the beginning, as it was clear that without binding targets the Commission was needed to be able to impose some form of corrective action to avoid any (un)intended free-riding or inaction by some MS (Popkostova, 2018). Simultaneously, MS were very cautious and tried to make few concessions regarding the discretionary powers of the Commission in the situation when the progress would prove insufficient for meeting the EU targets (Interview 3). Consequently, there was an attempt to "water-down" the role of the Commission in comparison to the initial proposal and to the position of the EP, which generated an inter-institutional conflict that dominated the entire negotiations on this regulation (Interview 16). The Estonian presidency, following the wishes expressed by the French delegation in its initial informal message to the Council in July 2017, removed mentions to obligations of MS to contribute financially to a common investment fund if they miss their indicative targets (Contexte 2017a). MS also pushed for a non-quantitative assessment of progress, in order to avoid allowing the Commission to recommend any national targets to underperforming countries at a later stage (Euractiv 2017c).

While the MS held a "tight grip" on the negotiations, it is likely that they may not have fully grasped the extent of the new role and influence of the Commission in this new setting (Interview 26). The outcome was "certainly" not anticipated by the European Council when it mandated the Commission to put forward a package (Interview 16). Nonetheless, there were some that saw the Council as the big winner of the negotiations having successfully blocked the Commission from being able to pursue infringement in case of non-compliance with national targets (Interviews 10, 18). The transformed role of the Commission in this new governance architecture and its implications for the balance of powers between EU institutions and MS are further discussed in chapter 7.

Trajectory of renewable targets

While MS would not have to meet binding targets for renewable energy, in order to ensure that the collective efforts could reach the EU-level renewable objective the regulation includes an annex with a

formula for estimating the indicative national targets that would be necessary. However, these indicative targets, as well as the binding EU target, only indicate the ambition level for 2030. Therefore, another discussion emerged on the trajectories through which these targets would be met. Intermediary benchmarks had to be established, which MS would need to follow collectively to temporarily distribute their efforts until 2030.[5]

The Commission's objective was to have a linear trajectory, motivated by the fact that renewable energy technologies were already cheap and commercially ready, which meant that there was no need to wait for prices to further decrease (Interview 1). The EP backed a linear trajectory through its vote on 16 January 2018, after Claude Turmes and Michele Rivasi reached a compromise with the EPP to introduce more flexibility in the trajectory. The trade-off consisted of putting in place three intermediary milestones: 20% of the total obligation to be fulfilled by 2022 and 70% by 2027, with more flexibility for the midway 2025 target, for which MS could reach only 45%, slightly under 50%, which would have been the case in a completely linear trajectory (Euractiv 2018e).

MS rejected this linear trajectory in the Council from the beginning of the negotiations, advocating for an exponential trajectory, which would lead to backloading investments in renewables closer to 2030. The Estonian presidency tried to introduce a compromise adding two benchmarks before 2030, in 2023 (22.5% of overall target) and 2025 (40% of overall target), while also allowing the Commission to take "corrective measures if these targets are not met" (Euractiv 2017h). The change of position of France discussed earlier in this section was decisive for the introduction of an additional progress benchmark in 2027 (Euractiv, 2017c). Germany, France, and Portugal were the most instrumental countries in convincing other delegations to adopt three intermediary targets before 2030 (Euractiv 2018b). Nonetheless, MS and the EP agreed to change the date of the first check of progress to 2022 from 2023 and to also decreased the number of total checks to three, to reduce administrative burden. The compromise on a semi-linear trajectory, was considered one of the only significant "losses" of the Commission in the negotiations for this file, even though MS shifted significantly compared to their starting position (Interview 4).

Long-term decarbonisation plans and targets

Active debates also concerned the decarbonisation ambitions in the 2050 perspective and the governance provisions that would monitor progress for the long-term objectives. The Commission's initial proposal for the NECPs did not have a strong long-term component. In fact, the EU's executive

[5] The negotiation of the target itself is discussed separately in the next section.

was considered by some as insufficiently ambitious on this topic, both in its proposal and during the negotiations (Interview 18). The EP insisted on adding clear and measurable 2050 ambitions, using its concession over the lack binding national targets as a bargaining chip (Interview 4). The long-term commitment efforts were led by Claude Turmes, who many credit for the outcome of the negotiations (Interview 2). This showcases the importance that rapporteurs and EP committees can have in shaping the outcome of the negotiations. MEPs voted on 7 December 2017 to set a tight net-zero emissions target for 2050, a major success for Turmes in the EP (Contexte, 2017b). The vote was very close, with 61 votes in favour, 46 against, 9 abstentions in the joint ITRE and ENVI committees. At the same time, the Commission was given an extended role as a "gap filler" for monitoring the compliance with the long-term objectives (European Parliament, 2017a). Support came largely from S&D, ALDE, GUE and Italian Five Star Movement, while EPP and ECR only supported some points of the compromise (e.g. they opposed the idea of a carbon budget). The net-zero GHG emissions by 2050 objective received overwhelming backing, surprisingly, on 17 January 2018 in the plenary (466 in favour, 139 against), which was praised as a "great victory for the climate and citizens" by Turmes (Euractiv, 2018a). Therefore, the EP entered the trilogue negotiations with a strong and highly ambitious mandate. The net-zero 2050 objective was used as a red line by the EP until the final stages of the negotiations.

MS, especially those from CEE, were against any rigorous long-term planning for 2050 (Interview 16). Luxembourg, holding the early Council presidency, alongside Sweden, proved to be the most reliable partners for the EP in its endeavours, desiring clear templates and participation commitments (Interview 3). The final agreement required the Commission to put forward a design for a 2050 EU strategy for GHG emissions in line with the Paris Agreement, taking into account scenarios for meeting a net-zero target by 2050 (European Parliament, 2019a). In the end, the EP did not manage to obtain an explicit commitment for climate neutrality by 2050, but MS have to provide long-term strategies for their energy transition until 2050. The template for these strategies is significantly looser than that for NECPs, allowing long-term strategies to remain largely exploratory and non-committal. The strategies have to cover at least a 30-years period, to present the GHG emissions reductions both in total and per economic sector, the size of removals through carbon sinks, the expected progress, the links to other national objectives, and "to the extent feasible", expected measures. Interestingly, while all MS submitted their NECPs and revised them according to the recommendations received from the Commission, four countries (Bulgaria, Romania, Cyprus, and Ireland) have still not submitted even a first draft of their long-term strategies by the time of writing this thesis, despite the 1st of January 2020 deadline. The Commission is yet to proceed with any infringement procedures on this lack of compliance.

5.3 Renewable Energy Directive (2018/2001)

Renewable energy sources which include "biomass, geothermal, solar, and wind energy and hydropower, do not rely on emission-intensive fossil fuels and replenish themselves through natural processes" (Schoenefeld and Knodt, 2021: 50). In the CEP, the revised Renewable Energy Directive (RED II) modifies the original Renewable Energy Directive 2009/28/EC (RED I), establishing a new collective EU-level target of 32% for renewable energy sources in the total EU energy mix by 2030 (which can be increased in 2023 based on a proposal from the Commission). The directive also provides the general guidelines for support schemes for renewable capacities, renewable energy self-consumption, energy communities, mechanisms for cross-border cooperation, the criteria for biofuels, the general guidelines for guarantees of origin to avoid double counting, and a framework for mainstreaming the use of renewable energy in the transport and heating and cooling sectors (with a target for a minimum 14% share in the transport sector by 2030 and an annual 1.3% average increase in the share of renewables in the heating and cooling sector from 2021). Therefore, this is a highly complex directive establishing both the EU collective target for renewable energy and the general guidelines that need to be followed for pursuing it.

A particularly controversial issue under the previous renewable directive was the guidelines on biofuels. In RED II, first generation biofuels are limited to 7% of consumption in transport and the rest coming from second generation biofuels, while also placing restrictions on palm oil use in their manufacture. This was probably considered the most contentious issue, with the highest amount of media coverage and interest from civil society (Interview 33). The Commission was tasked to define the concrete sustainability criteria for biofuels through a delegated act after the adoption of the directive. The Commission would similarly have to publish a delegated act setting the sustainability criteria for renewable fuels of non-biological origin (RFNBOs), which are mostly hydrogen-based synthetic fuels. This left a great deal of influence to the Commission over the technical details for establishing which fuels can be considered renewable. Delegated acts adopted by the Commission automatically enter into force if there is no objection expressed by the EP or the Council within a period of two months, with the possibility of extension to for another month. Therefore, in addition to the role that it has been conferred through the Governance Regulation, the Commission will also have significant powers in enforcing the implementation of RED II. Such delegated acts are highly consequential, as it will also be discussed in Chapter 8.

The negotiations unfolded as a struggle between EU institutions, with the EP emerging as more ambitious on almost all points of discussion and with the Commission being positioned somewhere in the middle (Interview 1). In its initial proposal, the Commission followed the 2014 conclusions of the European Council and maintained a 27% target for renewable energy to be achieved by 2030 (European

Commission, 2016g). While the Council initially endorsed the 27% target proposed by the Commission, the EP supported a 35% target, including a 12% sub-target in the transport sector of every (European Parliament, 2019b). The decisive moment during the negotiations belonged to the Commission, which revised its initial proposal to 30%. The final target of 32% that was agreed between the co-legislators was a result of the strong negotiating stance that the EP maintained throughout the entire process, whose efforts were fuelled by the new information provided by the Commission during negotiations.

While the directive no longer establishes binding national renewable targets, as it had been the case with RED I, the proposal of the Commission for the Governance Regulation would have imposed a linear trajectory for achieving the EU-level target, which would have limited the flexibility of MS during the implementation phase. This was a contentious issue for the Council, which sought from its first general approach adopted in June 2017 to give governments more flexibility over how to achieve the target and also greater discretion in deciding whether to open their national support schemes to cross-border capacity or not. Therefore, the Council opposed the Commission and the EP, trying to maintain as much control as possible over the means through which the share of renewable energy sources would be increased at national level.

While in the negotiations of the Governance Regulation the change of position of France weighed the heaviest, for this directive it was the changes of government in Spain and Italy that were most consequential, especially for the negotiations on targets (Interview 1). These two events marked a complete shift of the Council majority and its overall level of ambition, which later also spilled over into the NEMD negotiations (Interview 2). In Italy, the Five Star Movement ran for election on an ambitious climate platform, which they then pursued at the EU-level, while the appointment of Pedro Sanchez as the new Spanish prime-minister and his new socialist Minister of Ecological Transition, Teresa Ribera, was a "game-changer" in the Council (Interview 18).

Prior to setting a general approach, the Council was deeply divided, with only thin majorities forming on key issues. Sensitive topics were not discussed at great length until the very last minute, in order to avoid general discord between national representatives (Euractiv, 2017h). The EP took advantage of this division during the trilogue (Interview 18), whose rapporteur was the S&D MEP Jose Blanco Lopez, who admitted from the onset that he desired more ambitious targets than the Commission proposal (Euractiv 2017e). This progressive stance was maintained throughout the negotiations. Interestingly, more climate-sceptic MS also faced a distinctly unique set of circumstances that disabled them from pursuing more aggressive tactics. As shown by Bocquillon and Maltby, Poland could not show vocal opposition in a period when it hosted the UN climate change conference in Katowice, while Bulgaria "was neutralised by being the President" during the Council negotiations (2020: 47).

The recast Renewable Energy Directive was adopted by the EP on 13 November 2018 (475/100/33) (European Parliament, 2018b) and by the Council on 04 December 2018 with one vote against (Czech Republic) and three abstentions (Hungary, Slovenia, and Belgium) (Council of the European Union, 2018b). The transposition deadline was 30 June 2021. It should be noted that various aspects of the EU's renewable energy policy have been integrated in other parts of the CEP, for example in the Governance Regulation and the Electricity Directive.

Renewable energy target

The headline target for renewable energy sources in the total the energy mix in the EU set by RED II for 2030 was first proposed by the European Council in its 2014 conclusions. However, these conclusions put more emphasis on GHG emissions reduction, leading to some researchers to interpret it as a sign that renewables promotion had been side-lined (Bürgin 2015). During those high-level negotiations, only Germany, Denmark and the Netherlands backed a more ambitious target of 30% (Solorio and Jörgens, 2021: 87). Given the economic turmoil at the time, MS were wary of high electricity prices, partly fuelled by the costs associated with renewable support schemes and some no longer desired to offer financial support for renewable installations (Interview 33). The UK and France were supportive of a 40% GHG emissions reduction target, but not of nationally binding renewable targets (Interview 26). Germany, which had supported binding national targets in the previous 2007 negotiations, expressed more caution this time. French President Francois Hollande declared himself torn between pressures from the public to decrease the share of nuclear energy in the aftermath of the Fukushima disaster and the lobbying effort from nuclear companies such as EDF (Bürgin, 2015: 699). In the end, the lower 27% target was seen as a sign of "renationalization of the EU renewable energy policy's governance structure", given that this would not be implemented through binding national targets (Solorio and Bocquillon, 2017: 36).

The Commission did not go outside the mandate it was given and proposed a 27% target, which was backed by a series of internal studies and impact assessments released together with the legislative proposal (Interview 1). Lacking a clear signal from MS, the president of the Commission sought to "depoliticise" the legislative process, by relying on the results of the impact assessment on cost-effectiveness as a more "technocratic" means on deciding on the content of the file (Bürgin, 2015: 691). The Commission assessment found the 27% target to be the most cost-effective for achieving a reduction in GHG emissions of 40% by 2030, an estimation for which it was criticised by both environmental groups and MEPs (European Parliament, 2014). It was ultimately accused of "giving in to the intense lobbying efforts of large energy providers and energy intensive industries" (Bürgin, 2015: 691). Similar criticisms of the Commission had been voiced in the during the negotiations of the

previous 2020 renewable target (Toke, 2008: 3007). Bürgin (2015) argues, however, that this concession was a strategic choice made by the Commission. By aligning its position with that of key MS, the Commission improved its bargaining position at a time when it faced heavy contestation (2015: 694). For example, the Commission's climate leadership was being questioned after failing to obtain ambitious commitments from other major countries at UNFCCC climate summits (Skovgaard, 2013).

Nonetheless, the Commission later revised its initial calculations based on the results of a new report by the International Renewable Energy Agency (IRENA), which showed that a slightly higher renewable target would not imply higher implementation costs (Interview 1). The results indicated that up to 34% could be realistically reached in a cost-effective manner. In light of these new figures, Commissioner Miguel Arias Cañete declared the previous modelling done by the outdated as a result of the "spectacular" fall in the prices of renewables (Euractiv 2017c). It therefore updated its recommended target to 30%. While the Commission was no longer technically part of the decision-making process, the recalculation had a significant impact on the debate, especially as it came out during a key moment of negotiation between the EP and the Council (Interview 1). This event was seen as one of the tipping points during the negotiations and a very effective negotiation tactic by the Commission to rely on its technical prowess (Interview 26). It took advantage of its high number of specialists and expertise, as MS had little time to react (Interview 31). The results of the recalculation put particularly high pressure on smaller MS, which lacked sufficient expertise and resources, especially given the time constraints of the negotiation timeline of the CEP (Interview 31).

Meanwhile, the EP pushed for a higher target from the beginning of the trilogue negotiations, which changed the stance of the Council to a defensive position of finding ways to limit the ambition level of the target (Interview 26). On 17 January 2018, the EP voted for a 35% target in contrast to the 27% target in the common position of the Council adopted a month earlier, on 18 December 2017. The Council also backed a 14% target for the transport sector. The most ambitious MS were Portugal, Spain (after governmental change), France (after change of position), Luxembourg, and Sweden. However, the other delegates were adamant about keeping the initial target at 27% (Interview 1). When the EP voted on a 35% target, the Polish Energy Minister Krzysztof Tchorzewski made it clear that it will be almost impossible for his country to meet such a goal (Euractiv 2018c).

The Bulgarian presidency was the first to put a higher target of 33% on the Council table for its 11 June 2018 meeting (Euractiv 2018d), in response to the recalculation by the Commission (Interview 18). Pressures emerged from Sweden, France, Portugal, and the Netherlands, fuelled by the change of government in Spain and Italy, to push for a 35% target in the Council's common position. Germany has not necessarily been one of the progressive countries, but it did follow domestic public pressure. Chancellor Angela Merkel expressed publicly her reluctance to constantly setting new climate goals, at

time when MS were already struggling to meet existing objectives (Politico, 2018). However, Germany did not object to a more ambitious target when the Commission proposed it, given the wide domestic support for reducing GHG emissions. Still, it effectively vetoed any target above 32%, therefore blocking higher ambitions form the EP and environmental groups (Solorio and Jörgens, 2021: 88). In the end, the 32% target was agreed as a result of combination of factors, especially the recalculation done by the Commission, the aggressive negotiations stance adopted by the EP, and the two changes of government (Interview 18).

National support schemes and cross-border cooperation

RED II also had to revise the general guidelines for national support schemes for renewables and the degree of openness of these schemes to participation from neighbouring countries. This was an important discussion, as some MS with higher population densities, particularly those in North-Western Europe, were already starting to face issues regarding land availability, which would severely limit their ability to meet national indicative targets for renewable energy. An option for overcoming this problem was to allow MS to develop renewable projects in other EU countries, but to count those projects towards their own targets. Naturally, this also required clarification about the access that such projects would have to support schemes either in their country of origin or in the host country.

The Commission pushed for the mandatory opening of the national support schemes in order to break MS protectionist practices. An official from DG ENER explained that the legislative proposal was also backed by increasing the budget for building cross-border interconnections through the Connecting Europe Facility to ensure that governments could no longer use the excuse of lack of physical infrastructure (Interview 1). At the same time, the general stance of the Commission was to limit the overall support received by renewable technologies, which were already approaching maturity levels in most EU geographies (Interview 33). This is why the directive states that financial support for renewables should only be granted when deemed necessary and without creating market distortions. Throughout the process, the EP was largely supportive of these Commission endeavours.

Meanwhile, some MS were concerned about unfair competitive advantage that could be gained by other countries if allowed access to their national support schemes (Interview 1). This protectionist behaviour was also visible in the negotiation of the NEMD files, where some MS were concerned about allowing any third party to have significant influence over the design of their domestic electricity markets. Germany was one of the main proponents of opening up support schemes, but for some other countries, like Slovenia this was unacceptable (Interview 10).

The compromise saw the establishment of a cooperation mechanism that allows MS to jointly support renewable energy and settle the way in which new capacities are counted in the respective countries' targets. There are three main implementation options: (1) statistical transfers, which is mostly an accounting procedure that allows a set quantity of renewable energy to be deducted from one country's target and added to another's, in exchange for financial compensation, (2) joint projects, for which multiple MS can co-found renewable electricity or heating and cooling projects with a split of the accounting, and (3) joint support schemes, where multiple countries can develop new support measures. Therefore, in this discussion was settled by allowing MS to bilaterally engage in accounting transfers or joint endeavours, while safeguarding exiting national schemes from access of foreign companies.

Self-consumption of renewables

Articles 21 and 22 of RED II establish the ability of consumers to produce renewable electricity and consume it without any barrier from grid operators. The Commission introduced provisions protecting access to grids for active consumers, especially to stimulate the installation of rooftop photovoltaic panels on households. As production at peak hours from those domestic producers could be larger than the consumption, the excess electricity would have to be evacuated on the grid. This had to be ensured through clear provisions regarding grid access conditions that the Distribution System Operator (DSO) would have to give to those household so-called "prosumers". To strengthen the case for prosumers even further, the EP wanted to ensure that no financial charges would be incurred for renewable self-consumption by their respective DSO, provision which it managed to obtain by taking advantage of a divided Council on the topic (Interview 18).

The Council was split on this issue, struggling to find a common approach (Interview 29). Some MS were particularly concerned about their capability to balance a high number of prosumers with existing grid constraints, and therefore raised questions about where the responsibility would fall for potential grid disruptions, as well as whether t prosumers would be granted access to national support schemes (Interview 1). The Estonian presidency tried to make it possible for DSOs to refuse connection to self-consumers wishing to sell their electricity to the grid and to allow governments to tax self-production (Contexte, 2017c). Even MS that were not particularly interested in this topic used it as a bargaining chip to pursue other points of interest (Interview 24). This was obvious even in the latter stages of the trilogue, when there was still internal Council negotiation about a common perspective, discussions which were mostly realised through informal backchannels between different groups of MS (Interview 29).

In the end, most of the decisions regarding self-production were left to the negotiations of the electricity directive and regulation, which offer more clarification on the general principle of grid access enabled through RED II. This is discussed in more detail in Chapter 6

Bioenergy and biofuels

Renewable energy targets are not exclusively met through electricity production capacities. In fact, a significant part of EU renewable energy comes from bioenergy, which is biomass transformed into energy. However, to ensure that the biomass used is sustainable, it needs to abide by rigorous standards for emissions and ecological impact. If managed correctly, biofuels can contribute not only to reductions in GHG emissions, but also to reducing fossil fuel imports and stimulating rural development (Skogstad, 2017: 28).

The use of bioenergy has been supported in RED I through a sub-target for biofuels. However, the so-called first-generation biofuels raised serious concerns regarding sustainability and impact on ecosystems and biodiversity, given that they were mostly produced from energy crops (i.e. crops planted exclusively to be converted to biofuels). In addition to their questionable climate credentials, those first-generation biofuels created issues of land use, as increasingly more farmers switched to such monocultures, after MS launched multiple support schemes, which limited the available land for food crops.

Given the concerns regarding the negative side effects of the provisions under RED I, the Commission proposed to reduce the share of biofuels in transport to a maximum of 7% in 2021 and 3.8% in 2030, without differentiating between types, such as ethanol and biodiesel. This caused widespread outrage and the Commission was accused of showing fundamental shortcomings in its research and decisions (Euractiv, 2017d). The Commission's own Regulatory Scrutiny Board, established through the Better Regulation agenda, issued multiple negative opinions on the draft proposals. Marie Donnelly, the director for Renewables, Research, and Energy Efficiency in DG ENER actually admitted at the time that the decision to phase-out first generation fuels was based on public opinion, not on scientific evidence (Euractiv, 2017d). The Commission did show openness for incorporating input from non-state actors such as environmental NGOs (Interview 11), but the widespread belief was that the Commission had a politically charged viewpoint on the issue, which ultimately undermined its credibility in the view of many decision-makers (Euractiv, 2017g). Swedish EPP MEP Christofer Fjerllner called the Commission's U-turn on biofuels from RED I "scientifically unfounded" and a danger for European agriculture (Euractiv, 2017f). Meanwhile, others came in support of the Commission and accused the "attention-seeking NGOs" of pushing for "emotion-based policymaking" (Euractiv, 2017q).

For the EP, the main issue was its desire to completely ban the use of palm oil for biofuels. The Dutch Green MEP Bas Eickhout took part in an influential Euractiv interview on banning palm oil (Euractiv 2017g). On 9 November 2017, lawmakers in the transport committee voted 30 against and 11 in favour of Bas Eickhout's proposal to phase-out crop-based biofuels entirely by 2030 (European Parliament, 2019b). However, a narrower ban that only covered palm oil was voted on 17 January 2018, following an agreement between EPP, S&D, and ALDE (Euractiv, 2018l).

Some MS were reluctant to make substantial changes to the biofuel provisions, usually due to the existence of a particularly well-developed domestic industry producing bioenergy, but this was not a core issue in the Council (European Parliament, 2019b). The debate in the EP dominated this topic, overshadowing discussions in the Council. The final outcome established a 14% target for biofuels in the transport sector, imposing more significant limits on the share of unsustainable crop-based biofuels, and setting sub-targets for more sustainable advanced biofuels produced from waste starting at 0.2% in 2022, to 1% in 2025, and 3.5% in 2030. The legislation did not ban palm oil-based biofuels all together, but the sustainability standards imposed through a later delegated act would lead to its near-complete phaseout.

The increasingly more restrictive conditions imposed on biofuels through the final version of RED II largely reflect a "process of knowledge accumulation" and feedback from epistemic communities made up of experts and academics, that can be critical of legislative proposals and even discredit the "foundational policy rationale" (Skogstad, 2017: 37). Therefore, the involvement of the scientific community and the legitimacy it musters had a meaningful impact on tightening the rules for biofuels counted towards the renewable targets. However, the result was still described by some civil society organisations as an "absolute crash", being unhappy about the continued inclusion of multiple type of biofuels with questionable climate credentials (Interview 33). NGOs have been highly critical of the Commission's approach. For example, Transport&Environment explained how the use of palm oil would lead to no real emissions, reduction, WWF described it as a "prelude to another biofuels fiasco", while Fern pointed to a failure to learn from the experience of the previous version of the Renewable Energy Directive (Euractiv, 2016). The Commission was "bombarded" with complaints and requests from NGOs throughout the process (Euractiv, 2017q).

5.4 Energy Efficiency Directive (2018/2002)

The CEP also included a recast of the 2012/27/EU Energy Efficiency Directive (EED), aiming to better implement the "energy efficiency first" objective of the Energy Union. Energy efficiency permeates across multiple sectors of the economy, including transport, industry, and buildings, yet it cannot be

considered a policy field in its own right, but rather and instrument that can contribute to all of the three main objectives of EU energy policy – competitiveness, sustainability, and security (Dupont, 2020: 95). The energy efficiency first principle, introduced by the Commission as a pillar of the Energy Union, is meant to encourage taking into consideration energy efficiency measures when shaping any energy policy or making any energy investment. The principle is meant to ensure that energy is produced only when it is really needed, that overinvestments in energy assets are avoided, and that energy demand is reduced through cost-effective measures (European Commission, 2022a).

The Commission proposed a series of changes based on its findings that the previous form of the directive was insufficient for meeting the EU's energy efficiency target and provided an insufficiently robust framework for MS to implement it (European Commission, 2014). However, the Commission "took a back seat" during negotiations, especially when compared to its involvement in the Governance Regulation and RED II (Interview 6). Meanwhile, the EP emerged throughout the negotiations as the main actor promoting the implementation of the "energy efficiency first" principle (Interview 3) and has been decisive in securing a higher energy efficiency target (Bocquillon and Maltby, 2020: 47). According to the final form of the recast EED, the EU has to collectively achieve a headline target of at least 32.5% improvements in energy efficiency by 2030, with yearly energy savings obligation of 0.8% in each MS. The final target of 32.5% that was regarded as a major victory for the EP, which was once again regarded as the most influential and creative actor during the negotiations of the ECG files (Interview 6). On the other hand, the Council has been more successful in reducing the annual energy savings obligations.

Ultimately, negotiations on the recast EED were "divisive" (Dupont, 2020: 103). The same division over the binding nature of the target that emerged between the EP and the Council for the 2012 directive was still prevalent. A very interesting case developed within the EP, where the initial Polish S&D rapporteur Adam Gierek lost the vote for his own amendments and eventually his position in the negotiations. He was accused of having very particular ideas for this directive, which were not shared by his fellow S&D MEPs (Interview 2). He eventually de facto surrendered control of the file to his colleagues, removing his own amendments (Euractiv, 2017l). He was later replaced by Miroslav Poche after the vote in the ITRE committee on the amendments for this directive. Meanwhile, EPP shadow rapporteur Markus Pieper tried to slow down the process, pushing for a technical discussion of the text and focusing on costs (Interview 16). Both Pieper and Gierek were viewed as highly unambitious and they were slowly marginalised (Energypost, 2017b). Despite these hurdles, the EP managed to maintain its position as the "most influential and creative actor in the negotiations" (Interview 6).

The Council argued from the very beginning for more "flexibility" in attaining the objectives, as communicated after the informal meeting of EU ministers in Malta in 2017 (Council of the European

Union, 2017d). Germany was among the initially reluctant countries, as it was on the verge to fail to meet its 2020 energy efficiency target (Interview 2). However, given the way discourses had been framed in recent years when it comes to the energy transition, it was very difficult for MS to present positions against energy efficiency (Interview 6). The "multiple benefits" of energy efficiency, ranging from the economic to the environmental and social, have been very successfully instrumentalised by advocates of higher levels of ambition for convincing policymakers and disabling opposition from any angle (Fawcett and Killip, 2019: 1171).

The revised EED was adopted by the EP on 13 November 2018 (434/104/37) (European Parliament, 2018c) and by the Council on 4 December 2018 with two votes against (Belgium and Czechia) and two abstentions (Croatia and Slovenia) (Council of the European Union, 2018c). However, there are significant concerns regarding the transposition and the implementation of this directive, given the already improper implementation of the previous form of the EED, for which the Commission notified 27 MS and further sent 15 letters of formal notice in 2018 for launching infringement procedures (Interview 19). The recast EED had to be transposed into national legislation by 25 June 2020.

Energy efficiency target

Unlike the case for RED II, in the initial proposal for a recast EED, the Commission put forward a target of 30%, which was higher than the 27% that was agreed by the European Council in 2014 (European Commission, 2016h). Therefore, from the very beginning, the Commission exceeded the mandate it had received. The decision by the Commission to increase the headline target was based on the impact assessment it had conducted on the revision of the directive, which showed that more ambitious targets would provide a superior impact on economic growth, employment, competitiveness, and security of supply (European Commission, 2016b). Therefore, it invoked the same "multiple benefits" of energy efficiency argument that has been used by its advocates in previous negotiations. Some NGO representatives claimed that the target was increased compared to the mandate given by the European Council as a result of NGO efforts targeted at the Commission (Interview 33), but others did not perceive such an influence (Interviews 2, 6).

The EP responded with an even higher ambition level, supporting a 40% target in the ITRE Committee. Compared to the Commission, it also argued for the target to be binding at EU level, similar to that for renewable energy. S&D and the Green MEPs were the main advocates for higher ambitions, while EPP and ECR MEPs maintained a conservative position for a 27% objective (Interview 33). A S&D MEP even admitted to a lot of pressure being exerted by environmental NGOs throughout the legislative process (Interview 8). The former camp managed to secure a majority in spite of inner struggles. S&D

rapporteur Adam Gierek tried to reduce the target in the EP position to 28%, but it was later raised to 35%, under pressure from his own political group (Euractiv, 2017k). When ITRE eventually voted for a 40% target, he had been effectively side-lined from his positions as the EP's negotiator on the file. While the vote was only won with a narrow majority of 33 against 32, it was enough to prompt the departure of Gierek from his position (Euractiv, 2019r). While 40% was not seen as feasible by the many members of the ITRE Committee, it was chosen as a negotiating tactic for the trilogue. In the plenary, the target was reduced to 35%, given the efforts coordinated by influential EPP MEP Markus Pieper.

The EP proposal for a new target proved to be highly contentious in the Council. MS started from the position of backing a 27% target, but "greener" countries such as Germany, Sweden, France, and Finland pushed for 30%. The governments wanted to signal to their domestic public willingness on the topic (Interview 19). Simultaneously, the starting positions of the Czech Republic was 20% (Interview 19), while UK and Poland pushed for 27% (Euractiv, 2017j). After intense negotiations, a 30% non-binding target passed the vote for the Council's general approach, even if it was opposed through voting by six countries (Hungary, Latvia, Poland, Romania, Slovakia, and United Kingdom) and two abstentions (Bulgaria and Slovenia) (Council of the EU, 2017b). This was one of the few instances in the CEP when the Council struggled to reach consensus, or near-consensus during its deliberations. The Bulgarian presidency was unsuccessful in negotiating this mandate with the EP, where rapporteur Miroslav Poche secured a 32.5% headline target, which was considered a significant victory for the EP.

Annual energy savings obligations

While much attention focused on the headline energy efficiency target of the EED, the negotiations on the annual energy savings obligations were more technical, in spite of their arguably higher importance. Article 7 of the previous EED required energy distributors and retail energy companies to reduce the volume of energy sales to the final consumer by 1.5% annually. MS were also free to achieve the energy savings through alternative measures, such as carbon taxes, financing schemes, fiscal incentives and energy efficiency standards, norms, and labelling. As this was an article in a directive, it had to be transposed into national legislation and implemented by each country. Failure to do so would allow the Commission to pursue an infringement procedure, which could eventually impose fines on national governments. Therefore, the compliance mechanism behind this obligation was significantly more robust than the overall target.

The Commission proposed maintaining this system in its recast EED proposal, with the same 1.5% annual target, while eliminating some loopholes that allowed instances of double-accounting. In the EP,

rapporteur Adam Gierek once again failed to follow the party line and wanted to completely change the methodology with "obscure and overly complicated methods" (Interview 19). ITRE was completely split on the calculation formula for the energy savings, which damaged its negotiating position.

MS wanted to reduce the obligation to as low as 1% for the 2026-2030 period, mainly motivated by increasingly higher marginal costs of implementation as higher levels of efficiency were being achieved. The Council also wanted to keep full control over the calculations of energy savings (Interview 6). "Unambitious" countries chose this issue as their main focus for "watering down" the file and for keeping as many of the existing loopholes as possible, which for many represented more than half of the entire energy savings they were calculating for the targets in the previous directive (Energypost, 2017a). The Czech Republic pushed the charge against 1.5%, with 11 countries supporting it: Austria, Belgium, Italy, Latvia, Slovakia, the Netherlands, Poland, Portugal, Romania, Spain, and the UK (Euractiv, 2017j). The Maltese presidency wanted the target to only be lowered to 1.4% but to also be non-binding. However, in the general approach, instead of reducing the target to 1.4%, the 2020-2030 period was split into two, with 1.5% only applying until 2025.

The final compromise between the Council and the EP reduced the energy savings obligation to 0.8%, now to be calculated from the total final energy consumption and not the total energy sales. This change in formula should allow for more accurate accounting, eliminating double-counting and likely leading to similar levels of real energy savings as the previous 1.5% obligation set on total final energy consumption (European Parliament, 2019c). The Council also managed to exclude transport and certain industrial activities from this obligation.

Inclusion of energy poverty

A key concern was also the possibility of including special provisions for tackling energy poverty in the recast EED. Based on the legitimacy concerns outlined in Chapter 4 and seeking to prove that it put citizens at the centre of the Energy Union, the Commission introduced energy poverty reporting obligations and measures, starting from the idea that the concept was ill-defined at EU-level and needed to have better legal framing (Interview 6). The measure to include provisions on energy poverty was replicated across the entire package, in multiple legislative files. The EP supported the proposal, but not as actively as other aspects of the recast EED, focusing more on the climate ambitions and therefore allowing more influence of the Council on this topic. MS were very reluctant to attach energy poverty provisions to legislation on energy efficiency, given the lack of social competences of the EU, especially in the area of energy policy. Therefore, the Council refused to open the door for Commission intervention in what many countries saw as social policy, which is very close to national interests

(Interview 6). An East-West divide was very visible on this topic. The discussion spilled over to NEMD files, where it gained even more salience. The inclusion of aspects related to energy poverty and protection of vulnerable consumers are therefore discussed at length in the context of the Electricity Directive in Chapter 6.

5.5 Energy Performance in Buildings Directive (2018/844)

The Energy Performance in Buildings Directive 2010/31/EU (EPBD) was also revised by the CEP. The EPBD represents the main legislative instrument for promoting the energy performance of buildings and for boosting the renovation of the existing building stock in the EU. Based on the effectiveness of the previous directive, the Commission recommended maintaining its main measures, while also making some improvements, mostly related to technical aspects on inspection requirements for heating and cooling systems and the amelioration the national energy performance certification schemes in some countries.

In the EP, the file was assigned to EPP rapporteur Bendt Bendtsen, who was regarded as highly ambitious on the topic (Vitali, 2017). Alongside Morten Helveg Petersen, ALDE, and Florent Marcellesi, Greens/EFA, he published a highly influential letter in Euractiv (2017m) against the dilution of the file by the Maltese presidency. They mobilised the ITRE committee, which voted 61 in favour and 2 against the tabled amendments (European Parliament, 2017b), which gave the rapporteur a secure mandate for negotiations with the Council (Interview 34).

In its final form, the revised EPBD covers key provisions on energy performance certificates, inspection schemes for heating and cooling systems, minimum energy performance requirements for new buildings, promotion of e-mobility through recharging points requirements and management of financing instruments for improving energy efficiency measures in buildings. In the end, it was the "quickest file to be passed" in the entire CEP (Interview 14). It was adopted by the Council on 14 May with 1 vote against (Slovenia) and 2 abstentions (Croatia and UK) (Council of the European Union, 2018d) and by the EP on 17 April 2018 (545/35/96) (European Parliament, 2018d). MS had to transpose the directive into national law by 10 March 2020. Given the relatively technical nature of its content, it was also one of the files that attracted the least attention from third parties, with the exception of a few industrial association and advocacy groups focused specifically on energy performance in buildings (Interviews 5, 34). It was also considered to be "the most improved file compared to the Commission proposal" (Interview 34). Regardless of its quicker adoption, there were still some contentious aspects of discussion that merit further analysis.

nZEB building standards

The Commission maintained in its proposal for the revision of the EPBD one of the most demanding and contested requirements for MS, which established that all new buildings must meet nearly zero-energy buildings (nZEB) standards from 2021. This provision would apply to public buildings starting from 2019. The EPBD defines nZEB as very high energy performance buildings, which have "nearly zero or very low amount of energy required should to a very significant extent be covered by energy from renewable sources, including renewable energy produced on-site or nearby". This relatively broad definition allowed MS to implement their own interpretation of the concept domestically.

The EP was particularly active and influential in maintaining this stipulation on nZEB requirements from the previous directive. However, the positions of Council and EP were very far apart. The loosely defined nZEB concept was an outcome secured by the Council during the negotiations of the previous form of the directive, after intense negotiations with the EP which negotiated for "zero-energy buildings" to become the norm for renovations (Dupont, 2020: 101). The negotiations followed a "nothing is agreed until everything is agreed mentality" according to the Estonian presidency spokesperson Annikky Lamp and the trilogues were even described as a "trench war" by one official (Euractiv, 2017o). MS were particularly interested in keeping a controversial provision in Annex 1 of the directive, which could have undermined the entire purpose of the file (Euractiv, 2017n). The provision allowed investments in renewable energy sources on-site to replace the renovation requirements. The final compromise included a loose definition of nZEB, requiring governments to develop their own national standards, based on domestic circumstances and specific conditions (European Parliament, 2019d). Therefore, the Council was successful in securing a high degree of national flexibility.

Long-term renovation strategies

Another controversial measure for the MS was the Commission's proposal to incorporate and expand in the directive the provisions on long-term renovation strategies from the previous EED and to define "measurable indicators" for decarbonising the building stock (Euractiv, 2017s). According to this provision, governments had to produce roadmaps and national indicative milestones for 2030, 2040, and 2050, the implementation of which would be monitored by the Commission through the new Energy Union governance system. The milestones had to aim at delivering a decarbonised building stock by 2050 in each country, which proved to be a very sensitive topic for governments. The Commission also introduced an obligation for MS to report in those strategies measures for tackling energy poverty that could be achieved through buildings renovation (European Commission, 2016i).

The EP supported clear milestones for 2030, 2040, and 2050 and strived to ensure that countries commit to achieving nearly-zero energy level by 2050 (European Parliament, 2019d). However, in the Council, MS desired only indicative milestones, in order to avoid potential infringement procedures and fines (European Parliament, 2019d). There was a clear split between the Council, which viewed the proposal of the Commission as too demanding, and the EP, which wanted further requirements for governments. This issue was in fact responsible for blocking the trilogues for multiple rounds of negotiations. Commissioner Miguel Arias Cañete attended one of the trilogue meetings to attempt to overcome this blockage, which constituted a unique event (Euractiv, 2017t). The Commissioner claimed that the lack of a deal between the co-legislators on the EPBD could undermine the objectives of the Paris Agreement. His intervention was also considered key for securing an earlier compromise compared to the other directives, even if the co-legislators significantly diluted the ambitions of the Commission (Interview 5).

The final compromise obliges governments to develop long-term renovation strategies that aim to achieve a decarbonised building stock by 2050 (European Parliament, 2019d). The strategies must include an overview of the current building stock, measures for stimulating deep renovations, policies to target the worst performing buildings and energy poverty, an overview of current national initiatives, indicative milestones for 2030, 2040, and 2050, and calculations of the estimated energy savings and overall contribution to the EU's energy efficiency target. National plans need to be submitted every 5 years based on a common template and need to be synchronised with NECPs. While the Council did manage to avoid setting binding national decarbonisation milestones, the fact that the obligation for producing strategies for decarbonising the building stock by 2050 was included in the final agreement was considered by some to be the "biggest victory for the European Parliament" in the negotiations on energy efficiency topics (Interview 34).

Electromobility

Another key provision of the EPBD introduced by the Commission was the obligation for minimum requirements of charging points for electric vehicles in new and retrofitted buildings. The Commission seized the opportunity of this directive to unilaterally introduce the article on electromobility, without a prior mandate from MS (Interview 2). Both the Council and the EP wanted to reduce the burden to fewer mandatory recharging points and to only require pre-cabling in some buildings to be ready for when the demand for e-charging would be higher. This was a very rare instance in the negotiations of this package when both co-decision institutions to agree very easily on a topic. The general approach of the Council diluted the Commission's proposal by 96%, according to Commissioner Miguel Arias Cañete (Euractiv, 2017k, 2017p). The final agreement on the EPBD requires residential buildings with

more than ten parking spaces to be equipped with the power lines ducting necessary for installing charging points for all the parking spaces, while for non-residential buildings, this requirement applies to only 20% of the parking spaces, but at least one charging station would have to be installed from the beginning (European Parliament, 2019d).

5.6 Conclusion

This chapter analysed the ECG files of the CEP. The main purpose of the four directives and regulations was to set and implement the EU's ambitions for decreasing GHG emissions by 40% before 2030. While it generally respected the mandate given by the European Council in 2014, the Commission raised the level of climate ambition on some measures and designed a governance process that governments will have to abide to. The EP proved to be the most ambitious institutions, especially as a consequence of the role played by its rapporteurs, with the notable exception of the Energy Efficiency Directive. Meanwhile, the MS sought to limit the supranational authority over the implementation of energy and climate policies, but proved to be constrained by domestic affairs, especially in the case of countries where climate change was an important topic to citizens. However, the Council failed to adopt through unanimous vote the final agreement on each of the four files, revealing discontent among some countries. A range of environmental NGOs, scientists, and other civil society groups provided input during the negotiations, with varying degree of success in influencing the positions adopted by EU institutions, especially on the renewable energy and energy efficiency directives, as previously explained (Interviews 8, 33; Euractiv, 2016; Euractiv 2017q).

The Regulation of the Governance of the Energy Union was perhaps the most consequential file in the bunch, as it established a completely new framework for the implementation of the EU climate objectives. The regulation marked a shift from top-down technocratic planning and accountability between the Commission and MS, to a new relationship based on cooperation and bilateral negotiation. Governments no longer have to abide to binding national targets, but they have to elaborate complex national strategies outlining their contribution. In this new setting, the Commission supervises the efforts of all EU countries and determines whether the targets and actions presented in NECPs are sufficient for reaching the collective EU targets. While it can no longer pursue infringement procedures against MS that lag behind their targets, the new governance setup places the Commission in the centre, arguably granting it a more influential position than in the past. The EP was the principal supporter of a more significant role for the Commission in this process, also managing to introduce obligations on governments to submit long-term decarbonisation strategies and successfully counterbalanced the attempts by the Council to backload the trajectory for reaching renewable energy targets. Countries

such as France, Spain, and Italy have shown how domestic politics can lead to the re-evaluation of national preferences if they do not match the expectations of their citizens.

The Renewable Energy Directive introduced a target of 32% for renewable energy consumption, higher than what had been agreed in the European Council conclusions of 2014. This was a result of a combination between the EP ambitiousness and the active involvement of the Commission in the middle of trilogue negotiations, when it revised its calculations for the most cost-effective target that the EU could reach by 2030. A coalition of ambitious MS also contributed to pushing the final target well over their starting position of 27%. However, despite efforts from the EP, there will be no more binding national targets, replaced by indicative targets based on a formula from the annexes of the Governance Regulation. MS have also successfully ensured the protection of their national support schemes from third-party access but will be able to engage in bilateral cooperation in future projects. While the technical expertise and administrative capacity of the Commission proved decisive in increasing the overall renewable target, this was not also the case for provisions on the targets and standards for biofuels. The credibility of the Commission on this topic was considered compromised by many actors, especially after negative feedback on its proposal from multiple groups of scientists.

The negotiations of the Energy Efficiency Directive were marked by the events in the EP, where S&D rapporteur Adam Gierek was ousted by its own party for undermining the negotiations position of the EU legislature. However, the newly appointed rapporteur Miroslav Poche managed to reach an agreement with the Council on a 32.5% target, compared to the 33% mandate he had from the EP and the initial common position of the European Council of 27%. The EP also managed to impose high mandatory annual energy savings obligations on governments, despite resistance in the Council, especially coming from CEE countries. It also secured a revision of the formula for calculating the annual savings, which eliminates previous loopholes that lead to numerous instances of double counting.

The Energy Performance in Buildings Directive was the quickest of the bunch to be adopted, even if trilogue negotiations were blocked for multiple rounds. In a highly uncommon event, Energy and Climate Commissioner Miguel Arias Cañete attended the negotiations between the Council and the EP when they were debating the long-term renovation strategies that MS would have to develop. The EP managed to secure the inclusion of binding milestones for building renovation rates, but it failed to uphold the proposal for “zero-energy buildings” standards. The directive requires MS to ensure that all buildings constructed from 2021 adhere to nZEB standards, for which they have significant leeway to define. The technical aspect of the file resulted in minimum engagement from civil society organisations and other non-state actors (Interviews 5, 34).

6. New Electricity Market Design files

6.1 Chapter overview

This chapter analyses the second half of the CEP, the New Electricity Market Design Files. These are the Electricity Directive, the Electricity Regulation, the Risk Preparedness Regulation, and the ACER Regulation. Together, these legislative acts implement reforms aimed at better integrating an increasing share of renewable energy and active consumers in the current electricity market, while also ensuring the security of supply and providing clarity on the role and governance of the actors engaged in the electricity market. Similar to the previous chapter, the files are discussed in individual sections, each focusing on the main content of the files, the changes made to the previous versions of the legislation, the inter-institutional dynamics, and the outcome of the negotiations.

Frist, the Electricity Directive, together with the Electricity Regulation, revises the provisions of the third energy package regarding the functioning of the EU electricity markets. It sets the conditions under which governments can regulate retail prices for retail consumers and guarantees grid access for households, or groups of households, that produce their own renewable electricity.

Second, the Electricity Regulation establishes the roles of the main participants in the EU electricity markets and the common rules which they must respect. It restricts the utilisation of capacity mechanisms for remunerating coal-power plants that have high GHG emissions, establishes the rules based on which the boundaries of wholesale electricity markets are designed, and revises the procedures for regional cooperation between TSOs.

Third, the Risk Preparedness Regulation introduces a set of procedures that market participants have to implement for preventing and managing crises that can endanger the security of supply of electricity. It also establishes the methodology for the elaboration of risk-preparedness plans and the rules for decision-making in case of emergencies.

Fourth, the ACER Regulation outlines the responsibilities of the EU Agency for the Cooperation of Energy Regulators, which coordinates the activity of NRAs. The regulation establishes the inter-institutional dynamics with other entities such as ENTSO-E and the RCCs, while also setting internal decision-making process of the agency.

6.2 Electricity Directive (2019/944)

The Electricity Directive (EU) 2019/944 recasts the Directive 2009/72/EC of the third energy package, by focusing "on the role of customers in the electricity market and aiming to establish a more competitive, customer-centred, flexible and non-discriminatory EU electricity market with market-based supply prices" (European Parliament, 2019e: 2). The stated purpose in the directive is "to ensure affordable, transparent energy prices and costs for consumers, a high degree of security of supply and a smooth transition towards a sustainable low-carbon energy system" (Directive (EU) 2019/944). Therefore, it reflects the key concerns of both the Energy Union and the CEP as a whole, placing a high degree of priority on the affordability of electricity for European consumers. It expands the previous directive by further strengthening the rights of individual consumers and energy communities, expanding the ability to engage in demand response, self-production, self-consumption, storage, and sale of electricity. In addition, it also further clarifies the role of market participants, such as DSOs, TSOs, and ACER.

More specific measures include clearer billing information for retail consumers, ease of switching suppliers and customer protection measures to allow more dynamic participation in retail markets based on informed decisions regarding consumption patterns. Individual consumers may also participate in the market through aggregation of demand, meaning that multiple customers can load or generate electricity collectively. The recast directive establishes energy communities, which are not only assured access to distribution services, but they can also manage their own distribution network. The newly empowered market participants are simultaneously financially responsible for the imbalances they may create on the grid. Meanwhile, DSOs have to facilitate grid connection for electromobility services and together with TSOs must engage in the procurement of ancillary services, but they cannot own nor operate storage facilities, unless there are no other market participants interested in this type of service.

The Commission made its proposal for the reform of the electricity market design based on an impact assessment that found that competition in both wholesale and retail markets could and should have been improved (European Commission, 2016d). The subsequent Commission proposal sought to eliminate practices that prevented prices from reflecting the situations of scarcity of electricity and to restrict regulations that distorted price formation, mainly by proposing the elimination of regulated tariffs (European Commission, 2016j). At the same time, the Commission proposed that MS would have to monitor and address energy poverty, but without public price-setting interventions.

The fact that the Commission constructed the CEP around the political line of protecting consumers is probably reflected most in this directive (Interview 12). The further empowerment of household consumers was strongly supported by the EP, as stated in its 2016 resolution (European Parliament,

2016a). The electricity directive file was negotiated jointly with the electricity regulation, both being assigned to EPP rapporteur Krisjanis Karins (later replaced by Jerzy Buzek). Interestingly, compared to the ECG files, with the exception of the Greens which are more ideologically homogenous, MEPs voted mainly on national lines in the ITRE committee (Interview 18). Among MS, France alongside several CEE countries fiercely opposed the elimination of regulated tariffs, introducing leeway for measures that target vulnerable consumers. As expected, the negotiations on regulated price regulation were the most intense, lasting until five in the morning in the final day of the negotiations (Interview 28).

The recast directive was adopted by the EP on 26 March 2019 (551/72/37) (European Parliament, 2019i) and by the Council on 22 May 2019 with unanimity (Council of the European Union, 2019a). The transposition deadline for this directive was 31 December 2020.

Regulated prices and energy poverty

Article 5 of the directive addressed the practices through which some MS imposed limits on the price that consumers paid for electricity. The full liberalisation of the electricity markets was a key feature of the third energy package, but many countries still had not fully implemented its provisions, as explained in Chapter 3. As the Commission introduced energy poverty obligations in its proposal for the directive, the concern was that some MS would use this as an excuse for maintaining regulated electricity prices (Euractiv, 2018m). The Commission proposed that governments would be obliged to offer targeted protection to vulnerable consumers, but without directly setting electricity prices. Social protection measures targeted at consumers had already grown substantially from the second to the third energy package, mostly as a result of a push from the EP, in contrast to what was considered a rather reluctant Commission at the time (Haber, 2018: 311). However, in later packages the concerns of the Commission over consumer satisfaction became a key input into legislative proposals (Haber, 2018: 311). According to the initial proposal, price interventions would only be allowed under certain conditions of extreme emergency and for a maximum of a five-year period after the entry into force of the directive. The European Commission also suggested that all actors should decide on a common EU definition of energy poverty, to avoid the concept being abused through inaccurate national interpretations (Interview 28). However, as admitted by the deputy Director General of DG ENER, Klaus-Dieter Borchardt, the Commission failed to achieve their goal of ending regulated tariffs (Contexte, 2019b).

The term of energy poverty only permeated the EU vocabulary in 2009 following years of lobbying efforts from environmental organisations (Bouzarovski and Petrova, 2015: 136). It refers to “the inability of a household to secure a socially and materially necessitated level of energy services in the

home" (Bouzarovski and Herrero, 2017: 69). The EP has been particularly involved in using EU competences to address energy poverty. When it came to the negotiations of this directive, it called for energy poverty to be addressed through social measures, with price setting only being allowed under very specific conditions and to be completely phased out in maximum 10 years (European Parliament, 2019e: 11). The ITRE committee voted for a general 5-year time-limit on regulated prices and a 10-year period for regulated prices for vulnerable consumers. Meanwhile, in the general approach of the Council, MS supported the ability of suppliers to set prices freely, but at the same time permitted price interventions by governments in the name of energy poverty, on a temporary basis (Council of the European Union, 2017c).

The ability to control electricity prices for consumers was viewed as a matter of survival and legitimacy by some governments, especially France where EDF was a big supporter of maintaining regulated tariffs (Interview 18). Some voices in the think tank community explained why "artificially low electricity process" were "not good for EDF nor for consumers", but with no success in changing the entrenched French support for regulated prices (Euractiv, 2018n). This became even more relevant once the Gillet Jaunes protests against petrol prices erupted in November 2018, at a time when the file was still being negotiated. President Emanuel Macron may have ideologically opposed regulated prices, but he needed to ensure that this practice would continue to be allowed in some circumstances for domestic political reasons and fears of backlash from citizens (Interview 18). While the negotiations could have reached an agreement closer to the Commission's proposal at first, once the Gillet Jaunes protests started, it became very clear that the price regulations would not be eliminated (Euractiv, 2018k). The Nordics and the Netherlands supported phasing out regulated prices (Interview 23), while thirteen countries were already currently using this practice. Many governments feared a similar situation to what happened in 2013, when the Bulgarian government had to resign amid mass protests over electricity bills (Euractiv, 2013). Under pressure coming especially from France and Hungary (whose legitimacy domestically also rests on regulated energy prices), the Estonian presidency's proposal significantly altered the Commission's proposal, broadening the conditions under which regulated prices could be introduced (Contexte, 2017f). The Council also rejected any time-limit and conceded that countries would instead only have to submit reports assessing their progress towards eliminating regulated tariffs, while the Commission would be tasked with publishing an EU-wide report in 2025, but with no binding measures being imposed (Contexte, 2018f). Given the high domestic implications of this provision, numerous MEPs voted along national lines, leading to most of the Council's amendments making it into the final version of the directive (Interview 18).

According to Article 5(2) of the Electricity Directive, governments are allowed as a derogation to impose regulated prices on a temporary basis as a means of protection for vulnerable consumers and the energy poor customers. A similar derogation is also allowed during the transition towards full retail

market liberalisation. There are, nonetheless, some limits imposed on the ability of MS to regulate prices, measures which should "(a) pursue a general economic interest and not go beyond what is necessary to achieve that general economic interest; (b) be clearly defined, transparent, non-discriminatory and verifiable; (c) guarantee equal access for Union electricity undertakings to customers; (d) be limited in time and proportionate as regards their beneficiaries; (e) not result in additional costs for market participants in a discriminatory way" (Directive (EU) 2019/944). Articles 28 and 29 are a reminder that other social policies can be pursued to aid vulnerable consumers, but this does come in the way of the ability of MS to actually regulate retail prices if they deem fit.

Self-consumption and energy communities

Article 13 to 15 of the directive also establish some key provisions regarding self-consumption. Prosumers, or active consumers, were defined in the directive as "electricity consumers that are engaged in the consumption and production of electricity", which can be both household and non-household consumers (Nouicier and Meeus, 2019: 70). According to the directive, any prosumers that operate individually or grouped together can generate or store electricity, as long as this does not represent a primarily commercial activity. The Council introduced additional clarifications and requirements in the final text, requiring national authorities to first ensure that prosumers are "(a) entitled to operate either directly or through aggregation; (b) entitled to sell self-generated electricity, including through power purchase agreements; (c) entitled to participate in flexibility schemes and energy efficiency schemes; (d) entitled to delegate to a third party the management of the installations required for their activities, including installation, operation, data handling and maintenance, without that third party being considered to be an active customer", according to Article 15 of the directive (Nouicier and Meeus, 2019: 71).

The directive also addressed the ability of individual consumers to organise in larger groups for loading and generating electricity and to the rules under which they may be allowed grid access. Compared to the negotiations on regulated tariffs, this was a minor issue, but disagreements existed between the EU institutions.

The Commission proposed that aggregators should be able to take part in the retail markets without having to obtain consent or pay compensations (European Commission, 2016j). The Commission also pushed for local energy communities to receive a legal footing in the directive (Interview 9). Its leadership actively presented the inclusion of these topics in the directive as proof of its interest in catering to the needs of EU citizens and putting them in the centre of the transition. The Commission

based its proposals on an EU-wide inquiry into the various regulatory frameworks that MS had been using for incentivising consumers to engage in self-generation (European Commission, 2017d).

The ideas of the Commission "resonated" well with the EP, which was very willing to put the citizens at the centre of the market reform (Interview 11). Nonetheless, the EPP rapporteur Krisjanis Karins introduced an amendment removing the Commission's proposal that aggregators did not have to pay compensation for any grid imbalances they would cause. The Council accepted the legal inclusion of these forms of organisation in the electricity market design, yet MS were adamant about ensuring that they would not need to provide financial compensation to DSOs in case disruption to the grid resulted from the activity of household prosumers and energy communities. The reactions of renewable associations were mixed, ranging from enthusiastic support (Interview 25) to scepticism about the merits of focusing on energy communities as opposed to a greater focus on big investments in large renewable capacities (Interview 11).

6.3 Electricity Regulation (2019/943)

The recast Electricity Regulation (EU) 2019/943 represents a complementary legislative act for the electricity directive, establishing the basic principles of the functioning and design of European electricity markets. Among its basic principles, the regulation states that all participants are responsible for the imbalances they cause in the system, while balancing capacity, which is procured by TSOs based on market-based principles, represents a different service than balancing energy, which is settled at marginal pricing and must reflect real-time value of energy. In addition, it harmonises the rules for short-term markets (day-ahead and intraday) and abolishes price caps and floors on the wholesale market (nominated electricity market operators may impose such limits provided that they are time-limited). A key objective is to promote such types of markets to further facilitate the integration of renewable energy sources, a concern which was not a key issue in the adoption of the previous EU energy packages. At the same time, the regulation diminishes the scope of priority dispatch for renewable energy to only apply to small installations with a capacity of less than 400 kW (200kW for new installations after 2025). This was based on the fact that renewable technologies have reached maturity levels, and given their low marginal costs, they are among the first electricity sources to be cleared on the market anyway. Some MEPs tried to remove the Commission's exception for small installations with a capacity under 400kW and demonstration projects, but this position became highly contested by Green and S&D MEPs in the ITRE Committee, so the exception was maintained (Euractiv, 2018g). MS were also allowed to decide whether to apply or not priority dispatch at all.

In its impact assessment for the electricity regulation and directive, the Commission found multiple barriers to cross-border electricity trade and insufficiently used interconnector capacity (European Commission, 2016c). Therefore, in order to improve congestion management, the regulation also requires MS to develop remedy plans based on non-discriminatory and market-based solutions. TSOs must make at least 70% of the transmission capacity available to neighbouring countries through cross-zonal capacity allocation.

The regulation also introduces new rules on capacity mechanisms aimed at ensuring resource adequacy and remunerating availability of energy producers. Such mechanisms shall only be used as a last resort and after having consulted interconnected countries. Moreover, they must follow strict emissions performance standards of 550g CO_2/kWh for new installations from 2020 and a limit of an average of 350 kg CO_2/year for existing capacities was imposed from 2025. Capacity mechanisms shall also be temporary, non-discriminatory, non-distortive, and open to storage and demand-side management and must be available to cross-border participation. The maximum entry capacity is set to be calculated by regional coordination centres.

The role of TSOs, DSOs, ENTSO-E, and ACER was also reviewed, in addition to the introduction of a new fora for cooperation among these actors. TSOs have to organise in regional coordination centres (RCCs) by 1 July 2022, organisations which bear the responsibility for capacity calculation, security and adequacy assessment, and for facilitating the regional procurement of balancing capacity. These centres replace the Commission's initial proposal for regional operational centres (ROCs). A new EU DSO entity was also established for the cooperation and sharing of best practices between DSOs in a similar manner to the cooperation of TSOs as part of ENTSO-E. This new entity would "promote the completion and functioning of the internal market for electricity, and to promote optimal management and a coordinated operation of distribution and transmission systems", according to Article 52 of the regulation. The Commission wanted to exclude DSOs that were not fully unbundled from participating in the EU DSO entity, but the Council eliminated this provision. The leadership of this new organisation will be realised through a Board of Directors consisting of 27 members from each EU country. Some civil society organisations pushed with limited success the message of avoiding the "mistake" made with ENTSO-E in the past by giving more Commission oversight over this new body (Politico, 2018b).

The EP fought for ACER to have a strong oversight over this body, but fell short (Energypost, 2018). Under the new rules, ACER will monitor the implementation by TSOs of the new rules on cross-border capacity and give opinion on capacity mechanisms. The Commission was allowed by the Regulation to assign new tasks to ACER in a simplified way, provided that it does not concern "decision-making powers2 (Art 13). The regulation also increased the regulatory oversight of ACER over the process of

formulating network codes, but the final authority over their development remains in the national remit (Herranz-Surrallés et al., 2021: 69)

When designing its proposal, the Commission was mainly concerned with the inward-looking practices of MS, while championing more regional and EU-wide approaches (Interview 2). For example, in the case of capacity mechanisms, which constitute national solutions, the Commission pushed for strong limits, preferring to alternative instruments such as increased interconnection capacity (European Commission, 2016k). These proposals emerged in a context when, especially after Brexit, there were concerns that some large MS were trying to slow down the integration of European markets, while only smaller MS were still supporting further liberalisation (Interview 10). Given the entrenched economic interests that countries have when it comes to electricity markets, the negotiations generally reflected national lines. In fact, MEPs voted on national lines, with MS even negotiating through their MEPs as national delegates, an otherwise very rare occurrence (Interview 26). This was coupled with a simultaneously unambitious Commission, which sensed the intensity of national interests for this file and did not purse highly deep reforms (Interview 32).

In the Council, the interests were highly (sometimes irreconcilably) heterogeneous (Interview 27), which turned the negotiations process into an affair among MS, rather than the EP versus Council dynamic seen in ECG files (Interview 14). Even if countries exchanged votes on issues of great interest to each other, as was the case for Germany and Italy (Interview 14), consensus was very difficult to reach. In an unusual turn of events, there were 11 votes against the general approach, which resulted in a messy negotiation with the EP, where governments resorted to pressuring MEPs to vote on national lines, especially in the case of Germany, France, and Poland (Interview 10). Greatly concerned about the issue of bidding zones, the "German machine" mobilised to an unprecedented extent across EU institutions, forcing the Commission to back down on key issues (Interview 14) and angering other MS through its "aggressive" behaviour that turned the Council negotiations into an "inwards looking and toxic" affair (Interview 26). Therefore, the negotiations for this regulation provided a stark contrast to the underlying mechanisms for the negotiation of the first half of the CEP.

The recast regulation was eventually adopted by the EP on 26 March 2019 (544/76/40) (European Parliament, 2018j) and by the Council on 22 May 2019 with 25 votes in favour and 3 abstentions (Bulgaria, the Czech Republic, and Slovenia) (Council of the European Union, 2019b). The provisions of the electricity regulation entered into force on the 1st of January 2020. The Commission will review its implementation by the end of 2030.

Capacity mechanisms

A well-functioning electricity system needs to be able to ensure "resource adequacy", which requires (1) sufficient available power generation capacities and (2) flexibility of power generation to match fluctuating demand and production from renewable energy sources (Nouicier and Meeus, 2019: 24). The uptake of renewable energy sources, which are intermittent in nature, requires flexible sources that can ramp up production at demand peaks when renewable energy generation is lagging. In the absence of large-scale commercial battery systems, this can be done (at least partly) using existing fossil fuel capacities. However, as such plants would operate as "peakers", ramping up production when needed for only a few hours at a time, such a business model is unlikely to keep them profitable. A way to overcome this is to compensate those plants for the capacity they keep on standby for quick reactions, even if it does not generate electricity most of the time. However, if not managed correctly, such mechanisms could act as veiled subsidies that MS use for their coal-fired capacities in the name of adequacy and security of supply. Capacity mechanisms can thus be utilised to ensure resource adequacy by anticipating generation capacity requirements and even potentially stimulating investments, but they come with environmental risks.

Article 22 of the Electricity Regulation defines capacity mechanisms as "temporary measure[s] to ensure the achievement of the necessary level of resource adequacy by remunerating resources for their availability, excluding measures relating to ancillary services or congestion management" (Regulation (EU) 2019/942). As they are implemented at national level, this also raises the need for coordination and standardisation to avoid disturbing cross-border trade or distorting market functioning. This was considered potentially problematic, given the diversity of methods that have been used by MS for assessing resource adequacy and their chosen mechanisms for addressing it (Nouicier and Meeus, 2019: 25).

The Commission feared that uncontrolled capacity mechanisms would simply be used as subsidies for coal power plants, which would not only keep GHG emissions high, but would also distort the market. Therefore, it set out design principles for national mechanisms trying to open them to other MS and to ensure that trans-border solutions are considered first. It also proposed limiting capacity payments to installations with maximum emissions of 550gCO2/kWh. This Emission Performance Standard (EPS) was introduced in the proposal by the Commission at the very last minute, which created frustration among some MS (Interview 21). According to the Commission's proposal, the EPS would enter into force immediately for new power plants and five years later for existing ones. To push for more regional approaches for addressing system adequacy, as countries did not take available capacities in neighbouring states sufficiently into account when assessing their capacity needs, the commission also

proposed a European capacity needs assessment, which countries should consult when setting up capacity mechanisms.

Crucially, there were some internal inconsistencies between the DGs on this topic. Under the guidance of DG ENER, the Commission published a report (2016e) showing the inadequacy of existing capacity mechanisms and the distortions they created for the market. However, DG COMP kept approving capacity mechanisms (Energypost, 2016). In 2018, DG COMP greenlit four capacity mechanisms in France, Greece, Italy, and Poland. This was branded completely unacceptable by Green MEP Claude Turmes, believing that this interfered with ongoing negotiations (Euractiv, 2018g).

In the EP, given the potential climate implications of veiled subsidies for coal power plants, capacity mechanism became the main topic of interest by the Greens (Interview 14), the most ambitious group when it comes to fossil fuel phaseout. The ITRE committee voted 51 for and 10 against the mandate to be negotiated with the Council, in which the EP would have support the Commission's proposal for the EPS. An alternative approach was proposed, which also introduced a 200kgCO_2/kW per year that would apply to power plants supported by capacity mechanisms from 2025, a threshold purposefully set to ensure that an average coal plant could only be used for an average of 200 hours per year (Contexte, 2018e). The S&D group even wanted the proposal to kick in immediately for all plants (Politico, 2018b).

A very contentious point was the suggestion that a distinction should have been made between "strategic reserves", which would continue be eligible for state aid, and "capacity markets", which would be phased out according to the draft regulation. This was a completely unacceptable idea for Poland, who viewed it as a double standard, with Germany and Belgium having "strategic reserves" and itself having capacity mechanisms, under these revised rules (Euractiv, 2018h). As a result, a coalition of seven countries (France, Poland, Italy, Hungary, Greece, Ireland, and the UK) issued a joint position against the "strategic reserve" distinction, making a clear reference to Germany, who closed eight lignite plants in 2015 and transferred them into a "strategic reserve", to be used as back-up in case of emergency with clearance from the Commission (Euractiv, 2018i).

Within the Council, Poland and the V4, as well as Romania, Bulgaria, Greece, and Croatia supported more leeway for the development national capacity mechanisms (Interview 18). The main opposition to this group came from France, the Nordics and Belgium, who supported limits on the design of such mechanisms (Interview 25). However, simultaneously, France, the UK, and Ireland were opposed to any European assessment of capacity needs (Contexte, 2017f) and rejected any European control, arguing that the European level "may not be the best place to assess the situation in each member state" (Contexte, 2017d). Nonetheless, as part of an informal coalition called "Make Power Clean", together with Germany, Italy, Portugal, Denmark and Austria, France did support a coal phaseout and accepted more restrictive conditions to be set on the design of capacity mechanism. The Estonian presidency

proposed a compromise consisting of a threshold of 700kgCO_2/kW per year, applying to new plants from December 2025 and existing ones from 2030. However, countries such as France, the Netherlands and Luxembourg voted against this common approach, fearing that it "softened" too much the rules on capacity mechanisms (Contexte, 2017h).

NGOs and civil society groups chose capacity mechanisms as their main focus in the internal electricity market files, working closely especially with green MEPs, but also with countries in the Make Power Clean coalition (Interview 14). Europe Beyond Coal, a group of multiple civil society organisations working on coal phaseout, ran a campaign on this issue (Euractiv, 2017v), NGOs such as Climate Action Network participated in a "PR war" against "[s]ubsidizing coal plants' life extensions through capacity mechanisms" (Politico, 2018b), while think tanks like E3G relied on the efforts of progressive MEPs (Euractiv, 2017x). As a counterweight, the industrial association Eurelectric opposed the elimination of capacity mechanisms, mainly as a result of having "several powerful coal-reliant utilities as members" (Politico, 2018b).

In the final compromise between these two camps, countries would be allowed to preserve capacity mechanisms already established before 31 December 2019, through a "grand-fathering" clause (Contexte, 2018f). This provision received wide support from MS, who saw this as a guarantee for protecting already-made investment in power production capacities. As the group of countries led by Poland did not have a blocking minority, the 550gCO_2/kWh EPS could not be removed. In addition, existing plants would have to follow the same limit, or an alternative limit of 350gCO_2/kWe per year from 1 July 2025. This was the result of the pressures from the Make Power Clean coalition during the final stages of the negotiations (Euractiv, 2018j), supported by progressive MEPs and NGOs. Meanwhile, the grandfathering clause was offered as compensation to Poland (Interview 21).

In the end, Article 23 of the regulation requires that any capacity mechanism ought to be based on the European resource adequacy assessment, taking into account electricity flows at regional and European level, not just at national level. However, the Council ensured the MS could still refrain from participation in this assessment, provided that they justify their choice in writing.

Bidding zones

The European electricity market is divided in bidding zones, usually along national borders, which are used for defining the limits of regional electricity markets. Countries can also be grouped together in one bidding zone, such as Germany and Luxembourg, or there can be multiple bidding zones in one country, as is the case for Italy or Sweden (Noucier and Meeus, 2019: 24). The basic logic for their

functioning is having a unitary wholesale electricity price per time unit within one bidding zone. Trade outside bidding zones must be done taking into consideration interconnection capacity and availability, through a separate mechanism of cross-zonal capacity allocation, usually coordinated by TSOs. In practice, what this means is that electricity prices vary between bidding zones. Theoretically, bidding zones could be reconfigured to address recurrent congestion issues, which can have a negative effect on market functioning. This was the basic premise that was discussed as part of Article 13 of the Electricity Regulation.

The Commission proposed a process for defining geographical areas within which market participants would be able to exchange electricity without capacity allocation, which as a general rule, should be better designed to reflect structural congestion zones (European Commission, 2016k). In essence, it wanted to redraw bidding zones to no longer follow political borders, by arrogating to itself the right to divide European countries into several price zones, if this would help with congestion management. In addition, the Commission also wanted to reach a 75% cross-zonal capacity allocation, in order to allow the free flow of electricity across bidding zones. Coming under immense pressure from German MEPs, the EP was the first to propose that the decision-making over bidding zone design should remain in the national remit, in a system that would allow the Commission to act as an arbiter only when MS would fail to reach agreement between themselves over the design of a particular bidding zone (Interview 14). Therefore, the most intense negotiations took place within the Council.

The most active country within the Council was Germany, which had an immense national interest in not reforming bidding zones. The bulk of German low-cost wind energy capacities are located in the North of the country, especially in the Baltic and North Seas, while most of the energy-intensive industrial consumers are located in the South of the country, in regions such as Bavaria. The combination of this mismatch between the sources of electricity production and consumption and the underdeveloped transmission system capacity linking Northern and Southern Germany has frequently led to grid congestions. In other words, the German transmission power lines are unable to transport all of the wind power from the North Sea when production peaks, requiring the produced electricity to be curtailed elsewhere. The surplus electricity has to pass through neighbouring countries, in particular Belgium, Poland, and the Czech Republic. In order to avoid having to pay compensation for these uncontrolled flows of electricity across borders, which distorted the markets of neighbouring countries, German TSOs were limiting cross-border capacity available to the market. This practice was also caused by a scepticism of the German population to electricity imports (Interview 14). Given this large congestion area, the proposal of the Commission for redrawing bidding zones would have resulted in Germany being split between two separate bidding zones. Such a prospect was considered completely unacceptable for the German government from a political standpoint, as it would have resulted into different electricity prices between Northern and Southern Germany (Interviews 2, 10, 32). This would

not have only been problematic because of the reaction of domestic consumers, but also because it could have probably resulted in a potential industrial relocation towards the North, where electricity was cheaper (Interview 26). This situation created a contradictory situation for German officials, who wanted to be able to integrate more renewables into the grid which required solving the congestion problem, but the solution of splitting the country into two bidding zones was politically unacceptable (Interview 10).

The Czech Republic, Belgium, Denmark, and Poland, which were overtly discontent with the distortive impact that the practices of German TSOs had on neighbouring markets (Contexte, 2017e), responded aggressively, refusing to allow Germany to pass on to them any of the costs created by its political decisions (Interview 26). Germany was accused of behaving in a very inward-looking fashion, completely ignoring the interests of other MS and only being interested in its domestic considerations. Nonetheless, in the December 2018 Energy Council, Germany managed to convince sufficient partners to oppose granting any powers to the Commission for splitting countries into bidding zones but made concessions on Article 14 on cross-zonal capacity allocation to require TSOs to make at least 75% of cross-border capacity available to the market. The Estonian presidency pursued this position in the negotiations with the EP, aiming to preserve the decision-making powers over bidding zones at national level (Contexte, 2017f). The Austrian presidency settled with the EP the cross-zonal capacity allocation at 70%, in a meeting where the Austrian negotiator had to step outside the room to call "Berlin" to ask for approval on the spot, according to accounts from other participants (Interview 14).

Therefore, through the stronghanded intervention of Germany, the Council successfully blocked the transfer of powers to the Commission for the design of electricity bidding zones. The regulation still requires countries to develop "action plans" to reduce congestion inside a bidding zone and can reconfigure bidding zones based on a decision by the involved NRAs. Only if an agreement cannot be reached between NRAs, the issue would be settled by ACER, not the European Commission.

Regional Coordination Centres

Regional cooperation on electricity markets had been realised from 2017 Regional Security Coordinators (RSCs). These entities evolved from the first form of inter-TSO coordination mechanism established through the Security Coordination Initiative (SCI), which were later reorganised into Regional Security Coordination Initiatives (RSCIs). RSCs were owned or controlled by TSOs, which were in charge of ensuring security of supply and responsible for the final operational decision-making within these entities (Noucier and Meeus, 2019: 32). RSCs covered five key tasks: (1) security analysis,

(2) capacity calculation, (3) outage coordination, (4) adequacy forecast, and (5) common grid model. Therefore, they shared responsibilities for ensuring security of supply of electricity.

The Commission proposed replacing the RSCs with Regional Operational Centres (ROCs) (European Commission, 2016k). The proposal was made following a case of poor coordination between South-Eastern MS, which ceased cross-border electricity flows during a cold spell in January 2017, causing significant risk for the functioning of the entire grid in the region (Interview 17). Increasing shares of intermittent renewable energy would also require more profound regional coordination between TSOs. According to the Commission's proposal in Article 37, TSOs would have been required to participate and to delegate to the ROCs some tasks that had only been conducted at national level in the past, giving these new entities decision-making autonomy over interconnectors and making recommendations to TSOs regarding short-term adequacy. Some MEPs also wanted to ensure that these regional entities would be as strong as possible and endowed with the responsibility to evaluate if closing an interconnector would be allowed in exceptional circumstances (Interview 14). However, voting on these issues was largely done on national lines, consequently diluting the Commission's proposal (Interview 32). The EP supported the alternative to ROCs proposed by the Council, the Regional Coordination Centres (RCCs).

In the Council, MS rejected both the name for the new entities (the word "operational" had the connotation of decision-making power) and their prerogatives (Interview 32). The negotiations generally followed a "small versus large" MS division (Interview 14), with Germany positioned firmly against ROCs, which were supported by smaller countries that found the prospects of increasing the decision-making abilities of regional entities desirable (Interview 2). The general position in the Council was best described by the position of the Czech Minister of Industry and Trade, Jan Mladek, who stated that RCCs should be bottom-up constructs and based on voluntary cooperation (Euractiv, 2017i). A similar approach was also supported by ENTSO-E (ENTSO-E, 2017: 2), which would have lost some of its powers to the ROCs.

Given the opposition of the largest MS, the Commission proposal was rejected. The newly established RCCs are able to take "coordinated actions" in collaboration with TSOs, but they were stripped of any ability to make binding decisions. ENTSO-E and ACER were given the task to establish the geographical scope of RCC, which should become operational by 1 July 2022.

6.4 Risk Preparedness Regulation (2019/941)

The Regulation on Risk Preparedness in the Electricity Sector (EU) 2019/941 repeals Directive 2005/89/EC and seeks to overcome the lack of regional coordination and divergent national procedures for ensuring security of electricity supply, by introducing a set of common rules on crisis prevention and management in the electricity sector. The regulation expanded and corrected the stipulations of the third energy package, which required MS alone to monitor security of supply, while also provided some regulatory oversight for ACER. The operational security plans would be developed by ENTSO-E, with system operation guidelines and network codes on emergency and restoration having to be approved through comitology procedures (European Parliament, 2019g: 4). While the electricity regulation and directive also contain aspects related to security of electricity supply, this regulation focuses specifically on crises, setting out rules and responsibilities for carrying out regional and European resource adequacy assessments (European Parliament, 2019g: 3). It was designed for crises such as the accidental unavailability of infrastructure, extreme weather, water and fuel shortages, demand peaks in case of heat waves and cold spells and physical and cyber-attacks on energy infrastructure (European Parliament, 2019g: 2).

The regulation sets up the following series of procedures for ensuring system adequacy in case of a crisis. First, ENTSO-E develops a methodology to assess risk in each EU region, consulting RCCs, as well as producers and national authorities. The methodology is then approved by ACER. The methodology can be updated by ENTSO-E either when crises arise or for developing new regional crisis scenarios. Based on this methodology, national authorities prepare their own national scenarios, summarising the threats to the electricity system. These constitute the basis on which MS develop national preparedness plans that list the measures that would be implemented in the eventuality of a crisis. When a crisis emerges, MS have to inform the Commission and neighbouring countries. Therefore, ENTSO-E has a crucial role in establishing the methodology for avoiding potential black-outs in Europe (Eckert and Eberlein, 2020).

The idea behind the Commission's proposal (European Commission, 2016i) was to ensure that countries cooperate between themselves in the event of a supply crisis, instead of unilaterally limiting cross-border electricity flows. The joint impact assessment conducted by the Commission for the new electricity market design files (2016d: 6) revealed that the previous legislation based on national decision-making was no longer adequate for addressing the needs of an increasingly interconnected electricity market. However, the European adequacy assessment proposed by the Commission got "effectively killed" in the Council (Interview 32). The comprise was a form of "soft European control for regional cooperation", as there was a general consensus among MS to maintain EU influence at the

minimum possible over something they saw as close to their national interest as crisis management and security of supply (Interview 13).

In general, the regulation received less attention than other files from the package from many actors, especially from lobbyists (Interview 13, 17). The low level of interest meant that negotiations unravelled more quickly, as the process was also made easier by the fact that similar legislation had already been adopted for the gas market (EU 2017/1938). Both the Commission and the EP wanted to use this existing agreement on gas as a blueprint for the negotiations on electricity (Interview 28). The Commission also tried to use the momentum created by the supply problems caused by the January 2017 cold spell to mobilise support, promoting the idea of solidarity between MS in times of crisis (Interview 17). Overall, there was only a small number of amendments tabled by the S&D rapporteur Flavio Zanonato, mainly aimed at supporting the proposal of the Commission and at increasing the power of ACER (Interview 13). The Greens were the most active in trying to strengthen regional approaches over national action, but their amendments were mostly voted down in the committee.

MS were adamant in their 4 December 2017 general approach that "no national powers should be transferred to the regional operation centres as proposed by the Commission", deleting any reference to them in the text (European Parliament 2019g: 11). It was clear that the Council had no sympathy for regional cooperation (Interview 13). The Council manged to include in the final version of the regulation a larger role for the intergovernmental Electricity Coordination Group, a platform for exchanges between national regulators and the Commission.

The regulation was adopted by the EP on 26 March 2019 (558/75/31) (European Parliament, 2019k) and on 22 May 2019 by the Council with unanimity (Council of the European Union, 2019c).

Role of the Electricity Coordination Group

Probably the most contentious issue during negotiations involved the decision on the roles that ACER, the Commission, and the Electricity Coordination Group would have in the preparation and management of a crisis. The Commission proposed for ACER to be entrusted to decide on emergency measures in case of a crisis (European Commission, 2016i). DG ENER simultaneously tried to convince MS that the Electricity Coordination Group was not an adequate platform for such decisions, as it consisted of a mere Working Group of the Commission, with no decision-making powers (Interview 17). There was a difference of perspective between the Commission, who viewed security of supply as a shared European responsibility, and MS, which viewed it as a national prerogative and wanted to

ensure as much control as possible over the decision-making process in the eventuality of a crisis (Interview 17).

The EP also endorsed ACER to draft EU-wide guidelines, as agreed in the ITRE committee on 21 February 2018, also showing scepticism regarding operating through the Electricity Coordination Group (European Parliament, 2019g). The EP further sought to empower the Commission to give opinions, to amend or to reject cross-border risk-preparedness measures, and national plans. However, giving the Commission any authority over national plans was deemed unacceptable by MS, who saw security of supply as an exclusively national responsibility (Interview 17).

The Council refused to give extensive authority to ACER over decisions that MS consider key to national sovereignty (Contexte, 2018a). Therefore, the Council minimised the role of this EU agency and entrusted instead the Electricity Coordination Group, over which they believed they had more direct control given its intergovernmental architecture (Interview 13). In the final version of the regulation, ACER was tasked with permanent monitoring, but it had to report constantly to the Electricity Coordination Group and to consult this working group before approving risk-preparedness plans.

6.5 ACER Regulation (942/2019)

The regulation on the European Union Agency for the Cooperation of Energy Regulators (EU) 2019/942, adapts the existing regulation introduced with the third energy package in 2009, which established ACER, agency that became operational in 2011. ACER replaced the European Regulators Group for Electricity and Gas (ERGEG), in which MS were represented directly (Cohen and Thatcher, 2008). At the time of its foundation in 2003, ERGEG acted as a formal advisory agency for the Commission (Pollack, 2011: 101). Meanwhile, representation in ACER relies on a "double delegation", as MS have to first delegate authority to NRAs (and to a lesser extent to the Commission), and these organisations are then represented in the EU agency (Andersen and Sitter, 2015: 326). Importantly, ACER is not only responsible for drafting opinions and recommendations, but it also has decision-making powers over cross-border issues when MS fail to reach direct agreement. However, ACER still functioned as a "networked agency", relying on the resources of NRAs (Eckert, 2016: 511).

In a nutshell. ACER coordinates the activities of national regulatory agencies, but it exerts minimal hierarchical authority over them. The agency's tasks have also been modified throughout other files of the package. ACER can now adopt some decisions on resource adequacy assessments, methodologies on risk-preparedness, and capacity mechanisms. It is responsible for monitoring wholesale and retail markets in electricity and natural gas and for signalling potential barriers to cross-border trade. The

regulation also ensures that NRAs, ENTSO-E, ENTSO-G, RCCs, and TSOs are obliged to provide ACER with information. In case of non-compliance of these institutions, only NRAs can decide on measures. If no such decision is taken in four months, ACER can take it instead.

When it comes to the internal architecture of ACER, its board is made up of representatives from each NRA and one Commission official that does not have voting rights. In the current system, most decisions are taken based on a proposal from the director that are approved by the Board of Regulators, which cannot amend proposals. Decisions must be taken by two-thirds majorities, and not a simple majority as it had been proposed by the Commission (European Parliament, 2019h).

Both the conclusions of the European Council from 2014 and the messages from the Council presidency in 2016 on electricity market design outlined MS vision on the electricity market reform, yet they did not mention the role of ACER specifically (European Parliament, 2019h). Therefore, the Commission unilaterally proposed the strengthening of the powers of the agency and the redistribution of decision-making power within its architecture (European Commission, 2016b). The Commission also proposed that ACER would be able to amend and approve ENTSO-E methodologies for generational adequacy assessments and regional electricity supply scenarios, while having a stronger supervisory ability over the well-functioning of wholesale markets. It further proposed to endow ACER a stronger role in the development of network codes and the coordination of regional decision-making (Jevnaker, 2015: 927). These network codes dictate how interconnecting powerlines between MS are regulated, how capacity is allocated, and what energy security rules are in place. The EPP rapporteur Helveg Petersen supported the Commission in its endeavour and even suggested making ACER's opinions binding especially over RCCs (Contexte, 2018d).

However, the MS expressed concerns about "unlimited competences" being granted to ACER in the Commission's proposal (Euractiv 2018f). The negotiations turned into a "small versus big" MS dynamic, similar to many issues in the electricity market design on regional cooperation (Interview 10). Some countries did call for a more unified European approach, most notably Denmark, Ireland, and Spain (but only after the change in of its ruling governmental coalition). The newly appointed Spanish Minister of Environment Theresa Ribera stated that "ACER should facilitate the process of greater European integration" (Euractiv, 2018f). Nonetheless, similar to the Electricity Regulation, this was another instance where the influence of the "powerful German lobby" was felt, which successfully mobilised both the Council and German EPP and S&D (Interview 14). Germany also sought to block the EP attempts to give ACER oversight over RCCs and the new DSO entity (Interview 28). The Bulgarian presidency was heavily criticised for the manner in which it handled the file, as it leaned too much on the opinions of the German and French delegations, without sufficient consultation with the countries in the minority in the Council (Interview 26).

This was the last file of the entire CEP on which the Council reached a common position, on 11 June 2018 (European Parliament, 2019h). In the compromise between the Council and the EP, ACER is allowed to take more decisive action only in the case of inaction among the MS and NRAs (Interview 20). The regulation was adopted by EP on 26 March 2019 (558/75/31) (European Parliament, 2019l) and by the Council on 22 May 2019 with 27 votes in favour and 1 abstention (Germany) (Council of the European Union, 2019d).

Balance of power within ACER

A heavily contested topic concerned Article 25, which laid out the mechanism through which ACER takes decisions and the respective roles of its director and the Board of Regulators. The Commission proposed for decision within the agency to be taken based on the opinions of the director, voted by a simple majority in the Board of Regulators. The NRAs would not be able to amend the proposals made by the ACER director. Meanwhile, the EP supported the Council on this issue, which viewed the office of the ACER director as more of a secretariat, rather than a decision-making body (Interview 14). There was scepticism emerging from MS regarding the interests of the Commission in this file. The main concern was that the Commission was trying to intentionally keep ACER's administrative capacities underdeveloped, in an attempt to make it reliant on its bureaucracy, which in turn would allow it "to dominate a weak agency" (Buchan, 2015: 354). However, at least regarding internal decision-making, the Commission clearly sought to empower the director of ACER, as opposed to NRAs.

This came in contradiction to the preferences of many of the large MS (Interview 10). In the Council, France, Germany, Spain (before the change of its government), and Italy proposed to authorise NRAs to amend the director's decisions, rather than just being able to reject or accept them in the Board of Regulators (Contexte 2019b). Hungary and Poland also opposed any "central decision-making competencies" for the agency (Euractiv, 2018f). However, there was also a Denmark-led group of 14 countries that were worried about the diminished role for the director, which they viewed as a guarantor of ACER's independence (Contexte, 2018c). In the final compromise, the Board of Regulators "may give advice where appropriate" and the director "should take this into account" (European Parliament, 2019h). If the director rejects the comments, a written justification must be provided. The Board of Regulators decides based on a two-thirds majority vote. Therefore, the director maintains some independence when it comes to making proposals, but decisions can only be made through grand coalitions, which could be seen as more conducive to consensus-seeking between NRAs.

6.6 Conclusion

This chapter analysed the NEMD files of the CEP. The main purpose of these four regulations and directives was to revise the provisions of the third energy package to better integrate higher shares of renewable energy and prosumers, address market dysfunctionalities, especially related to cross-border trade and crisis management, as well as to adjust the roles of the institutions with a role in ensuring a well-functioning of the electricity market, such as ENTSO-E and ACER. Unlike the ECG files, MS retained a higher degree of control over the negotiations and the institutional outcomes of the legislative revisions. This was largely a result of the high economic implications of these files and their impact on national energy companies that still dominated much of the domestic markets. National preferences in the Council appear to have been based on a mix of these economic considerations and concerns regarding the impact on household consumers, which became clear in the case of France and the discussions on regulated tariffs in retail markets, as well as in the case of Germany and the discussion on bidding zones. While divisions among MS were more visible, they were resolved through deliberations in the Council, all having been adopted with no negative votes. This was also the result of the fact the Council managed to impose its will on the most contested issues, especially as numerous MEPs voted on national, rather than party lines. The Commission has also adopted a more technocratic approach, basing most of its proposals on market analyses and less on political preferences. It did not manage to increase the level of supranational oversight on security of electricity supply and crisis management and failed to reform the decision-making process within ACER. In terms of other non-state actors, the files attracted most attention from industrial associations and companies, while civil society mainly engaged with a few select topics, such as capacity mechanism for coal power plants.

The Electricity Directive improved the access to information for retail consumers and the ability of prosumers and energy communities to connect to the grid without undue burdens. These were some of the most significant proposals made by the Commission that were adopted by the co-legislators. The proposal of the Commission to phaseout the ability of governments to regulate prices for household consumers, which was initially supported by the EP, was rejected by the Council, based mainly on the preferences of France and CEE countries. The ability to control electricity prices for consumers was viewed as a matter of survival and legitimacy by some governments, especially after the eruption of mass-demonstrations in France against high petrol prices. Therefore, MS retained their ability to regulate electricity prices, with some minor new limitations, as a way to address energy poverty and to address retail market deficiencies. It is also worth mentioning that MS promptly rejected the Commission proposals to elaborate more precise energy poverty protection measures throughout the package, as they did not want to allow the EU more involvement in what they saw as a matter of social policy, which remained in the remit of national authorities.

The Electricity Regulation was negotiated simultaneously with the Electricity Directive, yet it generated more contested topics. MS blocked many proposals made by the Commission which would have affected their ability to control their own electricity markets. There were also intense intra-Council debates. This was certainly the case in the discussion on the design mechanism for bidding zones, whose revision would have effectively split Germany into two separate price zones. The German delegation exerted intense pressure on all negotiation partners, even if its position was damaging to the electricity markets of neighbouring countries. It did make concessions on cross-zonal capacity allocation, but this was insufficient to appease the national delegations that have been distraught by the aggressive and inward-looking negotiation stance adopted by the German representatives. In the EP there was a strong push for setting stringent emissions performance standards for capacity mechanisms, contrary to the position of CEE countries that strongly opposed restrictions on potential funding mechanisms for their coal-fired power plants. The compromise addressed the concerns of both sides, by both introducing a grand-fathering clause for existing facilities and setting restrictive emissions standards for new capacity mechanisms. Regarding the new entities for regional cooperation, the Council removed all Commission proposals that would have seen more operational decision-making powers for entities that were not strictly controlled by MS.

When it comes to addressing short-term security of supply problems and managing potential crises, the Risk Preparedness Regulation did not increase the level of regional or EU-level oversight, despite some proposals made by the Commission in this regard. Plans for European adequacy assessment were also rejected, with the compromise draft allowing only soft European control over regional cooperation on security of supply issues. The Council opposed the EP position to entrust ACER with taking emergency measures in case of disruptions in the supply of electricity, preferring to leave such decisions to be taken through intergovernmental deliberations within the Electricity Coordination Group.

Finally, the ACER Regulation poised small MS against bigger countries which did not want to see more decision-making powers for the EU agency coordinating their NRAs. Motivated by the preference of incumbent companies, countries such as Germany and France opposed increased ACER oversight capacities. Moreover, they also rejected the EP-backed Commission proposal to change the institutional design of ACER and to endow its director with more decision-making abilities, proposal also supported by 14 smaller MS. Therefore, the internal structure of ACER remained unchanged, with the director's proposals being voted through qualified majority by the Board of Regulators, where all NRAs are represented, but are not able to make amendments to the proposals on which they were voting. This latter compromise was opposed by Germany, which ended up abstaining in the final vote on the regulation as a result.

All in all, the negotiations of NEMD files saw a higher level of control of the Council, especially coming from larger MS. The differences between the two halves of the CEP are further discussed in the next chapter, which also uses the results of this analysis to assesses the validity of the hypotheses developed in Chapter 2.

7. Implications for new intergovernmentalism and EU energy policy

7.1 Chapter overview

This chapter discusses the results of the analysis conducted in this thesis by testing the hypotheses developed in Chapter 2, assessing the overall explanatory ability of new intergovernmentalism, and explaining the implications of the CEP for the wider context of EU energy and climate policy.

The first section assesses in turn the validity of the secondary and alternative hypotheses for each of the two bundles of the CEP files. It explains the mixed results of the theoretical framework, highlighting the conclusions and unique insights that can be drawn for each of the main hypotheses of new intergovernmentalism. While, as explained in Chapter 2, only the first four hypotheses outlined by new intergovernmentalism are subjected to rigorous empirical testing, this section also provides some comments on the 5th and 6th hypotheses of this theoretical framework.

The chapter then summarises the findings of the analysis, discussing the broader implications for new intergovernmentalism. The results of this thesis are compared to the conclusions of other recent research that has been conducted on EU energy policy using new intergovernmentalism. The section also draws conclusions about the applicability of the theory and its general utility.

Finally, the chapter interprets the results within the wider literature on EU energy and climate policy, seeking to explain the unique insights offered by this thesis. Particular focus is given to the significance of the new governance framework introduced through the CEP and how it affects the inter-institutional balance at EU-level.

7.2 Discussion on the validity of the hypotheses

Hypothesis 1

Deliberation and consensus have become the main practices of day-to-day decision making at all levels in the EU.

H_{1a}: Most decisions are expected to be taken by consensus in the Council of the EU.

As shown in Table 5, the majority of the files in the CEP have been adopted with consensus. However, there was a clear difference between the two bundles. While the NEMD files recorded no negative votes, the results of three out of four files on ECG were contested by at least one MS in the final vote

in the Council. The only exception was the Governance Regulation, which was unanimously approved. There may be two inter-related reasons for this. The first is the "nothing is agreed until everything is agreed" approach that was applied to negotiations in the Council (Interview 29). For example, to ensure the satisfaction of all MS, the Estonian presidency pushed the negotiations on December 2017 on the Governance Regulation into the morning, following a 15-hours session (Euractiv, 2017c). The reason why this file was given such attention was because it altered the general governance framework that would be used for implementing the EU climate ambitious and most MS were adamant about no longer utilising binding national targets for renewable energy. The second reason is the fact that all MS perceived the NECPs a satisfactory compromise in the Council, even if they may have miscalculated the degree of supranational authority that the Commission can exert as part of this new governance arrangement (this is discussed further in section 7.4 of this chapter). As for the other ECG files, the EP was very successful in increasing the level of climate ambition of numerous provisions, leading to commitments that were seen as unrealistic or too costly by some MS. The Czech delegation was one of the staunchest opponents of the idea of increasing the renewable and energy efficiency targets at higher levels that what had been agreed in the European Council conclusions of 2014.

When it came to the NEMD files, the EP has not had the same impact on the outcome of negotiations, which unfolded more through debates within the Council rather than between the co-legislators. This allowed a higher focus on deliberations between MS, which conversely permitted reaching more satisfactory results for all countries. There was also high support for limiting the empowerment of EU institutions such as the Commission and ACER, which reflected the general scepticism towards the transfer of supranational authority over electricity markets and issues of security of supply.

Ultimately, another key difference was that the ECG files were mostly concerned with the climate change pillar of EU energy policy, an area on which there is a broader consensus on the utility of EU-level cooperation. Meanwhile, the NEMD files involved aspects of the other two pillars of EU energy policy, the internal energy market and security of supply, where integration has been historically more difficult to achieve. The higher level of importance that MS put on these files led to higher mobilisation of national representatives and the effective side-lining of the EP and the Commission, which in turn allowed for more consensus-seeking deliberations within the Council.

Therefore, this hypothesis is false for the ECG files and true for the NEMD files.

Table 5: Votes in the Council on final trilogue agreements

Legislative file	For	Against	Abstention
Energy and Climate Governance files			
Governance of the Energy Union Regulation	27	0	0
Renewable Energy Directive	26	1 (Czechia)	0
Energy Efficiency Directive	23	2 (Belgium and Czechia)	2 (Croatia and Slovenia)
Energy Performance in Buildings Directive	25	1 (Slovenia)	1 (Croatia)
New Electricity Market Design files			
Electricity Directive	27	0	0
Electricity Regulation	25	0	3 (Bulgaria, Czechia, and Slovenia)
Risk Preparedness Regulation	27	0	0
ACER Regulation	27	0	1 (Germany)

Source: own compilation based on Council of the EU voting results

Note: the votes expressed by the United Kingdom were not taken into consideration. Because of Brexit, the UK delegation was not actively involved in the negotiations and voted in favour of all files, with the exception of the EPBD, where it abstained.

H_{1b}: Most decisions are expected to be agreed upon in more 'informal' settings before the formal vote in the Council of the EU.

This observation of new intergovernmentalism has proven true for all files of the CEP. Informal negotiations were a prominent feature throughout the entire decision-making process. In fact, this did not only occur between MS delegates ahead of Council meetings, but also for common negotiations with the Commission and the EP. A telling example was when the Commission circulated shared documents on Google Drive containing the reporting obligations that would be included in NECPs,

documents on which all participants were invited to provide input (Interview 24). Meanwhile, it was common practice for the energy ministers to reach agreements on NEMD files during informal meetings organised by the countries holding the rotating presidency (Interview 31).

Nonetheless, these informal negotiations were also a cause of frustration on some occasions. One such instance was when the Bulgarian presidency engaged the German delegation bilaterally on a recurrent basis to work through a compromise on the issue of bidding zones. Some MS opposed to the German approach on the topic and accused the Bulgarian presidency of backchanneling and disproportionately favouring German interests (Interview 26). These frustrations were also fuelled by a similar instance during the trilogue on cross-zonal capacity allocation, when the Austrian negotiator had to step outside the room to call "Berlin" to ask for approval on the spot, according to accounts from participants (Interview 14).

While not properly discussed in this thesis, informal fora such as the Florence Forum for electricity and the Madrid Forum for gas have historically represented crucial platforms for governments to meet with national regulators, the Commission, and utility companies and discuss EU energy and climate policies (Eberlein, 2003: 138). This type of meetings enable "transnational informal dialogue in the shadow supranational hierarchy" (Eberlein, 2003: 137), further reinforcing the relevance of deliberations outside the formal meetings of the Council and the European Council.

Therefore, this hypothesis is true for the entire CEP.

H_{1c}: Member States are not expected to present positions that cannot be justified in terms of benefit to the group.

This hypothesis was generally true for the ECG files, where MS often formed a more united front against EP attempts to impose higher levels of supranational oversight over national climate policies. Even when there were disagreements about targets or the mechanisms for implementation, these were always presented as competing alternatives for reaching common European objectives. The cooperative nature of the new governance system will also likely institutionalise this phenomenon, as MS have to consult one another when developing their NECPs.

The situation was different for the NEMD files. As shown in Chapter 6, the German delegation put high pressure on all participants to reject the revision of electricity bidding zones, even if maintaining the current system led to substantial imbalances of the electricity markets of its neighbours. This inward looking and aggressive stance created frustration within the Council, especially because Germany's

preferred position was chiefly based on its own domestic political considerations and detrimental to the functioning of wholesale electricity markets in other countries. The negotiations on the role of ACER and the RCCs also poised large MS against smaller countries, for which increased regional cooperation would have represented a guarantee of protection against abusive practices by the energy companies in France or Germany. The abstention from voting on the final agreement on the Electricity Regulation by Czechia and Slovenia was meant as a form of protest against the fact the interest of these larger MS trumped solutions that would have produced superior results for more countries.

Therefore, this hypothesis is true for the ECG files and false for the NEMD files.

Alternative H_{1a}: If unanimity is reached on the final vote for a legislative act, it does not necessarily reflect an actual consensus between Member States.

Given the lack of unanimity on most ECG files, this hypothesis is not applicable. A few points can be raised on the Governance Regulation, where all MS voted in favour of the agreement. As the Council maintained a "tight grip" in the negotiations with the EP, the resulting governance framework was satisfactory to all MS. There was some internal division regarding the trajectory for reaching the renewable energy targets, but as this did not impose binding obligations on governments it was not seen as highly consequential.

On the other hand, the lack of negative votes against the NEMD files does seem to have only reflected an "apparent consensus". For example, during the deliberations on the common approach for the Electricity Regulation, 11 MS voted against the compromise of the Bulgarian presidency seen as highly favourable of Germany's position (Interview 10). The negative votes were also meant to express discontent against the aggressive negotiations approach of the German delegation. This was a rather uncommon occurrence, but it did reveal wider division between national preferences. There was indeed a general rift between small and large MS on the degree to which national authorities would have to abide to European or regional decisions, with countries such as Slovenia remaining discontent with the outcome despite not actually voting against any of the files (Interview 10). There appears to be indeed a social norm in the form of a shared understanding that negative votes are measures of last resort, only to be used to signal that deliberations have completely failed (Interview 10).

Therefore, this hypothesis is not applicable for the ECG files and true for the NEMD files.

Alternative H_{1c}: Smaller Member States use negative votes as a form of dissent against the pursuit by larger Member States of positions that are not seen as benefiting the group.

The ECG files recorded a total of four negative votes, all of which coming from smaller MS. The Czech delegation was one of the staunchest opponents of the idea of increasing the renewable and energy efficiency targets, which is why it voted against the final agreement on these files. Slovenia voted against the EPBD compromise given that its concerns regarding the available financing for buildings renovations had not been sufficiently taken into account (Interview 10).

As shown in Table 5, there were no negative votes recorded on the NEMD files. However, there were three abstentions from smaller MS, at least two of which having been meant as a protest towards the negotiation stance of Germany on the Electricity Regulation, as already explained in this section. Nonetheless, neither of the two countries expressed negative votes on what had been a highly important file for the Council. This is likely because of the intense process of deliberation that occurred and the horse trading that led to the final agreement, which included a concession from the German delegation on increasing the cross-zonal capacity allocation to alleviate at least part of the regional network congestion created by its own internal market imbalances.

Therefore, this hypothesis is true for the ECG files and false for the NEMD files.

Implications for the first hypothesis of new intergovernmentalism

The dynamics observed in the empirical analysis of this thesis appear to have been different based on which area of EU energy policy was at stake. The high level of importance that MS put on decision-making ownership on matters of internal energy market and security of supply has been more conducive of deliberations in the Council, which in turn enabled delegates to reach consensus. However, this was not the case for the climate-focused legislation, where the deliberations on divergent MS positions were overshadowed by the inter-institutional negotiation with the EP, which in turn resulted in lack of consensus within the Council. The negative votes of smaller MS do not appear to be used as a form of legitimation in front of national publics as suggested by some (Hagemann, 2019; Senninger and Wagner, 2015), but rather a show of discontent when deliberative norms were not respected. Therefore, this does validate the new intergovernmentalism idea that deliberations and consensus between MS have become the norm, but this does not guarantee that they are always respected in practice.

The fact that the validity of this hypothesis was issue-specific is, however, problematic for new intergovernmentalism. Moreover, even in the NEMD files that were passed through unanimity, this

only appears to have been based on apparent consensus (see Novak, 2013). This confirms previous research on Council negotiations revealing that apparent consensus may occur when discussing issues with high salience for domestic public opinion (Hobolt and Wratil, 2020). This means that the appearance of consensus was more important that actually reaching unanimous agreement among MS. Consensus may also hide the interests of the large MS, such as Germany or France, which have been shown to be more unwilling to make generous concessions compared to smaller countries (Naurin, 2015: 726). Given the time constraints, it was also not always possible for all MS to develop clear preferences and therefore negotiators had sizeable margins of discretion in their mandates from national governments (Dehousse et al., 2014: 845). In addition, not all MS are equal during negotiations, which is apparent not only in terms of bargaining power and administrative capacity, but also in terms of levels of ambition and interest in energy and climate matters. This is acknowledged in the literature, with Liefferink and Wurzel (2017), for example, showing that countries can adopt multiple roles during negotiations, ranging from laggards to pioneers, pushers, or symbolic leaders, observation that is not well integrated by the new intergovernmentalism framework.

All in all, new intergovernmentalism correctly indicates that deliberation and consensus between countries has become the norm, but the implications of this are overstated, given that this norm has been broken especially by large MS when negotiating issues of strategic economic importance.

Hypothesis 2

The EU's supranational bodies are not hard-wired to seek an ever-closer union.

H_{2a}: The European Commission does not seek to further expand its powers.

On the ECG files, the Commission largely followed the conclusions of the European Council from 2014. There were a few notable exceptions, such as a higher proposed target for energy efficiency, but this did not meaningfully affect the level of supranational authority. Most importantly, the Commission respected the preferences of the MS to not set any nationally binding targets for renewable energy. As shown in Chapter 5, this concession towards an apparent reversal of supranational authority was heavily criticised by both MEPs and environmental NGOs. However, the final governance arrangement agreed between the EU institutions does not necessarily decrease the levels of power of the Commission, but rather changes the instruments through which the supranational body can ensure that the EU reaches its climate objectives. The implications of this new governance framework are discussed in more detail in section 7.4. What is important to note in the context of this hypothesis is that the Commission did not pursue a traditional form of empowerment, as such an option was seen as unrealistic, even if it had EP

support. However, it did create a rigorous form of planning and reporting, which gives the Commissions a central position, albeit of a more political nature. Participants in negotiations have remarked the level of preparation and strategic foresight that the Commission showed on the details of NECPs (Interview 4). Part of the reason why the Commission pursued this leadership role was its desire to appear capable of implementing ambitious climate goals and representing the interests of the European citizens in the energy transition, portraying itself as a climate leader in its new "political" role (Interview 7).

On the other hand, the Commission adopted a more restrained approach on the NEMD files. Its level of oversight over wholesale electricity markets would have been slightly increased according to its initial proposals on the Risk Preparedness and the ACER Regulation. However, these ideas were quickly dropped by MS in the Council, without significant resistance from the Commission or the EP.

Therefore, the hypothesis is partially false for the ECG Files and true for the NEMD files.

H_{2b}: The European Commission only seeks to influence the decision-making process when it has a strategic advantage.

When it comes to the ECG files, the Commission has constantly pursued to influence the outcome of the negotiations, especially regarding the overall level of climate ambition. It introduced proposals on electromobility in the EPBD, on the trajectory of renewable targets in the Governance Regulation, on self-consumption of renewable energy in RED II, and on removing loopholes on the accounting for the annual energy savings obligations under the EED. Moreover, it continued to be active throughout the negotiations process, especially on issues where its preferences overlapped with those of the EP. The Commission pursued its preferences irrespective of the strategic advantage it had on a particular topic. It proposed higher energy efficiency targets even when it had no political backing for such an endeavour. Commissioner Miguel Arias Cañete joined the trilogue negotiations in person to push for the provision on long-term renovation strategies without any promising prospects of success.

The situation was different during the negotiations on the NEMD. The Commission attempted to instrumentalise the cold spell in January 2017 (Interview 17) as a strategic opportunity to increase the level of EU coordination and supranational oversight over crisis management and contingency planning in the Risk Preparedness Regulation. However, it had limited success in this endeavour. It did not pursue any ambitious liberalisation measures, as in the absence of the UK during negotiations it lacked a key ally for this objective.

Therefore, the hypothesis is false for the ECG Files and true for the NEMD files.

Alternative H_{2a}: The European Commission pursues further integration at the EU level even if it does not lead to its further empowerment.

As explained above, the Commission pursued to increase the level of EU coordination and cooperation on climate objectives, irrespective of the lack of clear supranational transfer of authority to itself. Its proposed governance framework further integrates collective planning and strategising at EU level, truly collectivising national climate efforts.

Meanwhile, even if it did not pursue its further empowerment in the NEMD files, it did propose to increase the level of oversight and decision-making powers for ACER over issues of both system adequacy and design of bidding zones. It also introduced the concept of Regional Operational Centres, which would have substantially increased the level of regional oversight over national wholesale markets. The Commission proposed increasing cross-zonal capacity allocations in order to increase the electricity flows between MS and it increased funding for the Connecting Europe Facility that finances the construction of interconnectors. The Commission support for the empowerment of ACER and ROCs is further discussed in the section on hypothesis 3.

Therefore, this hypothesis was true for both the ECG and the NEMD files.

Alternative H_{2b}: The European Commission seeks to create strategic advantage to influence the decision-making process, rather than merely waiting for windows of opportunity.

The Commission has shown a tremendous ability for strategic planning, by seeking to influence the negotiations through a wide range of tactics that included the timing and content of proposals, the packaging of files, the selective introduction of new information during negotiations, and alliance-formation with the EP or different MS. This certainly applies for the CEP as a whole, which was carefully designed both to maximise the chances of success for the Commission's proposals and for politicising certain issues, such as regulated electricity tariffs by linking them to energy poverty. During trilogues, the Commission was actively involved in the negotiations on the Governance Regulation, RED II, and EPBD, where it contributed with expertise bringing proof for the viability of its proposals. On the other hand, this was not the case for the NEMD files, where the Commission adopted a more passive position, especially during negotiations. It did not exhibit the same ability to influence the overall policy process as it did on climate-related legislation.

Therefore, this hypothesis was true for the ECG files and false for the NEMD files.

Overall implications for the second hypothesis of new intergovernmentalism

The idea that further integration does not necessarily equate to further empowerment of supranational bodies is a valid observation of new intergovernmentalism. However, the theoretical framework generally underestimates the role and activism of the Commission. Contrary to Thaler's (2016) observation that the European Council has instilled most of the political momentum of the CEP, this analysis has shown the influence that the Commission had mainly over the ECG files. The analysis of the CEP as a whole has shown that the Commission can definitely act "politically" (Müller, 2017; Nugent and Rhinard, 2019). Moreover, by managing the difficult task of replacing binding national targets with a new mechanism that would be equally effective, the institution has also proven its ability to deal with "wicked problems" (Candel et al., 2016).

Interestingly, the Commission shares similar legitimacy concerns as MS delegations. Juncker's decision to operate as a "political" rather than technocratic Commission president is particularly relevant in this respect. Therefore, the Commission appears to be interested in self-legitimisation, especially after the introduction of the Spitzenkandidaten procedure (Dinan, 2016), representing more than a bureaucracy, being capable of playing a more political role (Nugent and Rhinard, 2019: 203). Given its "political" interests, it was unsurprising to observe that the Commission was not a passive actor, merely waiting for the emergence of windows of opportunity. Therefore, new intergovernmentalism's concept of "strategic advantage" was not particularly applicable to the ECG files, as the Commission has shown that it can push for different regulatory policies in line with its agenda (Arregui, 2016).

Therefore, rather than a strategic entrepreneur, the Commission would be better described as a "purposeful opportunist" (Camisão and Guimarães, 2017; Cram 1993; Nugent and Rhinard, 2016), making creative use of its powers, "softening up" the ground in advance (Lindberg and Scheingold, 1970), "politicising" or "depoliticising" issues in order to pursue political or apolitical routes in the policy process (Vahl, 1997). The analysis has further shown the importance of impact assessments as tools the Commission uses to provide the evidence base for its proposals (Bozzini and Smismans, 2016) and the Commission using the EP as a strategic ally, adopting a very pragmatic approach for both pursuing its preferences and increasing its legitimacy (Rosén, 2016: 41).

However, this was mostly obvious in the ECG files. An argument could be made, nonetheless, that the concept of purposeful opportunist still applies in the context of the NEMD files as well. Even if its initiatives were less successful, the Commission has certainly been "an organisation which has a notion of its overall objectives and aims but is quite flexible as to the means of achieving them" (Cram, 1994: 210). Interestingly, it pushed for increased European coordination even when there was no scope for an expansion in its own powers. This shows that the Commission does not attempt to redraw jurisdictional boundaries when it knows it has little chances of success (Alexandrova, 2017), as was the case with

NEMD files. Previous research on gas liberalisation has shown that the Commission has not only proven flexibility and "increased sensitivity" in integrating MS' preferences in its approach, but there were also instances of "real policy reorientation" based on MS preferences (Andersen and Sitter, 2015: 327).

The Commission acting a purposeful opportunist can be more obvious when looking at CEP as a whole. The apparent underwhelming success on NEMD files could be considered a conscious choice made by the Commission when it designed the package, bundling all these files together. This could be a part of the Commission's documented ability to make use of "synergetic relationships" between different energy policies (Howlett and Rayner, 2013: 177). In this case, its pursuit of a central role in the new governance framework for the climate objectives superseded other interests regarding electricity markets and security of supply, which the Commission may have left MS to focus on. This can also explain the relative discretion that the Commission has shown on NEMD files, especially compared to its aggressive tactics of the past, as shown in Chapter 3 when discussing the development of the internal energy market pillar of EU energy policy.

This ability to focus on different strands of EU energy policy based on context has been observed in multiple instances (Schoenefeld and Knodt, 2021). While for the 2020 renewable target the Commission emphasised the need for international climate leadership, for the 2030 targets it emphasised cost-effectiveness (2021: 60). More recently, when presenting the REPowerEU plan for eliminating Russian gas imports by frontloading investments in renewable energy, the Commission invoked energy security concerns (see Chapter 8 for more details). This shows a high degree of flexibility on the strategy used, even when the goal is effectively the same – higher climate ambitions. It is important to acknowledge both the preferences of the Commission itself and its contribution to shaping the preferences of other MS (Smyrl, 1998: 96). The impact of the Commission's actions can often be "incremental" and based on alliances built with the EP, civil society, and other EU agencies (Kaunert, 2010: 185). This means that the full impact of the CEP may still be difficult to fully grasp.

Hypothesis 3

When a transfer of powers to the supranational level occurs, it is done through the creation and empowerment of de novo bodies / When delegation occurs, governments and traditional supranational actors support the creation and empowerment of de novo institutions.

H_{3a}: When supranational transfer of powers occurs, it is done to 'de novo' bodies.

While there was resistance coming from MS regarding the ability of the Commission to launch infringement procedures for non-compliance with renewable targets, this was replaced with the new governance framework which still relies on the Commission for its implementation. There was no other significant transfer of powers to other EU agencies and institutions on renewables, energy efficiency, or energy performance in buildings. Given the lack of notable de novo bodies in the areas covered by these files, hypotheses H3b, H3c, Alternative H3, and Alternative H3c are not applicable for the ECG files.

In the NEMD files, MS blocked any proposals expanding the Commission's authority over national electricity markets. However, the need to increase regional cooperation and enhance European planning for disruptions in security of supply required EU approaches. Instead of expanding the Commission's prerogatives, most of the needs for inter-state coordination will be ensured through agencies that qualify as "de novo" bodies. ACER supervises the activities of NRAs and oversees the well-functioning of wholesale markets. ENTSO-E develops network codes and coordinates the activity of TSOs. The newly established RCCs have responsibilities over regional capacity calculation, adequacy forecast, security analysis, and outage coordination. A new agency, the EU DSO entity was also established for increasing the level of cooperation between DSOs. ACER is also obliged to report to the Electricity Coordination Group on issues related to security of supply.

Therefore, the hypothesis is false for ECG files and true for NEMD files.

H_{3b}: The European Commission supports the creation and empowerment of the 'de novo' institutions.

The Commission has proven highly supportive of the empowerment of EU agencies for improving the coordination between MS in the internal electricity market. It proposed the establishment of the new EU DSO entity through the Electricity Regulation, to replicate the positive results that ENTSO-E achieved for TSOs. It proposed higher decision-making powers for ACER, including for approving risk preparedness plans and ENTSO-E methodologies for generational adequacy assessment and regional electricity supply scenarios. The ACER Regulation was unilaterally introduced in the decision-making process by the Commission, as MS had not given their explicit consent about reopening this file. The Commission was also supportive of the creation of new RCCs, even if its initially proposed design was rejected. The only time the Commission expressed discontent regarding authority transfer to a de novo body was when the Council favoured the Electricity Coordination Group, but this was only because it preferred ACER to be given further decision-making powers over crisis preparation and management instead.

Therefore, the hypothesis is true for NEMD files.

H_{3c}: The 'de novo' bodies have distinct intergovernmental elements that differentiate them from the institutional architecture of the European Commission.

The negotiations on the institutional architecture of EU agencies did prove to favour intergovernmental designs. The new EU DSO entity will be governed by a board made up of 27 DSO representatives, one from each MS. The RCCs are only able to coordinate actions with TSOs, which are usually state-owned, but do not have the ability to take binding decisions themselves. The Electricity Coordination Group, which supervises ACER's activity on security of electricity supply, has a purely intergovernmental set up and its decisions must be taken by consensus. Lastly, one of the most contentious issues negotiated in the ACER Regulation was precisely about the internal decision-making mechanism of the agency. ACER is governed by a director whose actions require the approval of a Board of Directors, which is made up of NRA representatives from each MS and a Commission official that does not have voting rights. Decisions in the Board of Directors, which control the activity of the ACER director, are taken through a two thirds majority votes.

Therefore, the hypothesis is true for NEMD files.

Alternative H_{3b}: The European Commission supports the creation and empowerment of the 'de novo' institutions as a means to expand its influence over some policy areas.

Based on the evidence analysed in this thesis, it is difficult to make an informed assessment of this hypotheses. In most cases, there has been no obvious link between the establishment of a new entity or the empowerment of an existing one and the indirect impact this would have on the level of influence of the Commission. The only instance where this may have been the case refers to ACER, where MS had in the past raised concerns that the Commission was trying to intentionally keep the agency's administrative capacities underdeveloped, in an attempt to make it reliant on its bureaucracy, which in turn would allow it "to dominate a weak agency" (Buchan, 2015: 354). However, this was not necessarily the case, as the proposal made by the Commission on the ACER Regulation saw substantial new powers for the agency. The Commission did show a strong preference towards empowering ACER in the Risk Preparedness Regulation, as opposed to the Electricity Coordination Group, which functions as a Working Group of the Commission, but its membership only includes MS representatives. There is some research showing that ACER has been used by the Commission as source of technical

information and expertise for pushing its policy priorities through apolitical means, which can be more persuasive for decision-makers in some cases (Pollack, 2011: 102). ENTSO-E has also been portrayed as an "epistemic authority'"(Eckert and Eberlein, 2020: 61), that could arguably confer more credibility to different policy proposals.

Nonetheless, making a judgement on this hypothesis based on the data collected and processed in this thesis would be speculative. Consequently, this the validity of this hypothesis is marked as inconclusive.

Alternative H_{3c}: The institutional architecture of the 'de novo' bodies does not necessarily ensure full intergovernmental control over their activity.

The assessment of H_{3c} has shown that indeed all de novo bodies analysed in this thesis exhibit strong intergovernmental features in their internal architecture. However, this does not necessarily mean that MS exert full control over the decisions and activities of these entities. Representation in agencies such as ACER or ENTSO-E relies on a "double delegation", as MS have to first delegate authority to NRAs or the mostly state-owned TSOs, and then these organisations are represented in ACER and ENTSO-E (Andersen and Sitter, 2015: 326). There are also strong provisions in the Electricity Regulation regarding the independence of NRAs, weakening even further any direct connection between a national government and the representative from that country in ACER or even ENTSO-E. Moreover, the negotiations of the ACER Regulation have also resulted in an internal decision-making process of the agency that does not allow the representatives of NRAs to make amendments to the proposals made by the director, as they are only able just to vote. Therefore, not even the NRAs have full control over the decisions of ACER.

Therefore, this hypothesis is true for NEMD files.

Overall implications for the third hypothesis of new intergovernmentalism

New intergovernmentalism offers valuable insights regarding the role of the de novo bodies in EU energy and climate policies. The importance of these entities is recognised in the academic literature given the role they have gained in regulating European energy policy, often at the expense of MS (Kahler and Lake, 2004; Eckert, 2011; Eckert and Eberlein, 2020). Indeed, in EU energy policy areas where MS have proven more protective of their national authority (i.e. the internal energy market and security of supply), they preferred transferring powers to new EU agencies instead of empowering the Commission. The same was not true for ECG files, where the Commission had already had a long

history of supranational authority over climate policies, spanning back decades. Meanwhile, the Commission has taken a pragmatic view when it came to the creation and empowerment of new institutions in NEMD files and did not oppose their development (Peterson, 2015: 186). In fact, the Commission seems to have turned into a genuine driver of the phenomenon of EU "agencification" (Egeberg et al. 2015: 625). Nonetheless, it remains unclear whether the Commission has adopted such an attitude as a strategy to gain more authority over issues where MS are particularly resistant towards its further empowerment.

Some have commented on these new agencies of being rather "static" entities, restrained to performing only a narrow array of tasks (Scipioni, 2015: 769). Indeed, they tend to have very issue-specific mandates and strong intergovernmental designs (Bickerton et al., 2015a: 714). It can be argued that the issue-specific nature of their mandates is purposefully designed to prevent the uncontrolled spillover of their activity in other policies. However, not all EU agencies are necessarily vertically accountable to MS (Buess, 2015). This section has shown that even when strong intergovernmental control mechanisms are present, this may not necessarily imply that MS have direct and full control over the activities of these agencies. Schimmelfennig has argued that many de novo bodies share much of the autonomy of the more traditional supranational institutions, showcasing both supranational and intergovernmental elements, observation which renders the dichotomy described by new intergovernmentalists "useless" (2015: 724). While national delegates indeed dominate the management boards of these agencies, this may not necessarily imply that they simply act as promoters of domestic national interests, especially given that the chain of domestic accountability is not always clear (Egeberg and Trondal, 2017: 677).

Hypothesis 4

Issues of domestic preference formation have become stand-alone inputs in the European integration process.

H_{4a}: The Member State preferences are the most relevant inputs that determine the further integration of a policy sector.

The negotiations of the ECG files have generally shown a strong influence of both the Commission and the EP over the decision-making process, but also over creating the new governance framework for the Energy Union. Chapter 5 documented the influence that the two institutions had especially on the overall level of climate ambitiousness. The EP negotiating position of 35% and the Commission recalculation of its impact assessment in the middle of the negotiations were decisive in adopting a 32%

target for renewable energy, despite the initial starting position of the Council of 27%. The trajectory for reaching these targets was also modified compared to the preferences of MS. The 32.5% target for energy efficiency, higher than the European Council agreement on 27%, was in large part the result of the Commission proposing a higher 30% target and the EP negotiating on a 33% position. Energy poverty provisions, even if watered down, have been introduced in the EED and the Electricity Regulation, regardless of MS resistance against expanding EU energy competences in social policy. Thus, the preferences of MS were not the only determinant factor for the overall outcome of the legislation, especially when it came to the level of ambitiousness.

Perhaps even more importantly, the Commission and the EP had a decisive input in determining the design of the new governance framework for implementing the climate objectives. While the preferences of MS to no longer use nationally binding targets were respected, the NECP process is largely a Commission design, with the EP having also successfully introduced and obligation for MS to develop long-term strategies and consequently plan for decarbonisation until 2050. The obligations under the national long-term renovation strategies also reflect in large part the preferences of these two EU institutions.

Meanwhile, as shown throughout Chapter 6, this was not also the case for the NEMD files. There were occasional meaningful inputs from the Commission and the EP, but MS were firmly in the driving seat throughout the negotiations, given the perceived higher economic implications for national economies. The final agreements are largely the result of deliberations between MS, which is also why there has been no major revision of the design of the internal electricity market. Attempts to reform bidding zones, regulated tariffs, crisis management and prevention, and the institutional dynamics between EU agencies were promptly and effectively rejected by the Council.

Therefore, this hypothesis was false for ECG files and true for NEMD files.

H_{4b}: Issues of legitimacy and domestic political conflict are expected to be more important in determining the Member State preferences than sectoral economic interests.

According to the analysis of this thesis, this was the hypothesis on which the differences between the two bundles of the CEP files were most evident. On the ECG files, the preferences of MS appear to be most influenced by domestic public opinion favourable to climate change mitigation, especially in Western European countries. The most ambitious MS delegations were motivated by public opinion and environmental concerns (Interview 1). The changes in positioning in France, when it faced domestic backlash for its lack of climate ambitiousness, and in Spain and Italy, when their governing coalitions

were changed with parties that ran on electoral platforms with a higher focus on climate issues, show the close connection between domestic political considerations and the positions that are expressed in the Council by national delegates. Some MS such as Slovenia and Czechia did raise issues concerning costs and economic impact on domestic companies (Interview 19), but they were in a minority and they represented domestic publics more apathetic to climate change efforts.

MS generally preferred to retain control over their energy markets and how they function, as part of the NEMD files. Even if these preferences were at times motivated by domestic politics and public opinion, as was the situation with France and regulated tariffs for household consumers, most national delegates have shown economic concerns when expressing their positions in Council negotiations. The preferences of large countries such as France and Germany to protect their energy companies and national industries were often contradictory to the preferences of smaller MS such as Slovenia and Czechia, which saw increased EU authority over electricity markets as a measure of protection against abusive practices by large companies and neighbouring countries.

Therefore, this hypothesis was true for ECG files and false for NEMD files.

Alternative H_{4a}: The European Parliament significantly influences policy outcomes.

This issue was already discussed in the assessment of H_{4a}, which has shown the level of influence that the EP had on the levels of climate ambition and the governance framework in the ECG files. There were differences, however, based on the rapporteur that was appointed for each file. Rapporteurs from the Greens and S&D successfully increased the climate objectives both in the EP's general position and during negotiations with the Council on the Governance Regulation, RED, and EED. The EPP rapporteur for the EPBD was similarly ambitious, but this came in strong contrast to the EPP rapporteurs for the Electricity Directive, the Electricity Regulation, and ACER Regulation. Overall, the influence of the EP was visibly less consequential in the NEMD files, where large numbers of MEPs voted on national and not party lines, effectively acting as an extension of the national delegations in the Council.

Therefore, this hypothesis was true ECG files and false for NEMD files.

Alternative H_{4ab}: Other non-state actors can alter decision-making outcomes irrespective of their influence on Member State preferences.

The empirical evidence analysed in this thesis generally indicates a more important role for non-state actors at the EU-level than expected by new intergovernmentalism. Civil society has been heavily involved in the ECG files, advocating for higher targets and more stringent mechanisms of enforcement especially through a stronger role for the Commission. They provided information and may have swayed opinions on issues such as biofuel targets and standards in RED and created compelling narratives on the multiple benefits of energy efficiency, which in turn resulted in a higher overall target, as shown in sections 5.3 and 5.4.

However, their capacity to purse multiple issues was overstretched by the size of the CEP, which meant they could only prioritise a limited number of initiatives (Interview 33). As a result, their role was more limited on the NEMD files, where industrial associations and energy companies have been more active, given their vested interests. Industrial associations such as Eurelectric have been particularly influential in these files. Nonetheless, as shown in section 6.3, NGOs and civil society organisations joined forces with multiple MEPs and countries to phaseout capacity mechanism for coal power plants. Organisations such as ENTSO-E also provided important input and information for the negotiations of these files.

While the precise level of influence of these organisations is difficult to measure with precision, it is clear that the advocacy and lobbying efforts targeted directly at EU negotiations (as opposed to the domestic level) were consequential. This thesis has shown that NGOs in particular have used multiple tactics to influence decision-making, ranging from PR campaigns to working closely with progressive MEPs, often working in coalitions to maximise impact. It emerged from multiple interviews conducted for this thesis that some MEPs have grown to even rely on civil society organisations as informal sources of evidence and argumentation in favour of higher climate ambitions (Interviews 3, 13, 16). Discounting them from the analytical framework would lead to incomplete and less accurate interpretations of the events analysed in this thesis.

Therefore, this hypothesis was true for both ECG and NEMD files.

Overall implications for the fourth hypothesis of new intergovernmentalism

The empirical evidence analysed in this thesis has revealed that domestic preferences are not the "stand-alone" inputs for European integration. The European Council has significantly shaped the political agenda of EU energy policy (Tosun et al., 2015: 7), but, it does not appear to have become "a veritable EU executive", with significant agenda making and monitoring powers, while the Council has not always been the "key decision-maker when it comes to policy content", as expected by new intergovernmentalism (Bickerton et al., 2015a; 2015b). The Commission activism and the

ambitiousness of the EP had significant impacts especially on the content of ECG files and the governance framework resulting from them. Therefore, new intergovernmentalism has proven insufficient for explaining the role of these institutions. Nonetheless, the intergovernmental nature of policymaking on the internal energy market and security of supply was a better case study for the theory, but it could not offer correct explanations of domestic preference formation, which were rather influenced by economic interests similar to those described by liberal intergovernmentalism. Issues of legitimacy and domestic political conflict did explain most MS preferences on the ECG files, but the impact of these preferences has been less significant overall.

Therefore, the role of the EP needs to be better accounted for. The institution was the most climate ambitious during the negotiations, confirming its status as a veritable "environmental champion" (Burns, 2019). This can be largely explained by two reasons. The first is that unlike national governments, it the EP is not directly responsible for the direct implementation of legislation, therefore it is less concerned with implementation costs. There may also be a more direct connection between MEPs and voters after the introduction of the Spitzenkandidaten system, but it is still weaker than that of governmental representatives in intergovernmental institutions, which have to take into account domestic scrutiny on their activity. The second reason is related to the significant role that the rapporteur plays in the EP committees. Given the fact that energy and climate represent their main interests, the Greens received prominent negotiations roles in ITRE and ENVI, overrepresentation which led to disproportionate influence compared to their general standing within the EP as a whole. The EP was also the biggest proponent of increased powers for the Commission in the monitoring process and coordination of EU climate and energy objectives. Still, the EP should not be viewed as a monolithic structure, as there is internal fragmentation between parties and committees (Biesenbender, 2015: 35).

New intergovernmentalism therefore fails to provide convincing explanations for these developments. Interestingly, MEPs voted on national lines on NEMD files, better reflecting national preferences on these issues. However, new intergovernmentalism did not provide any expectations of such a phenomenon, even if this observation reinforces the idea of the centrality of MS preferences in determining the policy and European integration outcomes in some areas. Meanwhile, MEP voting on ECG files has shown signs of increasing national "disloyalty" (Koop et al., 2018).

It is important, nonetheless, to mention that this thesis has analysed policies that fall under the ordinary legislative procedure, which offers a superior constitutional role to the EP than in other EU areas such as CFSP or JHA. Indeed, most integration in the area of EU energy and climate policy has started since the EP gained this extended role, even if the EU did not have formal competences over energy policy until the Lisbon Treaty. The EP has made maximum usages of its constitutional powers ever since.

New intergovernmentalism was also shown to oversee the important role played by other non-state actors by providing input directly at the EU-level. There is extensive research on the impact of lobbying by industrial associations, environmental NGOs, and transnational actors on decision-making on EU climate policies (Braun, 2009; Convery, 2009; Skjærseth and Wettestad, 2010; Miard, 2014; Baird, 2017). For example, European industrial federations benefit from great human resources and expertise which they use to participate in all the stages of the policymaking process. This needs to be taken into account, but without overstating their role (Matlary, 1997: 97), which indeed has not been central.

Besides the influence of non-state actors on policymaking in EU energy and climate policy, this thesis has also revealed some valuable insights regarding the mechanisms for domestic preference formation. Domestic politics and citizen support have shown to be influential for MS preferences, especially on ECG files. There is evidence that this link has been relevant throughout the development of EU energy and climate policy. According to data collected by Alexandrova et al. (2014), public attention and salience around energy issues peaked in 2006, coinciding with the year when the European Council called for the establishment of an "Energy Policy for Europe" (Tosun and Mišić, 2020: 21). A similar peak occurred in 2014, when the European Council agreed on the main aspects of the Energy Union. This suggests a strong correlation between public support for further expansion in EU authority over energy policy and the decisive steps taken by the MS in the European Council to expand European integration in this area.

At the same time, according to Eurobarometer data processed by Tosun and Mišić (2020) on the willingness of EU citizens to accept increased EU authority over energy policies, public opinion seems to actually be more permissive of further supranationalisation and expansion of EU competences than what is reflected in the MS preferences that national representatives voice during negotiations. In 2018, 73% of EU citizens indicated their support for a common EU energy policy according to the data, support which has never dropped under 70% (Tosun and Mišić, 2020: 21). This raises some puzzling questions, given the push by MS to strip the Commission of its ability to legally challenge their potential lack of progress on renewable targets, which has been viewed as an attempt to decrease supranational control of EU energy and climate policies (Herranz-Surrallés et al., 2020).

A potential explanation is that the preferences expressed by MS are not simply influenced by domestic public opinion on EU competences in energy and climate specifically, but by other salient issues and broader views towards the EU. Eurobarometer data from the time of the negotiations of the CEP show that climate change ranked only on 7th among the most important issues for EU citizens, behind immigration, terrorism, and unemployment (European Union, 2018). Climate change was particularly important for Danish and Dutch citizens, whose representatives in the Council did indeed push for higher renewable targets as far back as the European Council meeting in 2014, when they supported a

30% objective. MS where the salience of climate issues is lower, especially CEE countries, generally matched the less ambitious positions pursued by national representatives. Meanwhile, the major preference shifts encountered during negotiations occurred in countries where trust in the EU was among the lowest (France and Italy) and where citizens had the lowest confidence in the importance that their voices have in EU affairs (Italy, Spain, and France). This may indicate a hypersensitivity to how the actions of MS representatives at EU-level are perceived domestically in those countries.

Citizen support for climate ambitions varies both between and within countries, based for example on ideological division (Neumayer, 2004; Latré et al., 2019). Western European left-voting citizens are more likely to have stronger beliefs on climate change, while the left-right divide is less visible in CEE, given the comparatively low salience of climate issues in domestic politics (McCright et al., 2016: 338). In CEE there is, however, stronger support for further integration on security of supply issues, which may be explained by the fact public opinion has also shown to be influenced by perceptions of their government's ability to deal with problems (Stadelmann-Steffen and Eder, 2021). In this case, further empowerment of the EU may be perceived as an effective alternative to national management on problematic issues.

Therefore, there are strong links between domestic public opinion and the preferences that MS adopt in EU negotiations. However, the link between the two does not need to be perfect for new intergovernmentalist observations to be valid. The theory states that the concerns of national representatives regarding legitimacy strongly influence their preferences. These concerns could be, however, at least partially misguided, even if this is not specifically explained by new intergovernmentalism. This means that miscalculations can be made, as was the case with the initial French position on the Governance Regulation, which was informed by the delegation's general approach towards decisions that involved the empowerment of the Commission but later proved to be based on a misguided perception of what would be acceptable for domestic publics. This kind of misguided interpretation does seem to be confirmed in the literature. Herranz-Surrallés et al. (2020: 13) explain that, while the development of the Energy Union did face high reluctance from MS representatives regarding further supranationalisation, "public opinion seems to mobilise in the opposite direction". The data presented by Tosun and Mišić also suggests that "governments of MS might be able to benefit electorally from the delegation of authority to the EU" (2020: 33), even if this may not be reflected in the perceptions of national representatives. Thus, subjective assessments of national representatives may also need to be taken into account for understanding the positions they adopt at EU-level.

Previous research on national preferences on energy policy has shown that perception of "vulnerability and strength" in a particular energy area can have a meaningful impact on the positions of national

representatives during negotiations (Mišík, 2015). Perceived weakness generally leads to stronger support for further integration. This was the case for example with smaller MS when negotiating the NEMD files on electricity market integration and security of supply. Importantly, this observation refers to the perception of decision-makers themselves, whose individual agency had been considered of limited importance by researchers in the past (Mišík, 2015: 199). This shows that domestic preferences are not based on objective evaluations at national level, but rather on the subjective interpretations of national representatives.

Pointvogl (2009) also explains that besides perceptions of security of energy supplies, perceptions of the impact on national energy companies similarly affects the willingness of MS for further integration, particularly on issues regarding the strengthening of the internal energy market. This may provide some reconciliation between the seemingly contradictory trends observed between the two halves of the CEP. MS preferences of NEMD files have proven to be shaped to a greater extent by economic interests and perceived impact on national energy companies. This could suggest that national representatives oscillate between public opinion and economic interests, based on the salience of the issue at stake and the magnitude of its impact. The time when French president Francois Hollande declared himself torn between pressures from the public opinion and the lobbying efforts from national companies (Bürgin, 2015: 699) showcases perfectly the different interests that national decision-makers have to juggle. This may mean that there could also be a dose of subjectivity of MS representatives in determining which of these domestic interests they base their preferences on.

Ultimately, it appears that economic interests and legitimacy concerns are deeply intertwined in the preferences MS have regarding the evolution of specific policy developments. For example, Denmark, where there is strong public support for ambitious climate policies, is also home to home to Vestas, one of the largest wind turbine manufacturers worldwide (Interview 26). Therefore, there may have been two simultaneous factors enabling the Danish delegation to pursue higher renewable targets in the both the European Council and the Council. In other cases, these factors could lead to opposing interests. It has been argued that the "contestation" of EU authority in the of renewable energy was amplified after the financial crisis, when concerns about high electricity prices, loss of competitiveness of domestic industries, and costly infrastructure investments took precedence in determining the preferences of MS (Solorio and Jörgens, 2021: 88). This even lead countries such as Germany, "known for their success in RES promotion to take a more reluctant approach" (Solorio and Jörgens, 2021: 88). In general, MS representatives may perceive EU cooperation more important on climate change mitigation efforts, while on market design and security of supply they may perceive national control as more desirable.

Hypothesis 5

The differences between high and low politics have become blurred.

The high-low politics distinction explains that policy issues reach the agenda either "from above" through the high politics route of the European Council, or "from below" through the low politics route of Commission expert groups (Princen and Rhinard, 2006: 1119). However, this thesis has shown that the revisions of EU energy and climate policies have resulted from a mix between the two routes. This suggests that, indeed, the distinction between high and low politics may not be particularly useful, as it is increasingly difficult to tell what constitutes an issue of heightened national concern and what may be considered a purely technocratic affair which can be left to expert decision-making. This observation is aligned with the ideas proposed by new intergovernmentalism as part of this hypothesis.

Previous research on high-low politics in EU energy policy, such as that of Alexandrova and Timmermans (2015), suggests that the lines are not necessarily blurred, but there is rather a distinct set of roles between EU institutions that determines this high-low politics interplay. However, others have shown that while the political agenda of the European Council is often set via a "high-politics route", MS have increasingly started to also give detailed guidelines including on technical aspects that have represented more the domain of lower-level bureaucratic work in the past (Tosun et al., 2015: 7). There is also research showing that in certain instances the European Council can "depoliticise" issues in order to decrease the level of domestic contestation (Glencross, 2016: 507).

The reverse is also true, as according to the evidence presented in this thesis, the Commission has strategically chosen to either politicise or depoliticise issues, based on the type of response it sought from MS. This is an interesting observation given the historic propensity of the Commission to follow "expert-based depoliticised route[s]" (Haverland et al., 2018: 327). In turn, MS have also slowly come to understand the utility of EU-level energy policymaking in some areas and have constantly allowed for the depoliticisation of the energy issues, including security of supply (Thaler, 2016: 572).

Hypothesis 6

The EU is in a constant state of disequilibrium.

New intergovernmentalism points to the instability of social, economic, and political developments of the EU and its MS in the post-Maastricht era (Bickerton et al., 2015b: 36). The implication is that the EU should be studied from the perspective of disequilibrium (Bickerton et al., 2015a: 716). There are indeed some arguments that much of the development of EU energy policy over the past three decades

was triggered by key external events, many of which having generated internal EU crises (Thaler, 2016: 572). However, while crisis can play an important role, previous research shows that, for example, the economic crisis did not "fundamentally change the broad trajectory of EU energy and climate policy" (Slominski, 2016: 344). While such crises can alter the hierarchy of priorities, affect the salience of particular issues, and open windows of opportunities, they do not necessarily cause a shift in the main objectives of preferences of MS and other EU actors. The situation may be somewhat different in the case of energy security policies, which have been described as "driven by events" (Szulecki et al. 2016: 551).

7.3 New intergovernmentalism and the Clean Energy for all Europeans Package

The analysis of the empirical data on the Clean Energy for all Europeans Package and the Energy Union has shown mixed results for new intergovernmentalism. It is clear that EU energy policy integration still occurs, albeit in unconventional ways, despite the increased domestic contestation and politicisation of EU institutions and policies, which have led to hybrid institutional arrangements in an EU governance architecture that is more complex and unpredictable (Herranz-Surrallés et al., 2020: 2). This is in line with the main integration paradox that is central to new intergovernmentalism, which explains that there is a seemingly endless expansion of European integration, but this no longer occurs through the further transfer of authority to the supranational level. However, many of the more specific explanations of new intergovernmentalism have provided at best incomplete insights on the recent developments of EU energy and climate policy. Table 6 summarises the results of the assessments of the main hypotheses tested in this thesis. While there has been variation between the ECG and NEMD files, overall, it appears that energy policy is not the "intergovernmental union" that new intergovernmentalists expect in policy areas developed after the Maastricht Treaty (Fabbrini, 2016). The findings confirm that energy and climate policy "does not fit neatly into the new intergovernmentalist framework" (Bocquillon and Maltby, 2020: 53). The alternative explanations that have also been tested did provide additional valuable insights, even if they were not universally valid. Combining "different theoretical lenses" especially on European integration was shown as appropriate in previous research on EU energy and climate policy (Wettestad et al., 2012: 83). Thus, unaltered and by itself, new intergovernmentalism cannot explain the empirical developments analysed in this thesis.

Previous research trying to apply new intergovernmentalism to EU energy and climate policy has similarly seen mixed results. Thaler (2016) offers a more optimistic view about the explanatory power of this theoretical framework, claiming that energy policy represents an ideal hybrid area for new intergovernmentalism. According to this explanation, the Commission has been complicit with the

European Council's leadership approach, which ultimately allowed it some room for policy initiative that it would have otherwise lacked (2016: 572). However, Thaler gives little credit to the Commission after the initial policy proposal stage, missing the significant influence the supranational institution had during negotiations, as was shown in the assessment on hypothesis 2 of new intergovernmentalism. While Thaler's article was published prior to the start of the negotiations, his interpretation leaves little room for any further influence played by the Commission after the stage of legislative proposal.

Table 6: Validity of the hypotheses

	Energy and Climate Governance files	**New Electricity Market Design files**
H_{1a}	False	True
H_{1b}	True	True
H_{1c}	True	False
Alt H_{1a}	N/A	True
Alt H_{1c}	True	False
H_{2a}	Partially False	True
H_{2b}	False	True
Alt H_{2a}	True	True
Alt H_{2b}	True	False
H_{3a}	False	True
H_{3b}	N/A	True
H_{3c}	N/A	True
Alt H_{3b}	N/A	Inconclusive
Alt H_{3c}	N/A	True
H_{4a}	False	True
H_{4b}	True	False
Alt H_{4a}	True	False
Alt H_{4ab}	True	True

Source: own assessment

Thaler also notes the role of deliberation and consensus in the political process of revising EU energy legislation and the leadership played by the main intergovernmental institutions, claiming that much of the European integration in the area occurred only after the EU has gained supranational competences in the area. While this is generally true, most of the pre-Lisbon Treaty developments in EU energy policy have been the result of the Commission acting as a purposeful opportunist, as shown in Chapter 3. Moreover, Thaler's article completely oversees the role of the EP, which this thesis has shown to have played a critical role in increasing the level of climate ambition in all ECG files.

Adopting a more critical perspective, Bocquillon and Maltby (2020) challenged the ability of new intergovernmentalism to adequately explain the new policy framework created through the Governance Regulation, explaining that the boundaries for energy policy are unclear and the distribution of authority has become unstable and contested. While acknowledging the significant political authority exerted through the Council and the European Council, they also highlighted the fact that the Commission "plays a substantial role in framing policy debates and following up with legislative proposals" (2020: 43). Similar to the findings of this thesis, they observed the significant role played by the Commission in the new governance arrangement, concluding that it would be more accurately portrayed as a result of "embedded intergovernmentalism", rather than of new intergovernmentalist dynamics. According to their explanation, energy policy is a hybrid area of EU competences, where "legal bases and roles for supranational institutions mean that the boundaries of energy policy are unclear, increasingly overlapping with climate policy" (2020: 40).

They correctly observe both the role played by the EP in increasing the overall level of climate ambitiousness, as well as the Commission's attempts to secure a strong role for itself in the new governance framework, without challenging the restrictive mandate it was offered by the European Council (2020: 51-53). While these observations are more in line with the findings of this thesis, they only offer a partial account of the role of the Commission, mostly because of the narrower research design, which focuses mostly on the Governance Regulation. The analysis presented in this thesis offers a more comprehensive explanation, through the additional focus on the NEMD files as a contrasting example and on the CEP in its entirety, which are crucial for showing the flexibility of the Commission regarding the tactics it uses to influence the policymaking process. Chapter 4 has shown the importance and implications of the packaging strategy adopted by the Commission, as well as the different dynamics that occurred between the two file bundles. It can also be argued that this thesis offers a more complex account of the preference formation mechanism at national level, as well as of the role of de novo bodies and other non-state actors.

Can new intergovernmentalism be revised?

Similar to the findings of Thaler (2016) and Bocquillon and Maltby (2020), there are many elements of new intergovernmentalism that have offered valuable insights for the analysis of the Energy Union and the CEP. However, the theory would require a set of both additional clarifications, as well as some more fundamental revisions, in order to offer a more accurate perspective of the developments in EU energy policy.

For example, new intergovernmentalist observations on deliberation and consensus-seeking as guiding norms during inter-state negotiations have proven relevant, but with some caveats. The explanations of new intergovernmentalism could be refined by better integrating the instances when MS, especially smaller ones, use negative votes or even abstention to protest shortcomings in deliberations. Moreover, the unanimity reached in the Council is often indicative of apparent consensus, with divisions between MS persisting even after the end of negotiations.

While indeed MS preferences are to a large extent based on issues of legitimacy concerns and domestic politics, they can also reflect sectoral economic interests at the same time. Interestingly, it appears that MS preferences can be the result of the subjective interpretation of national delegates of such issues, which can lead to misguided conclusions. The link between domestic politics and the preferences expressed by national representatives at EU-level is therefore less straight-forward that suggested by new intergovernmentalism.

The observations of new intergovernmentalism on de novo bodies have generally proven valid, even if no such institutions have been established in ECG files. MS indeed prefer to empower new EU institutions that have clear issue-specific mandates and strong intergovernmental elements in their internal architecture. However, as shown in this chapter, this does not necessarily guarantee the direct control of governments over their activity.

The temporal dimension of new intergovernmentalism also needs to be discussed. For EU energy policy, at least, the Maastricht Treaty was not the decisive event that led to the spectacular expansion of the field. While the Maastricht Treaty revolutionised the decision-making process, expanding quality majority voting, including to environmental policy, and increased the role of the EP in the co-decision procedure, an arguably greater impact was caused by the completion of the single market in 1992, objective that had been set by the Single European Act. This paved the way for the liberalisation of gas and electricity markets. Therefore, while 1992 was a turning year for EU energy policy, it was not because of the reasons offered by new intergovernmentalism. Moreover, energy policy only became an official EU area after the Lisbon Treaty of 2007, moment which truly marked the emergence of more

consistent and sustained efforts for integrating the internal energy market, security of supply, and climate change into a common EU energy policy.

Meanwhile, the major shortcomings of new intergovernmentalism are mainly related to the centrality it places on MS and intergovernmental institutions and the subsequent underestimation of the Commission and especially the EP. This thesis has shown that the Commission would be more accurately portrayed as a purposeful opportunist, which makes creative use of its powers and adopts flexible tactics for pursuing its interests. Importantly, the Commission can also act politically and echoes the legitimacy concerns of MS representatives. The EP has also been shown to have a decisive influence on climate policies in particular. Interestingly, both institutions have pursued further European integration in the area of energy policy, even when it would not lead to their own empowerment. New intergovernmentalism also needs to better account for the role of other non-state actors, such as industrial associations, environmental NGOs, and transnational networks, which are highly active at EU-level. However, such revisions would not be internally consistent with the core elements and units of analysis of an intergovernmental theory. Therefore, it may not be possible to revise new intergovernmentalism according to these findings in a way that would make it a coherent theory of European integration.

These findings mirror Matlary's (1997) conclusions from more than two decades ago when he tested liberal intergovernmentalism using EU energy policy as a case study. His research similarly questioned the general validity of purely state-centric models, which fail to account for the agency and influence of European institutions. Crucially, he highlighted the problematic assumptions regarding preference formation, showing that when it comes energy policy, MS preferences are actually influenced by a mix of economic interests linked to the domestic energy sectors and legitimacy concerns regarding the transfer of authority to the EU-level (Matlary, 1997: 95).

In this context, it may be worth discussing the general utility and applicability of European integration theories, especially of the overtly intergovernmentalist and supranationalist frameworks. It can be argued that trying to come with definitive answers to the "age-old tension between EU level authority and states' autonomy" is of limited significance in practice, given that the "pragmatic search for compromises" between these different levels has already become ingrained into the day-to-day decision-making process of the EU (Andersen and Sitter, 2015: 322). While it is problematic that new intergovernmentalism cannot convincingly explain the evolution a hybrid area of European integration such as energy policy, the theory appears to deliver superior explanatory accounts of new areas of EU activity, including the monetary union, CFSP, JHA, and economic and social policy (Bocquillon and Maltby, 2020: 41). However, this raises serious questions regarding its universality and, consequently, its status as a grand theory of European integration. In its current form, the theory is difficult to

operationalise, especially because of the plethora of different concepts it tries to integrate simultaneously. Moreover, its attempt to provide pertinent explanations for both major shifts in EU integration through treaty change and daily EU policymaking requires a level of complexity and granularity that is impossible to reconcile with the cohesiveness of an European integration theory. Thus, offering less comprehensive, but more accurate explanations of EU developments is arguably preferable to attempting to construct a new theory that claims universality. In the end, new intergovernmentalism offers a set of valid and even helpful observations for understanding the current mechanisms behind the EU's evolution but fails in its quest to represent the relaunch of theory crafting on European integration.

7.4 A new era for EU energy and climate policy

Chapter 3 stated that the Energy Union represented the culmination of EU efforts to build a common energy policy. This thesis has indeed revealed how the CEP has simultaneously pursued legislative revisions related to all three pillars of EU energy policy: internal energy market, security of supply, and climate change, in an attempt to increase the coherence among them. However, the analysis has also shown that the internal fragmentation of EU energy policy, stemming from decades of separate development, cannot be easily overcome, as it is still reflected into differentiated results. Interestingly, it appears that integration on climate change issues has achieved most success, motivated both by its inherent need for interstate cooperation and the longer history of supranational authority in the area, which had been established through environmental policy.

Similar results were found by Wettestad et al. (2012) when analysing the 2009 energy and climate package, which saw significantly higher levels of integration achieved in the revision of the ETS, than it in the case of renewable energy and the internal electricity market. They explain this differentiated result as an outcome of MS perceptions that further supranational integration of the ETS would be less harmful to national interests, compared to the vertical integration that the Commission was seeking in the other legislative files (2012: 82). This represents an important conclusion, as a shared understanding appears to be emerging between EU policymakers on the importance of common European approaches for tackling climate change. Arguably, this could lead to a case of "entrapment", when actors find it challenging to argue against a particular policy because it would contradict pre-established norms (Skovgaard, 2013: 1142). This may be why, as explained in the final section of Chapter 8, the Commission has more recently pursued a far more climate-centric approach through its newer project – the European Green Deal.

However, some researchers have contested the idea of a relentless expansion of supranational authority over climate policy in the EU, especially given a potential reversal of post-Lisbon developments after the "renationalisation" of EU governance on renewable energy objectives (Solorio and Bocquillon, 2017, 34-36). According to such views, the new governance framework shows that even policymaking authority that had already been delegated to the EU-level through previous legislation can be contested by MS, which may lead to it being renegotiated and even "de-Europeanised" or "partially weakened" (Solorio and Jörgens, 2021: 69). Dupont (2020) claims to have found similar contestations from MS on energy efficiency. In this context, contestation can be either "sovereignty-based" when it is linked to subsidiarity, or "substance-based" when it concerns specific policy instruments or levels of ambition (Herranz-Surrallés et al., 2020: 1). Dupont argues that substance-based contestation has been more prevalent since the mid-2000s, compared to the period beforehand which predominantly showed instances of sovereignty-based contestation (2020: 95).

Indeed, in the case of NECPs, the Commission can only initiate infringement proceedings for partial or incorrect implementation, not for failure to meet the actual renewable or energy efficiency targets that have been assumed by MS (Bocquillon and Maltby, 2020: 49). This is why this new mechanism based on reporting and recommendations from the Commission has been labelled as an instrument of "harder soft governance" by some researchers (Schoenefeld and Jordan, 2020: 774), representative of a wider trend in European integration of "continuous blurring between hard and soft" governance (Graziano and Halperson, 2016: 5). On the surface-level, the new governance framework appears to soften the way renewable targets are implemented, as they are no longer binding at national level, regardless of the attempts of the Commission to introduce "harder elements" during the negotiations on the CEP, which would have given it a stronger influence on national energy mixes (Schoenefeld and Knodt, 2021: 49).

Nonetheless, even if this may be the case, the governance framework adopted with the CEP should not be portrayed as a reversal of integration, but rather as a new mode of EU coordination on climate objectives. Research on long-term trends confirms that when it comes to the governance of renewables targets, the Commission's role has been gradually strengthening relative to that of MS (Schoenefeld and Knodt, 2021: 60). The authority implications of the new governance framework may have been overstated and it is too early to assess whether this long-term trend has been reversed. The Commission has a long history of using non-binding reports and recommendations to influence EU policy through "soft steering" (Pollack, 2011: 98). The NECPs require more demanding and rigorous planning and reporting efforts from governments than it was the case in the past. It is true, however, that the Commission can no longer launch infringement procedures for noncompliance with renewable targets, as has been the case until this policy revision. Infringement procedures have historically been crucial drivers of integration in the energy area, especially on the internal energy market. However, the

credibility of this instrument may have already experienced a decline over the past two decades, as the CJEU has become more cautious of sanctioning MS on energy matters (Pollack, 2011: 100-101).

There have been indeed misconceptions in the past regarding the actual implementation prowess of "hard" forms of governance, such as the Community method. As explained by Dehousse, while EU law supersedes national legislation, the EU does not have any means to exert hierarchical authority on lower levels, as its coercive power is dependent on national authorities that enforce decisions (2016: 22). Recently there has been a noticeable trend towards the development of so-called softer governance tools, but this does not necessarily need to imply an erosion of EU influence over MS (Dehousse, 2016: 31). Instead, these modes of governance should be seen for what they are – softer from a legal perspective, less hierarchical, and more inclusive. The extent to which they are less effective remains to be proven. Instead, it could even be argued that such governance frameworks based on political negotiations between MS and the Commission could actually decrease the need for contestation of supranational authority and better enable implementation through more consensual types of policymaking. In addition, as explained in Chapter 3, EU climate objectives for the energy sector are pursued through two parallel instruments: renewable targets and the ETS. While changes have been made to the governance of renewable targets, the hard cap on GHG emissions of the ETS represents a guarantee of the long-term decarbonisation of the power sectors of all MS. With time, the less EUA certificates will be available, the more costly they will become, which will increasingly result in the replacement of fossil-fired power generation with predominantly renewable energy capacities. It is therefore important to not look at the governance framework for the Energy Union in isolation, but as part of the wider EU energy and climate policies, that have become increasingly focused on reaching net-zero GHG emissions by 2050.

7.5 Conclusion

This chapter discussed the results of this thesis, drawing conclusions regarding both the new intergovernmentalist theoretical framework and the broader context of EU energy and climate policy. It started by assessing the validity of each of the secondary and alternative hypotheses derived in Chapter 2, discussing the implications for the main hypotheses proposed by new intergovernmentalism.

The first hypothesis correctly indicates that deliberation and consensus-seeking have become the norm, but the implications of this phenomenon are overstated. Consensus was not reached on all files, particularly those in the ECG bundle, mostly as a result of a higher focus on interinstitutional negotiations between the Council and the EP, rather than among MS. Smaller countries used negative votes to manifest discontent in the most blatant cases of failed deliberation, while abstentions were also

used as sign of protest. Even in the instances when votes passed unanimously, this did not necessarily reflect consensus between MS, which was most clear on the NEMD files on which some countries, especially Germany, adopted aggressive inward-looking tactics for pursuing its own domestic economic interests.

The second hypothesis underestimates the role and activism of the Commission, especially on the ECG files. New intergovernmentalism's concept of "strategic advantage" was not particularly applicable, as, rather than a strategic entrepreneur, the Commission acted more like a "purposeful opportunist", making creative use of its powers. This was most evident when analysing the CEP as a whole, where the Commission has shown an ability to exploit the synergistic relationships between the different strands of EU energy policy, concentrating its efforts on securing its central role in the new governance framework for the climate objectives, while allowing MS to focus on issues of internal energy market and security of supply. Interestingly, the Commission appears to be interested in self-legitimisation in front of EU citizens, especially after the introduction of the Spitzenkandidaten procedure. Moreover, it also pushed for increased European coordination even when there was no scope for an expansion in its own powers.

The third hypothesis offers valuable insights regarding the role of de novo bodies in EU energy and climate policies. MS preferred transferring powers to new EU agencies instead of empowering the Commission in areas where they are more protective of their national authority, such as the internal energy market and security of supply. Rather than opposing their creation and empowerment, the Commission seems to have turned into a genuine driver of EU "agencification". It remains unclear, however, whether the Commission has adopted such an attitude as a strategy to gain influence over policy areas in which MS are particularly resistant towards its further empowerment. Lastly, this section has shown that even when strong intergovernmental control mechanisms are present and national delegates dominate the management boards of EU agencies, this may not automatically imply that they have direct and full control over their activities.

The assessment of the fourth hypothesis has revealed that domestic preferences are not the "stand-alone" inputs for European integration. While the European Council and Council play important roles, the Commission activism and the ambitiousness of the EP also had significant impact especially on ECG files. The EP has confirmed its status of a veritable climate champion, enabled by its progressive rapporteurs. Interestingly, however, MEPs voted on national lines on NEMD files, better reflecting national preferences on these issues. These complex findings imply that new intergovernmentalism needs to better account for the role of the EP. The same can be said for other non-state actors, such as industrial associations, environmental NGOs, and transnational networks, which all had impactful, albeit not central, influence on policy outcomes.

The analysis of this hypothesis has also revealed some valuable insights regarding the mechanisms for domestic preference formation. The empirical evidence seems to have pointed to different mechanisms determining preference formation between ECG and NEMD files. However, this section has shown that economic interests and legitimacy concerns are deeply intertwined in the preferences that MS have regarding the evolution of specific policy areas. Importantly, domestic preferences appear to not be merely based on objective evaluations at national level, but rather on the subjective interpretations of national representatives. These delegates may perceive EU cooperation as more important on climate change mitigation efforts, while on market design and security of supply they may perceive national control as more desirable.

The fifth and sixth hypotheses were not subjected to the same rigorous empirical testing, for reasons outlined in Chapter 2. A brief assessment has shown that the distinction between high and low politics may indeed not be particularly useful, as it is increasingly difficult to tell what constitutes an issue of heightened national concern and what is considered a purely technocratic affair which can be left to expert decision-making. Meanwhile, it remains unclear if the EU is in a constant state of disequilibrium and what the implications of this observation are for EU energy and climate policy.

The chapter then looked at the overall implications of the findings of this thesis for new intergovernmentalism. Similar to the conclusions of other research exploring the relevance of this theoretical framework for EU energy policy developments, the analysis conducted here has shown that new intergovernmentalism indeed provides a set of useful concepts. However, implementing the theoretical revisions necessary for offering more accurate explanations of European integration in the energy and climate area would ultimately jeopardise its internal consistency and state-centric focus. Therefore, this chapter argued against the utility of attempts to relaunch theory crafting on European integration, recommending instead a focus on narrower, yet more accurate explanations of recent EU developments, including by using some of the key elements of new intergovernmentalism.

The final section of the chapter offered some reflections on the wider implications of the empirical evidence presented in this thesis for EU energy and climate policy more generally. While the Energy Union did indeed represent a conscious attempt to build a common EU energy policy, it has not successfully managed to overcome the fragmentation caused by the decades-long separate development of policies on the internal energy market, security of supply, and climate change. The section has also argued that, contrary to recent observations in the academic literature regarding a potential "renationalisation" of the governance framework for renewable target after the adoption of the CEP, the NECP process represents an unprecedentedly complex planning and reporting system. Even if it is based on softer mechanisms of political negotiations between the Commission and national governments than the previous system based on legal compliance, there are few reasons to believe that

the new governance framework will be less effective, especially when viewed as only a part of the wider toolkit of EU energy and climate policy.

8. Conclusion and way forward

This thesis contributes to the growing body of research on EU energy and climate policy and to the academic literature on European integration, by engaging in an in-depth analysis of the proposal, negotiations, adoption, and implications of the Clean Energy for all Europeans Package. The empirical analysis has revealed unique insights about EU inter-institutional dynamics in all three main pillars of EU energy policy: the internal energy market, security of supply, and climate change. Following the extensive assessment of the main hypotheses of new intergovernmentalism and the discussion on the nature of the new governance framework for coordinating national climate efforts through NECPs, this chapter begins by offering succinct answers to the main research questions outlined in the Introduction, summing up the findings of the thesis. This chapter then highlights some limitations of the analysis and finally suggest potential avenues for future research.

8.1 Summary of answers to the main research questions

Q1: How has the Clean Energy for all Europeans Package changed the governance of EU energy and climate policy?

At the time of its introduction, the Energy Union represented the culmination of decades-long efforts to establish a common EU energy policy. The CEP was designed as the main implementation tool of this vision, by making revisions to directives and regulations related to all three pillars of EU energy policy. However, the package could not overcome the historic fragmentation of the field, which lead to differentiated negotiations results. The files related to energy and climate governance increased the ambition level for GHG emissions reduction, renewable energy, and energy efficiency by 2030. They also introduced a new governance framework for implementing these targets, which no longer relies on legally binding renewable targets at national level, but on a mechanism based on planning and reporting coordinated by the Commission. Meanwhile, the files related to the electricity market design and risk preparedness saw more modest changes compared to the status quo. Increased cooperation between MS will be largely ensured through the work of multiple specialised agencies, but governments have retained a strong grip over the functioning of their domestic electricity markets.

Q1a: What were the main drivers of these changes?

The European Council generated the initial political momentum for these changes, especially for revising the governance framework for renewable targets. The inputs and actions of the Commission and the EP have successfully increased the overall level of climate ambition of the package, while the limited redesign of electricity markets was mainly driven by the deliberations and negotiations between MS in the Council. Other non-state actors also provided meaningful input to these EU-level discussions. Ultimately, while the empirical evidence suggests a strong intergovernmental control over policy and governance outcomes, especially over issues perceived to be of strategic domestic importance, can only partly explain the changes brough by the CEP. The strategies and preferences of EU institutions such as the Commission and the EP also had a profound impact on the final outcomes.

Q1b: How have these changes affected the inter-institutional balance at the EU-level?

The new governance framework for the Energy Union eliminated the legally binding obligations imposed on MS for meeting their renewable targets, which could suggest a decline in supranational authority in the area. However, this is not necessarily the case, given that the NECP process relies on unprecedented levels of planning and reporting on the progress achieved by governments regarding the EU climate objectives, giving the Commission a central coordination role within this framework. This more political style of implementation may actually help decrease the level of contestation by MS of EU competences on climate change mitigation in the future. When it comes to the electricity market design, the MS have limited any further expansion in the Commission's authority, but they have increased the level of interstate coordination, which will be implemented through multiple EU agencies and institutions in which governments are indirectly represented. While the EP has limited day-to-day input into these processes, it established itself as a veritable climate champion and will likely represent the main driver of increased climate ambitions in the future.

Q2: Can the theory of new intergovernmentalism explain the policy and institutional outcomes of the Clean Energy for all Europeans Package?

New intergovernmentalism offered multiple valuable insights for understanding recent developments in EU energy and climate policy. However, it ultimately failed to provide a sufficiently comprehensive and accurate account of the policy and institutional outcomes of the CEP. Unaltered and by itself, new intergovernmentalism cannot fully explain the empirical developments analysed in this thesis.

Q2a: Are alternative explanations more suitable for explaining these outcomes?

The observations from competing theoretical frameworks that were used for developing alternative hypotheses to those of new intergovernmentalism did improve the overall understanding of the changes brought by the CEP. They contributed both to further refining some key concepts of new intergovernmentalism, including on consensus-seeking among MS, the management of de novo bodies, and the mechanisms of domestic preference formation, as well as to providing more accurate interpretations of the roles of the Commission, the EP, and other non-state actors. However, given the fragmented nature of EU energy policy, these alternative explanations similarly failed to offer universally valid explanations for all the outcomes of the CEP.

Q2b: Can new intergovernmentalism be revised to increase its explanatory power, without fundamentally affecting its inner coherence?

While the potential of some theoretical revisions for further refining the explanations offered by new intergovernmentalism has been explored in this thesis, there are a number of major shortcomings the theory that cannot be addressed without affecting its overall coherence and internal consistency, especially regarding its state-centric understanding of EU affairs. Therefore, this thesis argues against the utility of attempts to relaunch theory crafting on European integration, recommending instead a focus on narrower, yet more accurate explanations of recent EU developments, which could be partly derived from key insights of new intergovernmentalism.

8.2 Limitations of the analysis

The main methodological and research design limitations of this thesis have already been outlined in section 1.5. Given the relatively short timeframe and the intensive case study focus of the analysis, it is difficult to make generalisations based on the findings of this thesis. While the topics analysed here covered all three areas of EU energy policy, by focusing mostly on the CEP and, to a lesser extent, the Energy Union, some simultaneous developments have not been covered by the analysis. Most importantly, over the same timeframe the ETS Directive, the Effort Sharing Regulation, the LULUCF Regulation and the Gas Supply Regulation have also been revised (see Herweg, 2016; Austvik, 2016; Moore and Jordan, 2020). They represent crucial elements of the EU's climate and energy security policies, without which it is difficult to obtain a fully comprehensive understanding of the recent

developments in EU energy policy. However, the large volume of legislative files contained in the CEP did not allow for an extended focus on other files, given the space constraints of this thesis.

In addition, this thesis also did not cover the international dimension of EU energy and climate policy, which has gained prominence in recent years. The Commission assumed a global leadership role for itself and the EU as a whole in the global efforts for climate change mitigation, especially after the United States decreased its international presence on climate issues during Donald Trump's presidency. Arguably, this role was assumed by the EU as far back as 2001, when the United States decided to not participate in the Kyoto Protocol. EU institutions have been in the meantime engaging in "energy diplomacy" (Herranz-Surrallés, 2016: 1386), making creative use of the EU diplomatic services to implement the EU Climate Diplomacy Action Plan (Biedenkopf and Petri, 2019). The EU's leadership position is now recognised in the literature, especially after its role in the in ground-breaking agreements such as COP21 in 2015 in Paris (Parker et al., 2017). The EU has also witnessed relative success in expanding the reach of its energy acquis into its neighbourhood, through the Energy Community (Schulze, 2015). This international dimension is an important aspect of EU energy and climate policy and the role played by the Commission, aspects largely missed by this analysis.

Another potential shortcoming is linked to the fact that EU institutions have often been treated as monoliths, especially the Commission, as this thesis has only offered nuance on internal divisions when they have been most obvious. Looking at the Commission as a coherent actor has been shown to be problematic in the past (Van Ballaert, 2015). Previous research on the Energy Union also mentioned in this thesis has revealed the internal divisions both between DG ENER and DG CLIMA and between Commissioners, conflicts which can shape the behaviour of the Commission (Bürgin, 2015: 701). The Commission's Secretariat General can also have divergent views from that of DGs (Hustedt and Seyfried, 2018; Bürgin, 2016). Because of such internal fragmentation, but also because of the institutional ambiguity that the Commission has faced for many decades in the energy area, it is not surprising that it has not always acted as a consistent and coherent actor (Herweg, 2015: 94). By not looking into the internal politics of the Commission more carefully, this thesis misses on some important dynamics relevant for explaining its behaviour.

As this thesis has also sought to draw more general conclusions regarding European integration theories, it is important to mention the limitations that sector-specific research designs can have for such an endeavour. The exclusive sectoral focus on energy may hide a certain "supranationalist" bias, as it focuses on an area of EU policy that is already more-or-less integrated (Schmidt, 1996: 9). Nonetheless, this is not as big of an issue in the case of new intergovernmentalism, which specifically claims that it refers not just high-level politics, but also to the day-to-day policymaking in the EU (Bickerton et al., 2015a). Still, a cross-sectoral study, or the additional analysis of the legislative files mentioned in the

beginning of this section, could have perhaps led to more conclusive and generalisable evidence on the merits of new intergovernmentalism.

8.3 Potential avenues for future research

Since the adoption of the CEP, there have been some rather spectacular evolutions in the EU's energy and climate policies. This section gives a brief overview of these developments, suggesting some potential avenues of future research that can build up on the findings of this thesis. There are three main developments that need to be discussed, each linked to a different event: the European Green Deal, the post-COVID 19 recovery efforts, and the REPowerEU plan.

The European Green Deal has been introduced shortly after the appointment of the new president of the Commission, Ursula von der Leyen. While the importance of the EP elections has been of somewhat lesser importance than it had been the case for Jean-Claude Juncker, as none of the Spitzenkandidaten were appointed by the European Council as president of the Commission, the European Green Deal emerged in a similar fashion as the Energy Union. Importantly, this new project does not replace the Energy Union, but rather it builds on its achievements, while also covering a wider range of economic sectors, such as agriculture, transport, and buildings, and having a more overtly climate focus. The first order to business after the publication of the Commission's European Green Deal strategy (European Commission, 2020a) was the proposal, negotiation, and relatively quick adoption of the EU Climate "law" (2020/0036(COD)). This regulation enshrines the collective EU objective of reaching net-zero GHG emissions by mid-century into legislation. Its effective impact has been that of a complete turnover of the most important economic sectors by a climate agenda. Interestingly for this thesis, the Climate "law" has extended the use of NECPs and the governance process established through the CEP to the implementation of the new climate targets for 2050. This serves as evidence of the fact that this governance framework is seen as both effective and acceptable by all EU actors. To reflect this 2050 target, the regulation also introduced an EU-level target of -55% GHG emissions by 2030.

This new long-term climate objective has consequently required already re-opening all ECG files that had only been closed in 2019, in order to bring upwards the targets for renewable energy and energy efficiency. The Commission proposed the Fit for 55 package (European Commission, 2021a), which, interestingly, bundled together RED II, EED, and EPBD with the revisions of the ETS, ESR, and LULUCF, as well as the energy taxation directive, the CO_2 emissions standards for vehicles, the social climate fund, and the carbon border adjustment mechanism. Crucially, the Commission has also unilaterally proposed the expansion of the ETS to also cover the transport and buildings sector (referred to as ETS II), much to the disliking of MS.

This therefore requires reflection on the difference in the packaging strategy used by the Commission. The design of the Fit for 55 package reflects the centrality of climate change issues during its negotiations. Learning from past experiences, the Commission may have chosen a stronger focus on climate policy given that it has been the area of EU energy policy where it has been the most successful at increasing the level of supranational authority. The framing of the package could even suggest a new era in which climate policies take precedent over energy policies. The reason why the Commission has used such an approach may be based on the realisation that environmental policy relies more on a "command-and-control" logic, while energy policy is usually governed through "softer" means (Tosun and Solorio, 2011: 1). Moreover, the package strategy could have also represented an insurance measure by the Commission, as every climate file is backed by an energy file, which have been assigned to different committees in both the EP and the Council. Multiple such pairings of files cover the same economic area – RED and ETS, EPBD and ESR/ETS II, CO_2 emissions standards and ESR/ETS II. Similar to the CEP, the Commission included social provisions, proposing the establishment of the social climate fund (European Commission, 2021b) for overcoming the distributive impacts of carbon pricing on vulnerable groups, to be funded from revenues collected from the expansion of the ETS.

Member States will also have to use their planned 2023 NECP revision to integrate these new more ambitious targets. This may be proof of incremental changes that build up on what appeared at the time as less ambitious policies when they were adopted as part of the CEP. The climate takeover has also been evident in a parallel package proposed by the Commission – the hydrogen and decarbonised gas market package (European Commission, 2021c). While it is meant to mirror many of the changes done in the electricity market design through the CEP, the package was proposed separately and has an overtly climate focus, evident in its very name. Further research could investigate the different strategies used by the Commission for the CEP and Fit for 55 packages, tactics which have perhaps been informed by a form of institutional learning from past experiences.

What is certain, however, is the visibly more decisive role of the Commission this time around, which has shown a greater capacity for initiative which it lacked a few years ago. This was also observed through the delegated acts it adopted on the Taxonomy of Sustainable Finance (European Commission, 2022a) and RFNBO standards (European Commission, 2022b), which set the criteria that hydrogen-based products need to meet to be considered renewable. A very interesting phenomenon could occur in the case of these two delegated acts, as numerous MEPs have expressed their discontent regarding the climate credentials of these acts and may attempt to strike them down. The Council and EP have the ability to override delegated acts by the Commission (Kaeding and Stack, 2015). This is a very interesting case of EP mobilisation that merits further study. Another interesting event that could be analysed in comparison to the CEP is the significantly wider division within the EP during the negotiations of the Fit for 55. Research by Dupont and Torney suggests that the European Green Deal

may also be an interesting case study for EU governance in "turbulent times" (2021), which could be linked to the unanswered questions of this thesis regarding the 6th hypothesis of new intergovernmentalism.

The second major event is related to the economic recovery following the COVID-19 pandemic. As part of these efforts, the Commission proposed an economic recovery package entitled Next Generation EU (European Commission, 2022b). Its most important instrument is the Recovery and Resilience Facility (European Commission, 2020b), will provide over €672 billion in loans and grants to MS, which are separate from the EU budget administrated through the Multiannual Financial Framework. While this event represents a very interesting development in itself for European integration, given that it generated funds through common Commission-issued bonds for the first time in history and it established a parallel monitoring framework that is not covered by EU treaties, it also has some big consequences for EU energy and climate policy. MS gain access to these funds by elaborating National Recovery and Resilience Plans (NRRP), which outline a combination of legislative and regulatory reforms and investments to be pursued. As at least 37% of these funds must be allocated to climate efforts and they need to be spent before 2026. This means that they will effectively provide much of the financial firepower for the implementation of the European Green Deal. The resemblances between NRRPs and NECPs are striking, as the former's design may have been influenced by the Commission's experience with the governance framework for the Energy Union. The negotiations of the NRRPs followed similar steps as that of NECPs and they similarly place the Commission as their political centrepiece. Just as for NECPs, the Commission can only issue recommendations, while it is the MS in the European Council and the Council that approve or reject plans and funding requests. These developments could also constitute an insightful case study into policymaking during crises and the unforeseen windows of opportunity that emerge, dynamics which could not be researched as part of this thesis. Research has already been published on the link between the post-COVID 19 recovery efforts and EU climate action (Quitzow, 2022; Siddi 2021; Dobbs et al., 2021; Gheueuns and Oberthur, 2021; Rosamond and Dupont, 2021).

Lastly, a third event that may also open new avenues for analysing the impact of crises on EU energy and climate policy is the Russian invasion of Ukraine, which has led to an unprecedented crisis of energy prices. As the Kremlin appears to have instrumentalised fossil fuel exports as economic weapons, more MS have started exploring options for eliminating their dependence on Russian imports. REPowerEU (European Commission, 2022d) represents the Commission's proposal for this endeavour, which offers a reinterpretation of how to achieve security of supply and reduce energy prices by accelerating the climate transition. The Commission's plan would see the gradual phaseout of hydrocarbon imports from the Russian Federation by frontloading investments and measures from the Fit for 55 package for increasing renewable energy capacities, achieving higher energy savings, and

electrifying the buildings and the transport sector. This is not the first time when the Commission has pushed alternative understandings for how to achieve energy security, after having done this more than a decade ago through the instrumentalisation of energy markets liberalisation and competition as a means to increase system resilience and avoid risks of disruptions in deliveries (Proedrou, 2012; Judge and Maltby, 2017). Therefore, this would also make a very interesting case study for the flexible strategies that the Commission adopts for pursuing its agenda on EU energy and climate policy. It may also signal a better alignment between the EU's energy security and climate objectives (Christou, 2021).

Appendix: List of interviews

Interview 1 - Head of Unit, Renewable Energy Unit, DG ENER, European Commission, Brussels, October 2018

Interview 2 - Energy Journalist, Contexte, Brussels, October 2018

Interview 3 - Senior Policy Analyst, E3G, Brussels, October 2018

Interview 4 - Senior Policy Officer, Governance Unit, DG ENER, European Commission, Brussels, October 2018

Interview 5 - Deputy Head of Unit, Energy Efficiency Unit, DG ENER, European Commission, Brussels, October 2018

Interview 6 - Policy Officer, Energy Efficiency Unit, DG ENER, European Commission, Brussels, October 2018

Interview 7 - Senior Analyst, European Commission, European Political Strategy Centre, Brussels, November 2018

Interview 8 - Assistant, Member of the European Parliament, S&D, Brussels, November 2018

Interview 9 - Administrator, European Economic and Social Committee, Brussels, November 2018

Interview 10 - Energy Attaché, Permanent Representation of Slovenia to the European Union, Brussels, November 2018

Interview 11 - Policy Advisor, European Renewable Energy Federation, Brussels, November 2018

Interview 12 - Senior Economic Officer, The European Consumer Organisation (BEUC), Brussels, November 2018

Interview 13 - Head of Office, Member of the European Parliament, Greens, Brussels, November 2018

Interview 14 - Member of the European Parliament, ALDE, Brussels, November 2018

Interview 15 - Deputy Head of Unit, DG CLIMA, European Commission, Brussels, December 2018

Interview 16 - Assistant, Member of the European Parliament, ALDE, Brussels, December 2018

Interview 17 - Policy Officer, Security of Supply Unit, DG ENER, European Commission, Brussels, December 2018

Interview 18 - Senior Assistant, Member of the European Parliament, Greens, Brussels, January 2019

Interview 19 - Assistant, Member of the European Parliament, S&D, Brussels, January 2019

Interview 20 - Senior Policy Analyst, Renewable Energy, Eurelectric, Brussels, January 2019

Interview 21 - Policy Analyst, Wholesale, Eurelectric, Brussels, January 2019

Interview 22 - Policy Analyst, DSOs and Retail, Eurelectric, Brussels, January 2019

Interview 23 - Director, ACER, Brussels, January 2019

Interview 24 - Policy Officer, Renewable Energy, Solar Power Europe, Brussels, February 2019

Interview 25 - Policy Officer, Energy Efficiency, Solar Power Europe, Brussels, February 2019

Interview 26 - Energy Attaché, Permanent Representation of Denmark to the European Union, Brussels, February 2019

Interview 27 - Transport, Telecommunications and Energy, General Secretariat, Council of the EU, Brussels, February 2019

Interview 28 - Transport, Telecommunications and Energy, General Secretariat, Council of the EU, Brussels, February 2019

Interview 29 - Transport, Telecommunications and Energy, General Secretariat, Council of the EU, Brussels, February 2019

Interview 30 - Transport, Telecommunications and Energy, General Secretariat, Council of the EU, Brussels, February 2019

Interview 31 - Transport, Telecommunications and Energy, General Secretariat, Council of the EU, Brussels, February 2019

Interview 32 - Head of Unit for the Internal Market, DG ENER, European Commission, Brussels, February 2019

Interview 33 - Senior Policy Officer, WWF Europe, Brussels, February 2019

Interview 34 - Member of the European Parliament, EPP, Brussels, February 2019

Interview 35 - Director, ENTSO-E, Brussels, March 2019

List of Acronyms

ACER - Agency for the Cooperation of Energy Regulators

ALDE - Alliance of Liberals and Democrats for Europe

CEE - Central and Eastern Europe

CEP - Clean Energy for All Europeans Package

CEPS – Centre for European Policy Studies

CEPCEO - Association of the Coal Producers of the European Community

CJEU - Court of Justice of the European Union

CO_2 - Carbon Dioxide

COP - Conference of the Parties

COVID-19 – Coronavirus disease 19

DG - Directorate-General

DG CLIMA - Directorate-General Climate Action

DG COMP - Directorate-General Competition

DG ENER - Directorate-General Energy

DG ENV - Directorate-General Environment

DG MOVE - Directorate-General Mobility and Transport

DG TREN - Directorate-General Transport and Energy

DSO - Distribution System Operator

EC - European Community

ECG - Energy and Climate Governance

ECR - European Conservatives and Reformists

ECSC - European Coal and Steel Community

EDF - Electricité de France

EEC - European Economic Community

EED - Energy Efficiency Directive

EFA - European Free Alliance

ELMPS - Economics, Law, Management, Politics and Sociology

EMEA - European Medicines Agency

EnBW - Energie Baden-Württemberg

ENTSO-E - European Network of Transmission System Operators for Electricity

ENTSO-G - European Network of Transmission System Operators for Gas

ENVI - Committee on Environment, Public Health and Food Safety

EP - European Parliament

EPBD - Energy Performance in Buildings Directive

EPP - European People's Party

EPS - Emission Performance Standard

EPSC - European Political Strategy Centre

ERGEG - European Regulators' Group for Electricity and Gas

ESR - Effort Sharing Regulation

ETS - Emissions Trading Scheme

EU - European Union

EUA - European Union Allowance

Euratom - European Atomic Energy Community

GHG - Greenhouse Gases

GOs - Guarantees of Origin

GUE - The Left in the European Parliament

IEA - International Energy Agency

IRENA - International Renewable Energy Agency

ITO - Independent Transmission Operator

ITRE - Committee on Industry, Research and Energy

MEPs - Members of the European Parliament

MS - Member States

NECP - National Energy and Climate Plans

NEMD - New Electricity Market Design

NGO - Non-governmental Organisation

NRA - National Regulatory Agency

NRRP - National Recovery and Resilience Plan

nZEB - Nearly Zero-Energy Buildings

OECD - Organisation of Economic Coordination and Development

OMC - Open Method of Coordination

OPEC - Organisation of Petroleum Exporting Countries

OU - Ownership Unbundling

QMV - Quality Majority Voting

RCC - Regional Cooperation Council

RED - Renewable Energy Directive

RFNBOs - Renewable Fuels of Non-Biological Origin

ROCs - Regional Operational Centres

RSCIs - Regional Security Coordination Initiatives

RSCs - Regional Security Coordinators

S&D - Socialists and Democrats

SCI - Security Coordination Initiative

SEA - Single European Act

TENs -Trans-European Networks

TEU - Treaty on European Union

TFEU - Treaty on the Functioning of the European Union

TSO - Transmission System Operator

UK - United Kingdom

UNFCCC - United Nations Framework Convention on Climate Change

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