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## EU External Energy Policy in Natural Gas: A Case of Neofunctionalist Integration?



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## **EU External Energy Policy in Natural Gas: A Case of Neofunctionalist Integration?**

### ***Research question***

Historically, energy security policy has been the experimental laboratory of Neofunctionalism. As a theory which was invented by Ernst Bernard Haas, it explains the expansive spillover-logic behind the post-war creation of the European Coal and Steel Community (ECSC) and the European Atomic Energy Community (Euratom) as peace-preserving institutions, causing functional pressures for the integration of related economic sectors and the incremental pooling of political resources in a ‘high authority’. The mentioned energy institutions were established as tools, with an underlying security rationale, for the integration of Germany to prevent its unilateral military resurgence as a threat to internal peace in Europe.

The target of today’s EU energy security policies is mainly Russia. As a consequence of Russia’s de facto autocracy, political and economic integration goals are much harder to attain. Furthermore, attitudes in EU member states vary between seeking interdependence with the Kremlin and independence from it. Since the gas supply disruptions in 2006 and 2009 (‘gas crises’) and the annexation of Crimea in 2014, dependence on Russia is increasingly viewed as a vulnerability. The Energy Union Strategy, which has been adopted by EU institutions to ensure mutual solidarity in the event of a supply shortfall, is shaped by this shift in threat perceptions. It takes account of the political leverage Russia possesses as a result of supplying more than one third of total EU gas imports via its state-

controlled export monopoly Gazprom (37.5 per cent in 2015<sup>1</sup>). However, the extent to which external source diversification away from Russia should take place is a recurrently disputed theme between national capitals. It has gained center stage with the case of Nord Stream 2, the Baltic Sea pipeline between Russia and Germany.

The fact that external political risks to EU energy security have moved to the top of the policy agenda puts a strong question mark behind the continued validity of the neofunctionalist spillover-concept for integration; which was developed to explain how the EU mitigated internal threats. Against the backdrop of constraining factors to the validity of neofunctionalist theory such as prevailing sovereignty perceptions, shifting national security concerns, the following research question arises: *Do EU natural gas security policies follow the conceptual expectations of neofunctionalist integration?*

This paper starts from the hypothesis that the EU Commission, as the key promoting actor of a common external energy policy, makes use of ‘spillover’-strategies and related approaches set out by neofunctionalist theory (see Table 1). In order to single out the role of interest-driven actors in spillover or spillback-processes, section 1 operationalizes the concept into the components ‘functional spillover’, ‘political spillover’ and ‘institutional spillover’. Drawing upon this categorization, the analysis of the dependent parameter – the degree of European integration – will be conducted from sections 2 to 4.

Specifically, section 2 places its emphasis on the functional pressures of gas policy harmonization member states have faced as a result from the supply /transit crises in 2006 and 2009. Section 3 (‘political spillovers’) examines how political actors in natural gas security learn from existing integration dynamics (or hinder them) and transfer their loyalties to a ‘high authority’, whereas section 4 (‘institutional spillover’) tries to identify

1 See Eurostat (2017) “Shedding light on energy in the EU. A guided tour of energy statistics”, retrieved from <http://ec.europa.eu/eurostat/cache/infographs/energy/bloc-2c.html> (last accessed: 26th of April 2017).

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whether and how spillover-processes within the EU lead to the creation of new institutions within EU structures and beyond. This study shall culminate in the conclusion put forward in section 5 to shed light on the extent to which EU natural gas policies follow neofunctionalist prescriptions.

A revisit of Neofunctionalism in the given analytical context is particularly warranted against the backdrop of disintegration in times of Brexit and right-wing autocratic populism which could well spread to the field of energy security. In this context, this paper will take into account recent theoretical reasoning in political science which touches upon the necessity to adapt integration theories to possible scenarios of disintegration. Amongst these, Ben Rosamond and Philippe C. Schmitter, as an early advocate of Neofunctionalism, stand out as the most prominent voices.

### **1. Neofunctionalism and the concept of ‘spillover’**

#### *a) Functional spillover*

A central precondition for the development of functional pressures is the interdependence of one policy field with a neighboring sector. As the pioneer of Neofunctionalism, German-American scholar Ernst Bernard Haas, observed in his landmark study “The Uniting of Europe” in 1958 individual sectors and issues tend to be so interdependent in modern polities and economies that it is difficult to isolate them from the rest.<sup>2</sup> Originally, Neofunctionalism assumed that ‘spillovers’ occur “[...]quasi-automatically as demands for additional central services intensified[...].”<sup>3</sup> when the supranational authority was not sufficiently endowed with powers to meet the rising demands of member states and interest groups. Haas himself conceded in 1975 that his initial assumption of automaticity in the process of integration had been unrealistic. This needed correction has however not rendered Neofunctionalism obsolete as

2 See Haas, Ernst Bernard (1958) *The Uniting of Europe. Political, Social and Economic Forces, 1950-1957*, Stanford University Press, Stanford, p. 297.

3 *Ibid.* (2004) *ibid.*, University of Notre Dame Press, Notre Dame, New edition, p. xv.

Haas suspected – a statement he revoked in his final book published after his passing in 2004.<sup>4</sup> Bidding farewell indeed turned out to be premature as the concept of Neofunctionalism was repeatedly adapted in times of bigger and lesser acceptance of European integration. The main evolution was to introduce *the concept of ‘agency’* in which various actors compete for the functional distribution of scarce public goods provided by a regional institution.<sup>5</sup> With the incorporation of this theoretical update, Neofunctionalism no longer assumed that policymakers and interest groups would necessarily devolve more powers to the supranational stage in a linear, progressive way. As Ben Rosamond asserts for the evolution of research in Neofunctionalism, a “retreat from functional automaticity” has come about.<sup>6</sup> Neofunctionalism was thus able to explain deviating outcomes of intergovernmental bargaining, sometimes culminating in nationalism (e.g. the ‘empty chair crisis’ caused by French President Charles de Gaulle). To put it simply, functional thinking is only as strong as it is perceived by the relevant actors.<sup>7</sup>

Furthermore, unforeseen external events can serve as *exogenous shocks*, having a mixed impact on the pressures member states are facing. As one of the implicit hypotheses of Neofunctionalism, these type of shocks may – according to Schmitter – present a source of internal conflict within a transnational regional organization as they do not necessarily possess the cyclical qualities known from endogenous ones.<sup>8</sup>

4 See *ibid.*

5 See Schmitter, Philippe C. (2015) ”Neo-Functionalism as a Theory of Disintegration”, Paper prepared for ‘European Disintegration – A Blind Spot of Integration Theory?’ 22nd CES Conference, Paris July 8-10, 2015, p. 2, retrieved from <http://www.eui.eu/Documents/DepartmentsCentres/SPS/Profiles/Schmitter/Neo-F-Disintegration.final.pdf> (last accessed: 26th of April 2017).

6 See Rosamond, Ben (2000) *Theories of European Integration*, The European Union Series, Palgrave, London, p. 63.

7 See Niemann, Arne/ Ioannou, Demosthenes, “European economic integration in times of crisis: a case of neofunctionalism?”, in: *Journal of European Public Policy*, Vol. 22 (2015) Iss. 2, pp. 196-218, 201.

8 See Schmitter (2015), p. 9.

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### *b) Political spillover*

The growth of authority at the supranational level occurs as a long-term consequence of incremental economic integration. In this understanding political spillover and integration thus take place as an inevitable side-effect.<sup>9</sup> However purposeful, interest-driven institutional actors enter the game and act as political sponsors of integration. According to Joseph Nye, policymakers who internalized the logic of ‘spillover’ have likely discovered “the inherent linkage of tasks”<sup>10</sup>. National and regional elites come to realize that problems of paramount interest cannot be effectively tackled at the domestic level only.<sup>11</sup> As a consequence, benefits in one policy sector ‘a’ can only be reaped and retained when linking it to thematically adjacent ‘sectors b’ and ‘c’. This should trigger *a learning process* which in Haas’ thinking will ultimately lead elites “to shift their loyalties, expectations and political activities toward a new center”<sup>12</sup>, for example a European high authority. More recent works on the neofunctionalist theory, as put forward by Ben Rosamond, tend to agree that the process of loyalty transference is crucial for understanding the propositions made by Haas.<sup>13</sup> Haas himself called for a careful look on the nature of the loyalty held by actors. If governmental decision-makers or national interest groups block a specific integrative step in the short-term, a permanent realignment of political loyalties to a supranational center could still happen under the condition that actors hold *long-range expectations* (e.g. business opportunities or political gains) with a pivot to ‘Europe’.<sup>14</sup>

However, this process may come to a halt, possibly increasing the potential for conflict on the path to integration, if the aims of political and non-governmental elites diverge.<sup>15</sup> To counter or circumvent resistance to integration, like-minded actors can employ a number of different strategies

9 See Rosamond (2000), p. 52.

10 Nye, Joseph Samuel, “Comparing Common Markets: A Revised Neo-Functionalist Model”, in: *International Organization* Vol. 24 (1970) Iss. 4, pp. 796-835. p. 804.

11 See Nieman / Ioannou (2015), p. 6.

12 Haas(2004), p. 16.

13 Rosamond (2000), p. 65.

14 See Haas (2004), p. 293.

15 See Rosamond (2000), p. 67.

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for creating functional pressures as Philippe C. Schmitter – an early proponent of Neofunctionalism – has set out as displayed in table 1:<sup>16</sup>

Schmitter deserves credit for the fact that with this typology employed Neofunctionalism can encompass policies which go beyond the ‘spillover-logic’. These strategies are not necessarily mutually exclusive but rather complementary. Most importantly, they may serve to promote goals in integration even if they imply an apparent backtracking on pro-integration commitments.

<i>Strategy</i>	<i>Definition</i>
Spill-over	Regional processes dispose national actors to resolve their inevitable dissatisfactions by increasing both the level and the scope of common institutions.
Spill-around	The proliferation of functionally specialized, independent, but strictly intergovernmental organizations.
Institutional build-up	Agree to increase the decisional autonomy or capacity of joint institutions, but deny them entrance into new issue areas.
Retrench	Increase the level of joint deliberation, but withdraw the institutions.
Muddle-about	Let the regional bureaucrats debate. Suggest and expostulate on a variety of issues, but decrease their actual capacity to allocate values.
(Disintegrative) spill-back	Retreat on level and scope of authority, perhaps returning to the status quo prior to initiation of integration.
Encapsulate	Respond to crisis by marginal modifications.

Table 1: Own compilation of actor strategies; sources: Philippe Schmitter (2003, see fn. 17) and Ben Rosamond (2000, see fn.7).

16 Schmitter, Philippe C. (2003) "Neo-Neo-Functionalism", in: Wiener, Antje and Diez, Thomas (eds.) – European Integration Theory , Oxford University Press, Oxford, retrieved from <http://www.eui.eu/Documents/DepartmentsCentres/SPS/Profiles/Schmitter/NeoNeoFunctionalismRev.pdf> (last accessed 31st of March 2017).

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### c) *Institutional spillover*

In terms of explaining the creation of new institutions, Neofunctionalism borrows its logic from David Mitrany's classic Functionalism to the extent that the institutional *form of policy-making follows its function*. Through the lenses of Neofunctionalism, institutional build-up can be seen as a product of increased complex interdependencies causing functional pressures for policymakers to act. Supranational institutions develop a life of their own in order to secure the benefits they take from the integration process. They can be constrained by those who build them, not controlled in their entirety.<sup>17</sup> This makes them capable of promoting agreements which go beyond the lowest common denominator between nation states. Beyond this, trans-national regional organizations may take the European Union both as a conceptual model and a normative engine. The EU often attempts to proliferate the building of new institutions to expand its own values and practices.<sup>18</sup>

## **2. *Functional Spillover and the Gas Crises in 2006/2009***

Unfortunately, neofunctionalist literature only offers few insights as to how exogenous shocks effect EU integration, while endogenous crises have been widely theorized. As a notable exception, Philippe C. Schmitter argues that in contrast to the usual cyclical qualities of endogenous shocks, exogenous ones – in the neofunctionalist logic – are likely to have a differential impact upon member states. He finds their long-term effect to be conditional on the institutional capacity of the trans-national regional organization (TRO), for instance the European Commission.<sup>19</sup> Complicating matters further, member states and their pertinent TRO might be dependent on the cooperative behavior of a third country for deescalating a disturbance.<sup>20</sup> The gas crises of 2006 and 2009 have attested to the relevance of including the aspect of 'exogenous shocks' to

17 See Nieman / Ioannou (2015), p. 6.

18 See Kühnhardt, Ludger (2010) *Region-Building. Vol. I: The Global Proliferation of Regional Integration*, Berghahn Books, New York/Oxford.

19 See Schmitter (2015), p. 9.

20 See Schmitter (2015), p. 9.

neofunctionalist reasoning as parameters for evaluating the impact of the EU's gas supply vulnerability on the integration process in a larger context. As compared to Gazprom's behavior in the 1990s, the above-mentioned disruptions have reflected a more general trend of the 2000s towards less diplomatic conduct as the monopoly has denied extra gas deliveries to Central and Western European states in the event of transit diversions by Western CIS countries like Ukraine.<sup>21</sup> Energy policy was used as leverage for political bargaining and created functional pressures for the EU to counteract the Russian display of dominance. As for Ukraine, EU policymakers have had to strike a difficult balance between reassessing the reliability of the country as a transit partner and protecting it from Russian pressure. The following section spells out the policy implications of the 2006 and 2009 exogenous shocks.

a) *The gas crisis in 2006*

On the 1<sup>st</sup> of January 2006 Gazprom suspended all gas supplies *to* Ukraine, following Ukraine's refusal to sign a renewed supply contract which would have envisaged a significant price rise. Despite this, Russia did not terminate supplies *across* Ukraine. Nevertheless, contract partners from the EU reported a decline in deliveries.<sup>22</sup> At the proposal of Russia, the EU-Russia Energy Dialogue in October 2007 introduced an '*Early Warning Mechanism*'<sup>23</sup> to mitigate the impact of future supply disruptions in gas and oil on Russia and the EU.<sup>24</sup> Signed by the coordinators of the Dialogue, Sergei Ivanovich Shmatkó, the Minister of Energy of the Russian

21 See Yafimava, Katja (2011) *The Transit Dimension of EU Energy Security: Russian Gas Transit Across Ukraine, Belarus, and Moldova*, Oxford University Press, Oxford, p. 81.

22 According to Yafimava the reported loss of deliveries varied between 14 and 40 per cent for individual EU member states, p. 82.

23 European Commission (2009) "Memorandum on an Early Warning Mechanism in the Energy Sector within the Framework of the EU-Russia Energy Dialogue", retrieved from [https://ec.europa.eu/energy/sites/ener/files/documents/2009\\_11\\_16\\_ewm\\_signed\\_en\\_0.pdf](https://ec.europa.eu/energy/sites/ener/files/documents/2009_11_16_ewm_signed_en_0.pdf) (last accessed: 17th of April 2017).

24 See Bilefsky, Dan, "Russia to soften EU worries of gas supply crisis with new alert system", 22nd of October 2007, in: *The International Herald Tribune*, retrieved from <http://www.nytimes.com/2007/10/22/business/worldbusiness/22iht-union.4.8001462.html> (last accessed 14th of March 2017).

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Federation and Andris Piebalgs, former EU Commissioner for Energy, the rapid alert system includes a special telephone hotline between designated persons in the Kremlin and Brussels, raising the profile of the Commission in external energy policy. If an ‘emergency situation’ occurs, the Energy Commissioner along with its Russian counterpart is allowed to appoint a ‘Special Monitoring Group’ to do fact-finding. Even though the reach of its competences is not clearly spelled out, the Memorandum on the Warning Mechanism has increased the decisional autonomy of the Commission and represents a case of ‘institutional build-up’ in line with neofunctionalist theory.

### *b) The gas crisis in 2009*

Despite the monitoring mission being in place, the 11 days of dramatic gas supply disruption in January 2009 proved the failure of the mutual alert system, leaving large parts of Central Eastern Europe in the cold. The most viable opportunity for supranational action was missed and the lack of emergency infrastructure to secure reverse gas flows in the EU became evident. The concept of solidarity between EU countries - as set out by the Commission’s Second Strategic Energy Review in 2008 - failed to work as planned as the gas interconnection facilities for transmission across member states were only in their early stages.<sup>25</sup> Hence, due to a preliminary lack of gas infrastructure and associated supranational oversight, there was no way for the Commission to effectively intervene and alleviate the symptoms of the crisis. Due to this lack of a clear mandate, functional pressures did not lead to a spillover of gas security policies from the member states to the ‘High Authority’ in Brussels. Russia furthermore denied Ukraine’s request of letting the Commission participate in dispute settlement negotiations.<sup>26</sup>

25 See European Commission (2008) “Second Strategic Energy Review. An EU Energy Security and Solidarity Action Plan”, Communication, 13th of November 2008, COM (2008) 781 final, retrieved from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0781:FIN:EN:PDF> (last accessed 14th of March 2017).

26 Yafimava (2011), p. 88.

Prior to the outbreak of the crisis, the Commission missed the opportunity to honor its prerogatives. It possessed useful tools – within the Energy Charter, the EU-Russia and the EU-Ukraine Energy Dialogues – to insist on greater transparency of commercial contracts as well as on proper metering of supply and transit flows on the Russia-Ukraine and the Ukraine-EU border.<sup>27</sup> As a consequence, it could not credibly place the exclusive blame on the Russian or Ukrainian governments. The January 2009 supply disruption was the first ‘transit crisis’ to which the tenth Joint Progress Report of the Dialogue explicitly referred, going beyond the allusions made in the 2007 report.<sup>28</sup> Unfortunately, this JPR declared that “a legally binding international mechanism for dealing with emergencies in the field of energy does not exist”.<sup>29</sup> The mere labeling of a ‘transit crisis’ rather conceals Gazprom’s irresponsible conduct as the first item in the supply chain. Though, Yafimava correctly points to the fact that the report’s acknowledgement further undermines the legal standing of the multilateral Energy Charter Treaty as an international transit dispute prevention and resolution mechanism to which both the EU and Russia had previously committed themselves.<sup>30</sup> What becomes evident here too, is that national energy policymakers in the EU in this situation retreated from the provisions stipulated by the ECT. By not adhering to them, they have claimed back authority. At the same time, they have set a negative precedent as this competence which had once been allocated to a multilateral ECT regime ‘spilled back’ to the national level.

What is more, as Richter and Holz note that the EU has not yet exhausted Liquefied Natural Gas (LNG) resources as a key component to achieving source diversification and to ultimately replacing Russian pipeline gas.<sup>31</sup> This would allow customers in the EU to fill up their gas storages throughout the year. Originally, with an exclusive reliance on pipeline-pumped natural gas, this refill can only be conducted in the summer months

27 Ibid.

28 Ibid., p. 59.

29 Ibid., p. 60.

30 Ibid.

31 See *ibid.*, p. 187.

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in which consumption is usually low. However, a large part of the European LNG import capacity is not well connected to the Internal Energy Market. Despite lower pipeline supplies in the Baltics, Finland and other East European countries, aggregate EU regasification capacity is only partially used.<sup>32</sup> The example of unused LNG capacities prove that despite existing functional pressures the national sovereignty of determining the structure of energy supplies has only spilled over to the EU level to a limited degree. Paradoxically the Visegrád states Hungary and Slovakia have been most hesitant even though pooled EU powers would reduce their vulnerability to short-term disruptions and increase their strategic clout. This restrained behavior by some member states points to the intergovernmental heritage of EU external energy relations. Whether this is baggage to bear for the neofunctionalist integration logic in gas security will be elaborated in the following section.

### **3. Political Spillovers**

The state-to-state nature of contractual gas delivery commitments cannot conceal the fact that until the fall of the Iron Curtain, the long-term convergence of state preferences has manifested itself most clearly in the common desire to increase interdependence with Russia by building common projects such as the MEGAL-Pipeline across former Czechoslovakia in the 1970s. After NATO's and the EU's eastward enlargement in 2004/07/08, the widespread European desire for interdependence with Russia has become less consensual, sometimes culminating in the wish for independence from Gazprom's natural gas tap.

#### **a) Spillovers from "Unintended Consequences"**

Against this backdrop of more divergent state preferences, it can be seen as a major leap forward that the EU Energy Commissioner Günther Oettinger in May 2014 was given a robust mandate for holding *trilateral gas talks* between the European Union, Ukraine and Russia after Gazprom in April cancelled Ukraine's natural gas discount as agreed to in the 17 December

32 See *ibid.*, p. 187.

2013 Ukrainian–Russian action plan because its debt to the exporter had risen to 1.7 billion USD since 2013.<sup>33</sup> The fact that the Russian government annulled an export-duty exemption for Gazprom, in place since the 2010, which led to an immediate price hike from 413 to 485 \$ per 1,000 cubic meters for Ukraine’s state company Naftogaz, complicated Oettinger’s brokerage role even more. Eventually, on the 30<sup>th</sup> of October 2014 a compromise deal was reached which featured two components: First, Ukraine agreed to pay 378 \$ in advance per 1,000 cubic metres to the end of 2014, and 365 \$ in the first quarter (ending on 31 March) of 2015. Second, Russia consented to partially prolonging the term of maturity for Ukrainian debt. On top of that, the European Union declared it would act as a guarantor for Ukraine's gas purchases from Russia and would help meet outstanding debts (using funds from existing accords with the European Union and IMF).<sup>34</sup>

The Commission’s role as a broker in the trilateral gas talks has substantially increased the EU’s supranational reach of action in gas policy as it for the first time entered the uncharted territory of country to country gas contracts mediating on behalf of EU countries and customers. Even though intergovernmental gas delivery agreements (IGAs) do not foresee an enhanced role for the Commission, supranationalism has crept in through the backdoor. Thereby confirming the neofunctionalist assessment that integrationist progress can occur as an ‘unintended consequence’. The inception of the trilateral talks under the political leadership of the Commission has increased its scope of authority and can therefore serve as an example of a successful “spill-around”-strategy.

33 See BBC, “Ukraine crisis: Russia halts gas supplies to Kiev”, 16th of June 2014, retrieved from <http://www.bbc.com/news/world-europe-27862849> (last accessed: 28th April 2017); see also Mazneva, Elena, “Gazprom Raises Gas Export Price as Ukraine Looks for Cash”, Bloomberg, 1st of April 2014, retrieved from <https://www.bloomberg.com/news/articles/2014-04-01/gazprom-raises-gas-export-price-as-ukraine-looks-for-cash> (last accessed: 28th of April 2017).

34 See BBC, “Russia-Ukraine gas deal secures EU winter supply”, 31st of October 2014, retrieved from <http://www.bbc.com/news/business-29842505> (last accessed: 28th of April 2017).

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Consistent with the ‘spill-around’-argument, the Commission in April 2015 sent a Statement of Objections to Gazprom alleging that export ban clauses, destination clauses and other measures that prevent the cross-border flow of gas in Europe, constitute an abuse of its dominant market position in Central Eastern Europe in breach of EU antitrust rules. By prohibiting provisions that required the wholesaler to use the purchased gas in its own country only, ‘Brussels’ once again intervened in the country-to-country sphere of gas contracts, thereby strengthening the ‘Energy Union’ for the event of supply shortfalls.

### *b) Spillovers from Inter-EU Diversification: The Energy Union*

A geopolitical challenge, yet also a chance for a comeback of neofunctionalist integration strategies have been the *Russian annexation of the Ukrainian territory of Crimea* on the 18<sup>th</sup> of March 2014 and the ongoing conflict in the Donbass region. Both have raised alarm bells in EU capitals as Europe’s main supplier and key transit country have become war parties, putting the predictability of gas supply from Russia into question. Politically motivated disruptions or acts of sabotage became genuine risks. Due to this external shock, a higher degree of internal ‘practical solidarity’ between member states became a strategically compelling argument materializing in the *Framework Strategy for a Resilient Energy Union*<sup>35</sup> published by the Commission on the 25<sup>th</sup> of February 2015. The core concept behind this strategy originates in the vision of Jerzy Buzek and Jacques Delors for a European Energy Community in 2010.<sup>36</sup> As for the 2015 policy proposal, it has not only underlined the need for a build-up of effective reverse flow capacity to

35 European Commission (2015) “Energy Union Package. A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy”, Communication, COM(2015) 80 final, retrieved from [http://eur-lex.europa.eu/resource.html?uri=cellar:1bd46c90-bdd4-11e4-bbe1-01aa75ed71a1.0001.03/DOC\\_1&format=PDF](http://eur-lex.europa.eu/resource.html?uri=cellar:1bd46c90-bdd4-11e4-bbe1-01aa75ed71a1.0001.03/DOC_1&format=PDF) (last accessed: 28th of April 2017).

36 The term “European Energy Community” should not be confused with the Energy Community institution designed to approximate the EU’s neighborhood; Buzek, Jerzy / Delors, Jacques, “Towards a new European Energy Community”, Brussels, 5th of May 2010, retrieved from [http://www.institutdelors.eu/media/en\\_buzek-delors\\_declaration.pdf?pdf=ok](http://www.institutdelors.eu/media/en_buzek-delors_declaration.pdf?pdf=ok) (last accessed 3rd of April 2017).

cushion possible supply disruptions in the most vulnerable European countries, it has also set off a spillover process which led one year later to reform proposals labelled the “Sustainable Energy Security Package” – an overhaul of large chunks of energy legislation.<sup>37</sup> This way, Energy Commissioner Maroš Šefčovič and Commission President Jean-Claude Juncker have articulated their claim to set the agenda. In this context, tangible results have been brought about: On the 27<sup>th</sup> of April 2017, the Council and the European Parliament struck a provisional agreement on the Commission’s proposal for a revised Regulation to safeguard the security of gas supply which forms a key element of the Energy Union strategy. According to the European Parliament, the draft agreement stipulates four “risk groups” of member states for obligatory “risk associated cooperation”, for joint risk assessment and joint establishment of mandatory preventive and emergency measures. These replace the seven regional cooperation groups listed in the initial legislative proposal. There will be three energy supply crisis levels that member states can declare by informing the Commission and the competent authorities in their risk groups and in directly connected member states: early warning, alert, and emergency. According to the preliminary text, the solidarity mechanism will be invoked when a member state judges a cross-border intervention to be necessary for tackling a severe crisis. This can happen only if there is a security or health risk for the so-called “solidarity protected consumers”, e.g. a household, a district heating installation or an essential social service.<sup>38</sup> According to Jerzy Buzek (EPP), the Chief Rapporteur of the bill, “member states are obliged to help each other when there is a danger to the

37 See European Commission (2016) “Towards Energy Union: The Commission presents sustainable energy security package”, press release, 16th of February 2016, retrieved from [http://europa.eu/rapid/press-release\\_IP-16-307\\_en.htm](http://europa.eu/rapid/press-release_IP-16-307_en.htm) (last accessed: 28th of April 2017).

38 See European Parliament (2017) “Security of gas supply through solidarity: EP and Council strike a deal”, press release, 27th of April 2017, retrieved from <http://www.europarl.europa.eu/news/en/news-room/20170426IPR72442/security-of-gas-supply-through-solidarity-ep-and-council-strike-a-deal> (last accessed: 3rd of May 2017).

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supply of gas to the most sensitive consumers – private households, hospitals, social services”.<sup>39</sup>

To accelerate the interconnectivity of gas supply infrastructure in Central and South Eastern Europe, the EU, a number of its member states<sup>40</sup> and six Energy Community Contracting Parties<sup>41</sup> have set up a High Level Working Group (CESEC)<sup>42</sup>. Launched as an expert group with substantial discretion to influence legislation in gas security, stakeholders have managed to amplify the reach to the electricity sector, renewable energies and energy efficiency in 2016.<sup>43</sup> This expansive procedure once again underlines Joseph Nye’s dictum of inherently linked political tasks.

Despite this incremental integrationist progress, the EU Commission’s hands-on response to energy security challenges posed by the conflict in Ukraine was not backed by all member states in the recent past. Hungary, from September 2014 to January 2015 – most likely pressured by the Kremlin – stopped gas deliveries to Ukraine, a member of the Energy Community, when the conflict escalated most, thereby undermining the EU’s credibility as a reliable partner.<sup>44</sup> While Hungary (HU) has resumed

39 Ibid.

40 Austria, Bulgaria, Croatia, Greece, Hungary, Italy, Romania, Slovakia and Slovenia.

41 Ukraine, Republic of Moldova, Serbia, FYROM, Albania and Bosnia and Herzegovina.

42 See European Commission (2017) “Central and South Eastern Europe Gas Connectivity”, retrieved from <https://ec.europa.eu/energy/en/topics/infrastructure/central-and-south-eastern-europe-gas-connectivity> (last accessed: 29th of April 2017).

43 See European Commission (2016) “Expanding CESEC into Electricity, Renewable Energy and Energy Efficiency”, CESEC New Horizons Non-Paper, retrieved from <https://ec.europa.eu/energy/sites/ener/files/documents/CESEC%20new%20horizons%20non%20paper%20-%20FINAL.pdf> (last accessed: 29th of April 2017).

44 See Stüwe, Robert (2016) “The EU Commission’s Energy Security Package: A Challenge To Russia’s Gas Dominance?”, ZEI Insight, No. 37, April 2016, retrieved from [https://www.zei.uni-bonn.de/dateien/zei-insights/stuewe\\_37-1](https://www.zei.uni-bonn.de/dateien/zei-insights/stuewe_37-1); see also Financial Times, “Hungary halts flow of gas to Ukraine”, 26th of September 2014, retrieved from <https://www.ft.com/content/7c5d2bf0-4552-11e4-ab86-00144feabdc0> (both last accessed: 29th of April 2017).

reverse flows to Ukraine (Ukr)<sup>45</sup> and has secured an EU-backed capacity upgrade for the HU-Ukr-Interconnector by 6.1 bcm /year<sup>46</sup>, the German-backed Nord Stream 2 pipeline<sup>47</sup>, which creates more directly linked delivery capacity for West Siberian gas, could pose a long-term risk. It could trigger a spill-back process in energy policy integration as Russia could try to limit the gas amounts being pumped to the EU market to such a level that would not allow EU member states to provide emergency supply to Ukraine in the event of a crisis, thus making EU commitments merely declaratory. To avert such a scenario, Kai-Olaf Lang and Kirsten Westphal from the German Institute for International and Security Affairs (SWP) argue that the EU should seek a trilateral agreement with Russia and Ukraine in order to maintain gas transit across Ukraine as an option of flexibility.<sup>48</sup> This would avoid a complete fall-out of the Ukraine transit route through the Brotherhood Pipeline after 2019, back up the EU's commitment to the war-torn country and save the Energy Union.

Despite these risks, the negative implications of the expiring Russian-Ukrainian contractual relationship on neofunctionalist EU energy integration should not be overestimated. As Richter and Holz set out, the European supply situation, regulation and infrastructure have improved

45 See Budapest Business Journal, "Ukraine received gas from Hungary ahead of halt from Russia", 1st of July 2015, retrieved from [http://bbj.hu/economy/ukraine-received-gas-from-hungary-ahead-of-halt-from-russia\\_100164](http://bbj.hu/economy/ukraine-received-gas-from-hungary-ahead-of-halt-from-russia_100164) (last accessed: 29th of April 2017).

46 European Commission (2016) "Central and South Eastern European Gas Connectivity (CESEC) High Level Group", Indicative project - specific information (last updated November 2016, p. 10, retrieved from [https://ec.europa.eu/energy/sites/ener/files/documents/monitoring\\_data\\_on\\_cesec\\_projects\\_november\\_2016.pdf](https://ec.europa.eu/energy/sites/ener/files/documents/monitoring_data_on_cesec_projects_november_2016.pdf) (last accessed: 29th of April 2017).

47 Nord Stream 2 has an annual capacity of up to 55 billion cubic meters per year and will deliver gas to Europe from the natural gas field Bovanenkovo in North Russia's Yamal Peninsula, which holds some 4.9 trillion cubic meters of gas reserves (twice as much gas as the total proven reserves of the EU 1.9 trillion). After its starting point in Russia, Nord Stream 2 crosses offshore the Exclusive Economic Zones (EEZs) of Finland, Sweden and Denmark before arriving in Lubmin, Germany.

48 See Lang, Kai-Olaf / Westphal, Kirsten (2016) Nord Stream 2 – Versuch einer politischen und wirtschaftlichen Einordnung, SWP-Studie, Berlin, p. 6.

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since 2009.<sup>49</sup> Most importantly, the Energy Union as a product of political spillover provides a strong impetus for overcoming the so-called ‘energy paradox’, which assumes that the EU was built around Energy (ECSC and EURATOM) yet sixty years later lacks a common external energy policy.<sup>50</sup>

### c) *Spillovers from External Diversification*

As it is far from certain whether the Commission will be needed as a conflict mediator between Ukraine and Russia for the long-term, the key focal point of pro-integration policies should be external diversification. This is mainly due to the observation that Ukraine’s significance as a transit country for gas deliveries will diminish by the time the *Russian strategic shift of transit diversification* to Turkey (Turkish Stream Pipeline), the Mediterranean and the Baltic Sea (Nord Stream 2) will fully materialize. As for the Kremlin’s geopolitical zone of influence, the Commission’s prerogatives gained through a ‘political spillover’ process in the course of the trilateral talks might not be sustainable.

Encouraged by the staunchest proponents of a gas supply reduction from Russia – Poland and the Baltic states – the EU Commission has embarked upon the *Southern Gas Corridor* for external source diversification. As the most prominent import pipeline – to be operational by 2020 – it is supposed to connect the EU to the Shah Deniz 2- gas field located in the Caspian Sea in Azerbaijan and at a later point to other Central Asian producers, bypassing Russian territory. The total length of the Corridor will be 3.500 kilometers and comprise three route sections: the South Caucasus Pipeline from Baku to Erzurum in Turkey, the Trans-Anatolian Pipeline (TANAP) reaching until the Greek border and the Trans-Adriatic Pipeline (TAP) transporting the gas across Greece, Albania and the Adriatic Sea to Italy.

49 See Richter, Philipp M. / Holz, Franziska, “All quiet on the eastern front? Disruption scenarios of Russian natural gas supply to Europe, in: *Energy Policy*”, Vol. 80 (2015), pp. 177–189, 177.

50 See Belyi, Andrei V. (2008) “EU External Energy Policies: A Paradox of Integration”, in: Orbie, Jan (ed), *Europe’s Global Role. External Policies of the European Union*, Routledge, Ashgate, pp. 203-217, 203; see also Panayotopoulos, Thomas (2015) *The Energy Union – a solution for the European energy security?* ZEI Discussion Paper C230, University of Bonn, p. 1.

The total capacity of gas to be carried is estimated at 16 billion cubic meters per year. A share of 6 bcm/y is already contracted for sale to Turkey, while the remaining 10 bcm/y will be sold in the EU.<sup>51</sup> This volume is lower than the one envisaged for the failed EU-backed Nabucco Pipeline which was expected to transport 31 bcm/y to the Union. To reach this capacity and ultimately bring about the desired diversification results, investors to the SGC would have to build additional infrastructure for connecting the Corridor to Turkmenistan and Iran.<sup>52</sup> This expansion might cause a geopolitical competition for gas resources with China and Russia – a prospect which does not necessarily speak against the construction of the SGC, as gas pipelines in the past have regularly been subject to power politics. Furthermore, the existence of armed conflicts along the SGC pipelines’ planned trajectory – such as in the Nagorno-Karabakh region and the clashes between Kurds and the Turkish state – cannot trump the strategic necessity of the Corridor for source and route diversification. From a pro-integration logic, the SGC might even serve to approximate Georgia as a key transit country closer to the EU, thereby re-energizing Europe’s claim to be a normative power. It has to be conceded though that partnerships with authoritarian regimes in the context of the SGC might in the long-term endanger the European self-perception of being a norm-oriented role model.<sup>53</sup> This is a dilemma, the EU can hardly escape. Instead, the EU should adhere to the logic of spillover and build resilience against external supply shocks by finalizing the Energy Union. In this context, facilitating pipeline interconnectors in the framework of the Projects of Common Interest (PCI) and the Connecting Europe Facility best promotes the neofunctionalist prescription of creating interstate linkages. As Weiner observes, six new gas interconnections (the Czech-Polish STORK, the “German-Czech-German” Gazelle, the Hungarian-Romanian,

51 See Siddi, Marco (2017) “The Southern Gas Corridor. Challenges to a Geopolitical Approach in the EU’s External Energy Policy”, FIIA Briefing Paper 216, p. 4, retrieved from [http://www.fiaa.fi/en/publication/662/the\\_southern\\_gas\\_corridor/](http://www.fiaa.fi/en/publication/662/the_southern_gas_corridor/) (last accessed: 13th of April 2017).

52 See *ibid.*

53 See *ibid.*, p. 7.

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the Hungarian-Croatian, the Hungarian-Slovakian and the Romanian-Moldovian) have been completed since the January 2009 gas crisis.<sup>54</sup>

As for the area of regulation, the political goal of external diversification might be at odds with the legal obligations of the Commission. The fact that both Russia and Azerbaijan aspire to deliver gas to the EU through Greece – Gazprom via the planned *Turkish Stream Pipeline*, SOCAR, the state-owned gas producer from Azerbaijan via the EU-favored *Trans Adriatic Pipeline (TAP)*<sup>55</sup> – will soon put the EU's political commitments to the test as both companies mentioned will compete for the use of network capacity in the Hellenic Republic. This requires a consistent application of the legislative *Third Energy Package* by the Commission. Adopted in 2009, it stipulates the provisions that a company's generation operations need to be separated from its transmission networks.<sup>56</sup> The challenge will be to create a level-playing field as SOCAR intends to acquire the Greek grid operator DESFA<sup>57</sup> and Gazprom considers to use the TAP on Greek soil as a transit pipeline for its own gas deliveries to Central and Western Europe<sup>58</sup>. As SOCAR holds at least 20 per cent of the TAP pipeline's shares, it would likely be in a position to make fair access to the Greek grid for Gazprom harder.

54 See Weiner, Csaba (2016) "Central and East European Diversification under new Gas Market Conditions", Working Paper 221, Centre for Economic and Regional Studies of the Hungarian Academy of Sciences – Institute of World Economics, p. 37, retrieved from [http://real.mtak.hu/33784/1/WP\\_221\\_Weiner.pdf](http://real.mtak.hu/33784/1/WP_221_Weiner.pdf) (last accessed: 13th of April 2017).

55 The Trans Adriatic Pipeline (TAP) will be part of the planned Southern Gas Corridor which is built to ship gas from Azerbaijan to the EU.

56 Koenig, Christian/Kühling, Jürgen/Rasbach, Winfried (2013) *Energierrecht*, Nomos UTB, 3rd ed., p. 141 ff.

57 See Kathimerini, "Socar wants lower price for greek gas grid-deal", 5th of September 2016, retrieved from <http://www.ekathimerini.com/211758/article/ekathimerini/business/socar-wants-lower-price-for-greek-gas-grid-deal> (last accessed: 28th of April 2017).

58 See Roberts, John/Powell, William, "Gazprom Eyes TAP for Russian Gas", *Natural Gas World*, 24th of January 2017, retrieved from <http://www.naturalgasworld.com/gazprom-eyes-tap-for-russian-gas-35548> (last accessed: 20th of March 2017).

The example of the Greek gas network illustrates that the Commission needs to grant fair access to the EU Internal Market to ALL licensed gas suppliers irrespective of the political goals of supply and route diversification which member states have subscribed to. To put it simply, following through on EU Competition Law and Regulation may eventually lead to higher volumes in Russian gas on EU markets. This probable result would be at odds with the Framework Strategy for the Energy Union and would contravene the logic of neofunctionalist integration of which the Energy Union is a product. It is truly paradoxical that by applying its core competence of ‘Competition Law’, the Commission can – as an unintended consequence in the words of Haas – undermine the key objective of external source diversification stipulated by the European Energy Security Strategy.<sup>59</sup>

On the other hand, its established high profile in the interpretation of EU Competition Law can give the Commission’s soft power a “hard edge”<sup>60</sup> with which it can solidify political spillover for its own institutional advantage. Consequently, Aalto and Kormaz Temel rightly indicate that the full implementation of the Third Energy Package would steer the EU’s internal energy market towards a “convergent society”<sup>61</sup>, an institution with a higher degree of pooled resources. A case in point for this is the Commission’s Decision from the 5<sup>th</sup> of December 2013 against the Russian-sponsored *South Stream*<sup>62</sup> Pipeline across the Black Sea, which effectively terminated the project, thereby contributing to physical infrastructure diversification in favor of the ‘Energy Union’. Specifically,

59 See European Commission (2014) “European Energy Security Strategy”, Communication, {SWD (2014) 330 final}, retrieved from <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0330&from=EN> (last accessed: 28th of April 2017).

60 See Goldthau, Andreas/Sitter, Nick, “Soft power with a hard edge: EU policy tools and energy security”, in: *Review of International Political Economy*, Vol. 22, No. 5 (2015), p. 941-965.

61 Aalto, Pami/Kormaz Temel, Dicle, “European Energy Security: Natural Gas and the Integration Process”, in: *Journal of Common Market Studies*, Vol. 52, No. 4 (2014), p. 758-774, 770.

62 South Stream would have shipped gas from Russia to Bulgaria with branches to Serbia, Bosnia-Herzegovina, Croatia and Hungary.

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the supranational authority put forward conditions which caused higher investment risks thus making the pipeline commercially and politically unviable. As justification, the Commission cited breaches of EU law in the Intergovernmental Agreements (IGAs) for the construction of the Black Sea pipeline Russia concluded with Bulgaria, Serbia, Hungary, Greece, Slovenia, Croatia and Austria. According to the Decision, the IGAs violated the EU's Third Energy Package as they would have given the state-owned Gazprom monopoly the status of generator AND owner<sup>63</sup> of the transmission network. Without full ownership unbundling being implemented, Gazprom could have abused its dominant position – especially on Central Eastern European gas markets which are already highly dependent on Russian deliveries. Furthermore, Gazprom must not enjoy the exclusive right to access the pipeline and would have to enable non-discriminatory third-party-access. Third, the tariff structure for gas shipping was criticized by the Commission.<sup>64</sup>

Despite member states and national energy industries have been closely involved in the *EU-Russia Energy Dialogue*, the Commission used this platform for promoting its external diversification policies. It has over the years carved out an agenda-setter-role, authorizing strategic 'Projects of Common Interest' (PCI)<sup>65</sup> in transport infrastructure such as the Nord Stream 1 (route: Russia-Germany) and the Yamal-Europe<sup>66</sup> (Russia-

63 Note: up to the gas handover point in Bulgaria as the entrance to the EU's Internal Market

64 See Keating, Dave, "South Stream must be renegotiated – Commission", Politico, 5th of December 2013, retrieved from <http://www.politico.eu/article/south-stream-must-be-renegotiated-commission-3/> (last accessed: 28th of April 2017).

65 After taking into account the comments of ACER (the Agency for the Cooperation of Energy Regulators), the member states together with the European Commission as the decision-making body decide upon the regional PCI lists. These regional lists are then combined to form a comprehensive Union-wide list to be adopted as a Delegated Act by the European Commission. Retrieved from Bundesnetzagentur <https://www.bundesnetzagentur.de/EN/General/Bundesnetzagentur/InternationalActivities/ElectricityGas/PCI/pci-node.html;jsessionid=C1AAA6623789AF94B9BB8875BFCDCCF3> (last accessed: 11th of April 2017).

66 The Yamal-Europe-Pipeline is delivering natural gas from the Yamal Peninsula in Western Siberia across Belarus and Poland to Germany. Its construction was completed in 1999. Since 2006 it is running at full capacity, 33 billion cubic meters.

Belarus-Poland-Germany) pipelines in 2001. Nord Stream 1<sup>67</sup> does not diversify the sources of supply yet was declared to be a PCI as it has broadened the routes of natural gas to the EU. Prior to becoming operational, ca. 80 per cent of Russian gas exports were pumped through the Ukraine Corridor mainly built in the 1970s. PCIs are intended to help achieve the EU's energy policy objectives, such as the completion of the internal energy market and security of supply and are based on the EU Regulation No 347/2013 on guidelines for trans-European energy infrastructure (TEN-E Regulation)<sup>68</sup>, which has been in force since June 2013. The Roadmap for EU-Russia Energy Cooperation until 2050, put forward by Commissioner Oettinger and Russian Energy Minister Alexander Novak in 2013, underlined the EU's aspiration of being an engine in energy integration.<sup>69</sup> In so doing, the Commission tried to affix its stamp on the long-term direction of EU-Russia energy relations while being fully aware of its limited formal competences against the backdrop of continued state supremacy.

The most notable recent example which validates the expansive logic of Neofunctionalism is the *Decision on Energy Deals with Third Countries* reached on the 21<sup>st</sup> of March 2017. The new information exchange mechanism requires member states to submit plans of closing an

67 Nord Stream 1 is an offshore natural gas pipeline from Vyborg in the Russian Federation to Lubmin in Germany that is owned and operated by the Nord Stream AG. It can transport up to 55 bcm of natural gas a year. The project includes two parallel lines. The twin-pipeline system already came on stream – the first line in November 2011 and the second in October 2012. At 1,222 kilometers in length, it is the longest sub-sea pipeline in the world. See <https://www.ft.com/content/51ea636e-0a14-11e1-8d46-00144feabdc0>.

68 Regulation (Eu) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure, retrieved from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:115:0039:0075:en:PDF> (last accessed: 11th of April 2017).

69 See European Commission (2013) “Roadmap. EU-Russia Energy Cooperation until 2050”, retrieved from [https://ec.europa.eu/energy/sites/ener/files/documents/2013\\_03\\_eu\\_russia\\_roadmap\\_2050\\_signed.pdf](https://ec.europa.eu/energy/sites/ener/files/documents/2013_03_eu_russia_roadmap_2050_signed.pdf) (last accessed: 29th of April 2017).

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Intergovernmental Agreement<sup>70</sup> in gas and oil to the Commission for an ex-ante compatibility check with EU law before opening negotiations. Under the previous regime, employed since 2012, the Commission was only eligible to make an assessment after the IGA was signed (ex-post), deeming 17 out of 125 notified IGAs questionable.<sup>71</sup> As a result, the integration process in gas security has stalled as no member state is able to terminate or renegotiate a non-compliant IGA. This lack of enforcement provides the imminent risk of spill-back processes defying the EU energy acquis and diversification commitments.

The controversial points which were raised in the Ordinary Legislative Procedure for the Decision on energy deals with third countries have revealed conflicting state preferences as to what the principle of subsidiarity (Art. 5 TEU) actually means. The Federal Council of Austria, the Portuguese and the Maltese Parliaments as well as the French Senate issued a “Reasoned Opinion on Subsidiarity” to voice their skepticism. Malta’s justification is particularly noteworthy as it even challenges the Commission’s basic arithmetic underpinning the Decision. It sets out that 6 of 17 non-compliant IGAs are linked to the failed South Stream project and are not indicative of a failure to abide by EU law in general. Whereas only 8.9 per cent of the total number of IGAs could be viewed as a source of concern from the supranational angle. As less encroaching tools, existing competition law and infringement provisions (e.g. Art. 258 TFEU) would have been sufficient for tackling non-compliant energy deals<sup>72</sup> instead.

70 IGAs typically serve as a legal and political guarantee to European energy companies who intend to sign a commercial contract with a state-dominated supplier such as Gazprom.

71 See European Commission (2016) “Report to the European Parliament, The Council and the European Economic and Social Committee on the application of the Decision 994/2012/EU establishing an information exchange mechanism on intergovernmental agreements between Member States and third countries in the field of energy”, 16th of February 2016, COM(2016) 54 final, p. 3.

72 See European Parliament (2016) “Reasoned Opinion of the Maltese Parliament on Subsidiarity”, Committee on Legal Affairs, 13th of June 2016, p. 4, retrieved from [http://www.europarl.europa.eu/RegData/docs\\_autres\\_institutions/parlements\\_nationaux/com/2016/0053/MT\\_PARLIAMENT\\_AVIS-COM\(2016\)0053\\_EN.pdf](http://www.europarl.europa.eu/RegData/docs_autres_institutions/parlements_nationaux/com/2016/0053/MT_PARLIAMENT_AVIS-COM(2016)0053_EN.pdf) (last accessed 28th of March 2017).

According to the Maltese, the mandatory ex-ante notification sought by the Decision Proposal would thus have violated the subsidiarity principle.

The Maltese example touches upon the nature of gas as a commodity which is a regionally traded fuel pumped through landline pipelines crossing multiple borders. Therefore, it bears no wondering that states tend to be cautious of ceding powers to a supranational authority in Brussels. In the case of the 2016 IGA Decision, it is remarkable that no country that is totally dependent on Russian gas has filed a subsidiarity complaint to the European Parliament. The permissive consensus among Central Eastern European member states secured the passage of this bill, proving the prevalence of high functional pressures which eventually induce the need to tolerate spillover-based integration and to speak with one voice.<sup>73</sup>

*d) Spillovers from interest group activity*

As Haas set out, Neofunctionalism has carried the assumptions of democratic pluralism over into the formulation of policy by disaggregating the state into its actor components.<sup>74</sup> This implies that non-governmental actors who are interest-driven and embedded in a pluralistic discourse can act as pressure groups who shape the preferences of national states and supranational decision-makers. There are at least two spheres in which spillovers in the formulation of political interests can be observed: First, an organizational relocation to the EU level has taken place in the lobbying sphere of the natural gas sector. As the most important agent on the supranational level, the European Network of Transmission System Operators for Gas (ENTSOG) has pitched tent. According to its mission statement<sup>75</sup>, ENTSOG is an association of Europe's transmission system operators (TSOs) to facilitate and enhance cooperation between national gas transmission system operators (TSOs) across Europe to ensure the

73 See Rompel, Susanne (2015) *Eine Energieaußenpolitik für die Europäische Union. Anspruch und Wirklichkeit*, Europäische Schriften (Vol. 95), Nomos, Baden-Baden.

74 Haas (2004), p. xiv.

75 See European Network of Transmission System Operators for Gas (2017), "Mission", retrieved from <http://www.entsog.eu/mission> (last accessed: 29th of April 2017).

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development of a pan-European transmission system in line with European Union energy goals. It was created on the 1<sup>st</sup> of December 2009 by 31 TSOs from 21 European countries, resting on the legal basis of the EU's third legislative package on the gas and electricity markets. It enjoys a considerable degree of leverage over senior EU officials since it develops annual Summer and Winter Supply Outlooks, review projections for gas supply, demand and capacity as well as disruption scenarios for Commission-sponsored Stress Tests. Furthermore, ENTSOG is incorporated into high-level policy formulation; for instance into the Gas Coordination Group, a stakeholder body set up by the revised 2016 EU Security of Gas Supply Regulation to coordinate supply measures chaired by the Commission.

Second, a striking form of spillover has occurred in the public discourse on some of the new pipeline projects. In corporate communication strategies the abstract category of “EU interests” is invoked as the major reference point for justifying the need for large gas infrastructure projects. Even in the case of the planned Nord Stream 2 pipeline – an undertaking to which the Commission has denied the status of being a “Project of Common Interest (PCI)” – operators embrace a pro-integrationist rhetoric to defend the claim of common benefits for all European consumers even though Nord Stream does not advance the agreed political goal of source diversification away from Russia. According to the Head of Communications of Nord Stream 2, Ulrich Lissek, the Commission needs to act as the guardian of the Treaties and not based on political sentiment.<sup>76</sup>

It can be ascertained that both with regard to the articulation of economic and ideational interests, expanded transnational linkages are going to evolve in the foreseeable future due to the political incentives the revised 2016 EU Security of Gas Supply Regulation provides. As an innovation, it includes a solidarity principle which gives priority to the support of

76 See Lissek, Ulrich (2016) “Regulation of Nord Stream 2: Rule of law, equal treatment and due process – A view from the project developer”, CEPS Commentary, retrieved from [https://www.ceps.eu/publications/regulation-nord-stream-2-rule-law-equal-treatment-and-due-process-%E2%80%93-view-project#\\_ftn3](https://www.ceps.eu/publications/regulation-nord-stream-2-rule-law-equal-treatment-and-due-process-%E2%80%93-view-project#_ftn3) (last accessed 3rd of April 2017).

households and essential social services during an emergency situation.<sup>77</sup> Furthermore, mandatory regional groupings of member states to organize preventive action as well as emergency plans devised to promote market-based solutions to possible supply disruptions, will likely lead to deeper inter-regional cooperation among utility companies. Time will tell whether this proposed Europeanization will result in an integrative spillover. What is sure though, is that the enhanced role of interest groups affirms Haas's dictum that agency takes the place of determinism.

#### **4. Institutional spillover: The Energy Community**

Within the sphere of gas security policies, the EU Commission has sought to duplicate its structures in its neighborhood with the intention of boosting the snowball effect of spillover as a tool for building resilience against exogenous supply shortfalls. As a first tangible result, this objective has culminated in the foundation of the *Energy Community*. In October 2005 the European Union and nine states or territories in South-Eastern Europe - Croatia, Serbia, Bosnia and Herzegovina, Montenegro, the FYR of Macedonia, Albania, Bulgaria, Romania and the United Nations Mission (UNMIK) on behalf of Kosovo - signed a multilateral treaty to establish an Energy Community (EnCT). This treaty is seen as the first legally-binding treaty between these countries after the Balkan wars of the 1990s and the culmination of the so-called Athens Process starting in 2002.<sup>78</sup> In the EnCT, the signatories committed themselves to establishing the legal foundation for an integrated and liberalized energy market in their states, adopting the EU energy *acquis*. The most recent members include Moldova

77 Wilson, Alex, "New rules on security of gas supply", Briefing EU Legislation in Progress, European Parliamentary Research Service, October 2016, retrieved from [http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/593487/EPRS\\_BRI\(2016\)593487\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/593487/EPRS_BRI(2016)593487_EN.pdf) (last accessed: 1st of April 2017).

78 See Renner, Stephan, "The Energy Community of Southeast Europe: A neofunctionalist project of regional integration", in: *European Integration online Papers*, Vol. 13 (2009), p. 1-21, 2.

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(joined in 2010), Ukraine (in 2011) and Georgia (in 2017).<sup>79</sup> By promoting the Energy Community, the EU intends to stimulate reforms in energy market integration.<sup>80</sup> Modelled on the European Coal and Steel Community from the 1950s, the EU Commission deliberately used the neofunctionalist model of regional integration as a blueprint for the set-up of the EnCT.<sup>81</sup> Just as between France and Germany after the Second World War, the idea was to pacify the Yugoslav countries which had been at war after the dissolution of the Soviet Empire.<sup>82</sup>

The EnCT has proven useful as a means for the EU to extend its legal and regulatory sub-space of the energy acquis, without extending the entire acquis, which is only possible through EU membership.<sup>83</sup> The goal of duplicating Union structures to the Western countries of the Commonwealth of Independent States (CIS) is a vital interest for EU consumers, who cannot make a legal transit claim against a western CIS gas undertaking, as there is no contractual relationship.<sup>84</sup> This example once again underlines the congruence between boosting spillover effects and economic policy interests of EU citizens. As a limitation to this assumption, it is argued nevertheless that the EnCT is in competition with the EU-Russia Energy Dialogue.

With regard to the strategies of actors, the methods policymakers have employed are broadly reflected in the concept of spillover. They predominantly aim at enabling the spread of institutional capability to the Energy Community and its Contracting Parties: At the administrative level, the Agency for Cooperation of Energy Regulators (ACER) and the Energy Community Secretariat have signed an arrangement to enhance cooperation. ACER may request the support of the Secretariat in collecting

79 See Energy Community (2017) "Parties", retrieved from [https://www.energy-community.org/portal/page/portal/ENC\\_HOME/ENERGY\\_COMMUNITY/Stakeholders/Parties](https://www.energy-community.org/portal/page/portal/ENC_HOME/ENERGY_COMMUNITY/Stakeholders/Parties) (last accessed: 11th of April 2017).

80 See Lang / Westphal (2016), p. 41.

81 See Renner (2009), p. 7.

82 See *ibid.*

83 See Yafimava (2011), p. 65.

84 See Yafimava (2011), p. 80.

market data and information for extending the coverage of its annual market monitoring report to the EnCT Contracting Parties. Exchange of expertise takes place via the participation of the Secretariat's staff in the Agency's working groups on electricity and gas as observers. Referring to the Energy Union Strategy, ACER Director Alberto Pototschnig indicated that the agreement would enhance the goal of extending the internal energy market to include the EU's eastern neighbors.<sup>85</sup>

At the political level, the Energy Community as the extension of EU institutions places its emphasis on regional cooperation – a goal which is prominently reflected in the energy acquis. Regional cooperation, though not an end in itself, aims to provide the EnCT's members with a supranational practice room to enable institutional learning. This is why it is common to confer the Presidency of the Energy Community to an associated EU country and contracting party, for instance to Bosnia-Herzegovina in 2016. This way, the EU escapes the trap of a top-down, paternalistic approach, and the Contracting Parties can develop a sense of ownership. As a substantial part of this strategy, two EU4ENERGY regional offices have been established in Tbilisi covering the South Caucasian countries of Georgia, Armenia and Azerbaijan in order to support the legislative and regulatory integration into the EU's Energy Union, ultimately creating a level playing field for large infrastructure projects. The second regional office will be based in Kyiv and will be responsible of Belarus, Moldova and Ukraine.<sup>86</sup>

85 See Energy Community (2016) "The Agency for Cooperation of Energy Regulators and the Energy Community Secretariat sign cooperation agreement", Press Release, 15th of December 2016, retrieved from [https://www.energy-community.org/portal/page/portal/ENC\\_HOME/NEWS/News\\_Details?p\\_new\\_id=13643](https://www.energy-community.org/portal/page/portal/ENC_HOME/NEWS/News_Details?p_new_id=13643) (last accessed: 12th of April 2017).

86 See Energy Community (2017) "European Union, Energy Community and the Ministry of Energy of Georgia mark the opening of EU4ENERGY regional office in Tbilisi to support energy reforms in Georgia, Armenia and Azerbaijan", Press Release, 10th of March 2017, retrieved from [https://www.energy-community.org/portal/page/portal/ENC\\_HOME/DOCS/4580408/4A5F1CD5F8485344E053C92FA8C014A0.pdf](https://www.energy-community.org/portal/page/portal/ENC_HOME/DOCS/4580408/4A5F1CD5F8485344E053C92FA8C014A0.pdf) (last accessed: 12th of April 2017).

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In line with the neofunctionalist notion of spillover, the EU Commission and likeminded energy stakeholders initiate integration attempts towards a partner country by placing a focus on technical cooperation first. Led by the intention of setting the preconditions for later political harmonization, the Energy Community tries to create a functioning downstream market first which involves the actual processing, selling and distribution of natural gas (and oil) based products. However, contrary to the somewhat schematic theoretical prescription, the Energy Community, in concert with the Commission, seize opportunity structures which can arise from Association Agreements, similar contractual commitments and a general integration-friendly stance. As for the latter, the example of the Georgian accession to the EnCT in 2017 is most remarkable.

To conclude, the Energy Community follows the logic of spillover but is not necessarily underpinned by a political promise of EU membership. Implicitly, the Energy Community has thus become a strategic instrument for EU neighborhood policy. Classic sectoral integration via the Energy Community à la Schuman and Monnet is therefore hard to realize.

### **5. Conclusion: Chances for spillovers – Risk of spillbacks**

This paper has found that EU natural gas security policies follow to a large extent the theoretical concept of neofunctionalist integration. A snowball effect of common political and legislative commitments for harmonization of the EU's external energy policy is gathering momentum. As a caveat, it has to be considered that the supremacy of EU policymaking continues to face the risk of 'spilling back' to traditional national patterns when confronted with a serious crisis. This affirms the theoretical revisit conducted by Ernst B. Haas that 'spillover processes' can "move toward and against integration"<sup>87</sup>.

87 Haas (2004), p. xxiv.

Specifically, this study has identified the following pro-integration trends:

1. **Functional Spillover:** The Decision on Energy Deals with Third Countries reached on the 21st of March 2017 validates the continued expansive logic of Neofunctionalism, proving the prevalence of high functional pressures on policymakers which eventually induce the need to tolerate spillover-based integration and to speak with one voice. As for the role of interest groups, an organizational relocation to the EU level has taken place in the lobbying sphere of the natural gas sector. Second, in corporate communication strategies the abstract category of “EU interests” is invoked as the major reference point for justifying the need for large gas infrastructure projects. The revised EU Security of Gas Supply Regulation will likely prompt utility companies to seek deeper inter-regional cooperation.

2. **Political Spillover:** On the other hand, in the aftermath of the gas crises, the spillover logic has entered the arena of the EU-Russia Energy Dialogue. Despite not being a supply crisis, the outbreak of the conflict in Ukraine in 2014 can be viewed as a major turning point for gas security policies. As an exogenous shock, functional pressures for a higher internal ‘practical solidarity’ between member states culminated in the Framework Strategy for a Resilient Energy Union causing additional legislative spillover measures for internal and external diversification measures. Amongst the ones targeting the domestic EU realm, the agreement on a revised Security of Gas Supply Regulation, which encompasses binding solidarity measures between member states based on risk categorization, can be viewed as substantial accomplishment. As for external source and route diversification, the EU Commission has reiterated its power of agenda-setting in the promotion of the Southern Gas Corridor to Azerbaijan by teaming up with likeminded member states.

3. **Institutional spillover** has taken place in the creation of the Energy Community as the EU institutions deliberately used the European Coal and Steel Community from the 1950s as a template. Very much in line with the original understanding of Neofunctionalism, stakeholders initiate integration attempts towards a partner country by placing a focus on

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technical cooperation first. Reiterating the relevance of interest-driven political actors vis-à-vis functional automaticity, stakeholders of the Energy Community seize opportunity structures which can arise from Association Agreements and similar contractual commitments arising from the EU's neighborhood policy.

4. The actor strategy of institutional build-up was identified in the creation of the mutual Warning Mechanism established after the 2006 gas crisis, leading to an increase in decisional autonomy of the Commission. The supply disruption in 2009 nevertheless reveals a mixed picture: On the one hand, due to the lack of a clear mandate for the EU Commission, functional pressures have not led to a spillover of gas security formal prerogatives from member states to the 'High Authority' in Brussels.

5. Spill-around strategy: As a consequence of the Commission's role as a broker in the trilateral gas talks, the EU's supranational reach of action has expanded. The inception of the trilateral talks under the political leadership of the Commission has increased its scope of authority without being granted new formal competences. At the same time, this paper has discovered tendencies and risks of disintegration ('spillbacks') in gas security policies which have accompanied the EU at every major challenge:

1. In the gas crisis of 2009 the non-use of the multilateral Energy Charter Treaty set a negative precedent for future supply disruptions, as formal competence for dispute settlement which had once been allocated to this contractual regime 'spilled back' to the national level.

2. Political commitment to diversification might be pushed back by the EU's own competition law in the future if the Commission has to grant Gazprom third-party access to the Southern Gas Corridor.

3. As the state-to-state reality of gas delivery contracts is still in place, the risk of breaching the 2017 EU Decision on ex-ante compatibility check for energy deals with third countries is still imminent.

A strategic recommendation for circumventing member states' resistance to greater harmonization would be to better align EU gas supply legislation

with the broader environmental and climate change goals of the Energy Union, as environmental policy represents an area in which the EU has achieved a considerable level of integration.<sup>88</sup> Building these connecting routes between various cognate policy fields would unlock additional potential for spillovers towards more effective EU integration. A strict adherence to the theoretical neofunctionalist model should not serve as an end in itself. Based on a compelling strategic judgment, selective integration measures are needed for EU gas security policy in order to circumvent divisive conflicts and to make it a unifying project.

88 See Sohn, Rike (2016) EU environmental policy and diplomacy from Copenhagen to Paris and beyond, ZEI Discussion Paper C234, Center for European Integration Studies, Bonn, retrieved from [https://www.zei.uni-bonn.de/dateien/discussion-paper/DP\\_C234\\_Rike\\_Sohn.pdf](https://www.zei.uni-bonn.de/dateien/discussion-paper/DP_C234_Rike_Sohn.pdf) (last accessed 1st of April 2017).





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