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A liberal actor in a realist world? The Commission and the external dimension of the single market for energy

Andreas Goldthau and Nick Sitter

ABSTRACT This article investigates the European Commission's external energy policy through the lens of the regulatory state. It argues that because of the nature of its institutions, policy tools and resources, the Commission remains a liberal actor even as the world leaves the benign pro-market environment of the 1990s and becomes more mercantilist – or 'realist'. The article tests seven hypotheses related to two key challenges as perceived by the Commission: building energy markets, and making them work. It finds that the Commission seeks to project the single market beyond its jurisdiction to deal with transit infrastructure problems; extend international regimes to cover energy trade; deal with monopolists such as Gazprom through classical competition policy; and fix global energy market failures with clear regulatory state tools. Importantly, however, some actions by the Commission can be seen as an attempt to counterbalance external actors, or as second-best efforts to address energy market failures.

KEY WORDS The Commission; energy policy; external relations; regulatory state

It is often said that we live in the age of the regulatory state. Indeed, the European Union (EU) is regularly held up as the prime example of the 'regulatory state' model because of the nature of its institutions, its policy tools (law and regulation rather than redistribution and direct intervention in industry) and its resources (Jordana and Levi-Faur 2005; Lodge 2008; Majone 1994, 1996). This is no accident: the European Economic Community was part and parcel of a broader Western liberal approach to international political economy (Lindberg and Scheingold 1970; Milward 1994; Ruggie 1982). The liberal blueprint that was built into the Treaty of Rome turned out to be very close to the new West European policy consensus at the end of the 1980s (McGowan and Wallace 1996). Domestic policy change towards the economic right in France, Britain and Germany coupled with the collapse of communism presented the European Community with a window of opportunity to build a liberal single European market at home and to project its liberal market model onto the international scene.

However, by 2000 this window had begun to close. The Washington consensus became increasingly contested; Putin's Russia became more assertive (fuelled by rising oil prices); and China emerged as an alternative politico-economic model. The central question addressed in this article is: has the EU changed with the world in the 2000s, or does it remain a liberal actor, committed to the 'regulatory state' agenda both at home and abroad, in the increasingly realist world?

The question as to what kind of international actor the EU is has been much debated, in the pages of this journal (Hyde-Price 2006; Manners 2006; Sjursen 2006a, 2006b; Smith 2004) and elsewhere (Bretherton and Vogler 2006; Hill 1996; Hill and Smith 2011; Peters 2014; Soetendorp 1999). The present article does not concern the nature of the EU as a global actor so much as the external dimension of the regulatory state. More specifically, the focus here is on the single market for energy and the Commission's efforts to ensure security of supply for two goods on which is it heavily import dependent: oil and gas. Our investigation centres on the Commission's exercise of regulatory policy tools (and not, for example, on the member states' policy decisions about the desired energy mix) and on the Commission's action as a more or less unified regulatory actor. To be sure, the Commission is as divided as any executive or regulator, and often even more so. While the Commission's internal dynamics warrant investigation in their own right, this article concerns how its regulatory state identity at home plays out beyond the borders of the single market.

Energy is a critical case study of the external dimensions of the EU regulatory state. It is a vital public policy issue in a sector that has undergone rapid geopolitical change (Noreng 2006). Both the oil and gas sectors offer a strong test of the EU's will and capacity to extend its liberal regime beyond its borders. Markets for molecules are more difficult to build and manage than markets for shoes, for example, and market failure can have broad implications for industrial production, human welfare and even military security (Helm 2002; Yergin 1991). If the EU cannot respond to changes in a sector at the heart of economic policy and regulation, it can hardly be expected to address other strategic sectors successfully.

Our point of departure is the observation that recent developments present serious challenges for the EU. Increasingly assertive producer states, rising resource nationalism and the ascendance of new consumers undermine the market-based liberal model of international energy trade from which the EU benefitted in the early 1990s. China has adopted its own approach to energy, characterized by mercantilism, national champions and off-market deals (Downs 2005). Under Putin's leadership Russia has sought to retain state control over strategic sectors such as energy (Gaddy and Ickes 2009). The combination of opaquely governed national oil companies (NOCs) and state-flanked energy deals has contributed to uncertainty regarding supply and demand (Downs 2005; Goldthau 2010; Stevens 2008). What is more, the rapid rise in oil prices from the record low of $9/barrel in 1998 to a high of $147/barrel in 2008 (BP 2011) marked a sharply increased price volatility and created high adjustment costs for industry, consumers and society. Finally, a series of 'gas disputes' between Russia and transit country Ukraine highlighted Europe's exposure to supply risks stemming from conflict among third parties. As the EU's executive and regulator, the Commission's declared goal therefore is to ensure 'secure [. . .] and affordable energy' for its 'people, industry and economy' (European Commission 2010: 2).

The EU could meet these challenges by measures that fit well into the liberal paradigm in International Relations (IR) theory (centred on open trade), or by way of more security-oriented or protectionist measures. For the purpose of this article, we take 'liberal' to entail an actor interpreting issues primarily in terms of trade rather than geopolitics, and employing policy tools designed to build and maintain open markets. To test this, we elaborate seven hypotheses linked to building international markets and to making them work in practice.

THE EXTERNAL DIMENSION OF THE EU REGULATORY STATE

The European single market project came to fruition at an extraordinarily favourable moment, with the West ideologically, politically and economically victorious in the Cold War. In the energy sector, consumer countries were in the driver's seat after the oil price collapse of 1986 and the decline of the Organization of Petroleum Exporting Countries (OPEC). By the turn of the millennium these conditions had begun to change, and the EU's open market policy came under considerable stress. Both scholars and policy analysts have therefore called for a stronger, more muscular and more realist external policy on the part of the EU (Correlje and van der Linde 2006; Smith 2010; Youngs 2009). To assess the Commission's response to the changing energy landscape, seven hypotheses are drawn up based on the presumption that the EU's regulatory nature (and liberal norms) shapes the Commission's strategy for dealing with the external dimension of the single market in energy. This is not to equate the regulatory state with neo-liberalism, since the regulatory state may often amount to a 'rescue of the welfare state' (Levi-Faur 2011); it is simply to assert that the external manifestation of the EU's regulatory state overlaps with liberal or open market approaches to international political economy. Even if EU energy policy does not live up to the regulatory state ideal-type, this approach allows us to elaborate expectations about the Commission's external behaviour *qua* regulatory state.

To be sure, the EU regulatory state never quite lived up to the ideal-type. There is a well-documented gap between the ideal-type and energy policy as actually applied in the EU and across its member states (Andersen and Sitter 2009; Pelkmans 2001). As a case in point, the 1998 directive liberalizing EU gas markets featured limited and gradual market opening, including for example derogations over take-or-pay contracts upon decisions by states

(European Parliament and the Council 1998). The second and third 'packages' in 2003 (requiring that states adopt a regulated access tariff, establish independent regulators and ensure non-discriminatory third-party access through legal unbundling of transport from trading services [European Parliament and the Council 2003]) and 2009 (focusing on ownership unbundling, new regimes for independent systems/transmissions operators, stronger national regulators and a new EU regulatory agency [European Parliament and the Council 2009]) closed the gap somewhat, but maintained energy market heterogeneity. The member states' parallel authority in this sector was written into the Lisbon Treaty: '[these] measures shall not affect a Member State's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply' (European Communities 2007: Art. 194[2]).

Indeed, even the most prominent advocates of the regulatory state thesis (Majone 1996, 2005) argued that although it was the central characteristic of the EU, it was not the only one. EU regulation governs the national regulators, and there are considerable gaps between EU policy and the policies actually implemented by national authorities (Andersen and Sitter 2006; Hayward and Wurzel 2012). As Lodge concluded in a cross-country analysis of Europeanization of the regulatory state: 'the impact of "Europeanisation" remains heavily influenced by domestic politics and policy-making' (Lodge 2002: 63). The key theme that runs through this literature and shapes the hypotheses below is the focus is on regulation – remedying market failure by regulatory policy tools – at the expense of other tasks such as redistribution or direct provision of public services and other policy tools such as taxing and spending or public ownership (Levi-Faur 2004; Lodge 2008; Moran 2002). The first set of hypotheses about the external dimension of the EU regulatory state are derived from the assumption that its efforts to build open markets at home are also reflected in an effort to project the single market rules beyond its borders. In other words, the Commission sees its mandate not merely as building an open market ('deepening'), but also as extending its geographical reach ('widening'). In the oil and gas sector this could be done by extending the scope of existing trade regimes that do not cover the energy sector; by building new regimes for trade in energy (including such sector-specific issues such as 'upstream' investment in production and 'midstream' transit regimes); and by establishing rules that guarantee non-discrimination for 'downstream' (distribution and sales) market actors. The principal causal mechanism at work here is the norms of the EU regulatory state (the Treaty of the European Union and the Commission's mandate establish open trade as an objective), but it is reinforced by the range of policy tools that are available to the Commission – powerful regulatory tools, but limited financial resources and no power to directly instruct their NOCs, let alone deploy military force.

Although the regulatory state itself is deeply engrained in the EU's institutional 'DNA', it was only in the early 1990s that the regulatory state approach could be projected beyond the then 12 member states. The favourable geopolitical context was the collapse of communism and the 'unipolar moment' (Krauthammer 1990). The EU seized the opportunity to establish the European Economic Area, embark on Eastern enlargement and put in place regimes for trade with the 'near abroad'. This was essentially a market-making project: an effort to extend the single market beyond the EU's boundaries. However, the new geopolitical scene proved ephemeral, and the 'liberal moment' had passed by the turn of the millennium. Economic and political power began to shift away from the Organisation for Economic Co-operation and Development (OECD) world, and the 'West' could no longer (unilaterally) set the rules of the game (Ikenberry 2008). This leaves three hypotheses to test:

I. First, the more the EU expands its external economic policy into the energy sector, the more we expect the Commission to seek to extend rule-based trade regimes to energy in order to secure a level playing field. Our empirical investigation focuses on EU efforts to foster international and regional trading regimes, both in terms of membership and in terms of extending their scope to energy.
II. Second, the stronger the EU's foray into addressing energy supply risks, the greater the Commission's use of general regulatory rules rather than ad hoc bilateral arrangements. Our empirical investigation focuses on the Commission's efforts to extend trade regimes to cover third country investment and transit, i.e. issue areas that are crucial to the bloc's long-term supply of oil and gas.
III. Third, the more the lopsided market power in international energy relations becomes the focus of the Commission's actions, the stronger its push to maintain a level playing field for energy firms regardless of their national origin, rather than supporting European 'national champions'. Our empirical investigation focuses on the extent to which single market rules affect non-EU firms that operate in Europe, notably with a view to external monopoly gas suppliers such as Gazprom.

Another four hypotheses follow from the assumption that as a liberal regulatory state, the Commission can be expected to address problems related to making markets work in terms of correcting EU-level market failures. In markets such as oil and gas, the challenges consist of ensuring price transparency and public data on supply and demand; establishing mechanisms to deal with supply (gas) or price (oil) shocks; establishing enforceable laws against cartels, firms' abuse of their dominant position and restraints on trade (price fixing or discrimination, restrictions on resale); and supporting crucial infrastructure, notably pipelines. Our second set of hypotheses are informed by these four issues: dealing with asymmetric information in energy markets (market data); managing externalities from non-energy events (notably political shocks to supply); addressing market dominance (restoring competition); and promoting the supply of EU-level public goods (infrastructure). The four hypotheses are:

IV. Fourth, the more pronounced bilateral arrangements or off-market deals in international energy affairs, the stronger the EU's efforts to address obstacles related to full and openly accessible market information on oil and gas fundamentals or shift information asymmetry in its own favour. Our empirical investigation explores the Commission's efforts to foster transparency at home and abroad.

V. Fifth, the more exposed EU energy markets are to external economic shocks (stemming from armed conflict or nationalization or strikes in producer countries), the more the Commission seeks to manage rather than prevent them. Our empirical investigation explores the ways the EU chooses to manage the consequences of political and economic shocks that threaten energy security.

VI. Sixth, the more the EU shifts its attention to producer cartels and monopolies, the stronger the Commission's efforts to foster competition on international energy markets (i.e. break up cartels rather than counterbalance them by establishing consumer monopsonies). Our empirical investigation explores the Commission's actions related to international and regional oil and gas markets.

VII. Seventh, to the extent that transnational energy infrastructure issues are tackled, the Commission addresses them in terms of market imperfections arising from public goods characteristics related to energy infrastructure and transit, rather than resorting to 'pipeline diplomacy'. Our empirical investigation explores the EU's involvement in providing infrastructure, through a range of policy tools that support the establishment and maintenance of pipelines, interconnectors and energy networks.

The next section presents the findings of the empirical investigation. Because our investigation centres on the preferences and actions of the Commission, the empirical data that provide the basis for the following analysis are drawn from Commission proposals and EU legislation (directives, regulations) as well as direct action through agreements with third parties, external projects and the use of competition law. The data set comprise 85 energy-related acts by the Commission between 1990 and 2012, as reported in *Agence Europe*, of which about half have a clear external dimension.[1] The latter were checked against reporting in the specialist press, particularly the *Financial Times* and *European Voice*.

BUILDING AND OPERATING INTERNATIONAL OIL AND GAS MARKETS

Our first set of hypotheses relate to the assumption that the Commission seeks to build or extend rule-based markets for energy, even as global power structures shift against the liberal model. The relevant timeline of our investigation therefore covers both the extension of the single European market to energy in the 1990s and the effort to extend this beyond the EU's own boundaries, and the more politicized period that followed in the 2000s.

Table 1 The external dimension of the EU regulatory state: making and operating energy markets (ordered by degree of compliance with liberal paradigm)

		Issue	*Aim*	*Means*	*Examples of tools as applied*	*Assessment*
I	1994	Trade regimes, regulating trade	Free trade and efficiency gains	Multilateral and bilateral agreements	All SEM energy rules extended to European Free Trade Association states that joined European Economic Area	Liberal
	2006				Energy Community Treaty extends SEM energy rules to West Balkans (subsequently also Ukraine and Moldova)	Liberal
	since 1994/1993				Attempts to extend World Trade Organization (WTO) rules to energy in context of Russian and Saudi accession (failed)	Liberal
	1991–2003				EU provided technical assistance through Technical Assistance to the Commonwealth of Independent States to Commonwealth of Independent States states; replaced by Neighbourhood Policy	Liberal
	Since 2012				Commission negotiations with Russia and Belarus on Baltic electricity market (ongoing); may include infrastructure funding	Liberal
	1998–2002				SYNERGY programme for co-operation with Latin America, South-East Asia and African states on energy policy	Neutral

II	1994	Regulating investment and transit	Sustain upstream capacity and trade infrastructure	Multilateral and bilateral agreements	For EFTA states: EEA (and bilateral treaties with Switzerland)	Liberal
	2006				For Ukraine, Moldova and West Balkans: Energy Community	Liberal
	1994				For CIS: Energy Charter Treaty (not operational)	Liberal
	since 1999				For CIS: 10 Partnership and Co-operation Agreements reference to WTO rule plus provision for dialogue, expert groups etc.; EU–Russia Energy Dialogue	Neutral
	2005, 1997, 1989				For non-CIS: Africa–Europe Energy Partnership (AEEP), Euro-Mediterranean Energy Partnership; EU–Gulf Co-operation Council (GCC) agreement	Neutral
	2011				Commission allows exemptions, e.g. for pipeline projects such as Nord Stream, see below	Non-liberal
III	1994	Non-EU firms' access to the Single European Market	Competitive SEM, consumer choice, efficient price	EU competition policy and energy market regulation	For EFTA states: EEA (and bilateral treaties with Switzerland)	Liberal
	2006				For Turkey and West Balkans: Energy Community	Liberal
	2009				For CIS: SEM rules require non-EU gas companies to register with EU regulator, permits Commission full use of competition policy tools also *vis-à-vis* foreign companies active on EU market (e.g. Gazprom dawn raid, see below)	Liberal
	2009				EU 'Third Energy Package' gas market rules require non-EU firms to 'unbundle' operation in EU	Liberal

(*Continued*)

Table 1 Continued

		Issue	*Aim*	*Means*	*Examples of tools as applied*	*Assessment*
	2009				EU 'Third Energy Package' gas market rules allow member states to withhold certification for transmission operators in case of security of supply risk	Non-liberal
IV	1995, 1999, 2008	Asymmetric information	Foster transparency at home and abroad	Collect and disseminate data	Regulation on registration for crude oil imports and deliveries in the Community; decision on information on crude oil supply costs and consumer prices; regulation on energy statistics	Liberal
	2012				Decision on transparency in member states' bilateral agreements with third countries	Liberal
	Since 2001				Support international transparency: Eurostat cooperation in Joint Oil Data Initiative (JODI) with International Energy Agency (IEA)	Liberal
V	1998, 2002, 2006, 2009	Externalities from non-energy events	Managing (buffering) externalities	Reserve stocks, co-ordination	Directives on oil stocks and to bring EU rules on stocks in line with IEA provisions	Liberal
	2004, 2010				Directive, later Regulation, on common EU framework for defining security of supply policies with regard to gas disruptions	Liberal
	1996, 2003, 2006				Decisions on trans-European energy networks, including funding, to achieve effective SEM operation and security / diversification of supply	Liberal

VI	2002	Imperfect competition, market dominance	Restore or promote competition	EU competition policy	Norwegian gas export monopoly gas negotiating committee (GFU) dismantled	Liberal
	2003, 2005				Removed destination clauses from gas supply contracts with Gazprom and others	Liberal
	2011–2012				Investigation of Gazprom practices: 'dawn raids' and anti-trust case	Liberal
	2010				Commission vetting bilateral deals between EU member states and third parties	Liberal
	2009				Commission proposed commercial vehicle to assume risks and supply guarantees to the Caspian (Caspian Development Corporation – on hold)	Non-liberal
	2010				Commission helping Poland with negotiations with Russia	Non-liberal
VII	1996; 1993/2000	Undersupply of public goods	Provide or support infrastructure	SEM exemptions, funding, support projects	INOGATE technical assistance programme & TRACECA to promote alternative energy infrastructure	Liberal
	2013				Call on Member States to bring contracts on South Stream in line with Third Energy Package re. unbundling, operation and tariffs	Liberal
	Since 2002				Support alternative pipelines to diversify supplies (i.e. non-Russian gas from the Caspian) both financially and through exemptions from SEM rules: Nabucco (failed) and 'Southern Corridor'	Non-liberal
	Since 1997				Support alternative pipelines to circumvent transit countries (Ukraine), both financially and through exempting from SEM rules: Nord Stream	Non-liberal

Table 1 sets out the most important policy challenges, and presents our findings on the Commission's response (because we focus on the Commission's strategies, the assessment in the last column captures the use of policy tools, not their effectiveness). A 'liberal response' is defined as one that is in line with the principles of the regulatory state model – and our hypotheses – and thus constitutes an extension of the EU's internal regulatory state model to its external energy environment. 'Non-liberal' responses include a wider range of policy tools, for example measures designed to protect EU markets or firms, to project EU consumer power *vis-à-vis* third parties, or use of political and economic power to access new markets. Although the line is sometimes blurred, it is clear that the policy tools as actually applied by the Commission are by no means restricted to the 'liberal' toolbox.

Extending international trade regimes to the energy sector

The principal policy tools by which the Commission pursues a liberal market agenda in external energy affairs are multilateral and bilateral agreements. The most successful example is the 1994 European Economic Area (EEA), which extended the single European market to the EFTA states, notably oil- and gas-rich Norway, making this important supplier country a de facto member state of the internal market. Norway consequently had to dismantle the Gas Negotiation Committee (GFU), its monopoly organization for co-ordinating exports of gas between 1986 and 2002 (Austvik 2001). Since oil and gas have been left out of the World Trade Organization (WTO), the Commission has sought to include energy in the WTO framework and to close energy-related loopholes such as dual pricing for gas (Behn and Pogoretskyy 2012). However, when the WTO was extended to Russia (2012) and Saudi Arabia (2005), energy was not included (Milthorp and Christy 2011: 293). The Energy Community Treaty, which includes Albania, Bosnia, Croatia, Macedonia, Montenegro, Serbia, Kosovo, the Ukraine and Moldova, is a modest success that commits the signatories to rule-based energy governance. The Commission has also started negotiations with Russia and Belarus on a legal framework to operate the electricity networks of the Baltic member states '[i]n line with the agreed roadmap for full implementation of internal market rules' (European Commission 2012a). In addition it uses a number of softer policy instruments, including financial support of non-supply-related programmes in renewable energy and energy efficiency, the establishment of expert groups to discuss technical issues, and a wide range of partnership agreements (Association Agreements, Partnership and Co-operation Agreements, SYNERGY agreements).

The overall finding is that the Commission pushes a liberal agenda that represents an external extension of its own regulatory state. To the extent that the EU ventured into regulating the energy sector as part of its external economic policy, it took a strictly rule-based approach. To be fair, this finding is unsurprising. The EU's overall preference for free trade is hard-wired into the organization through its treaties and fundamental principles as well as member state economic policy preferences (Moravcsik 1998). The expansion of EU external economic policy to energy since the early 1990s has therefore been very much shaped by the EU's overall liberal paradigm. Although there are exceptions to the EU's general free trade disposition, energy is no longer among them.

Building regimes for transit and investment

The EU has taken several steps to address risks related to security of supply, particularly linked to upstream investment and transit. The main policy tools are international agreements pertaining specifically to the oil and gas sector. The Commission has sought to establish stable and predictable legal frameworks and transnational dispute resolution mechanisms. This is based on the conviction that both gas and petroleum trade require substantial upstream investment in production capacity and midstream spending on transport infrastructure, which in turn requires a long time-horizon of involved public or private companies.

A case in point is the Energy Charter Treaty (ECT) of 1991 (Dore and Bauw 1995; Waelde 1995). Although Russia signed the ECT, it declined to ratify the treaty and stopped the provisional application of the ECT in 2009. The ostensible reason was the treaty's bias towards the EU's interests and Western liberal principles, and its signing at a time of Russian weakness (Selivanova 2012). As for Norway (which has also not ratified the ECT), transit and trade with the EU are covered by the EEA agreement and the Norwegian regulatory regime. In addition, the 2006 Energy Community Treaty commits the signatories to implementing the EU gas liberalization legislative packages. This provides the Commission with a policy tool to influence transit rules outside its own immediate jurisdiction, not least because of the expertise it shares with non-member states and their regulatory authorities. Indeed, this affects the entire energy sector in these states, not merely transit and investment.

A final example of the EU's rule-based approach to energy investment and transit are the numerous Partnership and Co-operation Agreements (PCAs) it has signed since 1999, which typically include chapters related to energy. The latter usually make reference to WTO rules and formalize consultation on technical or regulatory issues. PCAs are often complemented by a series of legally non-binding but still institutionalized 'agreements' or 'dialogues', such as the co-operation agreement with the Gulf Co-operation Council (GCC) or the EU–Russia Energy Dialogue. After the 2009 gas crisis between Russia and the Ukraine, the EU–Russia Energy Dialogue was complemented by an early warning mechanism aimed at moderating and de-escalating conflict surrounding energy transit, and a new EU–Russia Gas Advisory Council to exchange views on future gas trends. The effectiveness of these measures is clearly debatable, given the successive 'gas crises' that neither forum helped to prevent or solve. Still, the Commission clearly comes across as a liberal actor and has consistently made use of general regulatory rules in addressing energy supply risks, although these rules leave some room for manoeuvre when it comes to implementation (see below).

Including external suppliers in single market rules

With regards to challenges arising from external companies, our principal finding is that the Commission extends its standard policy instruments for liberalizing the gas sector to non-EU firms. Notwithstanding the member states' room for manoeuvre, the basic principle is that all firms active within the EU have to comply with EU competition rules and energy market regulation. The best example is the end of Norway's GFU. More controversially, this implies that non-EU firms that operate in the EU market are bound by its rules, as the Microsoft cases illustrated (e.g. Case T-201/04).[2] In effect, the Commission's tactics in terms of both liberalizing EU gas markets and ensuring that the rules cover external suppliers have been guided as much by pragmatic problem solving as by liberal principles. The most obvious example is the so-called 'Gazprom clause' in the 2009 Third Energy Package (Council of Ministers 2009: Art. 11). This was tailored specifically to address the failure of the ECT and concerns about Gazprom's dominant position (Eikeland 2011). It not only requires that non-EU firms comply with unbundling rules as far as their EU operations are concerned – what Cottier, Berkutova-Matteotti and Nartova call a kind of 'conditionality for firms' – but it also stipulates that member state authorities that certify transmission operators should ensure that non-EU firms' ownership does not put security of supply at risk, a requirement that does not apply in the case of EU firms (Cottier *et al.* 2011). The 'Gazprom clause' thus opens for considerable deviation from the liberal market model.

What is more, the Commission has sought to extend EU competition rules and energy market regulations to third countries and make them applicable to their companies, operators and regulators. The obvious case again is the Energy Community Treaty, which extends single European market rules to the EU's near abroad. To be sure, some EU member states have openly challenged the Commission's approach and have pushed for the establishment of 'national champions' as a way to counterbalance the lopsided market power of non-EU energy firms. A case in point here is the GdF (Gaz de France)-Suez merger of 2008, promoted by the French government. Still, the EU Commission has abstained from supporting these efforts, and instead stuck to competition policy tools and related regulations across the board. That said, we find some room for heterogeneity in the policy tools as applied by the Commission either directly or in its oversight of national regulators. This becomes clear in some of the Commission's efforts to deal with the next four challenges, related to making energy markets work.

Addressing lack of transparency as a market failure

The Commission has made increasing transparency in international energy markets a key policy objective. While the oil market may be the only truly integrated commodities market on the planet, around half the international crude oil trade still takes place bilaterally through medium and long-term contracts. Even the part that is subject to spot and futures trading lacks some key characteristics of fully functioning markets. Important producers, such as Saudi Arabia, reveal neither capacity nor reserves; key consumers, such as China, conceal their level of demand. Even the available market data suffer from a lack of accuracy and common standards of measurement (Holscher *et al.* 2008; International Energy Agency [IEA] 2009). A key objective of the Commission therefore is to smooth out price volatility by providing openly accessible information. The International Energy Agency is tasked with providing such data for oil markets (but only for the OECD countries). The Commission supports its efforts at three levels: direct support for IEA and the Joint Oil Data Initiative through Eurostat; collection of data on agreements between EU firms and their third-country suppliers; and market statistics pertaining to the EU.

In natural gas, the Commission was the driving force behind a Council decision of 2012 institutionalizing the exchange of information on member states' bilateral energy agreements with third countries (European Parliament and the Council 2012). Compared to oil, European gas markets are, if anything, even further from the textbook model of an open market. Because gas is primarily transported by pipeline, most trade remains regional. For historical reasons the gas trade outside North America is dominated by long-term take-or-pay contracts (the buyer pays even if they do not take the gas) and is therefore bilateral, with prices often pegged to oil. The challenge as identified by the Commission lies in disclosing pricing arrangements between external suppliers and individual European countries. This can be interpreted as an effort to curb price discrimination (which has long characterized European gas markets) as well as an attempt to shift information asymmetries to its own favour.

Either way, the Commission's measures are all scored as fully liberal, in terms both of policy tools and their application. Bilateral arrangements and challenges related to non-disclosure by market actors have been consistently addressed by efforts to gather and disseminate openly accessible information.

Managing external shocks

The EU has taken several steps to address potential price or supply risks stemming from non-energy events. In oil, events such as war (e.g. the Iran–Iraq war), domestic political turmoil in producer countries (e.g. in Nigeria's Niger delta) or industrial disputes (e.g. the 2002 PDVSA strike in Venezuela) can trigger severe price shocks. Here, the EU's policy efforts have centred on buffering oil price shocks by maintaining and managing strategic petroleum stocks, which can be released to counter the effect of an external shock. It does this by supporting the IEA's co-ordination of release of stocks in emergencies. With regards to gas, disputes between a producer and a transit country can have severe repercussions for third-party consumers. A case in point is the two-week 2009 crisis between Russia and Ukraine, which interrupted gas supplies to five South-East European countries (and led to reported losses of some \$1.5 billion for Gazprom). Reacting to that, the EU now requires member states to hold stocks and put in place measures for dealing with disruptions, and it has promoted measures to make supply networks more robust (e.g. trans-European energy networks, interconnectors and reverse pipeline capacity). In all, the Commission's measures are clearly directed at managing externalities and coping with their effects, rather than preventing them from occurring, and is thus are fully in line with the regulatory state logic and the notion of liberal policy tools.

Coping with imperfect competition

The Commission has taken on the challenge to tackle powerful producer cartels and monopolies among the EU's external suppliers. In natural gas, these efforts come against the backdrop of market power shifting (back) to Russia and other Eurasian producers in the 2000s, after a decade of a post-communist 'gas bubble' (Stern 1995). The Commission attempts to deal with this through competition law, e.g. the above-cited break-up of the GFU and decisions that oblige firms that supply the EU market to remove 'destination clauses' that restrict a buyer's freedom to resell gas anywhere in the EU. It has also launched anti-trust cases against monopoly supplier Gazprom, based on 'concerns that Gazprom may be abusing its dominant market position in upstream gas supply markets in Central and Eastern European Member States' (European Commission 2012b), and vetted member states' (or their firms') bilateral deals with main suppliers. In oil markets, imperfect competition is a problem at the global (not the regional) level, and mainly related to OPEC controlling some 43 per cent of global oil production, around 60 per cent of globally traded oil and 72 per cent of proven reserves (BP 2013). The Commission's efforts with respect to oil are therefore channelled through the IEA. Overall, therefore, the finding is that the Commission's efforts centre on making markets function more efficiently (and managing market risks) rather than counterbalancing lopsided market power of key suppliers.

However, there are some important exceptions to the Commission's liberal strategy. Two cases merit attention. First, the Commission has proposed what effectively amounts to a gas buyers' consortium in the shape of the Caspian Development Corporation. While the project has effectively been halted, the implicit aim was to pool EU consumer power *vis-à-vis* Central Asian producer states in order to secure large volumes of gas for Europe and diversify sources of supply beyond Russia (IHS CERA, 2010). Second, the Commission engaged in negotiating Poland's long-term gas contracts with Russia in 2010. The Commission acting as a 'referee' and vetting deals negotiated between its member states and third parties can be regarded as 'liberal', aimed at ensuring compliance with single market rules. It can, however, also be a means to throw consumer weight behind deals with strong third-country suppliers (European Parliament 2012). Both examples take the Commission considerably beyond its regulatory state role. Although the Commission's active role in supporting member states in negotiations with Gazprom/Russia and the Caspian initiative constitute non-liberal responses to a lopsided regional gas market, they can be seen as second-best efforts to address market failures.

Providing and supporting physical infrastructure

With regard to energy infrastructure, the Commission has supported the establishment of pipelines, interconnectors and other transport infrastructure that exhibit public goods characteristics. This is primarily an issue in natural gas, where pipeline multiplicity is a public good inasmuch as it reduces the EU gas market's reliance on a single external supplier (Russia) or a dominant transit route (across the Ukraine). The Commission takes a two-pronged approach to this challenge.

On one hand, it extends its competition-driven model beyond its own borders by liberal measures in its effort to build markets. The Commission has, for instance, asked six EU member states to renegotiate their deals on the planned South Stream pipeline bringing gas through the Black Sea to South-East Europe. Standard liberal measures to make markets work include the INOGATE technical assistance programme to promote construction of interconnector infrastructure for the Eurasian gas network, or the multilateral TRACECA agreement, which aims at supporting pipeline infrastructures from and to the Caspian Sea.

On the other hand, the Commission also supports infrastructure projects in order to overcome the public goods aspect of the pipeline problem. This sometimes requires compromising on competition policy. Here, the Commission's tools include both financial support and regulation. Examples include the exemption of the Nord Stream pipeline between Germany and Russia under the Baltic Sea from some single market rules, and the Nabucco pipeline initiative that was designed to establish a 'southern corridor' to Central Asian gas circumventing both Russia and the Ukraine. The EU also made a financial commitment to Nabucco that included a grant for a feasibility study and 200 million euro from the European Economic Recovery Programme. Moreover, the Commission – notably in the persons of energy commissioner Oettinger and president Barroso – has engaged in direct talks with potential supplier countries in the Caspian region (European Commission 2011). While this does not amount to Russian-style energy 'diplomacy' (Stulberg 2008), it certainly leaves the 'liberal' paradigm. Still, and although Nabucco eventually lost out to the rivalling Trans Adriatic Pipeline (TAP) project, these decisions and actions can be seen as efforts to help supply public goods (pipelines). At the same time, they may be interpreted as efforts to support infrastructure projects designed to circumvent dominant external players such as Gazprom/Russia or the Ukraine. While not liberal in outlook, these efforts to 'make markets work' by diversifying supply (and thus increase gas-on-gas competition) represent an effort to compensate for the failure to extend single market rules on trade, transit and investment to the former Soviet states.

CONCLUSION: THE *MOSTLY* LIBERAL EXTERNAL FACE OF THE EU REGULATORY STATE

Overall, our main finding is that the Commission – and the EU as a whole – has indeed adopted a liberal paradigm, but with plenty of room for ambivalent interpretation. This points towards two broad conclusions. First, in external energy policy the Commission is – mostly – a liberal actor, even as the world of energy turns more realist. Second, it is so by choice. Although the institutions and policy tools of the regulatory state constrain the Commission's external actions, its toolbox contains more than simply regulatory tools. When it comes to how to build markets for energy and extend their geographical reach, the Commission's strategy (and indeed the strategy of the EU as a whole) is overwhelmingly liberal. Its overall aim is the establishment of rule-based open market energy trade, rather than ad hoc bilateral arrangements. When it comes to making markets work, the findings are more diverse. When addressing asymmetric information and managing the consequences of external shocks to price or supply, the liberal toolbox suffices. However, when it comes to pipeline politics and coping with Gazprom's dominant supply role, regulatory policy tools are supplemented by diplomacy, finance and ad hoc exemptions to open market rules. We argue that this represents a pragmatic solution to the dilemma the EU faces in an increasingly 'realist' international context: if it is not possible to extend the regulatory state, it might be necessary to compromise on some of its principles abroad in order to maintain the regulatory market model at home. The conclusion that the EU is a liberal actor in a realist world therefore merits the adjective *mostly*. This adjective is of considerable significance. The fundamental challenge for the Commission is that the EU is increasingly caught between its liberal market model and a world less and less inclined to stick to this model. The EU's response has been to stick to its liberal guns – by choice and with conviction – even if this no longer fully resonates in the new environment, but to explore pragmatic use of a wider range of policy tools. Its use of non-liberal tools represents a second-best strategy, an effort to work around problems when its primary strategy fails.

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NOTE

1 The reporting in *Agence Europe* was checked against a full data set of more than 800 energy-related acts, including a large number of technical decisions, reported by the Commission in the same timeframe.
2 Between 2000 and 2013 the Commission investigated a number of possible abuses of dominant position by Mircosoft on the EU market for computer operating systems, including the company's linking of Media Player and Internet Explorer to its operating system. Microsoft received fines of several hundred million Euro, and was required to alter the Windows software sold in the EU. The list of investigations and cases is available on http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_37792, accessed 25/02/2014).

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