Interest Groups and the (Non-)Enforcement Powers of EU Agencies: The Case of Energy Regulation

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Some EU agencies have been recently entrusted with enforcement powers, which imply a crucial extension of their regulatory reach. However, other comparable agencies did not receive such powers. This paper explores the case of energy regulation as an instance of these "negative" cases, and suggests that the lack of enforcement powers may have been partially determined by business interest groups. To illustrate this argument, this article firstly relies on official documentation to show that key interest groups were consistently opposed to the option of granting enforcement powers to the EU agency in charge (ACER). Secondly, it is suggested that these interest groups, which have been largely incorporated in regulatory networks during the prehistory of the agency, had access to, and exerted influence in, the governance of EU energy policy, and could plausibly have been able to concretise their preferences. A systematic examination of the representation of interest groups in the European network of energy regulators (CEER/ERGEG) during the period 2004–2011 is undertaken to corroborate this point. The conclusion draws attention to the fact that, although interest groups are less visible than other actors and their presence is less formalised, they could be very influential on decision-making processes within European networks and agencies.

I. A NEGATIVE CASE FOR ENFORCEMENT

This article deals with the factors that could elucidate the occurrence of a "negative case" with respect to enforcement powers attributed to EU agencies. The study of such a negative case is particularly relevant, as the emergence of enforcement powers has been considered a new type of spillover.[1] As this argument is grounded on functionalist assumptions, it raises questions about what accounts for the non-emergence of enforcement powers, which should unfold as a functional necessity once a given stage of institutional development has been reached. Of course, it may be that some EU agencies simply do not match the scope conditions of the theory, or, in other words, that they do not (yet) possess the characteristics that should produce the spillover, eg in terms of their institutionalisation,

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[1] M Scholten and D Scholten, "From Regulation to Enforcement in the Eu Policy Cycle: A New Type of Functional Spillover?" (2017) 55(4) *Journal of Common Market Studies* 925.

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tasks, regulatory capacity, and so forth. If so, they would correspond to so-called irrelevant negative cases, ie those for which the phenomenon of interest is not theoretically expected, and indeed it does not occur. Instead, this paper focuses on a negative case – the Agency for the Cooperation of Energy Regulators (ACER) – that could theoretically display the outcome, as it is largely comparable to positive cases where the phenomenon of interest does occur, such as the European Securities and Markets Authority (ESMA),[2] and yet it does not. The central claim of this research strategy is that this negative outcome – the non-attribution of enforcement powers – should depend on one (or some) underlying factor(s) of theoretical interest that characterises the specific case at stake, and namely, as I will argue in what follows, on the role of business interest groups. It is also worth noting that European networks and agencies are extremely relevant for studying contemporary lobbying dynamics, as they epitomise the unfinished and multifaceted process of transnationalisation of governance, which is – to a considerable extent – where political authority is increasingly being relocated.[3]

Why would one expect that business interest groups matter for the issue at stake, and that they would do so negatively? While the general literature on interest group representation is abundant,[4] the dynamics of interest representation in transnational governance settings such as those unfolding in European regulatory networks (ERNs) that preceded the establishment of EU agencies, and in EU agencies themselves, are much less studied. In particular, the role of business interest groups in advancing or hindering enforcement, and, more generally, in shaping changes in governance arrangements, is an important topic that has so far been overlooked. Nonetheless, several features suggest that business interest groups may play an important role. ERNs and EU agencies typically deal with the meta-regulation of technical matters, involving topics such as market integration, the interconnectedness of operators or the need to provide information about tariffs, wherein one would expect a policy making style close to "board room politics", whereby decisions are made by an elite of bureaucrats, professionals and business groups, excluding citizens and politicians.[5] In addition, loose transnational arenas provide fertile ground for the political involvement of business interests.[6] In that regard, studies on international organisations such as the WTO[7] and the World Bank[8] have emphasised the openness, the diversity and the volatility of interest representation in these settings. Comparative work on national-level

[2] M Chamon, *EU Agencies: Legal and Political Limits to the Transformation of the Eu Administration* (Oxford University Press 2016).

[3] A-M Slaughter, *A New World Order* (Princeton University Press 2004).

[4] Cf for instance: FR Baumgartner et al, *Lobbying and Policy Change: Who Wins, Who Loses, and Why* (University of Chicago Press 2009); J Richardson, "Government, Interest Groups and Policy Change" (2000) 48(5) *Political Studies* 1006; J Beyers and C Braun, "Ties That Count: Explaining Interest Group Access to Policymakers" (2014) 34(1) *Journal of Public Policy* 93; PD Culpepper, *Quiet Politics and Business Power: Corporate Control in Europe and Japan* (Cambridge University Press 2010); D Coen and J Richardson, *Lobbying the European Union: Institutions, Actors, and Issues* (Oxford University Press 2009).

[5] WT Gormley, "Regulatory Issue Networks in a Federal System" (1986) 18(4) *Polity* 595.

[6] S Wilks, *The Political Power of the Business Corporation* (Edward Elgar Publishing 2013); D Ciepley, "Beyond Public and Private: Toward a Political Theory of the Corporation" (2013) 107(1) *American Political Science Review* 139 at p 142.

[7] M Hanegraaff et al, "Open the Door to More of the Same? The Development of Interest Group Representation at the WTO" (2011) 10(4) *World Trade Review* 447.

[8] PJ Nelson, "Conflict, Legitimacy, and Effectiveness: Who Speaks for Whom in Transnational NGO Networks Lobbying the World Bank?" (1997) 26(4) *Nonprofit and Voluntary Sector Quarterly* 421.

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policy networks has shown that business interests, mainly represented through associational forms and by the direct political action of large companies, represent a significant percentage of actors within these communities (roughly around 50%), even though the weight of business interests varies across sectors and policy areas.[9]

How to conceptualise and operationalise this weight? As Truman put it, "power of any kind cannot be reached by a political interest group, or its leaders, without access to one or more key points of decision in the government. Access, therefore, becomes the facilitating intermediate objective of political interest groups. The development and improvement of such access is a common denominator of the tactics of all of them".[10] Albeit access does not guarantee influence, it should be considered as a crucial condition for the exercise of power in policymaking. The question of interest representation can thus be fruitfully framed from this perspective, at least for exploratory purposes. The literature on lobbying has typically dealt with the question of access. In their extensive study of lobbying in the US, Baumgartner et al[11] have found that, when looking at the frequency of lobbying activities in Congress, business associations, corporations and professional associations all together constitute as much as 74% of the sample, in comparison with just 15% for citizen groups. Nonetheless, when citizens groups do participate, they seem to have a strong voice. They slightly outnumber trade and business associations as the most frequently cited type of "major participant" in a large sample of policy debates, with a score of 26% to 21%. Business corporations come third with 14%, the rest being shared among various actors such as professional associations, unions and think tanks. As regards influence, however, citizen groups are considered to have a disproportionally weaker effect on policy outputs, because they lack financial resources and staff in comparison with business corporations and associations.

The picture of lobbying activities in the EU shows quite complex and diverse patterns. To begin with, the EU is particularly dependent on secondary channels for interest representation, because of the weakness of ordinary representative institutions such as the European Parliament;[12] in turn, the system of interest representation in the EU is exceptionally remote from civil society, as most EU interest groups are in fact "associations of associations".[13] The very nature of policy making in the EU is prone to interest group intermediation, given its high reliance on regulation, which is often presented as a technocratic mode of governance that requires sector-specific knowledge.[14] Similarly, the limited staff size of the Commission makes it dependent on external actors for providing information and expertise. A rough estimation using data adapted from Greenwood indicates that trade associations and professional

[9] V Schneider, *Business in Policy Networks: Estimating the Relative Importance of Coporate Direct Lobbying and Representation by Trade Unions* (Opladen & Farmington Hills: Barbara Budrich Publishers 2006).

[10] DB Truman, "The Governmental Process: Public Interests and Public Opinion" (New York, Alfred A Knopf 1951) p 264.

[11] Baumgartner et al, supra, note 4.

[12] P Bouwen, "Corporate Lobbying in the European Union: The Logic of Access" (2002) 9(3) *Journal of European Public Policy* 365.

[13] J Greenwood, *Interest Representation in the European Union* (Palgrave Macmillan 2011).

[14] G Majone, *Regulating Europe* (European Public Policy Series; London, Routledge 1996) pp xiv, 315.

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associations represent 38% of all interest groups active in EU affairs, followed by citizen groups (17%), corporations (14%) and regions (10%).[15] These figures show a clear dominance of business, well above the US position. However, it is unlikely, the EU polity being multi-level and fragmented, that a single narrow interest can capture a policy domain, still less the entire system. The notion of "elite pluralism" is sometimes employed to make sense of this situation, meaning that "access is generally restricted to a few policy players, for whom membership is competitive and strategically advisable".[16] Correspondingly, Klüver noted that lobbying success in the EU varies with the issue context, depending on the relative size of lobbying coalitions and the salience of policy issues, whereas individual group characteristics do not exhibit any systematic effect.[17] At the same time, resource endowment and organisational structures, as in the American case, do play a crucial role for effective lobbying.[18]

Therefore, a double-sided expectation with respect to the role of business interest groups will be explored. On the one hand, it is expected that the opposition of important interest groups at a critical juncture[19] – brief phases of change whereby choices are made, other choices are discarded, leading to the establishment of institutions that generate self-reinforcing path-dependent processes, which are difficult to alter, such as agency design and reform – is a key factor that could lead to a negative outcome, that is, the non-assignment of enforcement powers to a EU agency possessing the theoretical features that would otherwise favour the functional spillover.[20] Such an opposition is expected to occur as business interest groups – especially in the case under investigation – consider pan-European regulators with enforcement powers to be too intrusive and insensitive to domestic variations in terms of market structure.[21] On the other hand, a negative case of enforcement should also depend on the actual capacity of interest groups to concretise their preferences. Thereby, it is expected that in negative cases such as the one under investigation, interest groups opposing the attribution of enforcement powers to EU agencies will be found to have a particularly preponderant role both in terms of access and (potential) influence on the governance of the policy area that is at stake at EU level, ie energy policy.

[15] Greenwood, supra, note 13, p 28.

[16] D Coen, "The Evolution of the Large Firm as a Political Actor in the European Union" (1997) 4(1) *Journal of European Public Policy* 91 at pp 98–99, see also D Coen, "Empirical and Theoretical Studies in EU Lobbying" (2007) 14(3) *Journal of European Public Policy* 333.

[17] H Klüver, "The Contextual Nature of Lobbying: Explaining Lobbying Success in the European Union" (2011) 12(4) *European Union Politics* 483.

[18] H Klüver, "Informational Lobbying in the European Union: The Effect of Organisational Characteristics" (2012) 35(3) *West European Politics* 491.

[19] G Capoccia and RD Kelemen, "The Study of Critical Junctures: Theory, Narrative, and Counterfactuals in Historical Institutionalism" (2007) 59(3) *World Politics* 341.

[20] Scholten and Scholten, supra, note 1.

[21] See for instance Ofgem stakeholder consultation, from whom it appears that enforcement is increasingly perceived as a matter of national competency: Ofgem, Consultation Decision. Review of Ofgem's Enforcement Activities – Decision Strategic Vision, Objectives and Decision Makers, 2013.

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II. Research strategy

The main conceptual challenge of studying negative cases consists of selecting cases that could theoretically display the outcome of interest, as they are largely comparable to positive cases as regards the explanatory variables, and yet they do not.[22] They correspond to relevant negative cases, whose investigation is especially helpful to delimitate the scope of causal propositions, to refine causal theories, or to generate new hypotheses. Process tracing approaches provide the appropriate tools to examine these cases by pointing to the observable manifestations of the phenomenon of interest within the case itself.[23] This in-depth study enables researchers to assess the congruence between empirical findings and concrete theoretical expectations.[24] Furthermore, counterfactual reasoning provides a complementary perspective to the study of negative cases, consisting in conjecturing on whether the outcome of interest would have occurred in the hypothetical absence of the specific factor of theoretical interest as mentioned above.[25] Starting with these premises, the analytical framework adopted in this paper relies on the within-case analysis of a single unit – a methodology that is appropriate for exploratory research applied to informal, hardly detectable phenomena.

The case of ACER fits neatly into this research strategy. This agency can be considered as a "typical" instance of EU agencies that could acquire enforcement powers, meaning that it is representative of the (small) population under investigation.[26] To begin with, energy regulation is confronted with the classic dilemma of coordinating policies and ensuring transnational cooperation in a field that involves "hard" politics associated with security concerns and national strategic issues. In the EU, energy regulation is specifically confronted with the highly complex task of ensuring the convergence of the gas and electricity markets in a context of path dependence on the existing infrastructures and on technical and economic domestic structures.[27] At the same time, supranational institutions have to manage the natural interconnectedness of energy policies and infrastructures in a context shaped by strong national interests.[28] ACER itself was established by the Third Energy Package as an independent EU agency and has been operational since 2011 to further progress the completion of the internal energy market for electricity and natural gas.[29] The statutory goals of this EU

[22] J Mahoney and G Goertz, "The Possibility Principle: Choosing Negative Cases in Comparative Research" (2004) 98(4) *American Political Science Review* 653.

[23] A Bennett and JT Checkel, *Process Tracing: From Metaphor to Analytic Tool* (Cambridge University Press 2014); D Collier, "Understanding Process Tracing" (2011) 44(4) *Political Science and Politics* 823; J Mahoney, "The Logic of Process Tracing Tests in the Social Sciences" (2012) *Sociological Methods & Research*.

[24] J Blatter and T Blume, "In Search of Co-variance, Causal Mechanisms or Congruence? Towards a Plural Understanding of Case Studies" (2008) 14(2) *Swiss Political Science Review* 315.

[25] JD Fearon, "Counterfactuals and hypothesis testing in political science" (1991) 43(2) *World Politics* 169.

[26] J Seawright and J Gerring, "Case Selection Techniques in Case Study Research: A Menu of Qualitative and Quantitative Options" (2008) 61(2) *Political Research Quarterly* 294.

[27] RW Künneke, "Convergence of Gas and Electricity Markets: Economic and Technological Drivers" in A Bausch and B Schwenker (eds), *Handbook Utility Management* (Dordrecht, Springer 2009) p 263.

[28] M Finger and F Varone, "Regulatory Practices and the Role of Technology in Network Industries: The Case of Europe" in *The Governance of Network Industries: Institutions, Technology and Policy in Reregulated Infrastructures* (Cheltenham, Edward Elgar 2009) p 87.

[29] Cf <www.acer.europa.eu/en/The_agency/Pages/default.aspx>.

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agency are to coordinate and complement the activities of independent energy regulators at the domestic level, to monitor the harmonisation of regulatory frameworks within the framework of the EU's energy policy objectives, and to provide advice on the process towards the achievement of the single EU energy market for electricity and natural gas. ACER's organisational structure is composed of permanent staff and experts from domestic regulators. Oversight of the agency's regulatory activities is ensured by a board of regulators, comprising senior representatives of national agencies in the field of energy in Member States. An administrative board appointed by EU institutions supervises administrative and budgetary activities. Finally, an independent board of appeal deals with complaints against ACER decisions.

The first step of the empirical analysis is exceedingly simple. It consists of looking for clues in official documents that support the expectation that business interest groups had an unconditional preference for blocking the attribution of enforcement competencies to ACER. In line with the logic of process tracing and congruence analysis, the descriptive inference comes from the systematic examination of diagnostic evidence.[30] The second step of the empirical analysis, whose goal is to examine the extent to which these preferences could have been concretised, is more demanding.[31] It requires a measuring of the importance of the role of business interests in the governance of the EU policy area at stake. Finding a univocal, direct measure of such a "diffuse" influence is difficult, especially due to the quite informal nature of the processes under investigation and related data availability limitations. However, a good proxy of business interest access and influence in EU energy policy governance is their active participation in the network that preceded the establishment of ACER, and at the same time still overlaps with it. Indeed, national energy regulators began to coordinate actively in an informal way from 1997. Then, in 2000, the Council of European Energy Regulators (CEER) was established as a voluntary association to institutionalise these informal exchanges. ERGEG (European Regulators Group for Electricity and Gas) was created by the EU in 2003 as an advisory group intersecting with CEER, but remained largely irrelevant until its transformation into ACER. In fact, actual decisions were made within CEER, that is, when representatives of the EU Commission are absent. From the organisational side, CEER and ERGEG can be considered as a single networked organisation, as they largely overlap in practice. At the outset, interactions among regulators were limited to technical exchanges of information and did not imply the discussion of policy issues; however, quite soon a number of soft rules in the form of principles, guidelines and recommendations were agreed upon and adopted at network level – for instance the "balancing markets" guidelines and the "information and transparency" guidelines, which aim to

[30] Bennett and Checkel, supra, note 23.

[31] It is worth noting that comparative evidence on the dynamics at work with respect to other agencies would be needed to cross-validate the proposition; eg by showing that *ceteris paribus* a lower preponderance of business interest groups is associated with the positive attribution of enforcement powers to another agency. However, comparable longitudinal data on external stakeholder participation to the policy process within networks were not available for other, similar cases. The present research strategy has to be intended as instrumental for an exploratory study pointing to an emerging question that deserves to be examined more systematically with cross-sectoral analysis.

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encourage competition in the energy markets and to establish a consistent strategy across Europe for the provision of information to market participants.

This article will thus examine the access and the potential influence of "external actors" in the policy process of CEER/ERGEG. The starting point involves the comparative examination of the proportion of all external actors that were consulted and took part in the hearings leading to the policy outputs of this networks, that is, the drafting and agreement upon all principles, guidelines and recommendations issued by the CEER/ERGEG. The temporal framework corresponds to the network's active operation, which is the period 2004–2011. These actors consist of 481 entities that can be systematised in 11 distinct types, as follows: (1) firms; (2) business associations; (3) experts; (4) trade unions; (5) NGOs and non-profit; (6) firm networks; (7) government and agencies; (8) consultants; (9) universities; (10) insurances and pension funds; (11) investors and financial institutions. The 68 policy processes (or "events") that occurred during the investigated period pertain to the reliability of supply, cost-effectiveness, risks minimisation, and to the transnational coordination, cooperation and communication of energy regulations. Examples are transmission tarification guidelines, congestion management guidelines, or procedures for transparency monitoring (cf Table 2 in the Appendix, below).

Afterwards, regarding the potential influence of external actors, my approach is to use some basic tools of social network analysis to identify the most central actors in the network. To grasp a sense of the trends over time, I will break down the analysis on a yearly basis, which represents the basic unit of the network's policy cycle, before aggregating data for the whole period. To do so, I will compute a two-mode matrix for each year, with the predefined actors in the rows and the events (ie guidelines, recommendations, etc) in the columns, by filling the cells with a value of one (1) where an actor actively participated in an event, and with a value of zero (0) where an actor did not participate. This two-modes (actor-event) matrix will be transformed into a one-mode (actor-actor) matrix applying the adequate procedure in UCINET.[32] This transformation creates a matrix containing symmetric relations between all pairs of actors participating in decision-making processes, year-by-year. As an example: a value of 5 in the cell 6-7 of the matrix related to the year 2008 means that both actors 6 and 7 jointly participated in five events in the year 2008. Then, these matrices can be analysed with social network analysis tools to derive centrality measures such as the degree and the betweenness centrality of actors, representing respectively their local popularity and their relative prominence in ensuring the connectivity of the network; they are thus complementary measures.[33] I will use the former as the main indicator of potential influence and the second as a robustness check. In order to implement this procedure, I have put together a new dataset, based on publicly available data found on the CEER and ERGEG websites and completed with an email inquiry to the network's secretariat (see the Appendix for more details).

[32] SP Borgatti et al, "*Ucinet for Windows: Software for Social Network Analysis*" (Harvard: Analytic Technologies, 2002).

[33] J Scott, *Social Network Analysis: A Handbook* (2nd edn, London, Sage Publications 2000) pp x, 208; S Wasserman and K Faust, *Social Network Analysis: Methods and Applications* (Cambridge, Cambridge University Press 1994) ch 8, pp xxxi, 825.

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III. Interest groups and patterns on non-enforcement

As said above, ACER is interesting from the point of view of enforcement because it is a "typical" EU agency that however does not enjoy enforcement powers. The opportunity of granting enforcement powers – through the application of fines – to ACER has been concretely discussed in due time, namely following a recommendation by the EU Parliament.[34] However, these enforcement mechanisms were considered not appropriate by the EU Commission[35] and by the EU Council, and were ultimately not conceded.[36] On paper, this choice has been motivated on the grounds of the "Meroni doctrine", which would prevent the delegation of "hard" regulatory powers such as enforcement competencies to EU agencies. The boundaries of the Meroni doctrine are however becoming rather indefinite. Indeed, as previously mentioned, ESMA, an EU agency that is largely comparable to ACER, has eventually received enforcement powers that are very similar to those suggested for the energy agency. The legitimacy of this entrustment process has also been confirmed by a ruling of the Court of Justice of the European Union (CJEU). Thereby, going by the book alone cannot explain this difference.

Instead, there are clues indicating that energy stakeholders mattered, especially business interest representatives. To begin with, it appears that business interests have been consistently opposed to this option. Since these issues are mostly dealt with informally, especially in the pre-ACER era, it is difficult to find smoking-gun evidence of their role.[37] However, it is possible to put together some documentary evidence that goes in this direction. Official reports of stakeholder meetings and consultations indicate widespread support for the prescription that enforcement procedures and practices should remain a prerogative of national regulatory agencies, in conformity with the Third Energy Package and the Regulation on Wholesale Energy Market Integrity and Transparency.[38] At the same time, a broad stakeholder consultation launched by ACER in 2012 has shown that these enforcement procedures and practices were largely non-harmonised.[39] Interestingly, a more recent report has indicated that enforcement powers are not only weakly consistent, they are also insufficient overall to guarantee compliance.[40] Nevertheless, the European Network of Transmission System Operators (ENTSO-E), which represents the most important external stakeholders as regards business interests in the energy sector,

[34] Report on the proposal for a regulation of the European Parliament and of the Council establishing an Agency for the Cooperation of Energy Regulators (COM(2007)0530 – C6-0318/2007 – 2007/0197(COD)).

[35] European Commission, 18 June 2006, 'Commission Position on EP Amendments at first reading', SP (2008) 4439 <www.europarl.europa.eu/oeil/spdoc.do?i=15160&j=0&l=en>.

[36] Common Position (EC) 10/2009 of the Council, OJ 2009 C 75E/1.

[37] D Collier, "Understanding Process Tracing" (2011) 44(4) *Political Science and Politics* 823.

[38] Cf namely Art 13 of Regulation (EU) No 1227/2011 of 25 October 2011 on wholesale energy market integrity and transparency; Safeguarding the independence of regulators Insights from Europe's energy regulators on powers, resources, independence, accountability and transparency CEER report; ACER Public Consultation on Recommendations to the European Commission as regards the records of wholesale energy market transactions according to REMIT,.Evaluation of Responses

[39] ACER Recommendations to the Commission as regards the records of wholesale energy market transactions, including orders to trade, and as regards the implementing acts according to Art 8 of Regulation (EU) No 1227/2011, Public Consultation Document, 21 June 2012.

[40] ACER's Annual Report on its Activities under Regulation (EU) No 1227/2011 on Wholesale Energy Market Integrity and Transparency (REMIT) in 2014, prepared by ACER, Market Monitoring Department September 2015.

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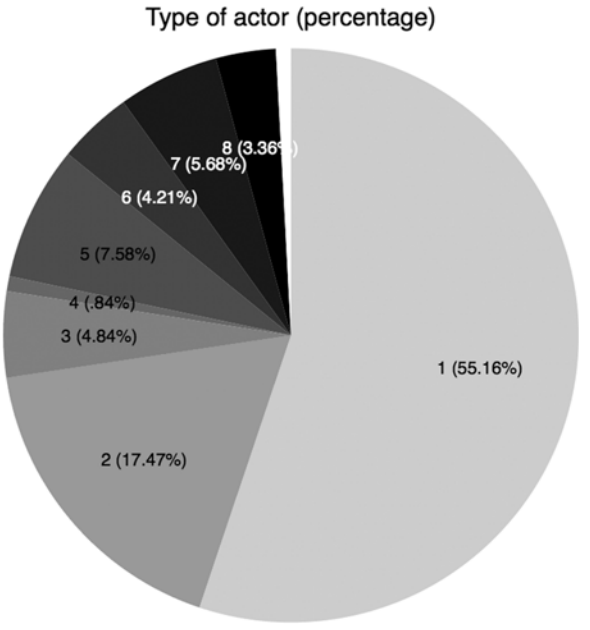


Figure 1. participation

expressed a clear opposition to the attribution of enforcement powers to ACER, however limited they might be – a finding that tends to corroborate the first expectation:[41]

> "ENTSO-E opposed the Commission's proposals to give ACER additional competences in the network code development process and considered the oversight role of ACER on regional cooperation as counter-productive and at odds with better regulation."

The next step is to assess the extent to which these stakeholders hold enough power to impose their preferences in this policy area, using the patterns of interest groups representation in CEER/ERGEG as a proxy. When we look at the aggregated figures, we find considerable support for the expectation about the preponderance of business interests in the energy network. Indeed, firms and professional associations represent 72% of all the external actors included in the decision-making process of CEER/ERGEG in the years 2004–2011 (Figure 1). Most importantly, this percentage grows to 85% when only the 10% most central actors (in terms of degree centrality) are considered (Figure 2). This means that business interests are virtually the only ones that are potentially influential in the production of policy outputs in the form of principles, guidelines and recommendations within the CEER/ERGEG.[42] This result confirms previous findings, for

[41] European Parliament, EPRS, *New rules for the Agency for the Co-operation of Energy Regulators (ACER)*, Briefing, EU Legislation in Progress, May 2018, p 7.

[42] It should be noted that the public sector is also included into these figures because some energy firms and facilities are partially state-owned. However, in these cases, these actors still represent the interests of energy producers, and not of consumers or of the civil society at large.

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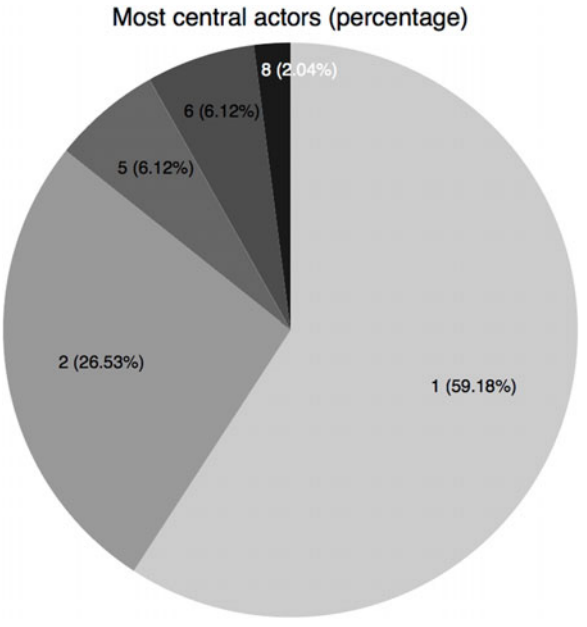


Figure 2. most central actors (10%)

Key:

1	Firms	7	Government and agencies
2	Business associations	8	Consultants
3	Experts	9	Universities
4	Trade unions	10	Insurances and pension funds
5	NGOs and non-profit	11	Investors and financial institutions
6	Firm networks		

instance those of Coen[43] and Culpepper,[44] according to which business actors are very successful in their lobbying activities, especially in technical fields. However, the scale of the phenomenon is impressive. These networks seem particularly vulnerable to be colonised by the external actors that have more financial resources and staff to get actively involved, at the expenses of pluralist representation that is more common in democratic institutions at the national and, to some extent, at the more institutionalised EU level.

Bivariate regressions can be used to give a sense of the association between the occurrence of each type of actor (measured as a dummy variable) and their overall

[43] Coen (2007), supra, note 16.

[44] Culpepper, supra, note 4.

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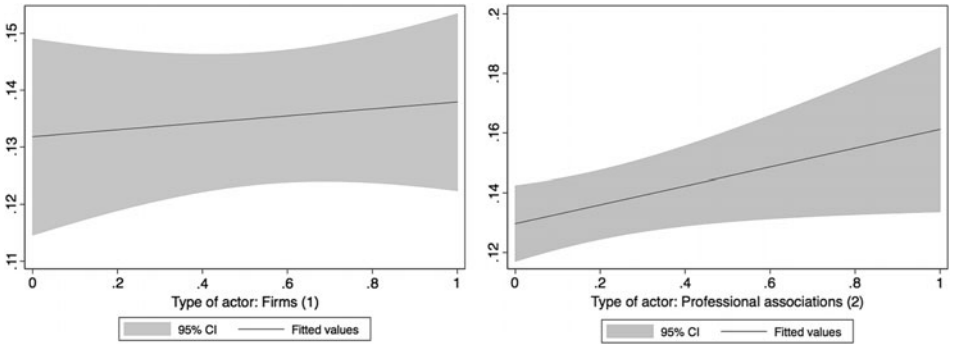


Figure 3-4. bivariate regressions (centrality)

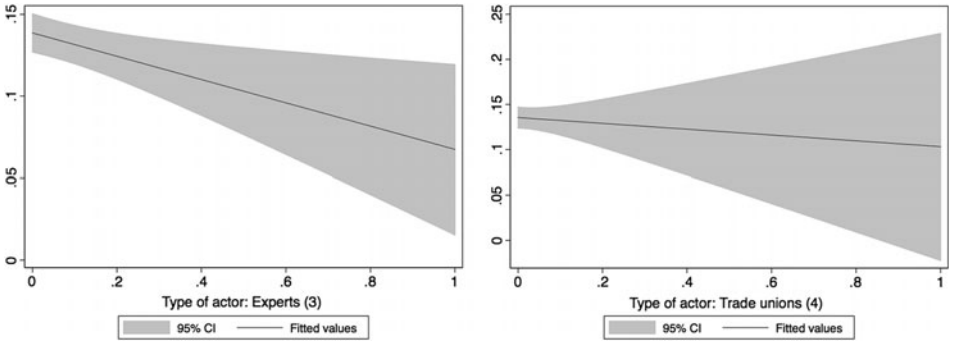


Figure 5-6. bivariate regressions (centrality)

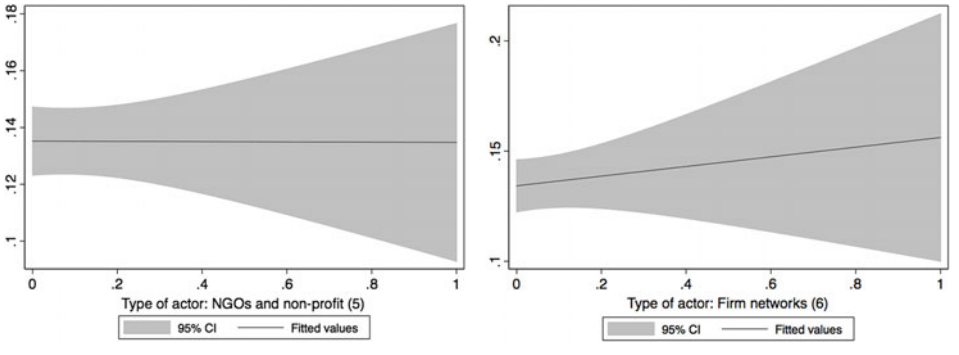


Figure 7-8. bivariate regressions (centrality)

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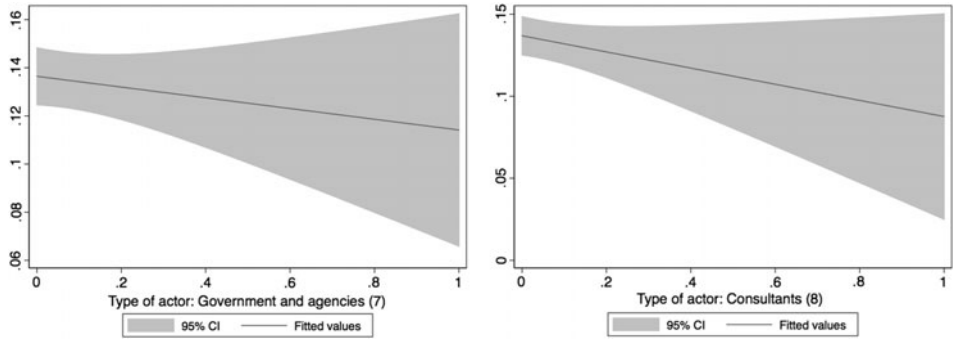


Figure 9-10. bivariate regressions (centrality)

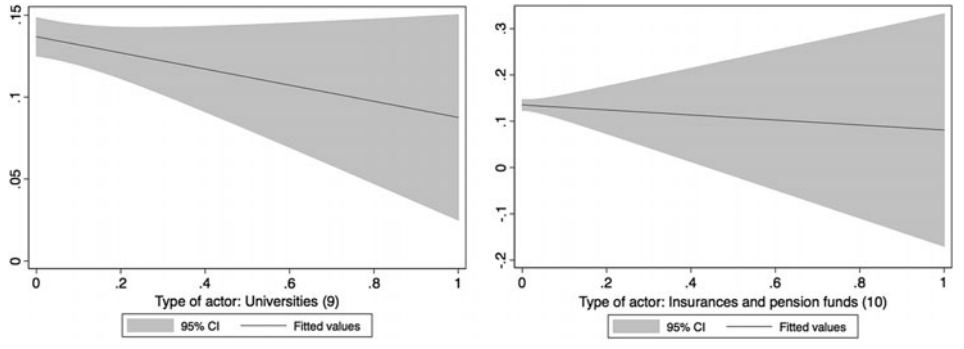


Figure 11-12. bivariate regressions (centrality)

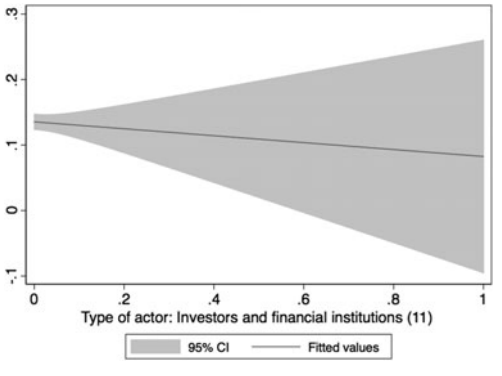


Figure 13. bivariate regressions (centrality)

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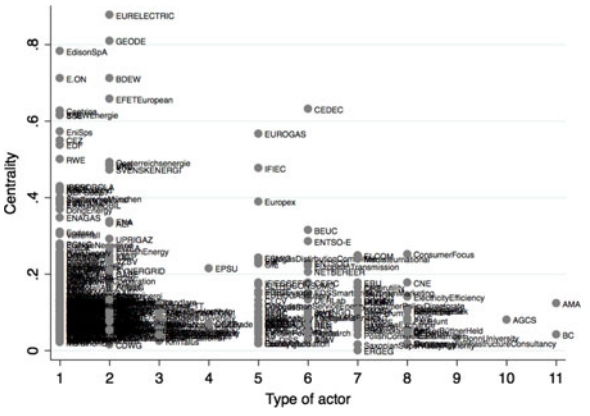


Figure 14. single-actor centrality

centrality. As shown in Figures 3 to 13, this association is not so clear-cut (regression tables are not reported). The only significant effects of the type-of-actor dummies on centrality occur for professional associations, whose presence tends to be positively associated with centrality, and for experts, which appears to be inversely related to the dependent variable. However, the overall trends corroborate the results mentioned above.

When the single-actor degree centrality of the most central actors is considered (Figure 14), it is possible to conclude that some large corporations seem very influential indeed, such as Edison SpA (an energy company headquartered in Milan, Italy), E.ON (a large holding company based in Essen, Germany, which runs electricity utility service providers), Centrica (a British multinational utility company whose principal activity is the supply of electricity and gas to businesses and consumers), EDF (a French electric utility company, mostly owned by the French government), ExxonMobil (an American multinational oil and gas corporation), and SSE (a British energy company). They rank consistently among the very most central actors, meaning that they were actively involved in many of the decision-making processes in the period under consideration. However, business associations are also equally relevant. Examples are EURELECTRIC (an association that represents the interests of electricity generation and distribution companies) and GEODE (which represents independent energy distribution companies), BDEW (an interest group representing the German energy and water industries), CEDEC (a Brussels-focused organisation representing the interests of local and regional energy companies in Austria, Belgium, Bulgaria, France, Germany, Italy, the Netherlands, Norway and Switzerland). Furthermore, in line with this expectation, the data shows that no single actor appears to dominate the policy process at network level for the entire period under investigation.

There is a trend towards even more representation of business interests over time; this is corroborated by this empirical analysis, although with some qualifications (Figure 15). The social network of external actors included in the CEER/ERGEG evolved

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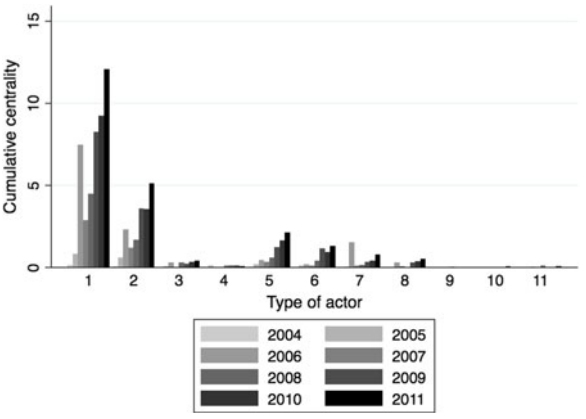


Figure 15. cumulative centrality year-by-year

considerably in the course of the period under consideration. It is possible to note an expansion both in the number of events per year and in the share of consulted actors. Above all, this development goes with a progressive reinforcement of business actors. The diachronic analysis of network centrality indeed shows that, although some public agencies and groups representing consumers and civil society were able to achieve moderately central positions in the first years of network existence, their potential influence stagnated or even declined as time went by. Instead, business interest groups monopolise the most central positions especially since 2009. Conversely, the relative weight of firms and business associations is quite stable over time.

At the end of the day, it appears that, in line with the second expectation, business interests were clearly overrepresented in CEER/ERGEG, indicating that is it likely that they have been able to concretise their preferences about the non-attribution of enforcement powers to ACER. It is also plausible to hypothesise that, if business interest groups had not been opposed or had not had a preponderant role in the governance of this policy area, the functional spillover would have been more likely.

IV. Concluding remarks

This article has put forward exploratory evidence about the preference of business interest groups for the denial of enforcement powers to ACER, the EU agency in charge of the meta-regulation of the energy sector. What is more, it has shown that business interests are clearly overrepresented in CEER/ERGEG, the network that preceded the establishment of ACER, and at the same time still overlaps with it, much more than in national and European institutions. Not only do business interest representatives have ever more frequent access to decision-making processes within the network, but they are also able to occupy very central positions, meaning that they have high potential influence on the outputs of these processes. The most central actors are a relatively small number of firms and business associations. While no single actor

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dominates the process, a distinct type of interest group, representing business interests, is increasingly predominant in the network, achieving an almost hegemonic position. These findings suggest that business interest groups play a particularly pre-eminent role in this area, both in terms of participation and of potential influence, which makes them potentially able to concretise their preferences for the non-attribution of enforcement powers to the sector-specific EU agency. Further research should cross-validate this exploratory finding with comparative evidence on the role of business interest groups in other sectors.

Some more general implications can be drawn from this exploratory study of a negative case of enforcement. The networks under investigation appear to be largely colonised by external actors that have the capacity, motivation and resources to influence their decision-making processes, more than is usually found in democratic institutions at the national and, to some extent, the EU level. A possible explanation – that would deserve further attention – could relate to the distinctive organisational and institutional characteristics of networked organisations, which could make them effective governance tools, but also more vulnerable to some special interests. On the one hand, their flexibility, informality and openness make them particularly permeable. On the other, as they are relatively opaque vis-à-vis broader audiences, weakly accountable to representative democracy institutions, and relying on technocratic legitimacy, they do not have to justify the differential inclusion of business interest groups in front of public opinion. What is more, they appear as primary lobbying targets for interest groups. Although trade associations are found to be less relevant than they used to be in domestic-level interest intermediation, their role is extremely important in the governance network under investigation. This may suggest that these associations are redirecting their efforts to other levels, where real decisions are considered to be made.

Given that ERNs and EU agencies are bringing into being a double delegation of powers – from domestic governments to independent regulators and then from independent regulators to regulatory networks and/or agencies – coupled with a selective inclusion of interest groups as external actors, the question of ensuring their democratic accountability stands out as crucial. The question remains open about the factors shaping the special role played by interest groups in this negative case of enforcement related to the governance of EU energy policy with respect to positive cases for which the function spillover did occur. It may depend on the specific public-private nature of the energy industry and on the unusual collective action capacity of their stakeholders, but, again, further research is needed to clarify the scope conditions.

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Appendix

Table 1. List of actors

Actor	Label
8KU	1
50Hertz	2
A2ATrading	3
ABDESolutions	4
Accenture	5
AU	6
AdriaticLNG	7
AEEG	8
AGCS	9
AKWien	10
ÅlandsElandelslag	11
Alliander	12
AlpiqSwisstrade	13
AlpiqTrading	14
AlstomGrids	15
Altergaz	16
ALTROCONSUMO	17
AMAFI	18
Amgaz	19
ANEC	20
Anigas	21
APG	22
AppliedMaterials	23
APX	24
ACIE	25
AFG	26
FSE	27
AEP	28
AIB	29
VDN	30
ANEE	31
AIGET	32
APER	33
FGW	34
Assoelettrica	35
AAEC	36
BAK	37
AGGM	38
AvaconAG	39
BalticCable	40
BarclaysCapital	41
BDEW	42
BeaconPower	43
BEB	44
BeckerBüttnerHeld	45

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Table 1. (Continued)

Actor	Label
BEMASK	46
BenergyBV	47
BergenEnergi	48
BEUC	49
BEWAGNETZ	50
BGGroup	51
BGInternational	52
BNEF	53
BNE	54
BonnUniversity	55
BGN	56
BP	57
BPGasMarketing	58
BPGasPower	59
BPNE	60
BritishEnergy	61
BritishGas	62
Bundeskartellamt	63
BGW	64
BEE	65
BWE	66
CECU	67
CEDEC	68
CEFIC	69
CentralEuropeanGas	70
CentreforCompetition	71
Centrica	72
CentricaEnergia	73
CentricaStorageLtd	74
ČEPS	75
CEPSA	76
CEPSAGAS	77
CEZ	78
CEZTrade	79
CFAInstitute	80
CIA	81
CIGRÉCIREDUIE	82
CLCV	83
ClimatePolicyInitiative	84
Clingendael	85
EUCC	86
COGENEurope	87
CNE	88
CRE	89
CWaPE	90
CDWG	91
Confartigianato	92
Confindustria	93
ConocoPhillips	94

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Table 1. (Continued)

Actor	Label
ConsumerFocus	95
ConsumerPolicy	96
CREG	97
CreosLuxembourg	98
CSL	99
CSRES	100
CzechGasUnion	101
CZEPHO	102
DanishConsumer	103
Danksenergi	104
DémászHálózati	105
Depomures	106
DERA	107
DERLabexperts	108
DeutscheTelekom	109
DistrigazSud	110
DongEnergy	111
DTE	112
E-COntrol	113
EonCZECH	114
EonBulgaria	115
EonEnergieRomania	116
EonEnergyTrading	117
EonHanseAG	118
EonHungaíriaCorporation	119
EonHungáriaDSO	120
EonNordicAB	121
EonNorthTransdanubian	122
EonRuhrgas	123
EANDIS	124
EASEE-gas	125
ECCG	126
EchelonCorporation	127
Econgas	128
ECT-Group	129
EDEF	130
EDEFEnergy	131
EDF	132
EDFDEMASZHalozat	133
EDFEnergy	134
EDFSA	135
EDFTrading	136
EdinburghUniversity	137
Ediso SpA	138
EDP	139
EDPDistribuição	140
EDPGás	141
EDPNaturgas	142
EDSO	143

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Table 1. (Continued)

Actor	Label
EEG	144
EEGI	145
EEOG	146
EestiEnergia	147
EEX	148
EFETEuropean	149
EFETIberian	150
EirGrid	151
ELCOM	152
ElectricPowerResearch	153
ElectricalPowerSystems	154
ElectricityEfficiency	155
EGL	156
Elengy	157
EleringOU	158
ELEXON	159
ELSTER	160
eMeter	161
EMFESZKft	162
ENAGAS	163
EnBWEnergie	164
EnBWTrading	165
EndesaIreland	166
Endex	167
Eneco	168
ENEL	169
ENERCON	170
ERU	171
Energie-Nederland	172
EnerginetDK	173
EnergyAgencySerbia	174
EnergyAgencySlovenia	175
ENA	176
EnergyNorway	177
ERO	178
EnergyUK	179
ENERGYWATCH	180
EnerNOC	181
ENIGasPower	182
EniSPS	183
ENTSO-E	184
ENTSOG	185
EnviaNetz	186
ENWL	187
Eon	188
EonNetz	189
EPIA	190
EPSU	191

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Table 1. (Continued)

Actor	Label
ERDF	192
ERGSpa	193
ERGEG	194
Ericsson	195
ESB	196
ESMIG	197
Esso	198
ESTELA	199
Eurometaux	200
EURELECTIC	201
EUROGAS	202
EUROGASSUPPLY	203
EurogasDistirbution	204
EurogasDSOs	205
EurogasLNG	206
EurogasStuc	207
EEX	208
Exchange	209
EGEC	210
EuropeanTransmission	211
EWEA	212
Europex	213
Even Consultant	214
EVN	215
EVNBulgaria	216
EWENetz	217
EXXONMOBIL	218
FachverbandGas	219
FACOGAZ	220
FEBEG	221
FEBELIEC	222
Federutility	223
FGSZ	224
FinnishEnergyIndustries	225
Fluxys	226
Fortum	227
FortumPowerHeat	228
Frako	229
FransNieuwenhout	230
ISI	231
AFG	232
Futured	233
FuturesOptionsAssociation	234
GBARTAK	235
GABE	236
Galp	237
GasForum	238
GasNaturalGalpEnergia	239
GasNaturalComercializadora	240

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Table 1. (Continued)

Actor	Label
GasNaturalFenosa	241
GasTerra	242
Gasag	243
Gaselys	244
Gaslink	245
Gasunion	246
GazdeNormandie	247
Gazprom	248
GazpromMarketingTrading	249
GDFSuez	250
Gemserv	251
GEODE	252
GIE	253
GLE	254
Global	255
GÖTEBORGENERGI	256
GPX	257
GRDF	258
Greenpeace	259
GreenwichUniversity	260
GRTGas	261
GSE	262
GTE	263
GTS	264
Gusee	265
HannoverUniversity	266
HEO	267
HervéRochereau	268
HIENT	269
HMPOWER	270
HungarianElectricity	271
IBERDROLA	272
IFIECCEFIC	273
IFIECEurope	274
IFIECInternational	275
INEOSChlorVinyls	276
InteractiveInstitute	277
Interconnector	278
OGP	279
ISDA	280
CNA	281
IWEA	282
JointNGO	283
JönköpingEnergi	284
JPMorgan	285
JuwiHoldingAG	286
KimTalus	287
KRIMarketing	288
KSBedrift	289

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Table 1. (Continued)

Actor	Label
KTH	290
Landis	291
LatvijasGaze	292
LeonoardoEnergy	293
Liander	294
LianderandEnexis	295
LondonEnergyBrokers	296
ManagementandInfrastructure	297
MarathonOilIreland	298
Marcogaz	299
MAVIR	300
MEDGRID	301
Médiateurnational	302
MerrillLynch	303
MilanVidmar	304
MITGas	305
MOL	306
MOLGas	307
Moyle	308
MrScarsi	309
MutualEnergy	310
MVKE	311
NAFTA	312
NASDAQ	313
NationalGrid	314
Naturgas	315
NaturgasEnergia	316
NederlandseAardolie	317
NederlandseGasunie	318
NERAEconomicConsulting	319
NETBEHEERNEDERLAND	320
NGT	321
Nordel	322
Nordenergi	323
NordPoolSpot	324
NorskIndustri	325
NorthWestEuropeanPlatform	326
KSBedriftEnerg	327
EBL	328
NuonVattenfall	329
OilandGasUK	330
OberoendeElhandlare	331
Oesterreichsenergie	332
OFGEM	333
OmbudsmanServiceEnergy	334
OMV	335
OMVGasPower	336
OMVGasStorage	337

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Table 1. (Continued)

Actor	Label
ODE	338
OTE	339
Paikallisvoimary	340
PANASONICEUROPE	341
PaulHunt	342
PGE	343
PGNiG	344
PLURIGAS	345
PolishAssociationEnergy	346
PolishCommercialChamber	347
POGC	348
POWEO	349
Powernext	350
PPC	351
PSEOperator	352
PublicPowerCorporation	353
PUC	354
QEnergia	355
QualityofLife	356
RdaboudUniversity	357
RE-DISS	358
RedEléctrica	359
REGTP	360
REN	361
RENandRED	362
REF	363
RES	364
RESC	365
IFN	366
Rohöl-Aufsuchungs-AG	367
ANRGN	368
Romgaz	369
RONI	370
RWE	371
RWEDeutschlandAG	372
RWEEnergy	373
RWEGas Midstream	374
RWEGas Storage	375
RWEnpower	376
RWESupply and Trading	377
RWETransgas, a.s.	378
RWETransportnetz	379
Sagecom	380
SAP	381
SBGI	382
Schneider-electric	383
SSE	384
SEDIGAS	385

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Table 1. (Continued)

Actor	Label
SEPSAS	386
ShannonLNG	387
ShellEnergyEurope	388
SHELLInternational	389
SIAPartners	390
SilverSpring	391
SEDC	392
SNCF	393
Sorgenia	394
SorgeniaTrading	395
SP	396
SPELuminus	397
SPP	398
SPPDISTRIBUCIA	399
SPPPreprava	400
StadtwerkeHannover	401
StadtwerkeMünchen	402
Stanowisko	403
Statkraft	404
STATNETT	405
Statoil	406
StatoilHydro	407
STEM	408
Stogit	409
Storengy	410
StorengyFrance	411
StorengyGermany	412
StorengyUK	413
SuomenVoima	414
SustainabilityFirst	415
SVENSKENERGI	416
SvenskaKraftnät	417
SVSE	418
SWB	419
SFOE	420
Swissgrid	421
SWMandMVV	422
SydkraftGas	423
SYNERGRID	424
T-DEurope	425
TAG	426
TeamWare	427
Teradata	428
TheSwitch	429
Thuega	430
ThüringenGas	431
TIGF	432

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Table 1. (Continued)

Actor	Label
Tiwag	433
Total	434
TOE	435
TransAdriaticPipelines	436
TransoLNGStorage	437
TroutmanSanders	438
TullettPrebon	439
Unesa	440
UCTE	441
UFE	442
UNEI	443
UPRIGAZ	444
UtilityPartnership	445
VaasaETTOy	446
Vattenfall	447
VattenfallAB	448
VattenfallDistribution	449
VattenfallEurope	450
VattenfallSalesPoland	451
VDE-ETG	452
VDMEnergyTrading	453
VKU	454
VERBUNDAG	455
VerivoxGmbH	456
VGB	457
ViennaUniversity	458
VIK	459
VNG	460
VOKKS	461
VSE	462
Východoslovenskáenergetika	463
VZBV	464
WackerChemieAG	465
Wartsila	466
WesternPowerDistribution	467
Which	468
WSG	469
WienEnergie	470
WINGAS	471
WuppertalInstitute	472
Yara	473
YellowWoodEnergyYWE	474
Západosloveskáenergetika	475
ZVEI	476
Platts	477
SaxonianSupervisoryAuthority	478
SaxonianExchangeAuthority	479
ISDAFOAEFET	480
BGWVDEWVKU	481

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Table 2. List of events

Starting date	Event
2004/10/07	E04-PC-01: Guidelines for Good Practice on Storage System Operators
2005/05/02	E05-PC-03: Congestion Management Guidelines
2005/07/18	E05-PC-05: Guidelines for Good Practice on Balancing 2005
2005/05/02	E05-PC-02: Transmission Tarification Guidelines
2005/06/09	E05-PC-04: Creation of Regional Electricity Markets - the Electricity Regional Initiative (ERI)
2005/11/22	E05-PC-06: Roadmap to competitive gas markets
2011/10/25	C11-PC-66: CEER Draft advice on Price Comparison Tools
2011/07/14	C11 - PC 63: Draft GGP on retail market design, with a focus on supplier switching and billing
2011/05/10	C11-PC-62 CEER Draft advice on the take-off of a demand response electricity market with smart meters
2010/06/22	E10-PC-51: Draft GGP on regulatory aspects of smart metering for electricity and gas
2010/07/20	E10-PC-50: Draft GGP on Indicators for Retail Market Monitoring
2009/10/01	E09-PC-40: Draft Advice on Customer Complaint Handling, Reporting and Classification
2006/03/01	E06-PC-07: Customer Issues
2011/11/09	C11-PC-67: Implications of Non-harmonised Renewable Support Schemes
2010/03/18	E10-PC-49: Benchmarking report on medium and long-term electricity allocation rules
2010/09/10	E10-PC-56: Draft Framework Guidelines on Capacity Allocation and Congestion Management for Electricity
2010/09/09	E10-PC-55: ERGEG Draft Comitology Guidelines on Fundamental Electricity Data Transparency
2010/07/14	E10-PC-52: Pilot Framework Guidelines on Electricity Grid Connection
2010/03/03	E10-PC-48: Call for Evidence on Generation Adequacy Treatment in Electricity
2010/02/01	E10-PC-47: Call for evidence on incentives to promote cross-border trade in electricity
2009/12/17	E09-PC-44: ERGEG Position Paper on Smart Grids
2010/12/17	E09-PC-45: ERGEG Draft Advice on the Community-wide Ten-year Electricity Network Development Plan
2009/12/10	C09-PC-43: Regulatory aspects of the integration of wind generation in European electricity markets
2009/03/24	E09-PC-38: Draft GGP on electricity grid connection and access
2009/01/20	E09-PC-35: Revision of GGP on Electricity Balancing Markets Integration
2008/09/17	E08-PC-32: Regulation (EC) 1228/2003 Compliance Monitoring, Second Report 2008
2008/07/18	E08-PC-29: Treatment of Electricity Losses by Network Operators
2008/04/17	E08-PC-28: GGP for Operational Security in Electricity
2008/09/16	E08-PC-31: ERI Coherence and Convergence Report 2008
2007/07/20	E07-PC-21: Electricity Regional Initiative Convergence
2006/12/21	E06-PC-17: Towards Voltage Quality Regulation in Europe
2006/10/05	E06-PC-15: Cross Border Framework for Electricity Transmission Network Infrastructure
2006/04/10	E06-PC-10: Guidelines on Inter-TSO Compensation
2006/03/15	E06-PC-08: Guidelines for Good Practice on Transparency
2012/06/28	C12-PC-68: CEER Market-Based Investment Procedures for Gas Infrastructure: Issues and Approaches
2011/07/11	C11-PC-64: CEER Vision for a European Gas Target Model

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Table 2. (Continued)

Starting date	Event
2011/05/11	E10-PC-59:Conceptual model for the European gas market – Call for Evidence
2010/08/19	E10-PC-54: Draft pilot framework guideline on gas balancing
2010/07/29	E10-PC-53: Assessment of CAM and CMP for effective access to gas storage
2010/09/10	E10-PC-58: Transparency requirements for natural gas
2009/12/18	E09-PC-46: Draft Pilot Framework Guideline on Capacity Allocation on European Gas Transmission Networks
2009/03/24	E09-PC-37: ERGEG Recommendations on the 10-year gas network development plan
2009/01/26	E09-PC-36: ERGEG Principles: Capacity Allocation Mechanisms and Congestion Management for Gas Transmission Networks
2008/03/21	E08-PC-27: Article 22 - Exemptions to TPA
2007/12/13	E07-PC-25: GGP - Third Party Access for LNG System Operators
2007/11/26	E07-PC-24: Principles of gas tariff calculation
2007/11/16	E07-PC-23: Gas Transparency Monitoring
2007/06/15	E07-PC-20: Capacity Calculation
2007/10/12	E07-PC-22: Gas Regional Initiative Coherence and Convergence
2007/05/10	E07-PC-19: Secondary Markets
2006/12/07	E06-PC-16: Guidelines for Good Practice on Open Season
2006/06/29	E06-PC-14: Transmission Pricing
2006/04/25	E06-PC-11: Guidelines for Good Practice on Balancing 2006
2006/03/20	E06-PC-09: Monitoring of the Guidelines for Good TPA Practice for Storage System Operators (GGPSSO)
2005/07/18	E05-PC-05: Guidelines for Good Practice on Balancing 2005
2011/05/18	E11-PC-61: ERGEG draft advice on the regulatory oversight of energy exchanges
2011/04/19	C11-PC-60: Europe-wide Energy Wholesale Trading Passport
2009/11/17	E09-PC-41: Draft Strategy for delivering a more integrated European energy market: The role of the Regional Initiatives
2009/11/17	E09-PC-42: ERGEG Regional Initiatives Progress Report - November 2009
2012/07/02	C12-PC-69: CEER 2013 Work Programme
2011/09/13	C11-PC-65: Draft European Energy Regulators' 2012 Work Programme
2009/09/11	E09-PC-39: Draft European Energy Regulators 2010 Work Programme
2008/10/21	E08-PC-33: Implementing the 3rd Package
2008/02/18	E08-PC-26: Call for Evidence - Financial Services
2008/07/21	E08-PC-30: Market Abuse Framework
2008/10/23	E08-PC-34: Record-keeping, transparency, exchange of information
2007/04/30	E07-PC-18: Guidelines for Good Practice on Functional Unbundling
2006/04/28	E06-PC-12: Guidelines for Good Practice on Account Unbundling

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