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The European Union in its new role as a climate spoiler: the bet on gas as the new bridge fuel and the power of the fossil fuel industry

Abstract

Throughout the 2000s the EU has been the undisputed global leader in climate action. But since 2012 we have seen the EU abandoning this leadership role by making climate action averse decisions, including “fracking” licenses, a demotion of renewables in the energy mix and the “locking in” of gas as a “bridge fuel” for the next decades to come, regardless of the unacceptable high volumes of methane leakage during gas production. While the EU Commission and politicians involved argue that this de-prioritizing of climate change considerations is necessary in view of the changed geopolitical constellation with a deteriorating relationship with Russia as well as the loss of competitiveness towards the US, I will rather argue that this new shift in EU energy and climate action policy is to a large extent the result of the Commission’s opening up to the influence of the lobbying oil and gas industry in Brussels. By using analysis of the EU’s attempt to increase its “participatory democracy, I will use the example of the Commission’s renunciation on regulating shale gas fracking to demonstrate that the Commission invites the fossil fuel industry to be a determining factor shaping EU energy policy.

Introduction

The EU plays an important role as a “normative power”. Due to its distinct political form it is “committed to placing universal norms and principles at the center of its politics.”¹ In this wake, the EU took on the role of the global champion in curbing the effects of climate change during the 2000s. But in the last years we saw a shift of the EU in this leadership role. The European Commission started to redraft the EU’s energy policy with considerable consequences for both the sustainability and climate goals and Europe’s foreign relations. The EU’s de facto renunciation of its role as a climate action leader began in October 2014, when the EU scaled back its long-term goals to reduce global warming and proposed “less-ambitious target” for emissions, efficiency and renewables.² The EU Commission also paved the way for domestically produced shale gas, and by planning LNG terminals and big pipelines projects is going to lock-in natural gas for decades to come. But the leakage of methane during gas production has led to concerns about the climate effects of gas, in particular if extracted by the method of hydraulic fracking. I will argue that this new shift in EU energy and environmental policy to a large extent is the result of the lobbying oil and gas industry in Brussels fostered by the

¹ Manners, 2002, p.241.

² Buergin, Alexander, “National Binding Renewable Energy Targets for 2020, but not for 2030 anymore: why the European Commission Developed From a Supporter to a brakeman”, *Journal of European Public Policy* (Vol.22, No.5. 2015), pp.690-707, p.691

Commission's institutional set up which allows for in-transparent lobbying of the industry.

1. The EU's waiver of its leadership role in climate change

Until recently the EU has taken on the role of being the global climate change leader. The Paris Agreement with its goal of curbing the rise of the temperature by 2 degrees Celsius until 2100 and possibly even to 1.5 degrees Celsius was a very hopeful signal that all 195 member states have finally understood the message that we have to switch gear in terms of global warming. Accordingly the International Energy Agency (IEA), in its 2015 World Energy Outlook, declared the beginning of the age of renewables. According to the IEA analysis, between 2014 and 2015 investments in the oil sector have gone down by 20%, the biggest decline of investment since oil has been extracted. Renewables are a mainstream fuel now, a real "game changer".³ In 2014 renewables were covering globally half of the new capacities for electricity. Pension funds are staying away from fossil fuels and would rather invest in renewables: in Norway's case, its 890 \$ billion pension fund — the largest wealth fund worldwide — will begin divesting itself of its stakes in coal companies.⁴ It seems that the beginning of the end of fossil fuels has finally come.

Particularly in the last ten years the EU had developed into a leader in fighting for a green and sustainable world and had taken the reduction of global warming very seriously for its region. In 2009 three unilateral targets for 2020 were enacted in binding legislation: 20% cut in greenhouse gas emission (from 1990 levels), 20% of EU energy generation from renewables and 20% improvement in energy efficacy. In 2009 the EU also decided to reduce Greenhouse Gas Emissions (GHE) by between 80 and 95% by 2050, which means that the energy sector will have to be transformed into an almost decarbonized one by 2050. This is going to be accomplished by a shift to electric cars, biofuels and to bio-kerosene for the aviation industry, to be made available from 2030 onwards. Energy efficiency is another important factor by which a large amount of emissions can be saved.

But it seems that the Commission has changed course over the last two years and is emphasizing competitiveness and the need for economic growth in its energy policy at the expense of sustainability.⁵ Furthermore a growing concern of energy security is put forward as a rationale for the emphasis on gas instead of increasing the share of renewables.

This U-Turn in EU climate action leadership started in October 2014, when the EU scaled back its long-term goals to reduce global warming and proposed "less stringent targets" for emissions, efficiency and renewables. In its so-called "framework package on energy and climate" it was agreed that as a binding target the governments of the EU member states have EU-wide 40% lower emissions by 2030 compared with 1990. While

³ Maros Secovic and Fatih Birol, *Friends of Europe, Speeches*, Brussels, November 12, 2015.

⁴ NYT, June 13, 2015.

⁵ See Skjaereth, Jon Birger, "The Shifting Climate Leadership of the European Commission", ISA paper, Atlanta, 2016.

a 40% reduction is by no means unimpressive, because it even means a doubling of the 20% goal for 2020, the catch comes rather with the other two goals for 2030 which entail the obligation for member states to bring up their share of renewables and to improve efficiency by 27%⁶: both targets are *not legally binding* for member states anymore; it is voluntary and only legally binding at EU-wide level. It is more than questionable how this goal is going to be achieved EU-wide if these are only voluntary targets. The European Environment Agency (EEA) was commenting on these watered-down goals by warning that with the existent measures it will not be at all possible to achieve a 40% emissions reduction by 2030.⁷ A second important decision in this respect is the Commission's 2014 renunciation on a ban of fracking shale gas.

Energy is often portrayed as operating in a trilemma between security, affordability and sustainability.⁸ But while since the beginning of this decade sustainability was the key driver for the European Union's energy policy, according to an IEA 2014 Report, "today's concerns of energy security and industrial competitiveness have become more pressing".⁹ As a result of the US oil and shale revolution, oil and gas prices are at a historic low with dramatic global repercussions for the oil and gas producer countries and the shale extraction industry itself. Moreover it will be exactly these low oil and gas prices that will drive renewables, biofuels and electric cars out of the market because currently they are unable to compete economically with fossil fuels, which are cheaper than ever and seem to be available in abundance for the next few decades. Thus also the EU wanted to allow fracking on European soil with very soft regulations. Since it seems that the Commission's decision to renounce on a ban on fracking is not important anymore, because the shale gas boom in Europe has dissipated, the EU seems to still bet on gas – but now on imported conventional and LNG gas, as the main energy source for the EU region. But gas has serious implications for climate change and therefore should also be phased out and being replaced by renewables.

2. Gas and global warming

Gas is getting promoted because of its perceived benefit of helping climate mitigation. A large amount of greenhouse gases are produced when you *burn* fossil fuels. The share of CO₂ released when burning fossil fuels is the biggest for coal, followed by oil, and then by gas. But it needs to be considered, that while gas emits around half as much CO₂ as coal when burnt, it emits 10 times more than utility-scale solar, and even 45 times more than wind energy generated onshore.¹⁰ Thus, in terms of CO₂ emissions, "an unrestricted gas boom could increase the use of the fuel by 170% by 2050", increasing overall CO₂

⁶ The Commission's proposal suggested a 30% increase, that was lowered to 27% by the Council Ministers. *Financial Times*, January 22, 2014.

⁷ EurActiv.com, Oct.24, 2014

⁸ Livingston

⁹ IEA Energy policies, 2014, summary

¹⁰ Neslen, Arthur, "BP lobbied against EU support for clean energy to favor gas, documents reveal", *The Guardian*, August 20, 2015, p.3.

emissions by 2-11%.¹¹ But all these figures pale if new research on methane is being included into the picture. Gas consists mainly of methane. There are serious concerns that methane is leaking through the production and transportation of gas, an effect the energy industry has been long aware of and which it tries to curb because the loss of profit. But methane's effect on climate change are considerable. If evaporating before being *burnt*, according to *Scientific American* "(m)ethane warms the climate 86 times as much as carbon dioxide over a period of 20 years before breaking down in the atmosphere."¹²

For a while there have been suggestions that the extraction method of fracking in particular causes the leaking of the greenhouse gas *methane*. It was alarming news when on the base of analysed satellite data and surface observations a 2016 Harvard study found a 30% increase in US methane emissions over the 2002 to 2014 period which accounts for "an enormous spike in methane in the entire planet's atmosphere".¹³ In this period the oil and US gas production increased by 20%, and the shale production nine times.¹⁴ Most of these methane emissions are attributed to oil and gas, but also to livestock, coal mining and waste. But the scientists also stress that at this point they can not clearly point to the origin for the methane releases and more research is needed to clearly identify the main source. In conclusion, "abundant gas may have a lot of benefits, such as economic growth, cutting coal-related local air pollution and energy security...but slowing climate change is not one of them."¹⁵

Still, the Commission seems to have committed itself to use gas as the main energy source for the future to come. This commitment is expressed in two decisions made by the Commission: by investing in cost-intensive infrastructure to import gas as well as in an 2014 decision to renounce on regulating shale gas. First I will discuss the decision with the long-term effect: the lifting up of gas as the bridge fuel of the future.

3. Gas as a controversial "bridge fuel"

In response to energy security concerns caused by the Russian gas supply crisis in 2014 the EU created the *Energy Union*.¹⁶ Among many other critical policy goals to create a common energy policy the Energy Union included a comprehensive diversification strategy focusing on gas. The Commission mentions explicitly the "Southern Gas Corridor", the set up of LNG gas hubs and gas storage as well as alternative gas suppliers such as the Mediterranean and Algeria. But while the EU would only be obliged to buy

¹¹ Carrington, Damian, "Fracking boom will not tackle global warning, analysis warns", *The Guardian*, October 15, 2014.

¹² Magill, Bobby, "EPA will regulate methane emissions from oil and gas wells", *Scientific American*, May 13, 2016, p.2.

¹³ McKibben, Bill, "Global Warming's Terrifying New Chemistry", *The Nation*, March 23, 2016.

¹⁴ Turner, A. J. et.al. "A large increase in U.S. methane emissions over the past decade inferred from satellite data and surface observations", *Geophysical Research Letter* 43, March 2, 2016, pp.2218-2224.

¹⁵ Carrington, 2014, op.cit., p.1.

¹⁶ The creation on the Energy Union is a historic step in the development of the EU's energy policy. See for example Youngs, Richard and Far Shahrazad, « Energy Union and EU Global Strategy », *Carnegie Europe*, December 2015.

Russian gas for another 12 years until 2029, the current EU diversification strategies are leading to a “lock-in” of gas as the future bridge fuel for decades to come because they are requiring the construction of new infrastructure: LNG terminals plus gas storage and a new mega gas pipeline, the Southern Gas Corridor.

The Energy Union recommends the import of LNGs not only from the US, but from other LNG producers like Iran, Indonesia and Malaysia. While European LNG terminals have “ample” spare capacity,¹⁷ they are scattered in an asymmetrical manner across the continent, meaning new terminals need to be built. The European Commission warns of the high costs of LNG, as the prices would be even higher than the gas imported from Russia.¹⁸ As Andreas Goldthau pointed out, European consumers will not be ready to pay a “security premium” on LNGs from the US or Qatar in order to get rid of the dependency on Russian imported gas.¹⁹ Lithuania plans a new LNG terminal with a capacity to supply all the Baltic states in case its supplies are needed. Currently it is buying Norwegian natural gas. For enhancing security of supply, the EU also launched a “Gas Package” which entails the intention to also build gas storage facilities.²⁰

A project, which got momentum as part of the Energy Union’s diversification plan, is the Southern Gas Corridor. Originally, A partial version of the pipeline, reaching from Azerbaijan through Georgia and Turkey to Europe, is planned to become operational in 2019, transporting 10bcm gas per year. But, admittedly, the EU has a history of failed plans for various gas pipeline projects bypassing Russia. Also this pipeline has to be operational for decades to justify the huge investment in its construction. But before the creation of the Energy Union with its diversification strategy to shed the dependency on Russian gas the Commission made efforts to renounce on imposing any obstacles on business for fracking shale gas in Europe.

4. The EU Shale Gas Boom (2012-2014)

Initially, Europe’s shale gas potential has been evaluated as substantial, but the numbers were downgraded. The IEA predicted in 2012 that there are more than 13 European countries with shale gas potential.²¹ Poland and France supposedly had the highest potential followed by Norway (not an EU member), Sweden, Denmark and the United Kingdom. But Poland’s reserves have been scaled back dramatically and turned into a non-issue in governmental circles. In any event, extraction of shale gas will be much

¹⁷ Leal-Arcas, Rafael, Juan Alemany Rios and Constantino Grasso, « The European Union and its energy security challenges: engagement through and within networks », *Contemporary Politics*, (Vol.21/3), 2015, pp.273-293, p.278.

¹⁸ European Commission, *Framework Strategy for a Resilient Energy Union*, op.cit., p.2.

¹⁹ Goldthau, Andreas, « Addressing the Russian Energy Challenges : Why Regulation Trumps Geopolitics », *The German Marshall Fund of the United States*, Policy Brief, December 2015, p.4.

²⁰ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on an *EU Strategy for Liquefied Natural Gas and Gas Storage* (Brussels, February 2, 2016, COM (2016) 49 final.

²¹ International Energy Agency, *World Energy Outlook*, Special Report on Unconventional Gas, «Golden Rules for a Golden Age of Gas», November 12, 2012, p.120..

more difficult than in the US because of the higher density of the population and because most the gas is located 50% deeper in the ground than in the US.

Shale gas is a controversial subject in the US, and even more so in Europe. There is disagreement among European politicians and scientists as to what extent shale gas contributes to a reduction of greenhouse gas emissions as well as whether the environmental hazards of the “fracking” method could be curbed in a European business environment which is supposed to be more regulated than in the US.

Fracking has been met with fierce public resistance in several of those EU countries where shale gas production was going to take place.²² Five European countries have imposed bans or moratoriums on fracking: France, Bulgaria, the Netherlands, Luxembourg and the Czech Republic. In the UK, (sub)-national parliaments in Scotland and Wales have also introduced a fracking moratorium. The governments of Norway and Sweden found that exploiting their shale gas resources wasn’t economically viable at the moment. For the time being it seems that on shore fracking for gas is not going to happen in the EU (except for the UK which will soon not be an EU member anymore). Yet, gas companies have lobbied intensively in Brussels to prevent the EU from seriously considering any kind of regulatory restrictions on fracking shale gas.²³ It needs to be explained why the European Union has shed its previous role as a climate action and environmental protection leader by promoting environmentally damaging extraction methods and by betting on a fossil fuel instead on renewables. Sustainability does not seem to have priority anymore in the EU’s energy policy.

5. Rationale of the EU

The EU explains its negligence on “sustainability” in the energy trilemma with the necessity to focus on competitiveness and energy security. The International Energy Agency (IEA) is fuelling this concern with warnings that the EU is losing its competitiveness in the global export market, in particular for energy-intensive goods, while the United States and emerging economies can count on increasing their shares in the export markets”.²⁴ This is of relevance for the 30 million people in the EU who work in heavy industries, e.g in the steel, iron and petrochemicals industry. The IEA’s Fatih Birol concludes that the main factor for this loss of competitiveness is the “high cost of imported energy.”²⁵ Hence the production of domestic shale gas would be a welcome alternative to imported energy.

²² See Boersma, Tim. *Energy Security and Natural Gas Markets in Europe: Lessons from the EU and the United States*. Routledge, 2015.

²³ For an overview of the opposition against fracking in Europe see “What ever happened with Europe’s fracking boom?” *Deutsche Welle*, June 26, 2014.

²⁴ International Energy Agency, *Energy Policies of IEA Countries, European Union, 2014 Review*, Executive Summary, 2014, p.6.

²⁵ Pilita Clark, “Energy price gap with the US to hurt Europe for ‘at least 20 years’”, *Financial Times*, January, 29, 2014.

Second, the EU has been very concerned about the security of its energy supply. Since domestic fossil fuel production is in decline, the EU had to import 53.5% of its energy consumption in 2014.²⁶ Notably, natural gas dependency in the 28 member states of the EU was 67.4% and the EU imported about 37.5% of its gas needs in 2014 from Russia.²⁷ There are divergent forecasts of the dimension of the EU's future gas import demands. The EU Commission seems optimistic that "further policies designed to achieve 2030 energy and climate targets may lead to a reduction in gas usage"²⁸, but does not specify how much. A realistic forecast is difficult at this moment since the import volume depends to a large extent on the future supply of renewable energy and the further improvement of energy efficiency. But it is safe to assume that gas consumption will decrease in the EU.

Nevertheless, supply problems with Russia are being politicized and as a response the Energy Union's diversification strategy has been advanced to compensate for future Russian gas deliveries.²⁹ However, these concerns are not warranted. As scholars point out, Russian supplies are guaranteed, because there exists a pattern of interdependence between Russia and the EU. Russia was always a reliable supplier of gas during the Cold War and even in the wake of the 1980 crisis of the Soviet occupation of Afghanistan. Moreover, Russia's pivot to Asia and the search for Asian customers has its limits. First, because it will still take a while before the pipelines will be in place and secondly, because the gas prices for the Chinese customers are lower than those for the Europeans. Moreover, there is a whole pipeline system in place between Russia and Europe (Nordstream I through the Baltics, one transiting through Belarus and three crossing Ukraine). The planned doubling of the Nordstream gas capacity (Nordstream II) is also a strong indicator that the Russians are counting on European-Russian gas relations continuing in the future.³⁰ And most importantly, Russia needs Western technology for its declining oil and gas resources and in particular for the extraction of shale and off-shore gas. Thus reasons related to supply security might have played a role, but do not seem to be the determining factor for the Commission to promote shale gas and to set up the infrastructure to import non-Russian conventional and liquefied gas.

5. The influence of the Fossil Fuel Lobby on the Commission

This policy line of the Commission to commit itself long-term to the use of a fossil fuel is surprising since it is incompatible with the EU's climate action goals. While EU member states like the UK and possibly also Poland were involved in this policy formation, it

²⁶ http://ec.europa.eu/eurostat/statistics-explained/index.php/Energy_production_and_imports

²⁷ Ibid. There is plenty of gas in the world, but the problem is to have it locally available, also called "tyranny of geography". Usually, gas is transported by pipelines; LNG import gas is an alternative to pipeline gas, but it requires special terminals for de-liquefying the gas again.

²⁸ http://europa.eu/rapid/press-release_MEMO-16-310_en.htm

²⁹ Mayer, Maximilian and Susanne Peters, "Shift of the EU Energy Policy and China's Strategic Opportunity", *China Quarterly of International Strategic Studies*, (Vol.3. No.1. 2017), pp.137-158.

³⁰ It needs to be noted that the German-Russian project, which has not yet been cancelled, faces serious difficulties in its realization. In the EU Commission the project does not find approval. See Kai-Olaf Land and Kirsten Westphal, Nord Stream 2 – A Political and Economic Contextualisation", *SWP Research Paper*, Berlin, March 2017.

seems most of all the Commission's welcoming attitude to the fossil fuel lobby which is responsible for this policy formation.³¹

The European Union presents a rewarding and promising institutional structure and political opportunity for "organized interests".³² The European Union is notoriously understaffed with a staff corresponding to the size of a "larger city administration". Therefore, the Commission needs to get additional information and consultancy. With its institutional set up the Commission is a very rewarding target for lobbying, and that best at an early stage of policy formulation.

There are 30,000 lobbyists in the EU's headquarters, almost matching the 31,000 staff members of the Commission. By some estimates they influence 75% of the legislation.³³ In June 2011 a register for lobbyists came into effect. Unlike in Washington, however, lobbying in Brussels lacks transparency. The EU lobby register also exists in Brussels, but it has one decisive weakness: it is voluntary. It is estimated that only 75% of Brussels business representatives and 60% of NGOs are registered.³⁴ Thus 20 out of the 50 largest companies are absent from the register.³⁵ In particular the law firms who are also involved in lobbying are not registered. It will become mandatory to register, though, by 2017. Instead to influence 28 governments it is much more effective and cost-saving to influence the Commission while working on the preparatory steps for legislating an issue.

Some of those are oil and gas companies and associations that lobbied hard for getting the legal permission to produce shale gas in Europe. On their webpage the oil and gas associations advertised shale gas by praising the economic benefits of shale gas as well as the reduction of energy dependency. At the time of the hype on shale gas it was claimed that shale gas will have created 1.1 million jobs by 2050 and will add 3.8 trillion euros to the EU economy between 2020 and 2050. Greater energy independence will cut gas imports to 62% down from 89% projected for 2035. They also claim that shale gas is environmentally friendly and they have launched the first chemical-disclosure webpage.

According to *Corporate Europe Observatory*, a watchdog NGO campaigning for greater transparency, BP has established an impressive power base in Brussels, with key figures placed strategically in EU institutions. Shell is also very visible around Brussels and representatives of both companies are present at meetings of agencies promoting EU policies like *Friends of Europe* and *Centre for European Policy Studies*. They have been trying to convince the EU of the need to permit shale gas, with as few restrictions as

³¹ See Bocse, Alexandra-Maria, « Transnational Policy Networks and the European Union's Energy Policy », *Contemporary Politics*, (Vol.21/3, 2014), pp.204-307.

³² Klüver, Heike. "Lobbying as a collective enterprise: winners and losers of policy formulation in the European Union", *Journal of European Public Policy*, (Vol.20, No.1.2013), pp.59-76, p.59.

³³ The Guardian, May 8, 2014.

³⁴ EuActiv, April 16, 2016

³⁵ *Corporate Europe Observatory*, « Cooking the planet: Big Energy's year of privileged access to Europe's climate commissioners », Brussels, 2015.

possible. Also the Association of the Oil and Gas Produced (formally OPG, now IOPG) has produced a series of factsheets on this subject matter. In the shale gas case the gas lobby has won by preventing the launching of a directive on banning fracking.

Research shows two opposing views on EU lobbying: Some studies conclude that in the EU, business actors are both successful at promoting their own agendas and manage to avert policies that might be socially desirable but costly for business, such as environmental or labour regulation. Others suggest that the EU's institutional structure may offer particularly good opportunities for citizen groups to advance their interests.³⁶ In general research is quite divided on this question. In any event it is also sometimes business which loses. There are two illustrative examples: REACH and the "European Working Time Directive". Under the REACH agreement the chemical industry is obliged to prove that the chemicals used are not harming consumers' health, with the "Working Time Directive" employers are prevented from making their employees work excessively long hours.

5.1. Bending institutional rules: "open consultations" as an access point for lobbyists

For decades we have experienced a discussion on the democratic deficit of the EU institutions and in particular the Commission. Therefore as one avenue to remedy this deficit the EU has always been very interested in integrating "civil society participation" as a way of turning the EU into a more democratic body. The EU is very interested in these initiatives because it increased the Commission's democratic legitimacy and is useful for the EU's output legitimacy. Or as Beate Kohler-Koch and Christine Quittkat put it so aptly in their analysis on participatory democracy in the EU: "(T)he Commission has always sought out societal groups as alliance partners in order to overcome resistance to its proposals by the Council."³⁷

In their extensive analysis on EU governance and civil society Kohler-Koch and Quittkat conclude that the Commission's participatory democratic ideal is an unattainable myth. They found a structural underrepresentation of public interests versus business interests

³⁶Duer, Andreas, Patrick Bernhagen and David Marshall, "Interest Group Success in the European Union: When and why does Business lose?" *Comparative Political Studies*, (Vol.48, No.8, 2015), pp.951-983. p.953. Also the degree of salience, conflictuality and complexity is under research. One major study is that of Heike Kluever, who identifies information supply, citizen support and economic power of entire lobbying camps as the main determinants of lobbying success. "Citizen support" refers to the degree to which interest groups can directly mobilize citizen and voters. This category will not be further considered here, because "citizen support" does not play a role neither for the Commissioners because they do not fear re-election nor for the parliamentarians. Kluever 2013, *op.cit.* p.61. See also Bernhagen, Patrick, Andreas Duer and David Marshall, "Information or context: what accounts for positional proximity between the European Commission and lobbyists" *Journal of European Public Policy*, (Vol.22/No.4), pp. 570-587. See also Coen, David, and Alexander Katsaitis, "Chameleon pluralism in the EU: an empirical study of the European Commission interest group density and diversity across policy domains", *Journal of European Public Policy*, (Vol.20, No.8), 1104-1119

³⁷ Kohler-Koch, Beate and Christine Quittkat, *De-mystification of Participatory Democracy* (Oxford University Press, 2013), p.143.

in the EU consultation process.³⁸ The EU associations who participate in the consultation process are not receptive to their constituencies by neglecting to enable them to formulate their opinions. The result is a predominance of economic interests in the decision-making process: “As far as the conflicting types of interests are concerned, economic interests continue to dominate to the extent that more associations representing producer interests are involved than associations representing each NGO sector individually”³⁹ The study focuses on the Commission’s so called “open consultation” process with lobby and interest groups being the consultation partners.⁴⁰ In the following I will demonstrate how the open consultation process was misused by the Commission to allow the shale gas industry to completely dominate the show. It is evident that the Commission bound EU regulations to allow the shale gas extraction industry to have unlimited and non-transparent access to decision makers in the Commission and that the Commission’s institutional set up of gaining information on this particular subject matter was disregarding serious conflicts of interests of its participants.

At the beginning of 2015 the Commission set up an invite-only network which was supposed to analyse and discuss the effects of fracking, titled “European Science and Technology Network on Unconventional Hydrocarbon Extraction”. The Network met four times per year over three years. Two working groups were established and were chaired by pro-industry people: e.g from Cuadrilla ConocoPhillips, from the pro-shale ministries in UK and Poland, and IPF Energies Nouvelles, who is also an advisor to the Shale Gas Europe lobby. The Network was composed of 74 members, 14 from the European Commission, of the other participants 10% were from civil society. More than 70% represented of the people here had clear financial stakes in the fracking industry and had aggressively looked for weaker safety rules. It was connected to a 113 million euro funding call for research into mitigating such environmental calls. For *Friends of the Earth*, the most vocal NGO on these issues in Brussels, this was a clear case of using public funds to “provide a lobbying vehicle to the oil and gas industry.” A panel chairman said openly, that the group’s intent was to foster policy-making in shale gas. In April 2015 *Friends of the Earth* declared that this “expert panel” was dominated by lobbyists of the fracking industry and withdrew.

Friends of the Earth used the new system of complaints to the EU ombudsman about this illegitimate and non-transparent, asymmetric and unbalanced composition of the network, with only few NGOs participating as a fig leaf to allow the claim that civil society has been heard. The EU Ombudsman⁴¹, who is actually an Irish woman, conceded to *Friends of Earth* that the complaint was justified and that the network is actually an “expert group”. An “expert group” includes “representatives of member states and European

³⁸ Summarized by Klüver, Heike, Caelesta Braun and Jan Beyers, “Legislative lobbying in context: Towards a conceptual framework of interest group lobbying in the European Union”, *Journal of European Public Policy*, (Vol.22, No.4, 2015), pp.447-461, p.447.

³⁹ Kohler-Koch and Quittkat, 2013, p.177.

⁴⁰ Kohler-Koch and Quittkat, 2013, p.51.

⁴¹ European Ombudsman, Case 1100/2015/NF, August 18, 2015, available on the web.

administrations, but also academics and/or representatives of civil society organizations”.

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But if it were an “expert group” it would have been obliged to be respectful to a set of rules on a possible conflict of interest of the majority of the participants and “an appropriate balance between the different members of the group”.⁴³ This was a further element in the Commission’s attempts to circumvent a serious regulation for fracking shale gas in Europe.

5.2. Lobbying by bilateral meetings between industry and Commissioners

The same picture appeared when analysing the meetings between key Commissioners and lobby groups. This is based on information released by the Commission (started with Juncker Commission). The European Commission met at least 68 times with industry representatives while it had only six meetings with civil society groups.⁴⁴ *Corporate Europe Observatory* also found that 80% of lobby meetings with Miguel Arias Canete, Commissioner for Climate and Energy, and Maros Sefcovic, Vice-President of the European Union and in charge of the Energy Union, and their respective cabinets have been with lobbyists from the industry, among them 74% with the fossil fuel industry and 6% with the renewables industry. Sources for *Corporate Europe Observatory* are leaked emails and data provided by the Commission itself.⁴⁵ EU-decision makers had had ten times as many meetings with the fracking industry compared to the organization’s representing citizens’ interests.⁴⁶

5.3. Pressure by the UK

EU Commission President Barroso had given the lead responsibility on shale gas to the DG Environment which was known for being sceptical on the fracking method. They wanted to launch a tough safety directive, but according to the “Guardian” it was blunted by the “EU’s hierarchy” which can only mean Barroso and the Secretary General.⁴⁷ It is obvious that Barroso stopped the policy formation process of DG before they would come out with the request of a directive. But Barroso had also to consider a sharp protest from the UK. Former Prime Minister David Cameron in a letter to him praised the advantage of shale gas and warned that “the industry in the US has told us that new EU legislation would immediately delay imminent investment”.⁴⁸ Barroso might already have felt a sense of blackmailing through the “Brexit” option.

⁴² Kohler-Koch and Quittkat, p.63.

⁴³ Ibid, p. 4.

⁴⁴ Friends of the Earth, *Fracking*, Brussels, July 2014

⁴⁵ Since December 2014 the Commission commits to publish on its website the dates, locations, names of the organizations and self-employed individuals and the topics of the bilateral meeting. *Corporate Europe Observatory*, 2015.

⁴⁶ *Fracking Brussels: A who’s who of the shale gas lobby*, Friends of the Earth Europe, July 24, 2014.

⁴⁷ Arthur Nelsen, “Green groups accuse EU shale gas panel of fracking lobby takeover”. *Guardian*, April 15, 2015.

⁴⁸ Letter was made available to me by Friends of the Earth

5.4. Pressure by the US

Also US politicians and lobbying firms like Covington & Burling lobbied for making shale gas extraction economically viable in Europe.¹ Even President Obama, during a visit of the EU in March 2014, recommended that Europeans engage in fracking, disregarding the “wrath of their voters”¹. First pieces of evidence of lobbying activities can be traced back to 2011 when a study by the US consultancy McKinsey, commissioned by the European Gas Advocacy Group (members are ENI, E.ON, GDF, Suez, Shell and Statoil), was introduced to the Commission, suggesting that the EU could save 900 billion euros in the achievement of its climate goals by advertising the production of gas and shale gas instead of promoting renewables.

5.5. Result: Only a lax recommendation

All these lobbying effects had a dramatic and decisive effect: instead of imposing a directive regulating the environmental effects of fracking, the Commission only issued a “recommendation” for the member states. Countries are able to pick and choose which fracking safety standard they want to implement, making – according to *Friends of the Earth* – a “mockery of the Commission’s voluntary approach.”⁴⁹ As *Friends of the Earth* judges: “The principles outlined in the Recommendation are non-binding, poorly defined, and create legal uncertainty about the relevance of existing EU regulations and therefore provided a very limited safeguard for the general public.”⁵⁰

Shale gas is being approved with the expectation that the EU, also in the future, will renounce on a regulation of “fracked” shale gas. The 2015 EU Communication on the “Energy Union” advertises the option of domestically produced energy (i.e. shale gas) as a means to contribute to a reduction of Europe's energy import dependence. This includes renewables as well as conventional sources and “for those Member States that choose it - non-conventional fossil resources - ...provided that issues of public acceptance and environmental impact are adequately addressed.”⁵¹ That does not sound as if the EU still plans to get tough on the regulation of shale gas

Conclusion

The European Union made a U-turn in its climate action leadership, among other decisions by promoting gas as the future energy source, regardless of the fossil fuel's negative impact on climate change. One indicator for this policy line was the permission of extracting shale gas without any legally binding regulations. But what the EU did not achieve was rather accomplished by several individual EU member states: the ban of

⁴⁹ Friends of the Earth Europe, *Friends of the Earth Europe*, Lobbying in Brussels. How much to the top 50 companies in the EU spend ? Brussels, no date.

⁵⁰ Friends of the Earth Europe, “Fracking Business as usual. Analysis of the failing EC Recommendations on Shale Gas”, Brussels, 2016, Executive Summary.

⁵¹ European Commission, *A Framework Strategy for a Resilient Energy Union*, op.cit. 2015, p.3..

shale gas production to the effect that the fracking boom in the EU is history by now. A second indicator is a strong push to construct new infrastructures rendering gas into Europe's new "bridge resource" until 2050 when the EU's economy is – according to the overarching EU climate goals – supposed to work in an almost decarbonized manner. It is safe to conclude that all these infrastructure projects will "lock in" gas as the EU's primary resource for decades to come, thus contributing considerably to a further warming up of our planet.⁵² It seems that the fossil fuel lobby in Brussels played a pivotal role in promoting shale gas. It is possible that after loosing the option for fracking shale gas in the EU region the fossil fuel industry also lobbied the Commission to invest in mega gas infrastructure projects. But more research is needed to confirm this assumption. With this disappointing reversal in its climate policy the EU will by far miss its 2050 goal. And the world needs to find a new climate action leader.

⁵² See for example Stefan Boessner, "Building more gas infrastructure than absolutely needed is likely to contribute to a carbon lock-in where future fossil fuel developments are favored over low-carbon technologies in Europe". "European dash for gas at odds with climate ambitions", *EnergyPost.eu*, March 13, 2016.