Self-interest as a condition for policy impact in transnational regulatory networks: the case of the Council of European Energy Regulators (CEER).

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ABSTRACT

Functionalist perspectives of regulatory networks assess their capacity for rule harmonization whereas strategic approaches emphasise how regulators use their networks to achieve more autonomy or powers, often simultaneously dismissing their ability to improve governance. **This paper argues that these two perspectives, rather than opposite, are complementary: regulatory networks can improve governance to the extent that regulators see in them the opportunity to pursue their institutional interests**. To underpin this claim, I analyse the empirical case of the Council of European Energy Regulators, retracing its history from foundation in 1997 to the present time. Further, I show that, besides pushing for the national adoption of soft rules devised at network level, regulators strove to affect domestic markets by co-producing European legislation. **The ability of networks to affect policy should be assessed by studying not only soft rules adoption, but also influence on supranational mandatory legislation.**

1. Introduction

The topic of network governance has proven fascinating for students of the European Union (EU). In the past two decades, the literature has portrayed the EU as a multi-level (Hooghe and Marks 2001, Scharpf 2001, Wessel and Wouters 2008) or multi-tiered (Nicolaides 2004) system of governance endeavouring to Europeanize national legislations and administrations (Jachtenfuchs 2001, Knill and Lehmkuhl 2002, Olsen 2002, Radaelli 2003, Mathieu 2016). In this picture, European Regulatory Networks (ERNs) have been conceptualized as the natural functional response to the unprecedented political construction the EU represents: that is, as filling the gaps in the EU legislation (Kelemen 2002), necessarily vague because born out of political compromise, by working out the details of national implementation (Nicolaides 2004, Eberlein and Grande 2005).

ERNs have been said to represent a second-best option for the European Commission to ensure coordinated implementation of European legislation given Member States' reluctance to create truly European supranational regulatory agencies (Coen and Thatcher 2008, Kelemen and Tarrant 2011, Maggetti 2013, Mathieu 2016). In this framework, the regulators-Commission interaction within ERNs has been widely understood as preparatory to the establishment of European Regulatory Agencies (Eberlein and Newman 2008, Lavrijssen and Hancher 2009) which, while possessing mostly advisory and coordinating powers, have themselves been investigated in depth as an important stage in the creation of the European Administrative Space (Egeberg and Trondal 2011, Heidbreder 2011, Egeberg, Trondal et al. 2014, Egeberg, Trondal et al. 2014).

There is an important difference between European Regulatory Networks and the spontaneous, regulator-driven transnational regulatory networks that preceded their creation. The former have been created through a European Commission decision as platforms for its dialogue with regulators. The latter are voluntary, informal transnational networks created by national regulators long before the European Commission had undertaken networking and agencification initiatives. The essentially bottom-up origins of many of the networks of regulators that have then become ERNs is only infrequently recalled in scholarly contributions and even more rarely investigated in its own right. The impact of regulatory networks on the process of European integration has only just begun to be explored in the literature (Boeger and Corkin 2015).

Rather than a mere detail, this difference is crucial to the contributions that this paper intends to make to the literature on European integration as well as to the literature on transnational regulatory networks; namely, showing that functional understandings of transnational regulatory networks only capture the surface of their rationale and overlook their substantive impact on policy, and that rational choice understandings of regulatory networks as outposts for regulators to defend their own turf and look for their next career option are similarly limited. Moreover, the paper makes the case that analyses of the impact of transnational regulatory networks should adopt a process-oriented approach and consider networks in a dynamic, evolutionary perspective.

The literature on European regulatory networks has been particularly concerned with their ability to improve governance by meaningfully affecting policy and/or achieving rule harmonization. Contributions tend to belong to either of two main camps: a functionalist camp, arguing that networks can and do matter for policy and governance (Maggetti and Gilardi, 2011); a rational choice camp, dismissing these claims and underlining how regulators pursue their institutional self-interest through networking (Bach, De Francesco et al, 2016).

The main argument advanced in this paper is that these two perspectives are not opposite, but complementary: **voluntary transnational networks "matter" by virtue of the possibility they offer regulators to further their institutional interests**. As a matter of fact, there is nothing in the legislative mandate of European national regulatory authorities conferring them powers or duties beyond the territory of the nation state. Voluntary transnational cooperation offers regulators an additional institutional space where they can shift the battleground of their domestic battles. In a national settings regulators are alone against their institutional opponents; at supranational level, they have allies in their counterparts from other countries as well as, as this case shows, in supranational actors. In other words, institutional interests represent a very strong motivation for regulators to actively and productively engage in transnational networking, for achieving policy results represents their main route to accumulate their key assets: reputation and legitimacy.

This paper retraces the history of the Council of European Energy Regulators (CEER). The literature has vastly overlooked its remarkable influence on EU energy regulatory policy, perhaps because it played out according to a different mechanism than those hypothesised in the relevant literature. The literature has assessed the ability of network members to adopt rules devised at supranational level within their national contexts. This article shows that European energy regulators' strategy to affect domestic markets has been different: besides developing soft rules, they invested most into influencing and co-producing European mandatory legislation. The findings in this article emerge from 28 face-to-face semi-structured elite interviews with current and former energy regulators from 9 Member States and other individuals involved in the CEER at different times. The focus of analysis is placed on the emergence and then the consolidation of cooperation. The interviewees were guaranteed full anonymity. A list of is provided in the Appendix.

2. Transnational regulatory networks and their impact on European integration.

This article shows that voluntary transnational networks of regulators have not only played an important, if neglected, role in the process of European integration but also, meanwhile, have built a resilient infrastructure of cooperation and coordination that represents a precious reservoir of political and institutional capital.

The extent to which networks are able to improve governance and contribute to policy-making is one of the main topics of investigation in this literature. Several contributions have assessed their ability to devise soft rules and achieve their adoption in their national settings (Maggetti and Gilardi 2011, Maggetti 2013, Maggetti and Gilardi 2014). Because different networks appear to achieve different results (some being more successful than others), contributors have investigated whether certain network characteristics (such as the presence of review panels) determine more or less rapid and successful diffusion of soft rules across national jurisdictions. In this paper, I show that the sector that the regulators oversee matters a great deal not only for their success in implementing supranational soft law into their countries, but also for the strategies they deploy in order to influence their national contexts. In the case of energy regulators analysed here, regulators invested a lot of effort on influencing and co-producing EU mandatory energy legislation, having realised that voluntary cooperation did not have sufficient bite into national contexts.

Recent literature, however, is sceptical of the capacity of regulatory networks to achieve policy coordination and harmonization, arguing that it may be just a secondary concern compared to the opportunities that networks offer to regulators to achieve institutional victories, such as gaining more autonomy (Bach, Ruffing et al. 2014, Danielsen and Yesilkagit 2014) or fighting their own turf wars (Bach, De Francesco et al. 2016). Indeed, the other main answer to the question of why regulators network pertains to rational choice approaches that focus on the institutional benefits derive in reputational and political terms (Macey 2003). Functional and rational choice, or strategic, perspectives are usually juxtaposed and tend to divide the scholarly community between those who argue regulatory networks can positively affect policy and those who dismiss this argument and underline regulators' self-interested motivations to network.

Very recent literature has shifted the focus of analysis to the emergence of regulatory networks and their stages of development, pointing to the mechanisms allowing them to exert their collective influence on EU policy-making (Boeger and Corkin 2015, Mathieu 2016),As Boeger and Corkin (2015) show for the case of European telecommunication NRAs, over time regulators have developed sufficient cohesion and resilience to be able to exert influence over the precise form of the institutionalization of their cooperation within the EU administrative order. Their analysis focuses on the process whereby the transnational network of European telecom regulators affected the governance features of the corresponding European Agency. Mathieu (2016) underlines feedback effects between the national and the European regulatory levels, whereby the European Union has had an empowering effect on telecommunication NRAs, allowing for their ERN to have tangible impact on European policy.

These contributions are important precedents to the argument developed in this paper, because they bring to the fore a usually overlooked characteristic of regulatory networks – agency – and they indirectly highlight the link between regulators' empowerment and their contribution to policy. Rather than beneficiaries of a double delegation (Coen and Thatcher 2008), regulators appear in this account as proactive policy agents capable of organising their own structures of interaction and coordination as well as of shaping outcomes. This paper builds on these and similar premises by directly discussing this link as necessary for regulatory networks to "matter".

The narrative focuses on the emergence and the consolidation of the transnational network of European energy NRAs - the Council of European Energy Regulators (CEER). Emergence and consolidation are the two separate dependent variables of this analysis. Timing, incentives and opportunity are independent variables. The analysis also discusses the mechanisms leading to the emergence of the network, in the first phase; and to its consolidation, in the second phase. In the formative phase, the gradual realization of the worth of network cooperation by all regulators led to the CEER being established. Cooperation among the regulators was therefore expedient to the emergence of an entirely new institutional actor on the

European energy policy arena: the network of regulators. In the consolidation phase, a very strong partnership with the European Commission afforded regulators, through the CEER, unprecedented political and regulatory influence over EU regulatory policy and therefore, over national regulatory policy. In the current phase, post-establishment of the European Agency, the CEER is in the process of re-inventing itself. As argued later, its consolidated network cooperation is its most valuable asset in this endeavour.

The corresponding ERN of the CEER, created in 2003, was called European Regulators' Group for Electricity and Gas (ERGEG). Thus far, the scholarly treatment of the CEER has been limited to acknowledging it as the predecessor of the ERGEG. Brief mentions of the CEER as a voluntary initiative of a handful of Southern European regulators can be found in some sources (Christiansen and Piattoni 2003) but most often the literature has considered the CEER and the ERGEG as virtually the same thing. This was probably because the ERGEG only differed from the CEER in that the European Commission could convene its meetings. Coherently with the narrative of ERNs as functionally leading to ERAs, with the establishment of the EU Agency for the Cooperation of Energy Regulators (ACER), the ERGEG was dissolved. The CEER, however, remained.

The historical institutionalist approach has only recently begun to be applied to networks of regulators (Boeger and Corkin 2015, Mathieu 2016) and has the merit, similarly to its contribution to the European integration debate, of being able to provide a more nuanced account of events unfolding over time, where different logics apply at different stages (Pierson, 1996). In these perspectives, time is a key independent variable (Büthe 2002). This article shows that, over time, the CEER made a non-negligible contribution to the process of European integration.

Network industries have played a key role in the rise of the European Regulatory State (Majone 1997, Lodge 2008), along with the relative networks of regulators, whose role is currently being re-discovered. The literature has given ample space to the policy entrepreneurialism of the European Commission (EC), pushing through its preferred solutions to policy issues, which inevitably foresee "more Europe" and thus a bigger role for itself. The entrepreneurialism of the EC has appeared most evident in sectors where Member States were extremely reluctant to relinquish their exclusive sovereignty and control, given their strategic importance; in particular network industries, such as telecommunications (Thatcher 2001) and energy (Schmidt 1998, Eberlein 2008, Mayer 2008, Diathesopoulos 2010, Torriti 2010, Maltby 2013, Goldthau and Sitter 2014, Herweg 2015).

The network of European energy regulators (the CEER) has often appeared in the literature, which has analysed its policy relevance (Vasconcelos 2005, Thatcher and Coen 2008, Vasconcelos 2009); its empowering effects on regulators (Maggetti 2013) and its ability to successfully bargain its gradual absorption (Eberlein and Newman 2008) into the European institutional framework (Lavrijssen and Hancher 2009) by securing a central role for Board of Regulators into the Agency for the Cooperation of Energy Regulators (ACER) (Thatcher 2011). These analyses fail to address the issue of the CEER's influence on EU regulatory policy, contain only limited references to how the CEER came to be and, most importantly, overlook the importance of that process for our understanding of the mechanism whereby regulatory networks manage to affect policy and governance: the interplay between their interests and their tasks.

In sum, the notion that transnational regulatory networks should mainly be understood in functional terms has come increasingly and more convincingly under attack. Some contributors have questioned the wholly positive depiction of transnational regulatory networks as improving governance (Bach, De Francesco et al. 2016). Several analyses have assessed the impacts of networks on their members, the national regulatory authorities. Networks appear to be instrumental in expanding the powers of regulators (Maggetti 2013) and to have "autonomizing effects" (Danielsen and Yesilkagit 2014), besides improving compliance with soft and hard law elaborated at EU level (Yesilkagit 2011) and prompting domestic compliance with norms and recommendations elaborated within the network itself (Maggetti and Gilardi 2011, Maggetti 2013).

The essential contribution this paper makes to the literature is to bring what are usually treated opposite perspectives under a common framework. The argument is that, for regulators, functional tasks and institutional interests need not be mutually exclusive; to the contrary, self-interest is the necessary condition for networks to "matter". The possibility to enhance their institutional relevance (through expanded competences and independence) and to fight their institutional battles represent the necessary incentive for regulators to cooperate. Through cooperation, they develop the mutual trust that renders the network cohesive and treatable as a single agent. At supranational level, regulators appropriate a different regulatory and institutional space, which enables them to reinforce their position towards institutional actors at national level. By developing partnerships with supranational actors, regulators within networks come to see the opportunity of improving supranational governance and their self-interest as coinciding. In sum, self-interest is a necessary, but not sufficient condition: a receptive ear in supranational institution (in this case, the European Commission and then the European Parliament) is a needed complement.

Furthermore, the analysis of this case provides an important addition to extant literature on the ways in which regulators are able to affect regulatory policy in their domestic contexts. Besides developing soft rules at network level, regulators also leverage their network to influence supranational policy-makers. In a sector as politically, economically and strategically salient as energy, the latter strategy may well prevail over the former. European energy regulators have invested considerable resources on co-producing mandatory European legislation, having realized that only binding rules would enable the necessary changes in national institutional and market designs to bring about the Internal Energy Market.

Methodology considerations and sampling choice.

> *"It is a very, very interesting story… I'll give you an outline of the key stages… from my point of view, of course. I'll tell you my personal history, although I believe it is similar to that of many others".*
>
> *(interview 1)*

The key events and episodes in the history of the CEER are, for the most part, undocumented. They are preserved in memos and in memories belonging to individuals, who witnessed it and/or acted in it. Hence, this paper presents "a" history of the CEER, reconstructed through the sequencing and the juxtaposition of many pieces of information gathered through interviews with some of its past and current agents, thus covering the whole time span of the CEER existence.

Interviewees were purposively sampled. The main goal of purposive sampling is to focus on specific characteristics of the population of interest, which the researcher considers most appropriate to answer her research question. The population of interest in this case are European energy NRAs. The specific characteristic of interest to this research is substantial activism into the network in its various phases. Information about these individuals arose from previous knowledge and snowball sampling after the first few interviews.

The existence of a series of possible shortcomings associated with elite interviewing needs to be acknowledged. All interviewing inevitably consists of individual, subjective perceptions of events. Furthermore, the traditional ethical concern with manipulating the respondent, typical of social science research, is almost reversed in elite interviewing, where interviewees muster their position onto their interviewer and possess the skills to steer the interview in their preferred direction. Having been key members of the CEER, my interviewees may have had an interest in portraying the network so as to magnify its importance.

To neutralize this risk to the extent possible, I interviewed non-regulators (consultants and academics in particular) as well, if they had worked at or with the

CEER in its formative years, and I triangulated information across interviews and through documentary analysis. In the following, I report direct quotations from the interviews wherever appropriate.

3. The resilience of trans-European networks: a history of the CEER from emergence to consolidation.

The next three sections articulate the main phases of the historical trajectory of the CEER in chronological order, as per the insights obtained through documental research and interview material. In retracing this history, I identify the underlying motives of the CEER's emergence and consolidation in its members' preoccupations for legitimacy, policy influence, and self-preservation.

2.1 The emergence phase: networking for legitimacy.

> *"In the beginning most of the work was national. There was so much to do nationally (…) the CEER was a club, it was interesting to go there because you met colleagues, on a national level you did not have colleagues (…) you had nobody to talk to and find out "Oh this is a usual problem or my issues are totally different from everybody else's? Am I doing something wrong?".*
>
> *(interview 25)*

The pre-history of the CEER began in early 1997. In February that year, representatives of the few then existing energy NRAs (from Italy, Spain, Portugal, Sweden, Norway, and the UK) met for the first time at a conference on electricity market restructuring[1] organized by the European Union and the World Bank.

[1] Second World Conference on Restructuring and Regulation of the Electricity Market, 3-5 February 1997, Vasteras (Sweden).

The Southern European NRAs had just been established, their enabling laws having been passed in 1995 (Italy and Portugal) and 1994 (Spain). Their respective governments had followed in the steps of the United Kingdom, which had undertaken the utility privatisation and liberalization process in the late 1980s and had established independent energy regulatory authorities in 1989. As for the Scandinavian countries, at the time the liberalization of electricity markets was well under way, with Norway pioneering the process in 1992.

As for European legislation, the 1st Electricity Directive had been released in 1996. It mandated the end of the energy monopolies to stimulate the creation of the Internal Energy Market (IEM). However, it did not mention regulation or regulators at all. The establishment independent regulatory authorities at the time depended exclusively on national governments' initiative. Eager to learn the ropes of a completely new profession, in Vasteras the three newly established southern European regulators sought the views and opinions of their more experienced UK and Scandinavian counterparts. They were, however, disappointed: differently from their counterparts, which were constituted as Independent Regulatory Authorities (IRAs), Scandinavian regulatory authorities had developed out of former ministerial departments, thus representing no rupture but continuity with the past; conversely, the UK regulatory authority observed with more interest the massive privatization programmes then ongoing in South America and Australia than the embryonic opening of southern European markets.

United in their search for benchmarks, the three Southern European regulators agreed to start communicating on a regular basis to exchange information about the issues they faced in their respective national markets. In this way, they set up the foundation of what would become the CEER. They started meeting quarterly, once in each country. Their first joint meeting took place a month after the Vasteras conference, in March 1997, in Lisbon. The second meeting was held in San Sebastian (Spain) in June 1997. Their third meeting took place in Milan in December 1997. They established three working groups, each chaired by one of them. The first topics they addressed were the new regulatory framework, in particular the development of incentive regulation, and regulatory independence from government and incumbent energy companies.

Meanwhile, the European Commission (EC) had quickly realized that the provisions of 1st Electricity Directive would not be sufficient to stimulate cross border energy trade. However, 1997 was too early to begin negotiating a second piece of legislation. Hence, the EC began reaching out to national entities to co-opt them into speeding up energy market opening at national level. At the time, the Commission was severely under-resourced, especially in sectors for which it did not have well-defined competence, such as energy policy. Therefore, officials in the Directorate General for Energy had only limited knowledge of national energy markets and actors. Their only providers of information were national energy incumbents, which had clear incentives to provide a biased picture. For these reasons, the European Commission began reaching out to national regulators.

The three southern European regulators were providing each other with exactly this service. Inspired by their ongoing collaboration, the then Director of the Directorate General for Energy at the Commission, Mr Benavides, conceived the idea of establishing of a Forum, gathering *"those actors who, like itself, felt the* _need_ *for market integration" (interview 3)*; i.e. regulators, operators, and other energy market stakeholders. The resulting Forum was called the European Electricity Regulatory Forum. Its first meeting was held in Florence (Italy) in February 1998. Henceforth it was commonly referred to as "the Florence Forum". Florence appeared as a suitably neutral location: it hosted a European a-political institution, i.e. the European University Institute (EUI[2]). The following year, the European Gas Regulatory Forum, or "Madrid Forum", was set up, focused on the gas sector.

[2] The EUI is the only European university, whose existence is based on a legal agreement between the EU and the Italian government dating back from the mid 1970s.

Now a consolidated, taken-for-granted event concerning EU electricity markets and regulatory policy matters, at the time the Florence Forum represented a veritable revolution. The idea of bringing together regulators[3], operators, utility companies and European Commission officials was unheard of. The February 1998 meeting, only a year after they had first met in Vasteras, represented the public *sortie* of the three southern European regulators, who drafted and presented their joint positions on the future of energy markets liberalization and the IEM.

The official establishment of the CEER: the opportunity for policy input.

> *"In the meantime, the CEER continued to develop and we found that as a group we have some influence at EU level, so it's not just exchanging best practices and learning from each other, which is also a component, but we also have an impact on what happens next".*
>
> *(interview 25)*

With the exception of France (who did so in 2003) and Germany (in 2005), all EU-15 Member States established energy NRAs quickly thereafter. The three regulators welcomed them to their informal club. In 1999 the Italian regulatory authority organized a seminar on "Criteria for electricity tariffs and pricing", to which all other European NRAs (which came into closer contact also thanks to the Florence and Madrid Forums) were invited to take stock of their experiences. The seminar was held in Rome. Representatives from 18 institutions attended and gave a presentation, including NRAs from Italy, Spain, Portugal, the Netherlands, Finland, Ireland, Belgium, the UK, Northern Ireland, Sweden, Norway, Hungary, Poland, Romania; Ministers

[3] Because most Member States had not established a regulatory authority yet, their energy Ministers were invited instead.

from France, Germany and Switzerland, and an observer from the European Commission (AEEGSI, Relazione Annuale 2000, p. 291; CNE database[4]).

Meanwhile, the Florence and Madrid Fora had become platforms for interaction with market stakeholders and with the EC about the future of the market framework. It was clear that the task was far from complete, and that new legislation was going to be put forward. The Fora became appointments to look forward to: the EC would outline its agenda, and all parties had a chance to respond to it.

Regulators realized that the time was propitious for them to have a say in the process. They quickly agreed to join efforts, as this would have allowed the "regulatory position" to come across directly to the Commission. This opportunity changed the attitude of the UK regulatory authority (OFGEM), which had initially been lukewarm towards the idea of regularly cooperating with their European counterparts. Therefore, in January 2000, the representatives of 10 regulatory authorities met at OFGEM offices in London to discuss the form and the goals of their association. On 7th of March 2000, representatives from Belgium, Finland, the UK, Ireland, Northern Ireland, Italy, Norway, the Netherlands, Portugal, Spain and Sweden met in Brussels to sign the Memorandum of Understanding (MoU) establishing the Council of European Energy Regulators (CEER). The choice of the word "Council" spoke directly to their political principals: *"like Ministers had their own network, in the Council, we, the regulators, well, we wanted our Council, too" (interview 1)*.

Between 2000 and 2003, when it was registered as no-profit association, the CEER remained a totally informal professional association: meetings took place in different European capitals and were voluntarily organized by each regulatory authority. Regulators supported the association with contributions made on a voluntary basis. The newly constituted CEER provided the then vice-President of the

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[4] http://www.cne.es/cgi-bin/BRSCGI.EXE?CMD=VERDOC&BASE=TODO&DOCR=14&SORT=-FECH&RNG=20&SEPARADOR=&&desc-c=+DISE%D1O+Y+ESTRUCTURA+DE+PRECIOS+Y+TARIFAS

EC and Commissioner at the DG Transport and Energy, Ms Loyola de Palacio, with a copy of the memorandum (interview 18). Ms de Palacio was a fervid supporter of the IEM and of European integration in general. She was very pleased of the initiative of the regulators and wholeheartedly supported the CEER in this first phase of its development (interviews 18).

The first phase: conclusions.

> *"They thought these guys were a group of academics who would have written down a few formulas, and that would be it. Most of our colleagues at the time only had advisory powers, whereas we decided things. When you can decide things, it's different, you face a lot of backlash".*
>
> *(interview 2)*

The emergence of the CEER was driven by the pursuit of legitimacy. Regulators faced harsh opposition in their national contexts Their experience testifies to the importance of individual agency and the meaningfulness of critical junctures in institutional development: small, unpredictable events whose legacy extends far more into time than their duration or entity would have led to expect (Capoccia and Kelemen 2007). Namely, through their occasional cooperation, three newly established and politically isolated regulators gave life to a structure of cooperation, which later became understood as a unitary agent representing the voice of European regulators.

From this point of view, the struggle that gave rise to the first nucleus of what would become the CEER was one of professionalization (Godwyn and Gittell 2011) intended as a quest for legitimacy of regulators' occupational autonomy. Their priorities in this first phase primarily concerned the fulfilment of their mandate within their national markets. This does not mean that they represented their national states at network level (as in Maggetti, 2014), but rather that they garnered through their voluntary transnational networking the necessary weapons to assert themselves as legitimate implementers of unpopular reforms at national level. Through the CEER, regulators had created an affiliation for themselves.

2.2 The consolidation phase: networking for policy influence.

> *"Let's put it this way, if my goal would be to… implement or to achieve very nationalistic, specific solutions, probably it would not be successful to do it at EU level. But if the goal is to develop solutions that make sense in a general economic way in a European perspective then you're much better off to try to push that at EU level".*
>
> *(interview 25)*

In the year 2000, the European Council launched the Lisbon Agenda. Among other things, it aimed at speeding up the full liberalization of the national energy markets and the achievement of the IEM. The Council had asked the Commission to prepare legislative proposals. The Commission sought the regulators' views. At this point, the CEER could no longer remain an informal association of professionals. The constant interaction with the Commission required resources and updated knowledge of the latest policy proposals. This was difficult to achieve from national capitals. The informal CEER needed structure: to begin with, headquarters in Brussels, but also secretariat staff, a work plan, and a budget.

At the same time, the European Commission wanted to formalize its relationship with the regulators. This fact is usually interpreted in the literature as a demonstration of the all-encompassing attitude of the European Commission, always keen to englobe any source of policy input under its own umbrella. A few interviewees expressed this understanding of the Commission, too (interview 3, 6, 10). As one interviewee pointed out, however, another point of view should be considered: the EC could not continue to explicitly and extensively rely on a private association of individual professionals to carry out important market reforms (interview 1).

"Formalizing" the CEER was necessary to ensure transparency and accountability. Moreover, the Commission gave leeway to the regulators to propose a model for their coordinated dialogue.

The regulators' proposals were very ambitious. Besides market design rules, in the first draft of what then became the 2nd Energy Package, there was the creation of a European body of regulators with ample regulatory powers, *"on the model of the American FERC* [Federal Energy Regulatory Commission]*; a true European regulator, with real powers, so that you could move from national to European regulatory agency" (interview 4)*. Therefore, some regulators envisioned a regulator-only European agency, and their careers as ascending from the national to the supranational level[5].

The EC Legal Service, however, in application of the Meroni doctrine, restrained the scope of the foreseen regulators' body to no more than consultative powers. In November 2003, a Commission decision created the European Regulatory Network (ERN) of energy regulators: the European Regulators Group for Electricity and Gas (ERGEG). A few days earlier, the CEER had been registered as a no profit association under Belgian law.

> *"The Commission wanted to consolidate the CEER as advisory organ to itself. It was the regulators who said "Well, we don't want to be part of something that can only be convened by the Commission… we want to be able to convene meetings and talk about our things, for instance training, exchanges of information, of help…. We have a series of things that interest us so we don't dissolve the CEER". And so there were the CEER and the ERGEG."*
>
> *(interview 3)*

The CEER and the ERGEG coexisted under the same roof between 2003 and 2011. The ERGEG had meagre resources; the existing organisational infrastructure of the CEER supported it entirely. These central years represent the most important and

[5] As is the case in the USA, where the Board of the FERC is composed of former state-level regulators.

the most political phase of the CEER's existence, the period where its influence as the expression of the collective position of its members was greatest. In the next section, I provide empirical evidence of the strategic use regulators made of their network as a policy lever on the European Commission. I also show that the regulators' contribution to the regulatory framework and the market design of the Internal Energy Market is inextricably tied with their institutional interests, such as expanding their independence and powers.

The CEER as a policy lever: making the market while pursuing institutional goals.

> *"…A strong unbundling (…) would not have found a majority in parliament (…), even if the ministry of economy had supported that (…) so early on I said it's not worth try to lobby nationally because we will fail but at EU level it's a different story… so we did succeed to get quite a number of those provisions into the 3rd package (…) like it's a separate branding, you know, it would be totally impossible to get this in XXXXX but in Brussels it was not such a big issue because a number of countries had already done it so they felt, yeah, it's a good idea, let's do it, and those countries that were strongly opposed were few, (…), but they did not have the majority in the comitology process therefore we got some rules we would never have gotten on a national level".*
>
> *(interview 27)*

If the Second Energy Package had represented the first unmissable occasion to influence European legislation on energy markets, the preparatory work to the Third, and most ambitious to date, Energy Package was an even bigger one. CEER regulators provided considerable input to the drafting of the legislation. They used this opportunity to shape the market and institutional design of their own national markets via influencing the drafting of binding European legislation, which all Member States would have to comply with. Smartly, they leveraged the diversity of national settings to trigger a race to the top as concerned market design and regulators' scope of authority and independence.

The Second Package resulted into much less ambitious legislation than regulators would have preferred. Eventually, it only mandated the existence of one regulatory authority for energy in each Member State, it specified that the regulatory authority should be independent from regulated entities (although no mention of independence from government was made); and foresaw monitoring duties and at least advisory powers over key regulatory issues such as network tariffs and access. At the time, NRAs showed immense differences in terms of powers and independence: some possessed wide ranging regulatory powers and independence; others were constrained by the possession of consultative powers and faced interference in their decision-making.

The occasion to redress these imbalances came after the two eastern enlargements (2004 and 2007), when twelve new energy markets joined the EU and the European Commission realized that market integration was simply not happening. At the same time, no entity existed, which could impose its decisions on any of the actors of the EU energy regulatory space. *"To avoid a deadlock"* (interview 3) regulators, together with EC officials, crafted the idea of dividing EU Member States into regional blocks, which would integrate their markets first, as an intermediate step before EU-wide market integration. These blocks, called Regional Initiatives, became the building blocks of the Internal Energy Market (IEM).

"There was no grand scheme behind it. It was more like… what the hell do we do!" (interview 25). That event represented a window of opportunity to convince Member States that more formal arrangements were needed in order to bring about the IEM; it would not materialize unless some form of coercive authority could be imposed on the Member States and the grid operators, and unless the regulators could impose their decisions on market players.

Both the CEER and the Commission saw in the 2009 Third Energy Package a key opportunity to expand their realm of action. Regulators lobbied for more powers at national level as well as for a driving seat in the future Agency for the Cooperation of Energy Regulators (ACER). The Commission, in turn, tried to carve out a leading role for itself in the Agency. This competition led to a hybrid agency, where the regulators retain considerable authority but under the aegis of the Commission. The entry into operation of the ACER in 2011 triggered the third phase of the CEER.

The second phase: conclusions.

> *"I said we need to keep our autonomy from everyone. I cannot gradually lose autonomy as I get closer to Brussels. So I wanted the Agency to be a regulators' agency. Autonomous, independent, that had to be very clear. I wanted it to be financed, like national ones are, through levies. (…) At that time, the Parliament listened to us. They listened to us and eventually that hybrid resulted, with at least a strong board for the regulators."*
>
> *(interview 4)*

> *"A good example is the 3rd energy package where with luck at that moment in time we were able to influence quite a bit the outcome, so in the 3rd energy package there are many provisions that we have drafted… and at that time we had extremely good cooperation with the Parliament so we were able to bring in many amendments to the Parliament and strengthen the role of regulators, the independence of regulators, strengthen the unbundling rules, things that we would not have been able to do on a purely national basis".*
>
> *(interview 15)*

If institutional interests were key in bringing regulators together, they would not have succeeded in achieving their goals and in contributing to policy unless they had had access to supranational level institutions and, in particular until 2009, the European Commission. These two aspects are linked: unless they had demonstrated an ability to provide constructive policy input, they would not have found in the Commission as solid a partner for pursuing their institutional prerogatives.

At first sight, this may seem a case of coinciding preferences, where both regulators and the Commission shared a preference for the same outcome: independent and empowered regulatory authorities. However, the different timing of the development of these preferences is crucial. The European Commission did not promote the establishment of Independent Regulatory Authorities (IRAs) before they came into existence first in the UK, then in many other Member States. Before 2003, Member States were under no European obligation to establish IRAs. The establishment of IRAs across Europe was rather part of a broader process of worldwide diffusion (Levi-Faur 2005).

As shown in the first section of this article, energy regulators came together independently, not in relation to European obligations. The prospect of future market integration entailed the prospect of continued cooperation in a European framework, but at the foundational moment regulators were driven by the necessity to establish their national institutional legitimacy. The potential for a Commission – regulators collaboration in the development of European regulatory policy appears in these accounts as almost a pleasant surprise for both sides.

Via the supranational authority of the EU, regulators made full use of their network as a policy lever on European institutions to achieve their preferred market *as well as* institutional goals. As mentioned earlier, infrastructure sectors are of enormous political and strategic salience; hence, it should perhaps come as no surprise that regulators were faced with many constraints on their ability to autonomously implement even the soft rules they had devised within their informal network. They realized that the power of soft law was limited in their sector. Far from abandoning any pretense at influencing their national contexts, they simply adopted a more productive strategy: leveraging their informal network to obtain formal, legally-binding rules imposed on their national governments.

2.3 The re-invention phase: networking for? The network leverage.

> *"The CEER has been incredibly successful but its initial role is finished, it's gone, pretty much, it's transferred to ACER. So now CEER is still working but I think it's got a philosophical purpose, which is to preserve the interest of independent energy regulators. (…) It can also lobby, of course… lobby is the wrong word… it can also try to influence the political establishment in Europe in ways which ACER can't, really, because technically ACER is kind of an arm of the EC so it would be wrong for it to lobby for new policy initiatives or lobby publicly in ways which disagree with where the EC is coming from because it would be like the EC arguing with itself, but CEER can do these things and that I think is the real example of the independent voice of regulators".*
>
> *(interview 14)*

The third and current phase of the CEER's existence began in 2011, with the dissolution of the ERGEG and the creation of the ACER. Many of the persons I interviewed for this research acknowledged that the creation of the Agency has actually partially deprived the CEER of its institutional and policy relevance. The Agency is perceived as a creature of the European Commission. Although regulators do retain a key role within the Agency, they have lost near-exclusivity over agenda setting.

In order to meaningfully survive, the CEER has adopted a two-pronged strategy: on the one hand, it deals with issues, outside of the official remit of the ACER, such as retail markets and consumer issues; on the other hand, it has been developing an advocacy-based identity. Moreover, in effort to enhance its representativeness (interview 25) the CEER has been welcoming regulators from neighbouring countries as affiliate members: the energy NRAs of FYROM, Montenegro, Moldova, Bosnia-Herzegovina and Kosovo.

Yet, arguably the key asset the CEER holds from its 20-year experience is, indeed, its network, whose properties confer it an advantage over a European bureaucratic organization in terms of speed and flexibility:

> *"We have more resources. ACER is always limited by the Commission resources (…) today ACER has 60 people and the regulators have about 180 full time equivalents that work for ACER, (…) the regulators as a whole group probably have 3500 people in Europe so we can quickly come up with 5 or 10 people on something, ACER would have to go to the EC, to the administrative service, get a budget increase, has to hire, to follow a procedure, so it takes them almost a year to find another 10 people. We can do this in a week."*
>
> *(interview 25)*

These resources, for all their lack of formal transparency, could allow the CEER to not only re-conquest a privileged position in relation to the EU institutions and the market stakeholders (that also have their representations in Brussels) but also, and most crucially, to make a substantial contribution to policy developments.

> *"They* [CEER representatives] *really negotiated with the Parliament and there are a lot of things in the Third Package that are actually, even our wording… which the agency could not have done, I mean it didn't exist, but we couldn't have done that through ERGEG, we could only do it through… and we've still got that".*
>
> *(interview 14)*

4. Conclusions: how informal transnational regulatory networks matter.

The extent to which regulatory networks matter is one of the most debated and divisive issues in the relevant literature. Can networks improve governance? Scholars sit on opposite fences: the ones bring empirical evidence that networks can matter; the others dismiss such claims, bringing empirical evidence of the opposite. In any case, the limits of functional approaches to deepen our understanding transnational regulatory networks have been widely acknowledged in the literature.

This includes networks of European regulators, who are far from being mere policy implementers exclusively preoccupied with fulfilling the policy tasks bestowed upon them by their institutional or political principals. Recent contributions have dismissed functional explanations and have drawn attention to the strategic usage that European regulators make of their transnational networks to achieve their own institutional objectives – primarily, gaining more autonomy, but also expanding the range of their competences and fighting institutional turf wars.

Even more recent analyses have begun shedding light on the ways in which networks of European regulators, through time, have developed sufficient cohesion to be able to considerably affect policy developments and, therefore, the extent and the quality of European integration in their respective sectors. Boeger and Corkin (2015), in particular, have drawn attention to the voluntary formations of regulators that preceded the establishment of European Regulatory Networks under the aegis of the European Commission and underlined their ability to leverage their networks to further strengthen their position within the context of the European regulatory space.

This paper adds to these debates by examining the case of the Council of European Energy Regulators (CEER), whose institutional relevance to the process of energy regulatory policy development in the EU has thus far been rather overlooked. The main argument developed from the analysis of this empirical case is that strategic and functional approaches to understanding regulatory networks need not be considered in opposition, but rather as complementary. Namely, the argument is that a necessary condition for networks to “matter” is that their members see the opportunity to pursue their institutional self-interest. It is opportune to characterise regulatory self-interest: rather than budget-maximizing, or bureau-shaping, it concerns the key assets of a regulator: autonomy and reputation.

While the strengthening of autonomy and reputation bring regulators together and lead to network emergence, for regulatory networks to affect governance the presence of a receptive institutional partner wielding regulatory authority in its own right appears crucial. Via the transnational network, regulators are able to impact on the domestic level via the supranational level. In so doing, they come to recognize the improvement of supranational governance as in their own interest. This is not to deny or exclude the importance of domestic determinants and the possibility for regulators, via their networks, to affect the supranational level from the domestic level (e.g. by *"once you start devising transnational network codes, you bring the national interest into play, necessarily*" – interview 3).

However, this case also shows that once the regulatory network loses its uniqueness as point of access to regulators, for instance with the creation of a supranational Agency, regulators have to devise new strategies to maintain their network's worth. Existing literature has refrained from discussing this aspect. In the concluding section of this article, I have suggested that regulators capitalize on the properties of the network structure (rapidity, flexibility, interconnection) they have been developing over time, that are sorely lacking in a bureaucratic agency.

Finally, in light of this analysis, the contribution made by voluntary transnational networks of regulators to the course of European integration can hardly be denied. Had the CEER never existed, the EC would have spent considerable resources to create the habit, for national regulators coming from different countries, "*diffident, with different backgrounds, and unused to cooperating*" (interview 14) to work together. Through the CEER, regulators built, at their own cost, a long-lasting structure of cooperation.

> *"Initially, it did not matter whether the working groups [of the CEER] actually produced results or not; what mattered was that participation in them consolidated the habit, for members of national institutions, to work together; these people got used to interact, exchange experiences, without interpreters at a formal, recorded meeting, but in more normal interactions… in this way, slowly, little by little, we were creating a European bureaucracy".*
>
> *(interview 3)*

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Appendix

Interview Nr	Currently or formerly involved with the CEER?	Role	Member State Nr
1	Current	Regulator	1
2	Current	Regulator	1
3	Former	Regulator	1
4	Former	Regulator	1
5	Current	Academic	
6	Former	Regulator	1
7	Former	Consultant	1
8	Former	Executive	
9	Former	Executive	
10	Current	Executive	
11	Current	Regulator	2
12	Current	Regulator	3
13	Former	Regulator	4
14	Former	Consultant	5
15	Current	Regulator	5
16	Current	Regulator	1
17	Current	Consultant	1
18	Former	Regulator	6
19	Current	Regulator	2
20	Current	Regulator	1
21	Current	Academic	
22	Former	Regulator	7
23	Former	Regulator	8
24	Current	Executive	
25	Former	Regulator	4
26	Former	Regulator	7
27	Current	Regulator	4
28	Current	Regulator	9