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Amending Arguments: The Discourse that Changed a Structure: A discursive institutionalist perspective on the interplay between the EU institutions concerning the EU's Gas Directive amendment

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Amending Arguments: The Discourse that Changed a Structure

A discursive institutionalist perspective on the interplay between the EU institutions concerning the EU's Gas Directive amendment



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List of abbreviations

Abbreviation	Concept
BIA	Background ideational abilities
DI	Discursive institutionalism
EC	European Commission
EP	European Parliament
EU	European Union
FDA	Foreground discursive abilities
MS	Member State(s)
MEP	Member of European Parliament
NS1	Nord Stream 1
NS2	Nord Stream 2
OLP	Ordinary Legislative Procedure
TFEU	Treaty on the Functioning of the European Union

1 Introduction

The European Union's dependence on imports of natural resources from outside the Union's borders remains a constant. Currently, Europe faces complications concerning its low gas reserves, which discomforts consumers and increases the gas price. Russia (40.1%), Norway (18.5%), Algeria (11.3%), and Qatar (4.5%) make up the leading exporters of natural gas to the European Union (EU) (Eurostat 2020). Resultingly, the substantial dependency on Russian deliveries generates a puzzle for the EU Member States (MS) because it is anticipated that a greater reliance on Russian gas results in a greater fragility concerning energy supply.

Various efforts have attempted to diversify natural gas suppliers and expand the pipeline network in and around Europe over the past decades. The Nabucco pipeline, the Trans-Anatolian gas pipeline, and the Trans-Adriatic pipeline exemplify the European pursuit for an enlarged pipeline network to diversify its purveyors. However, recent initiatives aim to increase European energy security by developing the EU-Russian pipeline network. The Nord Stream 2 (NS2) pipeline enables Russian companies to increase their exports and bypass the current pipeline network in Poland and Ukraine. A substantial reduction in the latter adds to the controversiality of the project. Both countries economically rely on the movement of Russian gas and its transit fees, which NS2's operationalization diminishes (Hancher and Marhold 2019). The European Commission – hereafter referred to as Commission – contests the project because, as mentioned earlier, the belief subsists that the pipeline jeopardizes the diversification of gas suppliers (Siddi 2020). Consequently, the Commission proposed a change in the Gas Directive, which the European Parliament and Council of the European Union (hereafter referred to as Parliament and Council) approved on April 17, 2019, to restrict the realization of NS2. The enforcement of Directive 2019/692 complicates NS2's future operations significantly.

European institutions essentially advocate in favor of free-market principles. The Commission's position differs significantly from the expected approach because the proposed amendment of Directive 2009/73/EC (the Gas Directive) on November 8, 2017, complicates the realization of the project. Another remarkable observation is the involvement of an EU institution in the fossil fuel market. Until recently, the Commission predominantly withheld itself from active participation in the energy market. Most MS held adverse opinions regarding

the centralized coordination of agreements concerning gas and oil (Goldthau 2016). A constantly changing environment and behavior are known political characteristics. However, these changes concerning European energy diplomacy are theorized to result in a mismatch between the EU's position and the political environment that continuously transforms (Herranz-Surrallès 2016).

1.1 Gap and objective

Anna Herranz-Surrallès (2016) conducted a study on the EU institutions' behavior concerning energy diplomacy displayed the gap between policy discourse and policy practice. The EU's energy policies are reproduced instead of improved concerning the changing environment of energy relations. The mismatch between discourse and practice is also referred to as *hysteresis* – a term coined by the sociologist Pierre Bourdieu. Hysteresis occurs when the habitus is “out of line with the field and with the ‘collective expectations’ which are constitutive of its normality (...) when a field undergoes a major crisis and its regularities (even its rules) are profoundly changed” (Bourdieu 2000, 160). In the most simplistic form, hysteresis is a mismatch between one's ideas and agency (the habitus) and the rules, power relations, and beliefs within an institutional structure (the field). Herranz-Surrallès (2016) argues that further research is required on the topic “to determine whether a persistent gap between policy discourse and actual practices can also be seen as a form of hysteresis, and under which conditions this gap could precipitate a change in practices” (1401). The Commission attempted and succeeded in narrowing this gap by anticipating the changes in the environment (the construction of NS2) by proposing a modification of the legal framework (the amendment of the Gas Directive). Resultingly, policy discourse and policy practice are comparatively synchronized. Accordingly, this study aims to identify how the Commission succeeded in making the Council and Parliament concur with the proposal to amend the Gas Directive through discourse. This study argues that Commission's discourse on specific subjects (e.g., the economic effects, potential threats, and political entities' influence) drive the Council and Parliament to agree with the proposal. Similarly, the Council is especially responsive to the use of legal arguments concerning the new legal framework. Parliament is most receptive of arguments referring to deficiencies in the current framework, resulting in security issues.

Bourdieu's hysteresis theory connects to the theory of discursive institutionalism (DI). DI is the fourth great theoretical tradition next to historical institutionalism, sociological

institutionalism, and rational choice institutionalism. DI is applied to the case because the theory considers “the substantive content of ideas and the interactive processes by which ideas are conveyed and exchanged through discourse” (Schmidt 2010, 3). The ideas and used discourse are central in this case study. According to Vivienne Schmidt (2010), decision-making processes are usually characterized by steady periods, interjected by short stages where severe changes occur. The case study exemplifies such a short period of drastic change.

1.2 Method

The Commission requested a mandate to negotiate on behalf of the European member states. However, the Commission demanded Russia to behave in harmonization with the regulations present in EU and international law. Several MS renounced the institution’s approach and mandate and, consequently, inspired the Commission to amend the Gas Directive “to ensure legal clarity for all new pipelines entering the EU” (Schmidt-Felzman 2020, 137). Therefore, this research focuses on the subsequent event of the Directive’s amendment through a single case study. The analysis concentrates on the EU institutions (the Commission, Council, and Parliament) regarding the Commission’s proposal to amend Directive 2009/73/EC, stemming from the political debate concerning the realization of the NS2 pipeline between September 2016 and April 2019 when the institutions agreed with the amendment.

Developing a deeper understanding of the impact of used language requires a qualitative research method. Mérand and Forget (2012) deem archival research a productive approach to identifying the hysteresis effect trajectories. The data sources are subjected to a qualitative content analysis with focusing on the institutions’ used. This method enables the researcher to find correlations and is instrumental in revealing (dis)similarities within communication and examining the consequences of the communication.

1.3 Relevance

The scientific relevance of this study is based on two pillars. First, the study conducted by Herranz-Surrallès (2016) requests a deeper understanding of how policy practice and policy discourse become increasingly harmonized within European energy diplomacy. This study identifies and explains how the used language (policy discourse) changes the legal framework (policy practice). Consequently, this case study contributes to current knowledge on narrowing the gap. Secondly, European energy diplomacy is a reasonably new field. Energy diplomacy is

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a decentralized policy field because MS favored multilateral and bilateral negotiations instead of a supranational approach (Riley 2016). This study analyses a significant shift where central coordination replaces individual MS action. Henceforth, the EU's growing prominence in European energy diplomacy and its modus operandi entails scholars researching the changing political environment.

Additionally, this research embeds significant practical relevance for practitioners, scholars, and private sector companies. A deeper understanding of the present discourse uttered by the EU institutions and its effects helps the actors mentioned above anticipate when the Commission proposes (amendments to) directives in the future. Moreover, the study produces practical relevance for the Commission. The Commission benefits from explaining how their arguments are received and answered by the Council and Parliament. Subsequently, the Commission could adjust its interaction with the co-legislators.

1.4 Structure

Four more chapters are presented, following the introduction, the theory section, and the methodology chapter. The fourth chapter describes the Commission's used discourse. The fifth chapter sets out the Parliament's reaction. Next, the Council's reaction is portrayed. Chapter 7 connects the Commission's discourse and the Council and Parliament's response. Finally, a discussion and a conclusion are provided.

2 Theory

This chapter presents the applied theory of discursive institutionalism (DI) and the independent and dependent variables literature. First, the dissertation's DI theoretical approach is explained. After that, the Commission's discourse as the independent variable is described. Next, the current academic knowledge about the dependent variable (the reaction of the Parliament and Council) is presented. Consequently, propositions are drafted based on the existing literature.

2.1 Discursive institutionalism

The DI theory suitably applies to the interplay between the Commission, Parliament, and the Council during the Gas Directive's amendment. Schmidt (2010) describes discursive institutionalism as a method to explain "the substantive content of ideas and the interactive process by which ideas are conveyed and exchanged through discourse" (3). DI approaches the transformation of institutions from a more dynamic perspective compared to the traditional institutionalisms because DI considers multiple actors, the actions of internal actors, the power of ideas, and normative and collective action (among others) as transformation influencers (Schmidt 2010; Schmidt 2017; Kuswandro et al. 2020). DI is often used by scholars who analyze grand geopolitical ideas, orated and translated within a smaller institution (Wahlström and Sundber 2018). Therefore, DI is most appropriate to apply to this case study.

According to DI, changes derive from two modes of explanation: background ideational abilities (BIA) and foreground discursive abilities (FDA). BIA covers the actor's knowledge on how the institutional environment functions and the existing rules in a regime (Schmidt 2010; Herranz-Surrallés 2016). Kuswandro et al. (2020) explain these abilities where "institutions are internal for actors who function as structures in organizing thoughts, words, and actions to meet with similar organizing from other agents" (614). BIA is closest to Bourdieu's term *habitus* (Schmidt 2010; Kuswandro et al. 2020). These practices can be referred to as the institution's structure, performance, norms, and values at one particular moment in time. Conversely, the FDA relates to the logic of communication, allowing agents to express themselves and undertake action outside their institutions (Schmidt 2010; Herranz-Surrallés 2016). Accordingly, the beliefs and actions encourage other institutions to transform or maintain institutional rules or practices (Schmidt 2008). Hence, BIA and FDA could significantly challenge and change the institution's field.

2.2 Independent variable: Discourse of the European Commission

The Commission's arguments distinguish itself based on two characteristics. First, references concerning the political debates are part of the discourse (e.g., energy security, power, and the relationship between and with MS). Secondly, the Commission's discourse signifies legal arguments, which cover references to the inapplicability of EU law and the Commission's limited mandate.

2.2.1 The Commission's political argumentation

According to Goldthau and Sitter (2020), the proposal exemplifies the Commission's shift away from free-market principles. They regard the Commission's action as a regulatory tool to use hard power instruments to restrict NS2's realization. Their observation adds to the claim presented by Prontera (2019), who perceived the Commission to act as an active organizer within the energy market instead of continuing with its free-market approach. This style is argued to have boosted the Council and Parliament's disapproval because the Commission "politicized EU regulation" (Siddi and Kustova 2021 1088). One claim of the politicized regulation is that the Commission supported the construction of other strategically essential gas pipelines (e.g., the Nabucco pipeline). The selective appliance of the Commission's regulatory tools exemplifies the Commission's policy discourse to diversify gas suppliers (Goldthau 2016). Similarly, the Commission's approach concerning Nord Stream 1 (NS1) and NS2 remains somewhat ambiguous. Contrary to the construction of NS2, the Commission decided not to intervene judicially on the NS1 project. The principal reason for non-intervention results from the power exercised by individual Member States (Riley, 2016). The contrast shows the subordinate position of the Commission to the respective governments' will. Similarly, Hedberg (2015) regards the Commission's failure to apply EU law to NS1 "due to political momentum and pressure from Russia and Germany" (2).

Another Commission political argument covers the securitization of gas supply. The emphasis on the securitization is most noteworthy because "the securitizing shift in the EU's energy debate induced the Commission to take a more active stance in shaping energy markets, which some analysts described as increasingly politicized and involving the selective application of EU regulations" (Siddi & Kustova 2021 1080). Conversely, some authors represent the Commission's successful bid with the Council and Parliament as being normative (Goldthau

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and Sitter 2020). In other words, the Commission regards the amendment as beneficial to the EU's performance and serenity. Similarly, Mata Pérez et al. (2019) mentioned the Commission's appeal to the Council and Parliament "that the amendment will enhance the solidarity between Member States and improve the functioning of the Energy Union" (5). However, Yafimava (2019) does not assume the proposal's normative potential as the Commission's principal argument, but the proposal as an attempt to increase its authority to act on energy matters on behalf of the MS. Such a mandate is included in the final version of the agreed-upon Directive. De Jong and Van de Graaf (2021) argue that the Commission aimed to impose its regulatory framework on NS2 to exert its institutional power to reach the Commission's objective. The policy practices of the Commission met the policy discourse by attempting to stop the realization of NS2. The Commission pursues more authority on energy matters by requesting the delegation of power from the Council to the Commission (Talus 2017a). Hence, the Commission's propensity to regulate the pipeline's construction and operations subsist, but the deficient institutional authority confuses the implementation of its strategy. However, several legal articles enable the Commission to participate in "decision making, especially for negotiation with third countries, derogation or expansions of pipelines" (Keypour 2019, 84). Hence, the Commission used the Directive's amendment to increase its power.

2.2.2 The Commission's legal argumentation

Moreover, the EU's legal framework covers parts of the pipeline instead of the entirety of NS2. According to Hancher and Marhold (2019), the Commission's legal tools include fragments of pipelines originating in non-EU states. Resultingly, the Commission's inclination to regulate the operations of NS2 complicates the viability to act effectively. Crucially, they hold the belief "that sub-sea external gas pipelines such as Nord Stream 1 and Nord Stream 2 bringing gas from Russia to Germany are not covered by the current legislation, nor are similar sub-sea pipelines bringing gas from Algeria, Libya or Norway" (Hancher and Marhold 2019 297). Similarly, Talus (2017a) claims that the Commission's attempt to halt the project was outside the judicial scope of the institution; EU energy law and the Gas Directive cannot be applied to exterior gas pipelines. Therefore, closing the gap between the Commission's policy discourse and the EU's policy practice is problematic and persists until changes to the EU law are enfolded.

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The Commission's actions and application of European energy law characterize the confusion in the struggle. Over the past decades, the Commission frequently refused or deliberately chose not to apply European law to new pipeline infrastructural developments, whereas other projects experienced active EU contestation (Riley 2018). Accordingly, the Commission's proposal functions as a tool to target an individual project by extending the legal framework, strengthening the institution's judicial position. Correspondingly, Riley (2018) highlighted the Commission's emphasis on the inapplicability of the former Directive because import pipelines presumably fell outside the Directive's scope. Consequently, the Commission reasoned in the amendment's favor, covering such pipelines (Riley 2018). The Directive includes specific articles which improve the Commission's vigor when the framework covers NS2. For example, the Commission's legal arguments also cover Gazprom's monopolistic position. The Gas Directive secures those suppliers, network operators, and system users are diversified through 'unbundling' (Gragl 2019). Unbundling is an instrument "for dealing with gas transmission networks as natural monopolies, in which the transmission of energy is not typically carried out on a competitive basis, but by a single natural monopolist" (Gragl 2019 122-3). However, the Directive's applicability remained contested and, therefore, the unbundling principle's pertinence on NS2 continued to be disputed.

2.3 Dependent variable: Reaction of the European Parliament and European Council

Similar to the Commission's discourse, the Council and Parliament's argumentation classify in political and legal arguments. The institutions direct their political ideas to fairness within the gas market, the EU's principles, and MS support. In contrast, the legal arguments mainly cover the applicability of the unchanged Gas Directive and the MS' role in shaping the legal framework.

2.3.1 The Parliament and Council's political argumentation

According to Fisher (2016), most MS within the Council contested the NS2 construction as a united front. However, he regards the discourse and subsequent debate as an impasse because the building of the pipeline adds to the MS' energy security but contradicts the principles of fostering a competitive market (Fisher 2016). Furthermore, the amendment's acceptance in the Council appeared more complex than within Parliament. Schmidt-Felzmann (2020) reasoned that the Parliament already reacted aversively towards NS1 and continued their contention

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during the NS2 debate. Their main claim contains the argument that the NS2 project is not following the EU's energy principles (Schmidt-Felzmann 2020).

Various Council's MS argued in favor of the proposal based on geopolitical grounds. The NS2 project was opinionized to pose a security risk when European gas dependence on Russia increased (Siddi and Kustova 2021). However, no agreement was reached. The Commission's discourse was also subjected to other forces within the Council. MS – both contesting and in favor of – the proposal based their arguments predominantly on economic (dis)advantages. The loss of transit fees in the cases of, for example, Poland and the Baltic states and the financial gains from transit fees for Germany and Austria stimulated these countries to reject or accept the Commission's proposal (De Jong and Van der Graaf 2021). The breakthrough in the Council occurred when a qualified majority backed the proposal. France functioned as the decisive factor by endorsing the Commission's proposal. However, De Jong and Van der Graaf (2021) argue that a convincing reason for France's support remains absent. They state that “the creation of goodwill in Eastern Europe (...), gathering support for the Eurozone's budget (...), and solving disagreement on the proposal between two French ministries” might have encouraged France's backing (De Jong & Van der Graaf 2021, 503).

These arguments, in conjunction with the Commission's discourse, drive the expectation that:

Proposition 1: The Council and Parliament rectified the amendment of the Gas Directive based on the Commission's foreground discursive political arguments

Proposition 2: The Council and Parliament rectified the amendment of the Gas Directive based on the Commission's background ideational political arguments

2.3.2 The Parliament and Council's legal argumentation

De Jong and Van der Graaf (2021) emphasized the advantageous position of the Parliament towards the Commission. They stated that the EP Committee advised the Commission to adjust its proposal to assure the Directive's applicability to the NS2 project to increase the chances of a successful amendment (De Jong and Van der Graaf 2021). However, the MS' principal role in legislation and decision-making distresses the Commission's controlling position with its 'right of first initiative.' Talus (2017b) emphasizes the weak judicial position by arguing that

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the Commission's authority and legal instruments fail to cover NS2 because the pipeline is subjected to the legislation of the affected MS instead of EU legislation. Similarly, Goldthau (2016) emphasizes the Commission's inclination to impose EU law on the NS2 project despite the solid regulatory position of individual MS. Therefore, the policy discourse to control the construction and operations of NS2 prevails but remains subject to the strategy of the states operating the pipeline.

Gragl (2019) argued that the Council believed the NS2 project to fall under "the law of the sea," but the Commission reasoned the Directive to fit the case (127). However, the Commission's later recognition of the law's inapplicability demonstrates the Commission's changing opinion. The claim that the Directive covered the project converted into an argument to modify the present Directive. Nonetheless, reluctance to the modification persisted initially within the Council (Gragl 2019). According to Siddi and Kustova (2021), the Council's aversiveness did not originate from a legal debate but that the Commission's intentions were mainly political (Siddi and Kustova 2021). Hence, the Council debated and approached the proposal on political arguments, whereas the Commission and Parliament reasoned the Directive to have judicial complications.

These arguments, in conjunction with the Commission's discourse, drive the expectation that:

Proposition 3: The Council and Parliament rectified the amendment of the Gas Directive based on the Commission's foreground discursive legal arguments

Proposition 4: The Council and Parliament did not rectify the amendment of the Gas Directive based on the Commission's background ideational legal arguments

3 Methodology

3.1 Research design

This study uses a single case study. This approach enables the researcher to seek in-depth knowledge and identify potential correlations. The Commission, Council, and Parliament are analyzed within this single case study. The study focuses on the Commission's discourse and influence on the Council and Parliament's reaction. Consequently, the single case study uses an embedded approach. The Commission's whole behavior is not analyzed, but solely the communication and actions covering the Gas Directive's amendment. Similarly, only the Parliament and Council's reactions within the Gas Directive debate are examined, excluding all other actions. The dissertation follows a deductive approach. The theory mentioned in the previous chapter directs our expectations. The hypotheses are confirmed or rejected based on the observations and identified patterns, which enable the researcher to make inferences.

3.2 Case selection

This single case study concentrates on the EU institutions (the Commission, Council, and EP) concerning the Commission's proposal to amend Directive 2009/73/EC, deriving from the political debate concerning the NS2's realization and the Parliament and Council's reaction. The EU's decision-making procedure (the ordinary legislative procedure, or OLP) necessitates the Commission to propose legislation and amendments. The Council and Parliament co-decide on approval or revision of the proposal. Accordingly, the case covers the Commission's communication and discourse towards the Parliament and Council as the independent variable and the communicated reaction of the EP and Council as the dependent variable. The EU-NS2 case is fascinating because EU energy governance is a policy field in its infancy. EU institutions were reserved on energy diplomacy because MS preferred bilateral action (Riley 2018). Hence, the interaction between the EU institutions on the Gas Directive's amendment offers a significant opportunity to understand how and why the institutional structure changes. The timeframe runs from September 2016 until the Parliament and Council published Directive 2019/692 on April 17, 2019.

3.3 Method of data collection

This dissertation uses online archival research to collect primary and secondary data. The data includes newspaper articles (as secondary data), press releases, speeches, and public documents (as primary data). The latter three are accessed through the EU's open-source archive. The archives of eminent media (e.g., POLITICO and Reuters) are consulted to acquire relevant articles. The researcher desired to conduct interviews with EU officials. However, time constraints and the topic's political sensitivity restrict this data collection method. Interviews enable a researcher to get more detailed information. The interviewees are likely to provide politically agreeable answers or neglect to comment on specific questions because of the topic's nature. Contrarily, archival research enables the researcher to collect data produced and communicated at the most critical time when the decision was just delivered. Interviewees assess and reassess what they heard or read, which changes their view over time. Hence, this study regards online archival research as the best available method under the circumstances.

3.4 Method of analysis

This study utilizes a qualitative content analysis. The qualitative content analysis assesses repetitions and the substance within and across weighty texts (Warren 2020). The researcher reviews the language based on the orator's background, the "textual characteristics," and the addressee's position (Mayring 2004 267). However, this method also includes a quantitative dimension by counting the frequencies of the codes to identify patterns, which could indicate an underlying meaning (Warren 2020). Hence, this technique is an all-embracing research method, enabling the researcher to constrain the potential limits in qualitative research (e.g., overlooking information).

Qualitative content analysis is favored over other methods of analysis because this method covers assessing the consequences of the used language and attempts to identify correlations between the language and its affected subject. For example, the thematic analysis identifies reoccurring topics and patterns but is more suitable for opinions and worldviews. This study desires a deeper understanding of why particular arguments are made and how they influence an institution. Also, discourse analysis studies how linguistic utterances shape and restrain social reality (Mullet 2018). The language is central in this study, but the primary purpose is the identification of the uttered language's consequences and not the background, phonetics, or grammar.

This research follows the six steps as presented by Mayring (2004). First, a research question is developed, as is illustrated in Chapter 1. Secondly, general categories are defined. These categories are derived from the literature review. Third, the categories are abstracted to apply them efficiently to the texts. Fourth, the collected data is revised, re-read, and the codes are applied. A formative reliability check is applied. After that, the final processing stage happens, where the entirety of the texts is assessed. Finally, the code frequencies are noted, and, consequently, the analysis of the codes and patterns progresses.

3.5 Operationalization

The dimensions and indicators deriving from the theory chapter are operationalized by creating abstract codes. This construction is the third step in Mayring's (2004) qualitative content analysis formation. As Schmidt (2008) discussed, the FDA and BIA potentially occur within the context of arguments based on law and politics. A distinction is made between the references to existing and prospective legislation. Existing legislation is connected to the BIA, whereas the discourse related to new legislation belongs to FDA arguments. Similarly, the political arguments are distinguished between political arguments applying to the current structure (connected to BIA) and political arguments with a normative character (connected to FDA). Boydston et al. (2014) and Johnson et al. (2017) developed a Policy Frames Codebook with seventeen types of indicators. These indicators enable researchers to apply them to cases dealing with communicated policy issues. The indicators are divided between the four dimensions. However, four indicators are excluded because they fall outside the scope of this study. These indicators are health & safety, quality of life, cultural identity, and expressions with no political spin (Johnson et al. 2017). The included indicators and their descriptions are displayed in Table 1. Appendix I presents the coding guide and the code's frequency.

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Dimension	Indicator	Code	Code description
Foreground discursive abilities	FDA political argument	Economic effects	Reference to economic effects after amending the directive
		Capacity	Reference to institutional resources under the new directive
		Morality	Reference to righteousness, responsibility, and principles by amending the directive
		Security	Reference to potential threats
		Public sentiment	Reference to what the public opinion desires
		Political implications	Reference to lobbying groups and political entities under the new directive
		Policy description	Reference to the effectiveness of the new policy
		(Self) promotion	Reference to promoting its own institution under the new setting
		Personal sympathy	Reference to sympathy and solidarity concerning the new directive
	FDA legal argument	Fairness & Equality	Reference to desired and prospective laws
		Legality	Reference to expressions of rights
		Punishment	Reference to new legal framework
		External regulation	Reference to interstate regulations and Member States' legal framework under the new directive
	Background ideational abilities	BIA political argument	Economic effects
Capacity			Reference to the current lack of available institutional resources
Morality			Reference to the absence of responsibility
Security			Reference to (energy) security under the current framework
Public sentiment			Reference to how the public regards the current structure
Political implications			Reference to the influence of lobbying groups and political entities under the current framework
Policy description			Reference to the effectiveness of the current policy
(Self) promotion			Reference to promoting its own institution in the current setting
Personal sympathy			Reference to sympathy and solidarity in the current setting
BIA legal argument		Fairness & Equality	Reference to distribution of present laws
		Legality	Reference to previous court cases
		Punishment	References to punishment under the present legal framework
		External regulation	Reference to interstate regulation and Member States' legal framework in the current setting

Table 1: Dimensions, indicators, and codes

3.6 Validity and reliability

The assessed data and applied codes assure the research's construct validity. The study aims to analyze the communicated arguments and the subsequent reaction. The consulted data includes the expressions from the three institutions. Similarly, the codes derive from distinguished literature covering political communication. The content validity is somewhat assured by the chosen method and the concept's operationalization. The research covers all relevant elements concerning political and legal arguments. However, other factors are not included, influencing the Council and Parliament's decisions. For example, behavioral characteristics and third-party lobbying activities are excluded from the analysis. Contrarily, the face validity is strong. The research aims to identify what arguments were communicated and how they influenced the subsequent amendment result from political and legal arguments derived from the existing literature. Therefore, the measurement seems to measure what is intended.

The research's external validity is limited. The inferences made in this research are generalizable to a limited extent. The conclusions apply only to the EU's institutions. Similarly, the research method produces reliable findings of the interplay between the institutions because the used sources describe what is communicated from one institution to the other. However, the study is subjected to the researcher's subjectivity because he conducts the analysis alone. The researcher enjoys a distance from the EU institutions, limiting his subjectivity as he is mainly unaffected by these institutions. Furthermore, the study's reliability is challenged by potential unforeseen factors which might influence the decisions of the Parliament and Council. For example, the negotiations behind closed doors cannot be controlled and included in the analysis. Nevertheless, researchers applying the same method are likely to replicate this analysis's inferences because they access open-source data. Furthermore, another strength of this analysis is the generation of new ideas about EU energy diplomacy, governance, and the interplay between intergovernmental and supranational institutions. Whether the conclusions apply to other intergovernmental organizations (e.g., the United Nations and the African Union) is unknown.

4 The European Commission's discourse

This chapter describes the discourse voiced by Commission in their pursuit to amend the Gas Directive. First, the arguments characterized as FDA are discussed. Following, this section portrays the claims applying to the background ideational abilities. Appendix I displays the code's frequencies.

4.1 Foreground discursive abilities

The FDA arguments derive from thought, personal opinions, and ideas that contradict the mainstream beliefs and current structure present within a *field*. The Commission extensively displays discourses with an FDA character during the proposal's amendment process.

4.1.1 Political arguments

Three types of discourse were frequently identified. First, the Commission significantly refers to the economic effects following the Gas Directive's amendment. Most arguments refer to the likely monopoly of gas companies and the potential loss of investments (European Commission 2017a). For example, Energy Commissioner Miguel Arias Cañete emphasized to the Parliament that the amendment would counter possible dominant positions of gas players in the market (European Commission 2017b). Similar arguments relating to potential monopolies and amendment's positive effect for a well-functioning energy market recur on multiple occasions (European Commission 2017c; Council of the European Union 2019a; 2018a). Likewise, the Commission often refers to the EU's more critical principle of progressive market integration. For example, the Commission reasoned in their proposal to the Council that "the current proposal should also be seen as part of an ongoing effort to ensure the integration and effective operation of Europe's gas markets" (Council of the European Union 2019a, 3). Cañete addressed the European Parliament by arguing that:

The provisions of the Gas Directive will from now on be applicable to all these gas transmission lines, both onshore and offshore, in the territory and the territorial sea of the Member States. This is a major step towards a well—functioning, transparent and competitive European Union internal gas market where all suppliers are acting under the same European Union rules (European Parliament 2017a).

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Another recurring argument is the reference to the righteousness, responsibility, and principles resulting from amending the Directive. The Commission emphasized the amendment's advantageous effects on the increased transparency concerning pipeline operations (European Commission 2017a; 2017c; 2017d). According to the Commission, transparency does not solely apply to pipelines but is extended to other institutions. Cañete stated that “the text agreed by the co-legislators also ensures transparency and cooperation among competent national authorities, for instance by requiring consultations among regulators before granting exemptions for new infrastructure” (European Parliament 2017a). Furthermore, the Commission mentions the more important principles of the Energy Union, which is an essential component of a strong EU. These principles relate to the EU's objective to combat climate change and complete the internal energy market (Council of the European Union 2019a).

The third FDA political argument often used by the Commission is the reference to potential threats and the instrumentalization of the amendment to combat those risks. Most present are the indications that the new Directive contributes to the security of supply (European Commission 2017a; 2017b). NS2's unregulated operations are projected to counter the diversification of sources and increase the dependence on the growing dominance of one player in the European gas market. Cañete's speech to the Parliament demonstrated this view by arguing:

“Our guideline has been the diversification of sources and support those gas pipelines who really are useful for security of supply, and not give support to pipelines like Nord Stream 2, which can never be a project of common interest because it does not increase our security of supply and it also creates problems for dominant positions in the market” (European Commission 2017b).

Furthermore, unregulated pipeline projects would “impact the overall gas supply architecture of the EU” because the eastern pipeline network could be unemployed (European Commission 2017c, 3). This undesired effect contrasts the Commission's responsibility to ensure an integrated and effective energy market. The proposal emphasizes that the amendment is needed. The Commission referred to Article 194 of the Treaty of the Functioning of the European Union (TFEU) because the framework necessitates the EU to promote and assure energy security and the interconnection of energy networks (Council of the European Union

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2019a). Hence, the argumentation that the amendment supports European energy security persists.

Discourse referring to the lobbying groups and political entities concerning the new Directive and references to the new policy's effectiveness was less prominent but still present in communication. For example, the Commission denoted the MS' empowerment concerning future bilateral intergovernmental agreements (European Commission 2019a). Similarly, the FDA political indications of policy effectiveness comprise of the mentioning of the EU's "robustness" and "collectivity" that the new Directive encourages (European Commission 2017d; European Parliament 2017a). Additionally, the Commission occasionally referred to sympathy and solidarity in conjunction with the new Directive. However, these utterances remain somewhat isolated but endure throughout the amendment process. The arguments are primarily concerned with the MS' increasing solidarity and within the EU as an institution (European Commission 2017d; Council of the European Union 2018a).

The Commission did not refer to the institutional resources under the new Directive, the public opinion, or promote their institution under the new setting. Hence, three FDA political arguments were absent from the Commission's discourse, and three were frequently mentioned. Contrariwise, three types of arguments occurred occasionally; references made to the economic effects after the amendment, the righteousness, responsibility, and principles, and the amendment's capability to solve potential threats.

4.1.2 Legal arguments

The Commission frequently voiced FDA legal arguments. Several codes occurred in the transcripts; references to the expression of rights were missing. Nevertheless, the three others occurred frequently. First, the Commission's reference to desired and prospective laws is often identified. The line of reasoning covers the removal of judicial obstacles to further market integration and the application of the new Directive to new pipeline projects, which the current framework upsets (Council of the European Union 2019a; European Commission 2017a). The Commission's Vice-President Šefčovič stated that:

"If it comes to the Nord Stream route (...). We just want to be sure that it is built under the same rules as any other pipeline in the European Union. Therefore, we

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proposed the Gas [Directive] amendment. Therefore, we proposed the mandates to the Council where the best thing to deal with all the legal and political sensitivities would be done through the negotiations where we can find the solutions for all these problems” (European Commission 2018a).

The desire for the amendment derives from the identification of a legal void. Commission officials mentioned that the new Gas Directive was in line with the legislative action, which was deemed needed to universally apply to all pipeline networks (Council of the European Union 2019a; European Commission 2017c).

The second repetitive FDA legal argument mentions interstate regulations and MS’s legal framework under the new Directive. The Commission responded to the Parliament’s questions on the proposal that an MS is granted the power to apply the EU’s legal framework to pipelines entering their country (European Parliament 2019a). Consequently, the amended Directive allows for MS implementation instead of centralized or supranational enforcement by the Commission. The Commission assured in their proposal to leave “appropriate competences and responsibilities for Member States” (Council of the European Union 2019a 4). Additionally, the Commission emphasized that an MS could apply for a project’s exemption. A working document provided to the Council incorporated a section highlighting Article 36 of the Gas Directive, which empowers an MS in these cases (Council of the European Union 2019a). Henceforth, the Commission’s used discourse concerning interstate regulation focused on MS’ authority to apply the new Directive and to empower an MS on specific occasions.

Lastly, the Commission’s references to the new legal framework are noticeable. The arguments primarily cover indications that the amendment makes the legal framework more efficient and provides legal certainty for states, investors, and operators (European Commission 2017a; 2017d). For example, the Commission stated that the new framework fosters “ensuring that all major pipelines wholly or partly located in EU territory are operated efficiently under a regime of transparent regulatory oversight will diminish conflicts of interests between infrastructure operators and gas suppliers, and guarantee non-discriminatory tariff setting” (European Commission 2017d). Resultingly, the institution with the ‘right of first initiative’ attempted to market its proposal as a constructive and beneficial modification of the old framework. Hence, whereas the Commission did not refer to the expression of rights, all other FDA legal

arguments appeared frequently within the Commission's communication towards the Council and Parliament.

4.2 Background ideational abilities

As mentioned in the previous chapter, the BIA covers the beliefs, opinions, and current structure. These notions relate to Bourdieu's concept of *field*. The field is the present environment and is continuously challenged and changed. This section described the references of the Commission to the current structure when the amendment was proposed.

4.2.1 Political arguments

Three indicators frequently occurred in the transcripts, three were identified once, and three were not noticeable. The Commission repeatedly referenced to the economic effects under the current structure. A key argument subsists that the current framework impairs investors and the diversification of suppliers (European Commission 2017e). These arguments connect diligently to earlier statements of the Commission that the current setting enables dominant players to strengthen their position within the energy market (European Parliament 2016). Consequently, the Commission views the environment as detrimental to the market's functioning. Similarly, a section in the proposal implies that the current structure stimulates delayed implementation of European law, which leads to adverse effects on the functioning of the internal energy market (Council of the European Union 2019a).

Additionally, the Commission denoted that the untouched Third Energy Package – the general legal package including the Gas Directive – jeopardizes the EU's energy security. The framework enables companies like Gazprom to close the gas supply running through Ukraine and Poland, which endangers, in particular, the energy security of eastern member states (European Commission 2016). Commissioner Cañete referred in his address to Parliament that the reduction of gas corridors harms the security of supply as a direct effect of NS2 (European Parliament 2016). These arguments also endured in the process's later stages. The Commission issued a working document to the other institutions stating that “the applicable legal framework under which these gas imports are carried out, including the rules applicable to the operation of the respective pipelines, can significantly affect the functioning of gas markets within the EU and the security of gas supply of European citizens” (European Commission 2017a, 3).

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The third recurring BIA argument covers the reference to the influence of lobbying groups and political entities. The Commission opinionized that the current framework leaves substantial room for the Russian Federation and Gazprom to negotiate to operationalize the pipeline (European Commission 2017c; 2017e). Likewise, the Commission's Vice-President Josep Borrel stated that the present legal framework applies to NS2 but that its operations were still determined by Germany and the private firms operating the pipeline (European Commission 2021). The current framework, according to Borrel, does allow the EU to contest NS2's construction and operations. Thus, the Commission's concerns about the actions of other political entities are covered within the Commission's discourse.

Additionally, three discourse types occur once. First, the Commission referred to principles within the current framework. The voiced argument entails that the Commission is allowed to negotiate on behalf of the EU under the principles of EU energy law (European Commission 2017c). Second, the discourse includes mentioning the public's attitude towards the current structure. Commissioner Margrethe Vestager reasoned to consider the opinions of consumers and shareholders when modifying EU rules by aiming to improve the European gas market (European Commission 2017e). Lastly, a reference was noticed to the effectiveness of the current EU policies. Commissioner Cañete expressed his concerns to Parliament regarding the construction of NS2 in conjunction with the existing legal structure (European Commission 2016). Hence, the Commission's discourse covered most BIA political arguments.

4.2.2 Legal arguments

The Commission's discourse covered two of the four types of BIA legal arguments. First, frequent referencing to the distribution of present laws transpired. Most references covered the legal void within the current framework (Council of the European Union 2019a; European Commission 2017a; 2017b). As Commissioner Cañete argued in favor of the Directive, "Europe is closing a loophole in the EU legal framework" (Gurzu 2019). The framework's gap contains several risks, according to the Commission. These risks mainly denote the effective competition in the gas market and the Commission's weak position to negotiate and enforce EU law (European Commission 2017c; 2017e). Consequently, the legal void supposedly stimulates ineffective market rules, jeopardizing the European gas consumer. The Commission accentuated the current framework as fostering "regulatory conflicts, legal uncertainty, and distortion of competition" (European Commission 2017a, 3). Resultingly, the Commission's

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discourse included multiple references to the distribution of present laws. However, the institution considered the current Directive significantly defective, which shaped their argumentation in favor of the amendment.

Secondly, the Commission's remarks concerning the interstate regulation and MS' legal framework in the current setting are noticeable. The argumentation mainly refers to the authority of the MS under the existing legal framework, which the Commission reasons to preserve. For example, the Commission reasoned in an address to the Council that "the proposal seeks to apply EU law within the EU's jurisdiction and does not seek to change the laws of the countries, nor to impose the application of the European Union law outside its territory" (Council of the European Union 2018a). Furthermore, the MS variety of national legal frameworks has potential perilous effects for consumers and EU law applications. The Commission emphasizes that the unamended Directive preserves these risks (European Commission 2017a). Another deemed risk is the inapplicability of national and EU law to pipelines outside the territorial waters. According to the Commission, the legal gap that guarantees the MS and EU's sidelining to apply their framework to these pipelines results in a brainteaser concerning who possesses the authority to negotiate (European Commission 2017c). Contrarily, the Commission unemployed the argumentation referring to previous court cases and the legal consequences deriving from the current framework. These utterances are unobserved.

Thence, some FDA and BIA indicators remained unnoticed. Nevertheless, most indicators occurred frequently within the Commission discourse. They notably used references concerning the economic effects, European principles, the elimination of potential threats, the desired and new legal framework, and the MS' position resulting from the Directive's amendment. Furthermore, their mentioning of BIA arguments covered the economic effects, threats to energy security, the influence of other political entities, the legal void within the present law, and the MS' regulation within the EU's current structure. Whether the Commission successfully transmitted these arguments to the Parliament's rhetoric is presented in the next chapter.

5 The European Parliament's reaction

This chapter describes the Parliament's argumentation in response to the Commission's proposal. The FDA political and legal arguments are first presented in line with the previous chapter. Also, an account of the BIA political and legal arguments is provided.

5.1 Foreground discursive abilities

5.1.1 Political arguments

The analysis of the Parliament's reaction to the proposal detected references to four out of nine indicators for FDA political arguments. First, Parliament repeatedly mentioned the likely economic effects after the amendment. Key elements are the decreasing diversification of gas suppliers, the problems for further market integration, and the dependence of eastern MS on transit fees. Parliament reasoned that "to promote the liberalization of the energy market, the EU supports the diversification of energy sources, particularly for those countries that are dependent on single-source suppliers like Russia" (European Parliament 2018a, 32). The amendment challenges the decreasing diversification of sources and contributes to market integration. Accordingly, the Parliament stated that the new Directive is in line with the European energy policy that has been present for the last decades because consumers would pay competitive prices due to the diversification of the European gas market (Council of the European Union 2019b). Hence, the Parliament regarded the amendment as producing economic advantages.

Likewise, Parliament referred to the amendment's usefulness concerning potential threats. The indications apply to European energy security and European security. Parliament stressed in a letter to the Council that the operationalization of NS2 is injurious to security and that urgent action is required to stop the project (European Parliament 2017b). Resultingly, Parliament reasoned that the amendment would "make us more secure and resilient to external disruptions and the abuse of energy supply as a political weapon" (European Parliament 2017c, 1). Other security reasons coined by Parliament apply to the decreasing energy security. According to Parliament, a cut in the Russian gas supply would leave the EU with economic liabilities (Council of the European Union 2019b).

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Thirdly, the assembly signified the political implications of other political entities relating to the amendment. Parliament deemed the Commission's increased power beneficial to the EU's overall functioning (European Parliament 2017d). The support was also voiced in a press release stating that "if the member state's assessment differs from the Commission's, it is the Commission's assessment which prevails" (European Parliament 2019b). Other references applied to key player states caught within the pipeline debate. Parliament pointed to the powerful and problematic position of the Russian Federation, Germany's accountability to stop the pipeline operation, and to the precarious position of eastern states like Ukraine, Belarus, and Poland (European Parliament 2018a).

Lastly, sporadic references were identified to promote Parliament's position after the amendment. These arguments indicate that Parliament encouraged the authority directed from the MS to the EU. The conclusion of the first reading included a section where they argued that based on the principle of subsidiarity, distortions of the internal gas market are best resolved on a European level (Council of the European Union 2019b). Therefore, Parliament regarded the amendment as an instrument to obtain a more influential role at the MS' expense. Contrary to the assembly's advocacy for more EU power, Parliament mentions the other FDA political arguments – referencing institutional resources, the EU's principles, public opinion, the Directive's effectiveness, and solidarity in conjunction with the proposed amendment – remained unnoticed. Nevertheless, the respective arguments mentioned above display the presence of FDA legal arguments within the Parliament's reaction.

5.1.2 Legal arguments

The Parliament's indication of FDA legal arguments covers two codes in particular. Firstly, occasional references were made to the EU's desired laws. Member of the European Parliament (MEP) Gunnar Hökmark stated in a debate on NS2 that the pipeline was incompatible with the legal framework and stressed the importance of more rules concerning the unbundling of gas influx to combat a gas company's potential monopolistic position (European Parliament 2016). Similarly, Parliament mentioned the desire to build on policies that started at the millennium's beginning to assure the security of supply and fair gas prices (Council of the European Union 2019b). Consequently, Parliament regarded the amendment as a vital next step contributing to these principles.

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Additionally, the assembly connected to the new legal framework and its subsequent *modus operandi* after implementation. Most interesting is the Parliament's emphasis on the necessity for legal reform. According to MEP Jerzy Buzek, "many wanted to see these negotiations fail, as without this agreement, EU rules would not be applicable to gas pipelines from non-EU countries" (Gurza 2019). Consequently, Parliament deemed the amendment as an absolute necessity. This claim also applies to a later utterance stating that the new Directive would ascertain reliability and regularity within the EU's legal framework (Council of the European Union 2019b). Thus, Parliament voiced the amendment as the right step to evolve EU law.

Moreover, Parliament's orientation towards the interstate regulations and MS' legal framework under the new Directive was encountered. However, this category remains isolated because the reference is solely met once. Parliament stated in their adoption of the amendment that bilateral negotiations and application of EU law by MS neglect in comparison to the EU's expected enforcement of the legal framework (Council of the European Commission 2019b). Therefore, the new Directive aims to empower the Commission as assessor and negotiator. Contrary to the aforementioned used arguments, a reference to the expression of rights is the only code not transpiring within the Parliament's documents.

5.2 Background ideational abilities

5.2.1 Political arguments

The most prominent BIA political argument present in the Parliament's reaction is the reference to (energy) security under the current framework. Multiple MEPs argued that NS2 increases the European dependence on Russian gas (European Parliament 2016). According to them, the legal framework permits the creation of a feeble consumption environment because a sudden decrease in Russian supply would affect the gas market and, consequently, the European economies. Furthermore, Parliament deemed the NS2 project as detrimental to the overall security. They argued that "Nord Stream 2 will be a powerful weapon in the Russian diplomatic arsenal" (European Parliament 2017b, 1). Hence, Parliament was highly apprehensive about the security issues following the NS2 construction and frequently voiced these concerns.

The second often recurring argument covers the economic effects under the current legal framework. According to Parliament, the construction is unnecessary from an economic perspective because NS1 is deemed sufficient and could increase its transit capacity (European

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Parliament 2018a). Therefore, the project would be a political tool and not an economic development. Similarly, MEP Petras Auštrevičius questioned the abuse of economic power by stating: “How about the past time period, when Gazprom was simply earning dozens of billions, if not hundreds of billions, using its monopoly on the gas market?” (Gurzu and Hirst 2017). His reference applied to previous experiences with the company. Consequently, Parliament voiced its concerns about the economic implications on several occasions.

Thirdly, although less frequently voiced, Parliament referred to the alleged actions of political entities in the absence of the amendment. MEP Morten Helveg Petersen said that the construction complements the political agenda of the Russian president Putin and increases its influence in Europe (European Parliament 2016). Also, Parliament enunciated that Russia potentially refuses to use the Ukrainian pipeline network by using NS2 as a political tool (European Parliament 2017b). Consequently, the assembly’s concerns cover the political interference of Russia within the EU.

The BIA political argument referencing the responsibility, righteousness, and principles within the current setting transpired once. The Parliament’s argumentation covers that the pipeline project is incompatible with the principles of the European Energy Union because NS2’s operations would have extensive detrimental results for the EU (European Parliament 2017b). Although less frequently pronounced, this argument was part of a pressing letter to the Council and the Commission. Contrarily, the five unidentified codes for BIA political arguments within the Parliament’s reaction are the statements concerning public opinion, the effectiveness of the present policies, promoting its institution, and a reference to sympathy and solidarity, and the lack of available institutional resources within the EU’s current structures. Parliament seemed unconcerned with these indicators.

5.2.2 Legal arguments

Parliament seldom reasoned based on BIA legal arguments. Two notable utterances concerning the distribution of present laws were included in the first reading’s conclusion. These arguments entailed that the current legal framework created inconsistencies within the European gas market and appealed to the Council “to take account of the lack of specific Union rules applicable to gas transmission lines to and from third countries” (Council of the European Union 2019b, 6). Thus, the Parliament acknowledged and pronounced the deficiencies present

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in the distribution of laws in the existing structure. Furthermore, only one argument referring to interstate regulation and MS's legal framework in the current setting was identified. This argument applies to the call that implementation and enforcement of EU law by MS is currently lacking (Council of the European Union 2019b). Hence, Parliament deemed the current setting as flawed. Conversely, Parliament withheld from signifying the two other BIA legal arguments indicators. Namely, the reference to previous court cases and the legal consequences under the present legal structure.

In conclusion, the Parliament's reaction included various FDA political and legal arguments that align with the Commission's discourse. The BDA political arguments are present within the response but are not associated with the Commission. Conversely, the BDA legal arguments are minimally present, but these utterances follow the Commission's rhetoric. Whether the Council adopts a similar position is discussed in the following chapter.

6 The Council of the European Union's reaction

This chapter portrays the Council's argumentation in response to the Commission's proposal. The FDA political and legal arguments are given first to match the previous chapters. Subsequently, a description of the BIA political and legal arguments is delivered.

6.1 Foreground discursive abilities

6.1.1 Political arguments

The Council's discussion significantly referred to the amendment's economic effects. The advantages and risks were both parts of the debate; whereas the German members often claimed that NS2 did not risk the diversification of suppliers, eastern European states declared the opposite (Nasr and Barkin, 2018; Council of the European Union 2019e). Nevertheless, the main economic argument carried out by the Council indicated that the amendment attracts investors and improves the internal gas market (Council of the European Union 2019b; 2019e; Datskevych 2019). Therefore, the Council put substantial emphasis on the amendment's economic consequences within their decision-making process. Another frequently mentioned characteristic is the reference to potential threats. (Council of the European Union 2018a; 2019b; 2019c). All claims signify that the amendment advantages the European energy security through diversification and less dependency on Russian gas. The Council's mentioning of lobbying groups and other political entities under the new Directive was also recurring. Their reaction was more balanced than the Parliament's response. The Council covered the decreasing Russian influence over the European gas market and the MS' continuous powerful position (Council of the European Union 2018b; 2019b). This position is in line with the European principle of subsidiarity.

Contrary to the previous arguments, the Council mentioned other FDA indicators to a limited extend. The reference to promoting its institution under the new setting occurred solely by referring to MS seeking closer cooperation with the EU (Council of the European Union 2019b). Ironically, the German Chancellor Merkel and member of the Council claimed that the agreement on the Directive was reached through MS' cooperation outside the EU structure (Posaner, Gurzu and Tamma 2019). Furthermore, the Council directed its argumentation to righteousness, responsibility, and principles by amending the Directive only once. The Polish delegation reasoned that "the Gas Directives should be the priority of all member states,

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especially if they really wish to achieve the objective of Energy Union based on solidarity and cooperation, and not on the bases of privileges and exemptions” (Council of the European Union 2018a). This argument is the only reference to European solidarity concerning the new Directive. Thus, although limited, the European principles and solidarity performed a function within the Council’s decision-making process. The Council did not refer to the institutional resources, the public opinion, and the amended Directive’s effectiveness. Conclusively, the arguments based on economic, security, and political entities were the most existent elements within the Council’s reaction.

6.1.2 Legal arguments

FDA legal arguments are even more noticeable in the Council’s rhetoric. The Council recurrently referred to desired and prospective laws. Their main argument applies to eradicating the inconsistencies in the current legal framework by amending the Gas Directive (Council of the European Union 2019d; 2019e). Consequently, the amendment is viewed to change the framework in the EU’s interest progressively. Additionally, the Council stated that the new Directive “provides for the possibility of derogations for existing pipelines to and from third countries, as well as clear procedures for negotiations with third countries and exemptions regarding new pipelines” (Council of the European Union 2019f). This reference covers the desire that future pipeline projects might obtain an exclusion from the new Directive. This request is later included to the Council’s satisfaction.

Secondly, the Council’s reaction repeatedly referred to the new legal framework. The Council doubted whether the amendment converged with internal law and claimed the need for an impact assessment (Council of the European Union 2018b). However, most references embedded a positive attitude. Multiple MS delegates plighted that the modified framework would increase the clarity and effectiveness of the applicability of European law (Council of the European Union 2018a; 2019c; 2019d). Therefore, the Council regarded the new legal framework as valuable to the EU’s functioning.

Third, the mentioning of interstate regulation and MS’ legal framework regarding the amendment transpired most often within the Council’s argumentation. Reservations were present that the authority shifted from the MS to the EU, especially among MS opposing the amendment (Council of the European Union 2019c). Nevertheless, the Council voiced that MS’

rights are preserved after the amendment and that MS holds their authority over their territorial waters (Council of the European Union 2018b; 2019b). The Council's optimism transpired during the concluding stages when they argued that the amendment resolves "incompatibilities between EU law and third country law" and that MS' jurisdiction remained guaranteed (Council of the European Union 2019e; 2019b). Conversely to the frequent reference to the MS' concerns, the Council refrained from denoting arguments based on rights expression. This trend is similar to the Commission's discourse and the Parliament's reaction

6.2 Background ideational abilities

6.2.1 Political arguments

The Council's BIA arguments were limited. Four arguments were identified once. The institution did signify the economic effects under the current structure. Their orientation entailed that the legal framework defied the competition, which was deemed vital to the functioning of the internal energy market (Council of the European Union 2019b). Similarly, the Council referred only on one occasion to the energy security under the current framework. Their argument entailed that the framework is meant to support energy security (Council of the European Union 2019b). Consequently, the Council argued that the current framework was already contributing to the EU's energy security. The third isolated argument denoted the EU's sympathy and solidarity within the current setting. The Polish delegate voiced in a Council meeting his concerns by stating that "the implementation of the Gas Directive will test the ambition, commitment, and solidarity of both the Commission and the member states" (Council of the European Union 2019c). Hence, although minimally uttered, the Council reasoned that solidarity in the present setting is essential. Lastly, the observed reference to the influence of political entities was directed towards the Council members themselves. The Council chairman claimed that the previous presiding countries – Bulgaria and Austria – "did nothing to promote this Directive. The Romanians, who are in opposition to Nord Stream 2 and who are suffering (...) immediately raised this issue when they began to chair the Council of Europe" (Datskevych 2019). Consequently, other political entities under the current structure – namely, the Council members – are distressing the amendment and its implementation.

Conversely, the other four BIA indicators remain unobserved; the reference to the lack of available institutional resources, the EU's responsibility and principles, public sentiment, the

effectiveness of the current policies, and, lastly, the promotion of the Council's position within the current setting.

6.2.2 Legal arguments

The Council recurrently referred to the distribution of present laws. Similar to the Commission and Parliament, the Council stressed the presence of a legal void within the current legal framework (Council of the European Union 2019b). Parallel with this implication is the statement is the claim made by the Romanian Energy Minister that the amendment “fills a gap in the EU's legal framework in the energy field and will ensure that the rules of the Energy Union are applied consistently across the EU” (Council of the European Union 2019d). Additionally, the Council signified those existing technical contracts should remain in place to not disrupt their operations after the amendment's realization (Council of the European Union 2019e). Hence, the Council frequently directed to the implications of the distribution of laws under the current structure.

Furthermore, the Council's argumentation directed itself towards the interstate regulation and MS' legal framework in the current setting. In a status report, the Council indicated that MS's national law often fails to cover the derogation clause (present in the amended Directive) and that MS's legal frameworks frequently contradict international law (Council of the European Union 2018b). Therefore, the Council perceived the amendment as necessary. Additionally, the Council argued that MS' frameworks are insufficiently capable of reducing market distortions (Council of the European Union 2019b). Consequently, the Council claimed that application and enforcement are best executed on a centralized level, in line with the Parliament's rhetoric and the amendment. Contrarywise and comparable to the Commission and the Parliament, the Council abstained from signifying previous court cases and the legal consequences under the present legal framework.

In sum, the Council's FDA political and legal arguments were manifold. Most statements referred to the economic effects, security issues, and the position of other political entities under the amended Directive. The Council's substantial references to FDA legal arguments even exceeded the legal indications within the Commission's discourse. The BDA legal arguments show a similar trend, although less frequent. However, the Council referred

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minimally to the BDA political arguments. The next chapter presents how the Commission's discourse transpired in the Council and Parliament's argumentation.

7 Connecting the dots: the embraced discourse

This chapter links the Commission's discourse to the Parliament and Council's reaction. These relations display what references correspond to one another and subsequently confirm or refute Chapter 2's propositions.

7.1 Political arguments

The presence of FDA political arguments within the institutions' rhetoric transpired considerably. The Commission's emphasis on the economic effects – the diversification of suppliers, market integration, and enhancing the climate for investors – has been ominously referred to by the Parliament and the Council. Both institutions deemed diversification and preventing the creation of monopolies as the fundamental reasons to agree with the amendment. Identically, the Commission's emphasis on the amendment's encouraging effect on the competitiveness of the European gas market echoed in the reaction of both the Parliament and the Council. However, there is a slightly different approach. The Parliament deemed the diversification of suppliers in the market as most important, whereas the Council's argumentation emphasized the importance of creating an investor-friendly environment. This tendency also unfolded when the Commission voiced the amendment's impact on enhancing European energy security. The Commission's discourse significantly indicated that the amendment contributes to increasing energy security by decreasing its dependency on Russian gas. Parliament went even further by arguing that this dependency might result in a Russian political weapon against the EU and, therefore, viewed the amendment as vital. Parliament and the Council adopted this argument by frequently stating identical opinions about the Commission's line of reasoning. Whereas the Commission's discourse included limited indications concerning the influence of other political entities on the European gas market concerning the new amendment, the Council and Parliament voiced these implications even more frequently. The Commission's reaction referred mainly to the MS role. However, the other institution's response was more extended and applied to the Commission's increasing authority and influence of the Russian Federation. Therefore, these topics can be perceived as a missed opportunity within the Commission's discourse.

The Commission's argumentation considerably included indicators concerning the righteousness, responsibility, and principles linked to the amendment. The Council merely

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referred to the EU's responsibility to amend the Directive, and the Parliament refrained from including any indication to this argument. Similarly, the Commission referred occasionally to the new Directive's effectiveness and the EU's solidarity. Both co-legislators abstained from including these arguments in their line of reasoning. Nevertheless, the Commission's statements concerning the FDA economic effects, security issues, and the position of other political entities transpired within the reaction of both the Parliament and the Council. Therefore, proposition 1 – the Council and Parliament rectified the amendment of the Gas Directive based on the Commission's foreground discursive political arguments – is confirmed.

The BIA political arguments within the Commission's rhetoric mainly percolated in the Parliament's response. The Council's reaction minimally depicted political statements embedding political arguments concerned with the current structure by solely stating that the EU's framework should encourage competition within the market. The Commission's emphasis on the economic effects depicts the structure's failure to guarantee a well-functioning energy market because of the threat to the diversification of suppliers and creating a hostile environment for investors. The Parliament's reaction predominantly contained the reasoning that the current framework was detrimental to the diversification of suppliers and that this market position might be used as a political tool in the future. Therefore, the Commission's discourse was (partially) adopted by the Parliament. This correlation also applies to the Commission's use of references to (energy) security concerning the present structure. Their arguments entailed the potential sudden reduction of Russian gas supplies, harming European citizens' gas utilization, and the shutdown of the pipeline network running through Poland and Ukraine. The Parliament copied these concerns in their response. Moreover, they extended the argument by often referring to NS2 as a political weapon regarding the Baltic states and Ukraine. They even advocated for combatting NS2's construction not solely through legal measures but also by political instruments (European Parliament 2016). Similar to the previous argument, the Council was observed to refer to the security issue solely once. Consequently, the inference that the Commission's discourse caught on only applies to the interplay between the Commission and Parliament.

The Commission's mentioning of the implications concerning the influence of other political entities within the existing structure directed its attention primarily to the dependency on the MS' actions towards the gas pipelines. Both Parliament and the Council included references to political entities, but they referred mainly to Russia's influence and the MS' uncomfortable

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position regarding amending the Directive. Therefore, the Commission's rhetoric did not transpire within the Parliament and Council's response. Furthermore, the Commission's reference to the public opinion, the European principles, and the effectiveness of the current policy remained unreciprocated by the co-legislators. Conclusively, the Council's argumentation covered the BIA political arguments minimally. However, Parliament referred significantly to specific BIA arguments. Therefore, proposition 2 – the Council and Parliament rectified the amendment of the Gas Directive based on the Commission's background ideational political arguments – is confirmed partially. The inferences can only be drawn from the Commission's discourse and the Parliament's argumentation as they transpired within the Parliament's reaction.

7.2 Legal arguments

The Commission frequently referred to desired and prospective laws as an indicator of FDA legal arguments. These indicators mainly covered the closing of an existing legal void, entailing those pipelines running from third countries to the EU should be covered by the EU's legal framework. Additionally, the Commission's discourse included the desire to create legislation, which stimulates the functioning of the internal gas market. The Council practically copied these arguments by recognizing them and used them as substantiation for agreeing with the amendment. Contrarily, although one observed statement by the Parliament covered the legal void, the assembly's reaction covered these arguments insignificantly. A similar correlation arises for the references to the new legal framework and interstate regulation and MS's legal framework under the new Directive. The Commission mainly referred to the latter by arguing that MS' law is often irreconcilable with the EU's objectives and that MS preserves the authority over their territories. The Council reproduced this argument as justification for amending the Directive by stating that the MS' power remains intact. The Parliament's reaction did not pair with the Commission's rhetoric. The Commission voiced the necessity for all-embracing directives that guaranteed legal certainty for all stakeholders concerning the new legal framework. The Council's references connect to the Commission's argument that the amended Directive fundamentally increases the legal clarity for the involved parties. The Parliament's reaction adopted parallel rhetoric by stating that the amendment fosters the reliability and regularity of European law. However, this sole statement is deficient in inferring that the Commission's FDA legal arguments impacted the Parliament's decision. Therefore, this study deduces that the Commission's discourse of FDA legal arguments influenced the

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Council's reaction, but not the Parliament's argumentation. Consequently, proposition 3 – the Council and Parliament rectified the amendment of the Gas Directive based on the Commission's foreground discursive legal arguments – can only be confirmed regarding the Commission and Council's interaction.

The BIA legal arguments within the three institution's rhetoric covered the distribution of present laws. The Commission emphasized the deficiencies in the current structure by arguing that the framework contains risks for ensuring effective competition, creating uncertainty, and a weak negotiation position for the Commission. The Council acknowledged these claims by referring to the legal void as disrupting competition. Parliament referred to a lesser extent to the law distribution within the framework but recognized the considerable flaws. Therefore, the Council and Parliament's argumentation duplicated some of the Commission's claims. This inference also applies to the indicators for interstate regulation and MS' legal framework in the current setting. The Commission reasoned that MS' law is often unimplementable and contrary to the European legal framework. However, they asserted that the MS's authority must remain untouched within the present structure. The Council's reaction reproduced these arguments by stating that MS are unsuccessful in applying effective legal tools and the need for centralized authorization. Similarly, the Parliament minimally referred to MS law. However, Parliament expressed their concerns about MS law's inapplicability and advocated for a European approach. Therefore, proposition 4 – the Council and Parliament did not rectify the amendment of the Gas Directive based on the Commission's background ideational legal arguments – is refuted because the Commission's BIA discourse echoed in the Council and Parliament's reactions.

8 Discussion

8.1 Key findings

This research aims to identify how the Commission succeeded in making the Council and Parliament concur with the proposal to amend the Gas Directive by using discourse. The goal derives from Herranz-Surrallès' (2016) request to explore how the existing gap between policy discourse and policy practice is reduced and what conditions stimulate this reduction. The results indicate that the Commission's discourse during the amendment process effectively diminished the gap between policy discourse and policy practice. The Commission's use of political arguments – particularly arguments referring to the economic effects, security issues, and the influence of other political entities – inspire the Council and Parliament to agree. Similarly, the Commission's utilization of legal arguments denoting the flaws within the current setting transpires within the reaction of the co-legislators. Consequently, the gap between policy discourse and policy practice synchronizes with the use of these arguments. However, the data suggests that the Commission's discourse effectiveness often varies between the institutions. The Council is more sensitive to legal arguments concerning the new Directive's functioning. In contrast, the Parliament appears to adopt legislation based on discourse, including political arguments that denote the current structure's deficiencies. Conclusively, this study demonstrates that the Commission's discourse effectiveness depends on the argument's subject but that the correct arguments diminish the existing gap between policy discourse and policy practice.

8.2 Implications

The study's inferences align with previous research. Siddi and Kustova (2021) argued that the Commission politicized the Directive's amendment to make the Council and Parliament concur. Identifying the Commission's extensive use of political arguments endorses their claim. Comparably, Goldthau and Sitter (2020) claimed that the Commission greatly emphasized the Commission's use of moral codes by referring to principles. This study also confirms this claim. However, both the Council and Parliament withheld from including these arguments in their reaction and, therefore, are deemed unfruitful in stimulating policy changes. Mata Perez et al. (2019) argued that the Commission significantly referred to the Commission highlighting European solidarity. The observations contradict this argument. References to solidarity are negligibly observed. Keypour (2019) declared that the Commission actively

advocated increasing its authority. However, this study identified no mentions of the Commission's self-promotion. The Council and Parliament referred to providing the Commission with a negotiation mandate, but the Commission was reticent regarding its increasing authority. According to Schmidt-Felzmann (2020), the Parliament agreed with the amendment because NS2 posed a potential threat to European security. This study firmly validates her argument because the Parliament's emphasis on security issues is distinctly prominent. Hence, the study's inferences refute and confirm the existing literature. This claim is also in line with the main findings, which remain somewhat surprising. The Council's reaction minimally included references to the political structure wherein the institutions operate. Similarly, the Commission's legal arguments concerning the amendment's future legal implications did not transpire in the Parliament's reaction. Nevertheless, discourse is displayed to close the gap between policy discourse and policy practice.

8.3 Limitations

The research's main limitations derive from methodological issues. The methodological choices were constrained by the available time and the topic's political sensitivity. For example, conducting interviews with EU representatives would increase the reliability of this study. Similarly, backroom politics probably influenced the amendment process significantly. These conversations are unfortunately not included in this study. Other dialogues which are likely not included in the data analysis are unpublished parliamentary debates, Council meetings, and consultations by the Commission. Their absence reduces the availability of potentially valuable data and, therefore, jeopardizes the study's validity. Furthermore, other factors potentially influenced the Council and Parliament's reaction to the Commission's proposal (e.g., lobbying groups or already existing verdicts). This study primarily focuses on the impact of political and legal arguments. Excluding other potential factors reduces the generalizability of the study. Therefore, the claims solely apply to the institution's reasoning concerning political and legal influences. Nevertheless, the qualitative content analysis enabled the researcher to comprehensively examine all the available published press releases, meetings, and documents. Hence, this study depicts a reliable picture of amending the Gas Directive and the EU's energy governance under restrictive circumstances.

8.4 Recommendations

This study produces several practical and research recommendations. As indicated above, future research is encouraged to assess whether other factors influenced the amendment's ratification by the co-legislators (e.g., social factors or intra-institutional factors). These factors might explain why the Council's reaction did not transpire the arguments based on the political current setting and the Parliament from preventing the utilization of future legal implications. Additionally, future research is needed to establish if the study's inferences also apply to the backroom conversations between the European institutions. These conversations probably influenced the institution's rhetoric and decisions. Future research is recommended to include interviews with European representatives involved in the amendment process. Lastly, future research should consider analyzing whether the use of FDA arguments influences the Council and Parliament's decisions in other politically sensitive policy areas (e.g., foreign affairs and the European Green Deal).

Moreover, the study's inferences drive some practical recommendations. First, the Commission is encouraged to use FDA political and legal arguments when addressing the Council. The Council seems benevolent to adopt these arguments within their endorsement rhetoric. Similarly, FDA political arguments and BIA political arguments are perceived to influence Parliament. Both institutions are significantly concerned with arguments based on the security issues and the economic effects. Consequently, the Commission is recommended to focus on these issues to influence the institution's approval. Additionally, the Commission has an opportunity to include references to other political entities within its discourse increasingly. The Council and Parliament referred significantly to this indicator, whereas the Commission's argumentation minimally posed such a statement. The Commission can be increasingly effective in getting their way within the legislative procedure when they emphasize these policy issues.

9 Conclusion

This study examined the gap between policy discourse and policy practice, or the hysteresis effect in Bourdieu's terms. This effect entails the mismatch between the Commission's *habitus* (the way an institution reasons and expresses itself) and the EU's *field* (its existing principles and structure). These concepts apply to the Commission's aim of obstructing the construction of NS2 by the amendment of the Gas Directive and, consequently, the European legal framework. Herranz-Surrallés' (2016) request to analyze under what conditions these notions are possibly harmonized applies to the hysteresis effect present within European energy governance. The Commission's *habitus* successfully changed the EU's *field* through argumentation. The DI theoretical perspective enabled this research to focus on the institutional transformations following the power of ideas embedded within an agent's discourse. The study's deduction infers that specific political and legal arguments facilitate the Council and Parliament's benevolence to concur with the Commission's proposals. Statements referring to the economic effects, security issues, and the influence of other political entities stimulate the co-legislators to comply with the Commission's propositions. This deduction also applies to legal arguments concerning the desirability of the new law, the new legal framework, and the MS' position in both the current and new structure. Moreover, the Commission can refer more frequently to security concerns under the existing structure because the Parliament is more responsive to these arguments. The Council is receptive to utilizing legal arguments referring to the new law's effects. Nevertheless, the Commission successfully reasoned to make the Council and Parliament concur with the Directive's amendment. Consequently, the European legal framework (the *field*) transformed appertaining to the Commission's *habitus*. Following, the hysteresis effect existent in the European energy governance diminished.

The inferences considerably enhance the existing and absent knowledge on how the EU institutions operate and transform concerning energy policy. The EU largely abstained from active participation in energy legislation and interference in the MS' national energy agendas in the past. Previously, older studies on EU energy governance analyzed a largely stagnant policy area. This study's valuable insights contribute to a progressively dynamic policy field knowledge. The conclusions explain how the Commission reasons within the energy debate, how the Council and Parliament react to the Commission's rhetoric, and what arguments incentivize these institutions to change the EU's legal framework. Moreover, a shrinking

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mismatch between the EU's policy discourse and policy practice is especially relevant in the broader context and within contemporary debates. The pending United States' sanctions on Russia and Germany regarding the NS2 operations potentially encourage a changing policy discourse. Similarly, the energy supply and consumption giants – the United States, Russia, and China – increasingly challenge each other. This enfolding diplomatic and economic conflict will significantly impact the European gas market and consumers. The EU's adopted position in this debate remains indecipherable, but the Commission's habitus will unquestionably change. This study adds to the Commission's consciousness to successfully alter the EU's legal structure and arm itself against the hostilities of these energy giants.

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11 Appendix I: Coding guide and frequency

	Code	Code description	Commission	Parliament	Council
FDA political arguments	Economic effects I	Reference to economic effects after amending the Directive	18	5	8
	Capacity I	Reference to institutional resources under the new Directive	-	-	-
	Morality I	Reference to righteousness, responsibility, and principles by amending the Directive	12	-	1
	Security I	Reference to potential threats	11	5	5
	Public sentiment I	Reference to what the public opinion desires	-	-	-
	Political implications I	Reference to lobbying groups and political entities under the new Directive	2	5	5
	Policy description I	Reference to the effectiveness of the new policy	3	-	-
	(Self) promotion I	Reference to promoting its own institution under the new setting	-	2	3
	Personal sympathy I	Reference to sympathy and solidarity concerning the new Directive	2	-	1
	Total	Total of foreground discursive abilities political arguments	48	17	23
FDA legal arguments	Fairness & Equality I	Reference to desired and prospective laws	10	2	9
	Legality I	Reference to expressions of rights	-	-	-
	Punishment I	Reference to new legal framework	6	3	8
	External regulation I	Reference to interstate regulations and Member States' legal framework under the new Directive	8	1	12
	Total	Total of foreground discursive abilities legal arguments	24	8	29

Table 1: FDA political and legal codes and frequency

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	Code	Code description	Commission	Parliament	Council
BDA political arguments	Economic effects II	Reference to economic effects under the current structure	6	3	1
	Capacity II	Reference to the current lack of available institutional resources	-	-	-
	Morality II	Reference to the responsibility, righteousness, and principles within the current framework	1	1	-
	Security II	Reference to (energy) security under the current framework	6	10	1
	Public sentiment II	Reference to how the public regards the current structure	1	-	-
	Political implications II	Reference to the influence of lobbying groups and political entities under the current framework	3	2	1
	Policy description II	Reference to the effectiveness of the current policy	1	-	-
	(Self) promotion II	Reference to promoting its own institution in the current setting	-	-	-
	Personal sympathy II	Reference to sympathy and solidarity in the current setting	-	-	1
	<i>Total</i>	<i>Total of background ideational abilities political arguments</i>	<i>18</i>	<i>16</i>	<i>4</i>
BDA legal arguments	Fairness & Equality II	Reference to distribution of present laws	15	2	4
	Legality II	Reference to previous court cases	-	-	-
	Punishment II	References to legal consequences under the present legal framework	-	-	-
	External regulation II	Reference to interstate regulation and Member States' legal framework in the current setting	9	1	2
	<i>Total</i>	<i>Total of background ideational abilities legal arguments</i>	<i>24</i>	<i>3</i>	<i>6</i>
Institution frequency	Commission	Reference is made by (a member of) the European Commission	82	-	-
	Parliament	Reference is made by (a member of) the European Parliament	-	29	-
	Council	Reference is made by (a member of) the European Council or the Council of the European Union	-	-	42

Table 2: BDA political and legal codes, frequency, and institution's references